

**SECTION 6
DEDICATION OF PARK LANDS AND SCHOOL SITES
OR FOR PAYMENTS OF FEES IN LIEU THEREOF**

As a condition of approval of a final plat of subdivision or of a final plat of a planned unit development, each subdivider or developer will be required to dedicate land for park, recreational, and school purposes to serve the immediate and future needs of the residents of the development, or will be required to make a cash contribution in lieu of actual land dedication, or a combination of both, at the option of the Village with the concurrence of the affected district, in accordance with the following criteria and formulas:

6-1 CRITERIA FOR REQUIRING PARK AND RECREATIONAL LAND DEDICATION.

All lands dedicated for park and recreational purposes shall be deeded to the Village of Lake in the Hills.

A. REQUIREMENT AND POPULATION RATIO.

The ultimate density of a proposed development shall bear directly on the amount of land required for dedication. The total requirement shall be 10 acres of land per 1,000 of ultimate population and may be allocated by the Board of Trustees in its discretion based upon the following criteria:

Types of Recreation Areas	Minimum Size	Park Acreage per 1,000 people
a. Play Lot	8,000 sq. ft.	N/A
b. Neighborhood Park	3 acres	2
c. Village-wide park for active sports	10 acres	4
d. Village-wide recreation park	15 acres	4
TOTAL		10 acres of land per 1,000 people

These requirements for acreage are based upon a review of available data studies and literature on the subject, including but not limited to, the National Land Park Association's *Recreation, Park and Open Space Standards and Guidelines*, 1990. These requirements shall be presumed as the appropriate acreage requirements and shall be used in calculating any cash in lieu of land contribution herein unless timely objected to as provided herein. Objections to these acreage requirements for any particular development shall be made in accordance with Section 1-4-1 of this Ordinance. Failure to timely object to these acreage requirements in accordance with Section 1-4-1 of this Ordinance shall thereafter waive any right to raise an objection at a later time.

B. LOCATION.

The Village's Parks Master Plan and Comprehensive Plan shall be used as a guideline in locating sites. A central location that will serve equally the entire development is most desirable. In large developments,

these sites can be located throughout the development according to established standards for park area distances.

1. CREDIT FOR PRIVATE OPEN SPACES AND RECREATION AREAS. When subdividers or developers provide their own open space for recreation areas and facilities, it may have the effect of reducing the demand for local public recreational services. Since private open space is not available to the general public of the Village, it is the policy of the Village that private open space will be discounted by at least 50 percent. Depending on the size of the development, a portion of the park and recreation area in subdivisions or planned developments may, at the sole option of the Board of Trustees be provided in the form of "private" open space in lieu of dedicated "public open space". The extent of the space shall be determined by the Board of Trustees based on the needs of the projected residents and in conformance to the total park and recreation land for the general area.

In general, a substitution of private open space for dedicated parks will imply a substantially higher degree of improvement and the installation of recreation facilities, including equipment by the developer, as part of his/her obligation. Detailed plans of such areas, including specifications of facilities to be installed, must be approved by the Village and before any credit is given for private recreation areas, the subdivider or developer must guarantee that these private recreation areas will be permanently maintained for such use by the execution of the appropriate legal documents. When an adjustment for private recreation areas is warranted, it will be necessary to complete the total park land dedication that would have been required from the subdivision or planned development and then subtract the credit to be given.

6-2 CRITERIA FOR REQUIRING SCHOOL SITE DEDICATION.

A. REQUIREMENT AND POPULATION RATIO.

The ultimate number of students to be generated by a subdivision or planned unit development shall bear directly on the amount of land required to be dedicated for school sites. The land dedication requirement shall be determined by obtaining the ratio of (1) the estimated children to be served in each such school classification over the (2) maximum recommended number of students to be served in each such school classification as stated herein, and then applying such ratio to (3) the appropriate number of acres for a school site of each such school classification as stated herein. The product thereof shall be the acres of land deemed needed to have sufficient land for school sites to serve the estimated increase in the number of children in each such school classification.

B. SCHOOL CLASSIFICATIONS AND SIZE OF SCHOOL SITE.

School classifications and the size of school sites within the Village shall be determined in accordance with the following criteria:

School Classification by Grades	Maximum number of students for each such school classification	Appropriate number of acres of land for each school site of such classification
Elementary schools, grades kindergarten through 5 th or 6 th	450 students	15 acres
Junior high schools, grades 6 th through 8 th or 7 th and 8 th	600 students	25 acres
High schools, grades 9 th through 12 th	1,500 students	70 acres
For unit (K-12) school district	2,550 students	110 acres

These requirements for acreage are based upon a review of available data studies and literature on the subject including but not limited to information provided by the State Superintendent of Education, and the unique characteristics of McHenry County including its generally rural character and its open spaces and the desire of its residents to maintain this character and open space in their future school sites. These requirements for acreage shall be presumed as the appropriate acreage requirements and shall be used in calculating any cash in lieu of land contribution herein unless timely objected to as provided herein. Objections to these acreage requirements for any particular development shall be made in accordance with Section 1-4-1 of this Ordinance. Failure to timely object to these acreage requirements in accordance with Section 1-4-1 of this Ordinance shall thereafter waive any right to raise an objection at a later time.

C. LOCATION.

The Comprehensive Plan and/or the standards adopted by the affected School District shall be used as a guideline in locating sites.

6-3 CRITERIA FOR REQUIRING A CONTRIBUTION IN LIEU OF PARK AND SCHOOL SITES.

When the development is small and the resulting site is too small to be practical or when the available land is inappropriate for park and recreational purposes or a school site, the Village, with the concurrence of the affected district, shall require the subdivider or developer to pay a cash contribution in lieu of the land dedication. The cash contribution in lieu of park and recreation land dedication shall be held in trust by the Village or other public body designated by the Village and shall be used solely for the acquisition of park and recreation land as classified above, which will be available to serve the immediate or future needs of the residents of that subdivision or development or for the improvement of other existing local park and recreation land that already serve such needs or for any other lawful park purpose or for any park purpose agreed to by the subdivider or developer at the time of platting. The cash contributions in lieu of school sites shall be paid directly to the school district in which the property is located and shall be used for the acquisition of land for a school site to serve the immediate or future needs of children from that subdivision or development or for the improvement to any existing school site that already serves such needs, and for the construction of school buildings or additions

thereto in accordance with Public Act 93-0330 and by agreement with the subdivider or developer in accordance with Section 6-11 of this ordinance. If any portion of a cash contribution in lieu of park and recreation land dedication or dedication of school sites is not expended for the purposes set forth herein within 13 years from the date of receipt, it shall be refunded to the record owner of the subdivided land at the time of the refund. If there is more than one record owner of the subdivision land or of the land that comprises the planned development, as applicable, such record owners shall share in the refund on a pro-rata basis using the latest assessed valuation for all such land.

A. FAIR MARKET VALUE.

The cash contributions in lieu of land shall be based on the "fair market value" of the acres of land in the area that otherwise would have been dedicated as park and recreation and school sites. The fair market value, on a per acre basis, shall assume, unless determined otherwise pursuant to Section 1-4-1 of this Ordinance, that the land is zoned residential, subdivided into a minimum of one acre parcels with appropriate frontage on a dedicated road, stubbed with village sewer and water, has all appropriate utilities available, is improved as set forth in Sections 6-7 and 6-8 of this Ordinance, and is otherwise property capable of being used for residential development. Based upon a study of real estate transactions in Lake in the Hills area, it has been determined that the present "fair market value" of such improved land in and surrounding the Village is, as of the effective date of this Ordinance, \$105,000 per acre. This figure shall be adjusted by the Board of Trustees from time to time with appropriate study and documentation. The "fair market value" as defined above shall be used in calculating any cash in lieu of land contribution herein unless timely objected to as provided in Section 1-4-1 of this Ordinance. Objections to the fair market value as defined above shall be made in accordance with Section 1-4-1 of this Ordinance. Failure to timely object to the "fair market value" as defined above in accordance with Section 1-4-1 of this Ordinance shall thereafter waive any right to raise an objection at a later time.

B. CRITERIA FOR REQUIRING DEDICATION AND A FEE.

There will be situations in subdivisions or planned developments when a combination of land dedication and a contribution in lieu of land are both necessary. These occasions will arise when (1) only a portion of the land to be developed is proposed as the location for a park or school site (that portion of the land within the subdivision falling within the park or school location shall be dedicated as a site as stated above, and a cash contribution in lieu thereof shall be required for any additional land that would have been required to be dedicated); and (2) a major part of the local park or school site has already been acquired by the Village or particular district and only a small portion of land is needed from the development to complete the site (the remaining portion shall be required by dedication, and a cash contribution in lieu thereof shall also be required).

6-4 DENSITY FORMULA.

The following table of population density is generally indicative of current and short-range projected trends in family size for new construction and shall be used in calculating the amount of required dedication of acres of land or the cash contributions in lieu thereof unless a written objection is filed thereto by the subdivider or developer in accordance with Section 1-4-1 of this ordinance:

Type of Unit	Preschool 0-4 Years	Elementary Grades K-6 5-11 Years	Junior High Grades 7-8 12-13 Years	Total Grades K-8 5-13 Years	High School Grades 9-12 14-17 Years	Adults 18 years+	Total Per Dwelling Unit
Detached Single Family							
2 Bedroom	.113	.143	.041	.184	.020	1.700	2.017
3 Bedroom	.292	.422	.120	.542	.184	1.881	2.899
4 Bedroom	.418	.644	.184	.828	.360	2.158	3.764
5 Bedroom	.283	.461	.132	.593	.300	2.594	3.770
Attached Single Family							
1 Bedroom	.000	.000	.000	.000	.000	1.193	1.193
2 Bedroom	.064	.106	.030	.136	.038	1.752	1.990
3 Bedroom	.212	.227	.065	.292	.059	1.829	2.392
4 Bedroom	.323	.370	.106	.476	.173	2.173	3.145
Apartment							
Efficiency	.000	.000	.000	.000	.000	1.294	1.294
1 bedroom	.000	.002	.001	.003	.001	1.754	1.758
2 bedroom	.047	.100	.028	.128	.046	1.693	1.914
3 bedroom	.052	.278	.079	.357	.118	2.526	3.053

* Illinois School Consulting Service/Associated Municipal Consultants, Inc., Naperville, Illinois, 1996, or as updated from time to time by the same consulting firm.

A bedroom as used in this Ordinance shall include any den, study or extra room located on any floor in a dwelling unit which is not clearly identified for some other specific purpose such as a kitchen (one per unit), dining room (one per unit), living room (one per unit) bathroom and family room (one per unit).

In the event a subdivider or developer files a written objection to the Table of Estimated Ultimate Population listed above, he shall submit his/her own demographic study showing the estimated additional population to be generated from the subdivision or planned development, and in that event final determination of the density formula shall be made in accordance with Section 1-4-1 of this Ordinance. This Table of Estimated Ultimate Population per dwelling unit shall be used in calculating any cash in lieu of land contribution herein unless objected to as provided in Section 1-4-1 of this Ordinance. Objections to the Table of Estimated Ultimate Population per dwelling unit shall be made in accordance with Section 1-4-1 of this Ordinance. Failure to object to the Table of Estimated Ultimate Population per dwelling in accordance with Section 1-4-1 of this Ordinance shall thereafter waive any right to raise an objection at a later time.

6-5 RESERVATION OF ADDITIONAL LAND.

When the Village's Parks Master Plan, or Comprehensive Plan or the standards of the Village call for a larger amount of park and recreational land or school sites in a particular subdivision or planned development than the developer is required to dedicate pursuant to this Ordinance, the land needed beyond the developer's contribution shall be set aside and reserved by the developer for subsequent purchase by the Village or other public body designated by the Village, provided that such acquisition is made within two years from the date of approval of the Final Plat.

6-6 COMBINING WITH ADJOINING DEVELOPMENTS.

If the subdivision or planned development is less than 40 acres, public open space or a school site that is to be dedicated should, if possible, be combined with dedications from adjoining developments in order to produce usable recreation areas and/or school sites without hardship on a particular developer.

6-7 TOPOGRAPHY AND GRADING.

The slope, topography, and geology of the dedicated site as well as its surroundings must be suitable for its intended purpose. Wetlands, floodplains and floodways may be accepted for Village ownership and maintenance, but shall not serve as a credit toward the park site contribution. Storm water detention areas shall not be accepted for Village ownership and maintenance, and the portion of a detention area designed to function primarily as a component of the storm water control system shall not serve as a credit toward the required park site contribution. Retention areas shall not be accepted for Village ownership and maintenance and shall not serve as a credit toward the required park site contribution. Wetlands, floodplains, floodways, detention areas, retention areas, and areas of steep slope shall not be accepted as school sites and shall not serve as a credit toward the required school site cash in lieu of land contribution.

6-8 IMPROVED SITES.

All sites shall be dedicated in a condition ready for full service of electrical, water, sewer, and streets (including enclosed drainage and curb and gutter), as applicable to the location of the site, and shall otherwise comply with the requirements of the Village's Municipal Code. The landscaping normally included within the definition of "improved" sites under the Village's Municipal Code may be deleted due to the delay time between dedication of any such school site and the construction of school facilities thereon.

6-9 INDEMNIFICATION.

As a precondition to the Village collecting school dedications and/or fees in lieu thereof, the school district shall execute an indemnification agreement largely similar in form and content to the form set forth in Exhibit 6-A attached.

6-10 COLLECTION, DISTRIBUTION, NEEDS ASSESSMENT.

The cash in lieu of land contributions imposed by this Ordinance shall be collected and held by the Village, except contributions for the applicable school district which shall be paid by the developer or subdivider directly to the school district on which the property is located, to be distributed upon request in accordance with the standards in this Ordinance to the appropriate unit of local government and to be used for the purposes set forth in this Ordinance.

6-11 WHEN DEDICATIONS, FEES ARE DUE.

All dedications and fees imposed by this Ordinance shall be due and payable upon Final Plat approval. However, the Village may agree that payment of fees may be made at the time of building permit issuance in consideration of which the subdivider or developer shall execute an agreement attached as Exhibit 6-B agreeing that the fees payable will be adjusted in accordance with the requirements of Section 6 and further agreeing that the fees may be expended for the purposes described in Exhibit 6-B.

6-12 CALCULATING CASH CONTRIBUTION.

In calculating any cash in lieu of land contribution payable at the time of building permit issuance as provided in Section 6-10 above, the Village shall use the fair market value as set forth in Section 6-3-A or any amendment thereto and in effect at the time of the contribution and building permit issuance.

6-13 FORM OF AGREEMENTS.

The following agreements shall be used as specified herein.

EXHIBIT 6-A

AGREEMENT REGARDING THE RECEIPT OF
DEVELOPER SUBDIVISION CONTRIBUTIONS

WHEREAS, the Village of Lake in the Hills, Illinois, on behalf of itself, its officers, employees and independent contractors (the "Village") , through its ordinances or through the provisions of its annexation agreements has required that developers make contributions to the Village, that the Village, in turn, may make available for other government bodies that are affected by the subdivision improvements; and

WHEREAS, such contributions may be in land or in dollars and, when transferred or paid over to those government bodies, inure to the benefit of those government bodies and not entirely to the direct benefit of the Village; and

WHEREAS, from time to time within the Village, and within other municipalities, disputes have arisen regarding the validity and amount of such contributions; and

WHEREAS, the Village is willing, at its discretion, to continue seeking the contribution of land or money but wishes to procure a commitment from other government bodies benefited by the receipt of such contributions that those government bodies will (a) acknowledge that the requirement that such subdivision contributions be made is totally within the discretion of the Village as to their existence, manner and amount; (b) the other government body that benefits from the contribution will pay the cost of defending any lawsuit that is filed challenging the appropriate amount of the contributions, the time at which they are to be made or any other aspect of the contributions; and (c) that the benefited government body will comply with the terms of a final and nonappealable judicial determination by a court of competent jurisdiction rendered in connection with the lawsuit; and

WHEREAS, the Village is willing, in its discretion, to pay over or require contributions only to other government bodies that execute this Agreement;

NOW, THEREFORE, IT IS AGREED between the Village on behalf of itself and its officers, employees, and independent contractors, and, a government body within the State of Illinois (Benefiting Government), and in consideration for the payment of money or the transfer of the land to the Benefiting Government, which the Village from time to time may within its discretion cause to be made by subdividing developers, the Benefiting Government does agree, as follows:

1. The Benefiting Government acknowledges that, except as otherwise provided in the Village's ordinances and/or annexation agreements, the Village is not obligated to cause the payment of money or the transference of land to the Benefiting Government. The Benefiting Government recognizes that the Village may, at its sole discretion, amend its ordinances or annexation agreements or its practices to discontinue the payment of subdivision contributions to the Benefiting Government.
2. In the event a lawsuit is filed against the Village, the Benefiting Government and/or others by a subdividing developer or any other person, corporation or entity that challenges the appropriateness, amount, timing or any other aspect of a subdivision contribution that, pursuant to the terms of the Village's ordinances or annexation agreements, has been paid or is due to the Benefiting Government, then the Benefiting Government does agree to pay the costs and litigation

expenses (including reasonable attorneys' fees) incurred in defending such lawsuit. The costs and expenses shall be paid by the Benefiting Government when and as incurred by the Village but in no event more than once a month. As a condition precedent to the payment of these costs and expenses, the Village shall submit to the Benefiting Government copies of the original statements reflecting the costs and expenses, together with the supporting documentation that may be reasonably requested by the Benefiting Government.

3. The Village covenants and agrees that it shall employ competent and skilled legal counsel to represent the Benefiting Government and the Village, and further covenants and agrees that it shall keep the Benefiting Government fully advised as to the progress and status of the litigation. In particular, the Village shall provide to the Benefiting Government copies of all pleadings filed in the litigation and shall consult regularly (and shall cause its attorneys to consult regularly) with the Benefiting Government or its attorneys, as applicable, as to the strategy for defending the lawsuit. In no event may such litigation be compromised or settled by the Village without at least 30 days' prior written notice to the Benefiting Government. In the event that the Benefiting Government decides that it would prefer to be represented in the litigation by legal counsel of its own choosing, then the Benefiting Government shall be free to retain its own legal counsel for that purpose and to intervene in the litigation. In the event the Benefiting Government shall intervene in the litigation, this Agreement shall terminate from and after the date of the intervention and neither party to this Agreement shall have any further obligations from and after that date; provided, however, that the Benefiting Government shall still be liable for all sums that have accrued pursuant to the above paragraph 2 and that remain due and owing from the Benefiting Government to the Village.
4. In the event that a final and nonappealable judicial determination is made by a court of competent jurisdiction that contributions of land or money received by the Benefiting Government are, in whole or in part, excessive, the Benefiting Government shall promptly repay such excess to the person who procures such a judgment, together with all other amounts judged by the court to be owing from the Benefiting Government. Provided, however, that in the event that a judicial determination should require the payment of damages or for the attorneys' fees of the plaintiff's attorneys, in addition to the return of contributions held to be excessive, the Benefiting Government shall pay all additional amounts in the same manner as is provided in paragraph 2.
5. In further consideration of the continued payment by the Village to the Benefiting Government of the subject contributions of land or money, the Benefiting Government agrees that its obligations under paragraphs 2, 3 and 4 of this Agreement shall extend to both past and future cash and land contributions.
6. On or before June 1st of each year, every Benefiting Government that receives payments from the Village under this Agreement shall submit a report to the Village describing the manner in which the payments have been used. When this Agreement provides that money turned over to the Benefiting Government is to be used for a specific purpose or within a specific time period, the report shall address those issues. If the Benefiting Government should fail to file such a report with the Village, the Village may delay the payment of any additional funds due the Benefiting Government until such time as a full report containing adequate information is transmitted to the Village.
7. This Agreement shall be terminable by either party for any reason or no reason at all upon 30 days' prior written notice to the other party evidencing the intention to so terminate this Agreement. But the termination of this Agreement shall not

affect the continuing obligation of the Benefiting Government or the Village with regard to claims or damages allegedly arising out of the Village's efforts prior to termination to collect or the actual collection of subdivision contributions.

DATED this _____ day of _____, 20____.

Village of Lake in the Hills

BENEFITING GOVERNMENT:

Village President

Title: _____

(SEAL)

(SEAL)

ATTEST:

ATTEST:

Village Clerk

Secretary

EXHIBIT 6-B

AGREEMENT

The Village of Lake in the Hills (the "Village") and _____, ("Developer") agree as follows:

1. The Village has approved a final plat of subdivision or a final plat of a planned development at the request of developer for the real estate legally described in Exhibit I attached hereto and made a part hereof (the "Land"). Accordingly, pursuant to the Village's Subdivision Control Ordinance or through the provisions of its annexation agreement, certain land dedications or cash contributions for park and recreation and school lands are immediately due to the Village from the Developer.
2. Developer has, however, requested that the payment of the aforesaid cash contributions be delayed and that the same become due and payable on a per housing unit basis at time the Village issues a building permit for the particular housing unit.
3. In consideration for the Village agreeing to delay its receipt of the cash contributions in accordance with Paragraph 2 above, Developer hereby agrees as follows:
 - a. The amount of cash contributions owed shall be calculated based upon Ordinance No. 2000-01-07 or as provided for in such other future ordinance amending or replacing Ordinance No. 2000-01-07 which is in effect at the time of the issuance of a building permit or alternatively the annexation agreement between the Village and Developer, if any, setting forth an amount of cash contribution.
 - b. Notwithstanding any present or future law, regulation and/or legal precedent to the contrary, the unit of local government that is the ultimate recipient of the subject cash contributions may expend such contributions for any of the following purposes intended to serve the immediate or future needs of the residents and children of the Developer's subdivision or planned unit development: (1) for the acquisition of land; (2) for site improvements such as, by way of example, streets, curbs, gutters, storm water control, and utility extensions; (3) for construction of capital facilities, including, by way of example, new buildings and structures, and the expansion or enhancement of existing buildings and structures; and (4) for so-called soft costs directly related to the foregoing items (2) or (3) such as architectural and engineering costs.
 - c. Developer has reviewed Section 6 of the Village's Subdivision Control Ordinance regarding dedication of park lands and school sites or cash contributions in lieu thereof, as well as all of the methodology, formulae, calculations, projections, assumptions, numbers and other factors used to arrive at the land dedication requirements or cash contributions in lieu thereof that are the subject of this Agreement (hereinafter referred to as "Section 6 of the Village's Subdivision Control Ordinance and Attendant Calculations"), and hereby acknowledges and agrees that:
 - i. Pursuant to Section 6 of the Village's Subdivision Control Ordinance, Developer has been offered the opportunity to raise any objections relating to acreage requirements,

presumptions as to fair market value, the *Table of Estimated Ultimate Population Per Dwelling Unit*, or any other application of Section 6 of the Village's Subdivision Control Ordinance; Developer has not raised such objections; Developer has thereby waived the right to assert those objections;

ii. Developer hereby waives any future right to object to or institute any legal action regarding Section 6 of the Village's Subdivision Control Ordinance and Attendant Calculations; and

iii. Developer hereby acknowledges that Section 6 of the Village's Subdivision Control Ordinance and Attendant Calculations have been properly passed, calculated, conducted and imposed.

4. This Agreement constitutes a covenant that is appurtenant to and runs with the Land. Either this Agreement or a memorandum thereof may be recorded against legal title to the Land by either party hereto; provided, however, it shall be a condition of the Village's issuance of the first building permit for a housing unit on the Land that Developer shall provide satisfactory evidence to the Village that this Agreement or a memorandum thereof has been recorded against legal title to the Land.

5. Developer represents and warrants to the Village that it is the sole holder of record fee title to the Land.

IN WITNESS WHEREOF, the Village and the Developer have caused this Agreement to be duly authorized, executed and entered into as of the _____ day of _____, 20 ____.

Village of Lake in the Hills
President

Developer

Village Clerk