



## **School Cash Donation Agreement**

### **SCHOOL CASH DONATION AGREEMENT**

This agreement made this 25th day of April, 2016, by and between; Kathy Usmiller & Melissa Welch (formerly Steward), Jason & Allison Caswick, and Merle R. & Theresa M. Smith; hereinafter referred to as "the Developers" and Millburn Community Consolidated School District #24, a body politic in Lake County, Illinois hereinafter referred to as "the School District".

#### **WITNESSETH**

WHEREAS, the County Board of Lake County, Illinois has enacted a certain Ordinance commonly known as Chapter 151: Unified Development Ordinance of the Lake County Code hereinafter referred to as "the Ordinance", and

WHEREAS, Section 151.220 of the Ordinance provides for a cash donation to the School District when the Regional Superintendent of Schools determines that the School District's existing and projected enrollments are at 85% of the design capacity for the facility; and

WHEREAS, the Ordinance requires a Developer of residential real estate to make land or, in lieu of land, cash contributions to the School Districts in which the real estate being developed is situated to serve the immediate and future needs of the development, and

WHEREAS, the Developer desires to develop certain residential real estate in Lake County, Illinois commonly known as the Resubdivision of Cottonwood Estates, a Final Plat of which is recorded in the office of the Lake County Recorder as Document No. \_\_\_\_\_.

WHEREAS, the Subdivision lies within the boundaries of the School District, and

WHEREAS, pursuant to the terms and provisions of the Ordinance, the Developers and the School District have mutually agreed upon the amount of the cash contribution to be paid to the School District in full and complete satisfaction of the Ordinance.

NOW, THEREFORE, in consideration of mutual covenants, conditions and promises contained herein, the sufficiency of which is hereby acknowledged, the Developer and the School District agree to a cash contribution as represented in the attached Contribution Agreement Addendum.

1. All of the preamble clauses herein set forth is to be considered part of the agreement, and all parties hereto are entering into same with full knowledge of same.
2. The amount of any cash payment stated in the Contribution Agreement Addendum, shall be increased by 3% per year for any building permit issued beyond the time period covered in the above table.
3. The School District or Regional Superintendent of Schools shall issue a separate receipt for each lot or unit as either receives payment of the amount required for same.
4. Proof of payment of the required contribution signed either by the Superintendent of the School District or the Regional Superintendent of Schools indicating the name of the subdivision, the lot and the amount of payment by either lot, dwelling unit or number of bedrooms, shall be presented upon application for and prior to the issuance of a building permit.
5. The School District hereby agrees that the District shall use any cash received pursuant to the Ordinance only for the purposes and in the manner provided in the Ordinance.
6. The Developer and School District hereby acknowledge that cash contributions received by the School District under the terms of this Agreement may be subject to refund under the terms and conditions stated in the Ordinance.
7. This Agreement shall be recorded in the Office of the Lake County Recorder together with the Final Plat and it shall be further referenced upon the face of said Plat.
8. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this Agreement as of the day and year first above written.

DATED THIS 25th DAY OF April, 2016

Developer Signature	Kathy Usmiller	Melissa Welch (Formerly Steward)
Developer Signature	Jason Caswick	Allison Caswick
Developer Signature	Merle R. Smith	Theresa M. Smith
School District Signature	Jane Gattone, School Board President	

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**AGREEMENTS REGARDING THE RECEIPT OF DEVELOPER SUBDIVISION CONTRIBUTIONS AND INDEMNIFICATION, IN THE EVENT OF A PRIVATE AGREEMENT**

WHEREAS, Lake County, Illinois, on behalf of itself, its officers, employees and independent contractors (the "County"), through § 151.220 of its Unified Development Ordinance has required that developers make contributions to government bodies affected by the subdivision improvements; and

WHEREAS, those government bodies may instead elect to execute a private agreement with developers regarding the contribution of land or money; and

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

WHEREAS, the County is willing to permit private agreements between government bodies and developers for the contribution of school land or money but wishes to procure a commitment from such other governmental bodies benefitted by the receipt of such contributions that those government bodies will: (a) acknowledge that the requirement by the County of proof of payment for such contributions to such governmental bodies is totally within the discretion of the County; (b) acknowledge that the requirement by the County of proof of payment for such contributions to such governmental bodies does not render the County a party to such private agreements and does not render the County responsible or liable for the terms of such private agreements for any reason, including but not limited to the extent that such private agreements provide for contributions beyond what is authorized by the contribution requirements of § 151.220 of the Lake County Unified Development Ordinance; (c) pay the cost of defending any lawsuit that is filed against the County challenging the appropriate amount of the contributions, the time at which they are to be made, the withholding of County building permits in the absence of proof of payment for such contributions, or any other aspect of the contributions; and (d) comply with the terms of a final and non-appealable judicial determination by a court of competent jurisdiction rendered in connection with the lawsuit; and

NOW, THEREFORE, in consideration for the payment of money or the transfer of land to the Millburn C.C. School District #24, which the County has authorized to be effectuated via private agreement in accordance with the Lake County Unified Development Ordinance, it is agreed between the County, on behalf of itself and its officers, employees and independent contractors, and the Millburn C.C. School District #24 as follows:

1. Legal Representation and Costs:

A. In the event a lawsuit is filed against the County and/or the Millburn C.C. School District #24 by a developer that is subdividing property or any other person, corporation, or entity that challenges the appropriateness, amount, timing, the withholding of County building permits in the absence of proof of payment of private

school contributions by the developer, or any other aspect of a subdivision contribution that, pursuant to a private agreement between the Millburn C.C. School District #24 and the developer, has been paid or is due to the Millburn C.C. School District #24, then the Millburn C.C. School District #24 does agree to pay the costs and litigation expenses (including reasonable attorneys' fees) incurred by the County in defending such lawsuit. The costs and expenses shall be paid by the Millburn C.C. School District #24 when and as incurred by the County but in no event more than once a month. As a condition precedent to the payment of these costs and expenses, the County shall submit to the Millburn C.C. School District #24 copies of the original statements reflecting the costs and expenses, together with the non-privileged supporting documentation that may be reasonably requested by the Millburn C.C. School District #24.

B. The County covenants and agrees that it shall employ competent and skilled legal counsel to represent the Millburn C.C. School District #24 and the County, and further covenants and agrees that it shall keep the Millburn C.C. School District #24 fully advised as to the progress and status of the litigation. In particular, the County shall provide to the Millburn C.C. School District #24 copies of all pleadings filed in the litigation and shall consult regularly (and shall cause its attorneys to consult regularly) with the Millburn C.C. School District #24 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 County without at least 30 days' prior written notice to the Millburn C.C. School District #24.

C. In the event the Millburn C.C. School District #24 decides that it would prefer to be represented in the litigation by legal counsel of its own choosing, then the Millburn C.C. School District #24 shall be free to retain its own legal counsel for that purpose, to intervene in the litigation and to ask the County to terminate its representation of the Millburn C.C. School District #24 under Section 2 of this Agreement. The Millburn C.C. School District #24 shall notify the County in writing to that effect. In that event, this Agreement shall remain in full force and effect regarding all other provisions of this Agreement, and the Millburn C.C. School District #24 shall remain liable to the County for all sums that have accrued under this Agreement up until the date that such written notice is received and for all sums that remain due and owing from the Millburn C.C. School District #24 to the County relating to the defense of any lawsuit under the terms of this Agreement. Further, the County shall be permitted to continue to defend itself in such lawsuit and notwithstanding the Millburn C.C. School District #24's withdrawal from such representation, the Millburn C.C. School District #24 shall still indemnify the County for the County's costs incurred in such defense.

2. The Millburn C.C. School District #24 shall indemnify and hold harmless the County from any and all liability arising from the County's withholding of building permits in the absence of proof of payment by the developer of contributions pursuant to the terms of a private agreement reached between the Millburn C.C. School District #24 and the developer.

3. In the event a judicial determination should require the payment of damages or payment of the attorneys' fees of the plaintiff's attorneys, the Millburn C.C. School District #24 shall pay all additional amounts.

4. In further consideration of the continued authorization by the County enabling the Millburn C.C. School District #24 to collect the subject contributions of land or money, the Millburn C.C. School District #24 agrees that its obligations under this Agreement shall extend to both past and future cash and land contributions.

5. The Millburn C.C. School District #24 understands that it will be asked to execute an indemnity agreement similar to this agreement on an annual basis, on or before June 1 of each subsequent year and that the County shall not exercise any rights it might have to withhold the issuance of building permits in the absence of proof of payment or to require proof of payment of contributions by a developer to the Millburn C.C. School District #24.

6. 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 Millburn C.C. School District #24 or the County with regard to claims or damages allegedly arising out of the County's efforts prior to termination to impose, collect or distribute contributions pursuant to private agreement, or to the actual distribution of subdivision contributions pursuant to private agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

Lake County

Millburn C.C. School District #24

\_\_\_\_\_  
Planning, Building and Development  
Director

\_\_\_\_\_  
Board President

ATTEST:

\_\_\_\_\_  
Secretary

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18550 Millburn Road  
Wadsworth, IL 60083



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Phone 847-356-8331  
Fax 847-356-9722

Date: April 25, 2016

Lake County Regional Office of Education  
Roycealee Wood, Superintendent  
800 Lancer Lane, #E128  
Grayslake, IL 60030-2656

Re: Resubdivision of Cottonwood Estates  
Millburn C.C. School District #24

Dear Ms. Wood:

A plat for the above referenced subdivision has been filed with your office, and it has been determined that our school district meets the criteria of 85% projected enrollment within the next 10 (ten) years. Therefore, the district is entitled to a school contribution pursuant to Section 151.220(B) School and Park Contributions, of the County Code.

Please accept this letter as notification that the district, under Section 151.220(D)(4)(b) of the County Code, waives all rights to such contribution under the terms and conditions of said Ordinance.

The school district hereby acknowledges that waiver of all rights under the Unified Development Ordinance to such contribution shall not prevent the district from entering into a private agreement with the developer or subdivider. The district entered into a private agreement with the developer on November 23, 2003 that stipulates payment must be received prior to the issuance of a building permit. The district will enter into a new agreement with the developers and will enter into an indemnification agreement with the County of Lake with regard to receipt of contributions as stipulated in the private agreement with the developer.

Sincerely,

Jane Gattone  
School Board President

Cc: Lake County Department of Planning, Building and Development

Millburn Elementary School  
18550 Millburn Road • Wadsworth, IL 60083  
Phone 847-356-8331 • Fax 847-356-9722

Millburn Middle School  
640 Freedom Way • Lindenhurst, IL 60046  
Phone 847-245-1600 • Fax 847-265-8198