

Prepared by and after
Recording Mail to:

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Rathje Woodward LLC
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FOR RECORDER'S USE

PLANNED DEVELOPMENT AGREEMENT

This Planned Development Agreement (hereinafter referred to as the “**Agreement**”) made and entered into this ____ day of July, 2018, by and between the VILLAGE OF WESTMONT, a municipal corporation of the County of DuPage, State of Illinois (hereinafter referred to as “**Village**”) by and through the President and Board of Trustees of the Village (hereinafter collectively referred to as the “**Corporate Authorities**”) and Bradford Westmont 4 LLC, an Illinois limited liability company (hereinafter referred to as the “**Owner**”)(Village and Owner are individually referred to herein as “**Party**” and are collectively referred to herein as the “**Parties**”).

RECITALS:

WHEREAS, Owner is the contract purchaser of a certain property (hereinafter referred to as the “**Property**”) consisting of approximately 11.6 acres, located at the northwest corner of Cass Avenue and 63rd Street, and commonly known as 6172-6234 South Cass Avenue and 10-38 West 63rd Street, Westmont, Illinois, which Property is legally described in **Exhibit A** attached hereto; and

WHEREAS, the Property is zoned C-1 Commercial Business District; and

WHEREAS, [insert TIF District recital]; and

WHEREAS, the Property is currently improved with a dilapidated and largely vacant commercial building and parking lot; and

WHEREAS, upon acquiring title to the Property, Owner proposes to demolish the existing commercial building and parking lot on the Property; and

WHEREAS, Owner further desires to resubdivide the Property into seven (7) lots and redevelop the Property with (1) an LA Fitness consisting of not less than 45,000 square feet, (2)

a movie theater or other commercial building consisting of not less than 30,000 square feet, (3) four (4) outlots with restaurant and related commercial uses, and (5) associated parking lot, landscaping and other improvements related thereto; and

WHEREAS, in order to facilitate and permit such development and uses, Owner has applied for and seeks the following approvals for the Property:

- A. A text amendment to Appendix A, Section 7.07 of the Westmont Zoning Ordinance to add Fitness Centers/Health Clubs and to add General Retail as permitted uses in the C-1 Commercial Business District.
- B. Zoning Ordinance map amendment to rezone the Property from C-1 Commercial Business District to a Planned Development Overlay District in the underlying C-1 Commercial Business District.
- C. Zoning Ordinance special use permit to allow restaurants with associated drive-ins on outlots 1A, 1B and 2 of the Property in the C-1 Commercial Business District.
- D. Zoning Ordinance special use permit to allow an indoor theatre on the Property in the C-1 Commercial Business District.
- E. Zoning Ordinance variance to allow off-street parking in the front yard of the Property in the C-1 Commercial Business District.
- F. Zoning Ordinance variance to increase the maximum size of ground signs permitted on the Property (Outlots 1A and 1B) in the C-1 Commercial Business District.
- G. Zoning Ordinance variance to increase the maximum number of wall signs permitted on the Property (Lot 5) in the C-1 Commercial Business District.
- H. Preliminary Plat of Subdivision approval to resubdivide the Property and property adjacent thereto (8 W. 63rd Street a/k/a Walgreen's lot) into two (2) primary lots, four (4) outlots, and one (1) additional lot.

WHEREAS, pursuant to due notice and advertisement as required by law, the Village of Westmont Planning and Zoning Commission held a public hearing on the afore-mentioned development requests of the Owner on June 13, 2018, and made their positive recommendations and findings of fact with respect to all of said development requests; and

WHEREAS, the Corporate Authorities of the Village after due and careful consideration have concluded that approval of the rezoning of the Property as a planned development overlay district in the underlying C-1 Commercial Business District is warranted as the proposed development meets the criteria for planned developments set forth in Chapter IX of the Westmont Zoning Ordinance; and

WHEREAS, the Corporate Authorities of the Village after due and careful consideration have concluded that approval of the afore-mentioned development requests of the Owner are warranted in that the proposed development promotes the redevelopment goals of the South Westmont Tax Increment Financing District, promotes and protects the public interest, and constitutes responsible and positive development of the Property.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements herein set forth, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

DRAFT

Section 1. Incorporation of Recitals. The above Recitals are hereby incorporated into and made a part of the Agreement.

Section 2. Zoning. The Property is currently zoned C-1 Commercial Business District and this zoning designation shall remain. In conjunction with or prior to approval of this Agreement, the Village shall approve a planned development ordinance (“**PD Ordinance**”) rezoning the Property as a planned development overlay district in the underlying C-1 Commercial Business District. All Village zoning regulations of the C-1 Commercial Business District shall apply to the Property except as the same are modified and permitted by this Agreement and the ordinances referenced herein granting development approvals to Owner for the Property. This zoning shall remain in effect unless and until amended in the manner provided by law for the amendment of zoning classifications.

Section 3. Permitted and Special Uses; Prohibited Uses. The Property is approved for the following permitted and special uses, and certain uses listed herein are prohibited:

- A. An LA Fitness on Lot 5 consisting of not less than 45,000 square feet. In conjunction with or prior to approval of this Agreement, the Village shall approve an ordinance approving a text amendment to the Westmont Zoning Ordinance, Section 7.07, to add Fitness Centers / Health Clubs as a permitted use in the C-1 Commercial Business District.
- B. An indoor theater or other commercial use on Lot 4, providing that the commercial building for such consists of not less than 30,000 square feet.
- C. General retail uses on any lot of the Property, subject to the restrictions contained in this subsection C. In conjunction with or prior to approval of this Agreement, the Village shall approve an ordinance approving a text amendment to the Westmont Zoning Ordinance, Section 7.07, to add General Retail as a permitted use in the C-1 Commercial Business District. The Parties acknowledge that the Property is located in the South Westmont Tax Increment Financing District and the Village desires to have the Property redeveloped with first-class uses in order to reinvigorate this commercial district and spur the redevelopment of surrounding properties. To that end, the following General Retail uses shall be prohibited on the Property as inconsistent with the redevelopment goals for the Property, despite their allowance per the Zoning Ordinance: Dollar stores or similar discount variety stores, resale/consignment stores, thrift stores and mini-marts.
- D. Restaurants with associated drive-ins on Outlots 1A, 1B and 2. In conjunction with or prior to approval of this Agreement, the Village shall approve an ordinance approving special use permits to allow restaurants with associated drive-ins on Outlots 1A, 1B and 2.
- E. Such other permitted and special uses as designated in the C-1 Commercial Business District, subject to any requirements and limitations set forth in the Village’s Zoning Ordinance. Any future special use on the Property shall require a prior public hearing

before the Westmont Planning and Zoning Commission and approval of an ordinance authorizing such special use by the Corporate Authorities. Any future use where a new building or structure is proposed, or any future use where an expansion or reduction of an existing building or structure is proposed, or any future use where non-minor modifications to existing building elevations and/or architectural features are proposed, shall first require an approval of a site and landscape plan related to the proposed use. Site plan and landscape plan approval is not required for a future use which will occupy an existing building without non-minor modifications.

F. Video gaming is prohibited on the Property.

Section 4. Site Plan and Landscape Plan. In conjunction with or prior to approval of this Agreement, the Village shall adopt an ordinance which approves the Owner's Site Plan and Landscape Plan for the Property. A copy of the approved Site Plan prepared by Kimley Horn and with a last revision date of June ___, 2018 is attached hereto as **Exhibit B**. The approved Site Plan includes approval of the building footprint, elevations, architectural details, parking lot and related improvements for Lot 5, which is proposed to be improved with an LA Fitness. The approved Site Plan includes approval of the building footprint, elevations, architectural details, parking lot and related improvements for Lot 1B, which is proposed to be improved with a Raisin' Canes restaurant. The approved Site Plan includes approval of the building footprint, elevations, architectural details, parking lot and related improvements for Lot 2, which is proposed to be improved with two (2) commercial buildings with a drive-in. The approved Site Plan includes approval of limited drive aisles for Lot 1A, Lot 3 and Lot 4. Exhibit B contains each of the aforementioned building footprints, elevations, architectural details, parking lots and related improvements.

Owner shall obtain approval of a revised Site Plan and revised Landscape Plan from the Village for Lot 1B, Lot 3 and Lot 4 when the Developer has a potential user for each such lot and which shows the proposed building footprint, elevations, architectural details, parking lot, drive aisles, landscaping and related improvements. A revised Site Plan and a revised Landscape Plan shall, at a minimum, show the proposed new improvements described above as well as the improvements approved as part of the original Site Plan. No permits shall issue to the Owner from the Village for Lot 1B, Lot 3 and Lot 4 until such a revised Site Plan and a revised Landscape Plan is approved, except for grading permits and permits to install parking lots on such lots.

A copy of the approved Landscape Plan prepared by Kimley Horn and with a last revision date of June ___, 2018 is attached hereto as **Exhibit C**. Owner shall maintain, repair and replace as necessary all landscaping (including any fencing) shown on the Landscape Plan.

Owner is required to install a drip irrigation system in all landscaped islands of the parking lot on all lots of the Property, and Owner is required to maintain, repair and replace as necessary such drip irrigation system.

Section 5. Plat of Subdivision. In conjunction with or prior to approval of this Agreement, the Village shall adopt an ordinance which approves Owner's Preliminary Plat of Subdivision for the Property. A copy of the approved Preliminary Plat of Subdivision prepared by Kimley Horn and with a last revision date of _____, 2018 is attached hereto as **Exhibit D**. Owner shall prepare a Final Plat of Subdivision for approval by the Village as required by the Village's Land Development Code (Appendix B to the Village's Code of Ordinances). Subject to final engineering approval by the Village, compliance with the Village's Land Development Code, and upon substantial compliance with the approved Preliminary Plat of Subdivision and this Agreement, the Village shall timely approve Owner's Final Plat of Subdivision. Although not part of the Property and not owned by Owner, the Preliminary and Final Plats of Subdivision include the approximate 1.6 acre lot commonly known as 8 W. 63rd Street, Westmont, which is currently improved with a Walgreen's pharmacy (the "**Walgreen's Lot**"). The Parties acknowledge that the legal publications and public hearing for the Preliminary Plat of Subdivision included the Walgreen's Lot. The approved Final Plat of Subdivision shall be recorded against title to the Property and the Walgreen's Lot.

The Preliminary and Final Plats of Subdivision shall contain or otherwise specifically reference a cross-access easement between and across all lots on the Property, including the Walgreen's Lot. The Preliminary and Final Plats of Subdivision shall contain or otherwise specifically reference a cross-parking easement between and across all lots on the Property. The Preliminary and Final Plats of Subdivision shall contain or otherwise specially reference a cross-access easement between the Property and the adjacent property to the immediate west comprising approximately 11.5 acres, commonly known as 150 W. 63rd Street, Westmont, and currently improved with a Mariano's grocery store (the "**Mariano's Lot**"). The points of cross-access between the Property and the Mariano's Lot shall be as depicted in the approved Site Plan. Such easement language required above (and separate easement document, if applicable) shall be in a form acceptable to the Village Attorney, whose approval shall not be unreasonably withheld and whose approval is limited to ensuring compliance with the approved ordinances for the Property, this Agreement, and the applicable ordinances of the Village. Such easements shall be recorded against title to the Property and, where applicable, title to the Walgreen's Lot and the Mariano's Lot. Said easements shall not be modified or revoked with the express consent of the Corporate Authorities.

Section 6. Variances. In conjunction with or prior to approval of this Development Agreement, the Village shall approve an ordinance which approves a Zoning Ordinance variance for the Property to increase the maximum size of ground signs permitted on the Property for Lot 1A and Lot 1B. The installed signage for Lot 1A and Lot 1B shall conform to the Sign Plans prepared by Doyle Signs and containing a last revision date of June 1, 2018, which are attached hereto as **Exhibit E** and shall otherwise comply with the sign regulations of the Village's Zoning Ordinance.

In conjunction with or prior to approval of this Development Agreement, the Village shall approve an ordinance which approves a Zoning Ordinance variance for the Property to increase the maximum number of wall signs permitted on the Property for Lot 5. The installed signage for Lot 5 shall conform to the Sign Plans prepared by 222 Architects with a last revision

date of May 7, 2018, which are attached hereto as **Exhibit F** and shall otherwise comply with the sign regulations of the Village's Zoning Ordinance.

In conjunction with or prior to approval of this Development Agreement, the Village shall approve an ordinance which approves a Zoning Ordinance variance for the Property to allow parking in the front yard setback. This variance shall allow an approximately twelve (12') foot setback from 63rd Street right-of-way for Lot 1A and Lot 1B, and shall allow an approximately twelve (12') setback from the Cass Avenue right-of-way for Lot 2 and Lot 3.

Section 7. Parking. The installed parking lot(s) for the Property, with the variance set forth in Section 6 above, shall substantially conform to the parking layout and design as set forth in the approved Site Plan. Owner shall continuously maintain, repair and replace, as reasonably necessary, said parking lot improvements (including landscaped islands). The installed parking lot(s) for the Property, as approved, contain a minimum number of six hundred four (604) parking spaces. Owner may reduce this number of parking spaces on the Property to the extent minimally necessary accommodate utilities, accessible parking spaces, minor shifts in drive aisles and similar minor design issues. In no event shall the Property contain less than five hundred eight-eight (588) parking spaces, unless such change is approved by the Village in accordance with applicable law, Village ordinances and this Agreement.

The Village has calculated the minimum required parking for all uses on the Property as 588 parking spaces. The Village calculated the parking space requirement for all uses on the Property as a whole, due in part to the cross-access and cross-parking easements, and any future parking calculations by the Village will continue to analyze and calculate the parking requirements for all uses on the Property as a whole. The Village shall re-analyze the parking requirements for the Property as specific uses are proposed for Lots 1A, Lot 3 and Lot 4 of the Property, and such uses may require, as a condition of approval, approval by the Village of a revised Site Plan for parking purposes and/or a parking variance. This Agreement provides no assurances or guarantees that such revised Site Plan for parking purposes and/or parking variance will be granted in the future.

Unless this Agreement and any applicable ordinances accompanying this Agreement are amended, the parking lot on the Property shall not contain vehicles or equipment for lease, for sale or for storage purposes. The overnight parking of trucks on the Property is prohibited. Trucks or vehicles containing advertising signage for a particular business on the Property which are permanently or semi-permanently parked on the Property for display purposes are prohibited. The Owner or any individual business on the Property shall not lease or sell parking spaces or allow parking on the Property to or by other businesses or individuals not located on the Property.

Section 8. Development Requirements, Commencement and Completion of Development.

(a) Owner agrees to develop the Property in accordance with the terms of this Agreement, in accordance with all ordinances and regulations of the Village (except to the extent

that variances/waivers are granted for the Property from such ordinances and regulations), and in conformance with the approved plans, specifications and notations set forth in **Exhibit B** (Site Plan), **Exhibit C** (Landscape Plan), **Exhibit D** (Preliminary Plat of Subdivision)(which shall be supplemented by this reference with the Final Plat of Subdivision once approved by the Village), **Exhibit E** (Sign Plan for Lot 1A and Lot 1B), **Exhibit F** (Sign Plan for Lot 5), and **Exhibit G** (Preliminary Engineering Plans)(including photometric plans)(which shall be supplemented by this reference with the Final Engineering Plans once approved by the Village)(collectively, the “Plans”), all of which are hereby approved and in conformance with this Agreement. The Village shall issue permits for development of the Property provided the proposed development is in substantial conformance with the Plans.

(b) Owner may develop the Property in phases. Phase I shall include construction of the LA Fitness building and accompanying parking and landscaping, all public improvements on the Property identified in Section 9(a) of this Agreement, and the installation of all drive aisles and means of ingress/egress to and from the Property as depicted on the Site Plan. Development of each phase shall include the installation of sufficient parking and related landscaping for each use. Nothing precludes Owner from installing parking for the Property as a whole as part of any phase.

(c) Notwithstanding Section 9.1(C)(2) of the Zoning Code to the contrary, any minor modifications to the Plans (excluding those engineering items set forth in Section 3(d)) may be administratively approved by the Community Development Director, it being the express intention of the Corporate Authorities to delegate to the Community Development Director the authority to review and approve any minor modifications to the Plans. As to any dispute as to whether a matter can be administratively approved as a minor modification, upon request from Owner to the Community Development Director, or upon the request of the Community Development Director, the matter shall be presented for consideration at the next regularly scheduled meeting of the Corporate Authorities for final action.

This procedure shall not serve as a waiver of any public hearing requirement of State statute pertaining to any potential modification. For purposes of this sub-section (c) and (d) below, minor modifications are those that are necessary to solve bona fide engineering, layout and/or design issues, including but not limited to minor modifications to lot lines, building footprints, and landscaping, so long as such modifications do not increase building square footage, do not result in the need for variances from Village ordinances, or otherwise do not change the essential character of the project authorized by this Agreement and as set forth in the Plans.

(d) Any minor modification providing for any of the following may be administratively approved by the Village Engineer, notwithstanding any Village ordinance requirements to the contrary: (i) Modification of utility plans to allow for more convenient or efficient service to properties; (ii) Grading modifications which do not have an adverse impact on other properties; (iii) Modifications required by other regulatory bodies with jurisdiction, including but not limited to IDOT, FEMA, IDNR, USACOE, or MWRDGC, which do not materially alter the engineering concepts approved by the Village and which do not materially

alter the approved Plans. With respect to any engineering modifications proposed to facilitate the development of the Property or any portion thereof, the Village Engineer shall consider whether the modifications meet Village ordinance requirements, whether they promote efficient development, whether they help preserve or enhance the function and aesthetic characteristics of new development, and whether they are consistent with the general plan of development for the Property as expressed in this Agreement.

(e) Any amendments or modifications of the Plans as may be agreed upon by Owner and the Village Engineer and/or the Community Development Director, as provided in Section 3(c) and 3(d) herein, as the case may be, shall not require any amendment to this Agreement. Notwithstanding the foregoing, this Agreement may be re-recording with substituted/amended Plans showing the approved minor modifications, if requested by Owner or Village.

(g) At all times, Owner shall develop the Property in accordance with the following codes, as amended from time to time, as well as any new codes applicable to the Property and throughout the Village that the Village may adopt from time to time after approval of this Agreement:

- (a) 2012 ICC International Building Code, with local amendments.
- (b) 2012 ICC International Property Maintenance Code, with local amendments.
- (c) 2012 ICC International Mechanical Code, with local amendments.
- (d) 2012 ICC International Fuel Gas Code, with local amendments.
- (e) 2015 ICC International Energy Conservation Code, with local amendments.
- (f) 2012 ICC International Existing Building Code, with local amendments.
- (g) 2012 ICC International Fire Code, with local amendments.
- (h) 2012 ICC N.F.P.A. No. 101 Life Safety Code, with local amendments.
- (i) 2011 National Electric Code, with local amendments.
- (j) State of Illinois Plumbing Code, with local amendments.
- (k) 2010 American with Disabilities Act.

(h) Owner shall complete substantially complete construction of the LA Fitness building and all items required for Phase I construction set forth in this Section 8(b) of this Agreement on or before _____, 20___. The LA Fitness use on Lot 5 shall obtain a certificate of occupancy on or before _____, 20___. In the event that Owner fails to comply with said completion and/or certificate of occupancy dates, the Village's Corporate Authorities, upon at least thirty (30) days' advance written notice to Owner, which allows the Owner a reasonable opportunity to appear before the Corporate Authorities and be heard, may consider an ordinance or ordinances voiding this Agreement and the related ordinance approvals for the Property. Alternatively, the Village may take such other action as allowed under the Incremental Tax Rebate Agreement between Village and Owner, or the Village may pursue such other remedies as allowed by this Agreement and Village ordinances. However, upon a timely request by Owner to extend said completion date and/or certificate of occupancy date for good cause shown, the Village may consider reasonable extensions of said completion date and/or certificate of occupancy from time to time, which request shall not be unreasonably denied, delayed or refused.

Section 9. Public Improvements / Engineering.

(a) Improvements to the Property and any off-site improvements benefitting the Property and also benefitting the Village and the public, as required by the Village's Codes and/or required by any governmental entity have jurisdiction over the Property and its improvements, together with any appurtenances, including but not limited to grading, water, stormwater management facilities, sanitary sewer, public road improvements, sidewalks, street lights, and other utilities (hereinafter "**Public Improvements**"), are described, listed or shown on the Engineering Plans attached hereto as **Exhibit G** or are otherwise depicted on the Plans (except for those plans described in subsection ___ of this Section 9.

(b) Except as set forth in subsection (e) of this Section 9, all Public Improvements identified on the Plans shall be constructed at no expense to the Village. Owner agrees to construct or cause to be constructed with commercially reasonable diligence all Public Improvements. Owner agrees that all work in the construction of the Public Improvements shall be done in a good, substantial and workmanlike manner, that all materials used therein shall be new and of good quality, that the same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to its approval, which shall not be unreasonably withheld or delayed. Owner will at its expense furnish all necessary engineering services for said improvements and shall dedicate any Public Improvements to the Village as may be required by the Village's Land Development Code and this Agreement.

(c) Village owns and operates a water distribution system within the Village for water distribution, which water distribution system has sufficient capacity to provide and will provide potable water to the Property, with such service and charges to be substantially the same as provided to other areas in the Village being provided with water by the Village. Owner shall be permitted to tap on to the Village water system at points recommended by the Village

Engineer. Owner agrees to pay all Village water service connection charges and other customary charges in accordance with the requirements of the Village ordinances and regulations.

(d) Stormwater management facilities, including but not limited to storm sewers, swales, and retention and/or detention ponds, need not be located on the Property. Owner shall not be required to construct any on-site stormwater facilities except those set forth on the Engineering Plans, such as internal stormwater inlets, stormwater pipes which shall be extended to the Property boundary to an agreed upon point or points in the Cass Avenue right-of-way, swales, if any, and facilities related thereto (hereinafter “**Private Stormwater System**”). The Village acknowledges the stormwater management detention facilities for the Property will be provided off-site on Village-owned Property located at 6101 N. Cass Avenue, Westmont as set forth in subsection (e) below. Owner shall continuously maintain, repair and replace as necessary the Private Stormwater System located on the Property.

(e) In order to facilitate the redevelopment of the Property, which is located in the South Westmont Tax Increment Financing District, and which redevelopment would not be economically feasible without financial and other assistance from the Village, the Village has agreed to design, construct and permanently maintain stormwater detention for the Property and connections/conveyances thereto offsite, at Village’s sole cost and expense. Specifically, the Village shall design and construct a system of public underground stormwater pipes, commencing at one or more agreed upon locations in the Cass Avenue right-of-way immediately adjacent to the Property, which shall connect to the private stormwater pipes on the Property installed by Owner. Said public underground stormwater pipes shall convey the stormwater collected in the private stormwater pipes on the Property in a northerly direction, along and within the Cass Avenue right-of-way, to a public stormwater detention facility located at 6101 N. Cass Avenue, Westmont, owned by the Village. The Village shall design and construct the afore-mentioned stormwater detention facility so that it has sufficient capacity to meet the stormwater detention needs of the Property. The Village shall continuously maintain, repair and replace as necessary all stormwater pipes in the public right-of-way and all public stormwater detention facilities, outlets and related piping. This public system or stormwater conveyance pipes, stormwater detention, outlets and related piping, and facilities related thereto are hereinafter referred to as the “**Public Stormwater System.**”

(f) The Village shall design and construct the Public Stormwater System as soon as practical, and the Village shall utilize commercially reasonable efforts to complete said design and construction so that the Public Stormwater System is functional and able to accept stormwater from the Property at such time that the Owner is required to connect to the same pursuant to Village ordinances. The Village shall apply for required permits from, enter into any agreements, and obtain easements reasonably required by DuPage Department of Transportation for the portion of the Public Stormwater System located in the Cass Avenue [a/k/a CH 15] right-of-way, which is under the jurisdiction of DuPage County. Owner shall reasonably cooperate with the Village as necessary regarding all required permits, agreements and easement from DuPage Department of Transportation, provided that such permits, agreements and easements impose no new material obligations on Owner that are not otherwise contained herein or

contained in the approved Plans or contained in Village ordinances. In the event that the Village is unable to timely complete the design and construction of the Public Stormwater System when the Owner is reasonably required to connect the Property to the Public Stormwater System, then the Village shall grant reasonable approvals and allowances to Owner for Owner to temporarily connect its Private Stormwater System to the nearest or most convenient Village-owned stormwater sewer. Such temporary connection shall be immediately disconnected and removed by Owner once Owner is able to permanently connect its Private Stormwater System to the Public Stormwater System.

(g) The Village shall not be held responsible for its inability to install the Public Stormwater System, or for any loss or damage to Owner or any subsequent owners, tenants or occupants of the Property, including consequential damages, or for any delay in construction and operation of the same caused by strikes, riots, elements, embargos, inability to obtain materials, or other acts of God, or any other cause beyond the Village's control, including but not limited to the granting of permits and easements from DuPage County Department of Transportation. Notwithstanding the foregoing, in the event of delays or inability to construct the Public Stormwater System, the Village shall use all reasonable efforts to provide Owner with temporary stormwater connections as set forth in subparagraph (f) above and/or to assist Owner with an alternative permanent solution for its stormwater management needs, at no additional cost to Owner.

Section 10. Site and Public Improvement Guarantees. As permitted by 30 ILCS 550/3 and 65 ILCS 5/11-39-3, Owner may provide performance and maintenance guarantees by cash, letter of credit or bonds in form and bond company or bank reasonably acceptable to the Village, which acceptance shall not be unreasonably withheld or conditioned, and in satisfaction of Village ordinances and requirements.

Section 11. Stop Order and Moratoria.

(a) Except in cases of emergency where an immediate danger to life or health exists, the Village will issue no stop orders directing work stoppage on buildings or other development without first giving forty-eight (48) hours' notice to Owner for the building permit for the work for which the stop order is being issued, in the manner provided herein, and any such notice shall cite in writing the applicable section of the Village ordinances or this Agreement allegedly violated by Owner and shall state in substance the reason for the stop order. Upon receipt of such notice, Owner shall take immediate steps to correct any violation cited and, provided such steps are promptly commenced and diligently pursued to completion in order to satisfy the violation, no stop order shall issue.

(b) The Village shall impose no moratorium or enter into or amend any agreement (other than an amendment to this Agreement), whether specific to all or any part of the Property or to the on-site or off-site utilities and improvements, or otherwise, which would or could in any way impede, delay, restrict or otherwise adversely affect the ability of Owner to seek and obtain plan approval, or construct any improvements on the Property as approved

herein, or sell any portion of the Property or improvements or buildings thereon, except as may be required by any State or Federal rule, regulation, code, statute or court order, or except in the case of an emergency that poses an immediate danger to the life or health of the public.

Section 12. Debris Removal and Site Access.

(a) At all times during construction, Owner shall be responsible for the timely removal of construction debris and waste related to the Property.

(b) At all times during construction, Owner (and its contractors) shall keep all streets which provide access to the Property reasonably clean from all mud, gravel and other debris, at all times during and after construction hours.

(c) At all times during construction, Owner shall comply with the permissible hours of construction set forth in Chapter 18, Article XI, Section 18-576 of the Village Code of Ordinances, as amended from time to time.

(d) After issuance of one written warning to Owner after a violation of this Section, the Village may issue a ticket and seek payment of a fine as provided in the Village ordinances for any subsequent violation by Owner.

Section 13. Protection from Special Fees or Taxes. Village agrees that it shall not impose any tax or fee on land, inventory, vehicles, transactions, employees, business, business patrons, or otherwise on the Property which is not of general application and applicable to other lands, employees, businesses, or business patrons throughout the Village. This provision does not apply to any Special Service Area tax or any Special Assessment Area assessment passed pursuant to the requirements of State statute.

Section 14. Village Code and Fees.

(a) Except as may be permitted or required by this Agreement, Owner shall comply in all respects with the applicable provisions of the Village ordinances and regulations, as the same may be amended from time to time.

(b) Owner shall pay all permit fees as required under applicable Village ordinances, as may be amended from time to time.

Section 15. Facilitation of Development.

Time is of the essence of this Agreement and the Parties will make every reasonable effort to expedite the subject matters hereof. It is further understood and agreed that the successful consummation of this Agreement and the development is in the best interests of the Parties and requires their continued cooperation. The Owner does hereby evidence its intention to fully comply with all Village requirements, its willingness to discuss any matters of mutual interest that may arise, and its willingness to assist the Village in any reasonable matter. The

Village does hereby evidence its intent to always cooperate in the resolution of mutual problems and its willingness to facilitate the development, as contemplated by the provisions of this Agreement.

Section 16. Contributions and Dedications.

Owner shall make all contributions required by the Village's Land Development Code (Appendix B to the Village Code of Ordinances) related to the subdivision of the Property. Village shall not require Owner to make any land dedications in lieu of cash contributions under the Village's Land Development Code.

Section 17. General Provisions.

(a) Continuity of Obligations.

(1) This Agreement shall inure to the benefit of and shall be binding upon Owner and its respective successors in any manner in title and interest, and shall inure to the benefit of and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.

(2) It is expressly understood and agreed that Owner may sell or convey all or any part of the Property and upon each sale or conveyance, the buyer shall be bound by and be entitled to the benefits of this Agreement with respect to the part of the Property sold or conveyed. Where the Village is notified of such sale, the Village hereby covenants and agrees that the Village shall consent to such assumption and that the Village shall release such party from its obligations hereunder with respect to that part of the Property so purchased subject to the following conditions: Except as otherwise provided in this Agreement, Owner agrees not to sell or convey any part of the Property until: (i) all required Public Improvements are constructed and the guarantee period has expired; or (ii) in the event all Public Improvements are not yet completed and/or the guarantee period has not yet expired, buyer: (a) agrees to assume all of Owner's obligations for the completion of the Public Improvements; (b) agrees to tender to the Village a bond or other security in the amount then required pursuant to the terms of Village ordinances; (c) agrees to accept responsibility for the guarantee period; and (d) agrees to accept assignment of this Agreement as well as the assumption of the duties and liabilities thereunder.

(3) Notwithstanding the foregoing, Owner may assign, sell or convey any part of the Property and may assign its rights, obligations and liabilities under this Agreement to a related single-purpose entity or affiliate, upon notice to the Village, but without the need for the consent of the Village and in such event Owner shall be deemed to be released from any of its obligations and liabilities under this Agreement and such related single-purpose entity shall be deemed to have assumed such obligations and liabilities.

(b) Amendments. A record owner of fee simple title to any parcel of the Property has the sole right to seek an amendment to this Agreement, which amendment shall not

require the approval of any other record owner(s) of fee simple title to any other parcel of the Property, so long as such amendment does not materially diminish any of the rights or materially increase the obligations of such other record owner(s) under this Agreement, and so long as such amendment would not be prohibited by or be in contravention to any easements or declarations, as may be amended from time to time. In such circumstances, an amendment to this Agreement may be made upon approval by ordinance and execution by the Village and the record owner(s) to which the amendment relates.

(c) Remedies. Except as otherwise provided in this Agreement, the Village and Owner, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provision or conditions of this Agreement by any Party, or their successors and assigns, which default exists uncorrected for a period of thirty (30) days after written notice to any Party of such default (or if such default cannot practicably be cured within thirty (30) days, that the Party in default has commenced efforts to cure within thirty (30) days and diligently pursues completion thereafter), the Party seeking to enforce said provision shall have the right to seek specific performance and if said Party prevails in a court of law, it shall be entitled to specific performance and reasonable attorneys' fees and court costs. It is further expressly agreed by and between the Parties that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded at law or equity, and the party which substantially prevails in any such litigation may recovery its reasonable attorneys' fees and court costs.

(d) No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's rights thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

(e) Village Approval or Direction. Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement. Approval of direction of the Corporate Authorities of the Village shall not require any super-majority vote unless otherwise required by law.

(f) Force Majeure. Neither the Village nor Owner or any successor in interest to Owner shall be considered in breach or default of its obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by a governmental entity or agency necessary for the Owner to proceed with construction of the project or any portion thereof; delay in commencement or completion of any and all work to be performed by others that affects Owner's ability to

commence or complete the project; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the reasonable control of the party claiming the benefit of this paragraph, including without limitation, any litigation, court order or judgment resulting from any litigation affecting the validity of the contemplated project, this Agreement, or eminent domain proceedings; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the parties in bad faith, and further provided that the party claiming “force majeure” notifies the other in writing within thirty (30) days of the commencement of such claimed event of force majeure.

(g) Captions and Paragraph Headings. The captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

(h) Notice. Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by personal delivery, by a nationally-recognized overnight courier service, or by certified mail, return receipt requested, to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the U.S. Mail.

If to Owner:

With a copy to:

If to Village:

Village of Westmont
31 West Quincy Street
Westmont, IL 60559
Attention: Village Manager

With a copy to:

Rathje Woodward, LLC
Attn: John R. Zemenak, Village Attorney
300 E. Roosevelt Road, Suite 300
Wheaton, IL 60187
Attention: John R. Zemenak

(i) Recording. A copy of this Agreement and any amendments thereto shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of Owner.

(j) Venue. The Parties and their successors and assigns agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

(k) Severability. The provisions hereof shall be deemed to be separable and if any section, paragraph, clause, provision or item herein shall be held invalid, the invalidity of such section, paragraph, clause, provision, or item shall not affect any other provision hereof; provided, however, the Village shall under no circumstances be required to incur any liability or loss or incur any expense for any reason in the event that any such section, paragraph, clause, provision, or item is held invalid.

(l) Conflict Between the Text and Exhibits. In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of this Agreement shall control and govern.

(m) Authorization to Execute. The representative of Owner executing this Agreement warrants that she/he has been lawfully authorized to execute this Agreement on behalf of Owner. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Owner and Village shall deliver to each other upon request copies of all resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

(n) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute on and the same instruments.

(o) Execution of Agreement. This Agreement shall be signed last by the Village, and the President of the Board of Trustees shall affix the date on which he signs this Agreement on Page 1 hereof, which date shall be the effective date of this Agreement. However, this Agreement shall not be recorded against title to the Property except as provided for in Section 7(h) of this Agreement, and this Agreement shall not be effective until such recording.

(p) Liability and Indemnity of Village:

(i) The Owner acknowledges and agrees that the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans and uses for the Property, including the Public Improvements and this Agreement, or the issuance of any approvals, permits, certificates, or acceptances for the development or use of the Property or the Public Improvements, but excluding the Public Stormwater System, and that the Village's review and approval of those plans and the Public Improvements and issuance of those approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Developer, or any of

their heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time.

(ii) The Owner acknowledges and agrees that notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and the other approvals for this project and agree not to challenge the Village's approval on the grounds of any procedural infirmity or of any denial of any procedural right.

(iii) The Owner agrees to, and does hereby, agrees to defend, hold harmless and indemnify the Village, the Corporate Authorities, the Planning and Zoning Commission, and all Village elected and appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time, within the statute of limitations or statute of repose applicable to those claims, against any of them in connection with (a) the Village's review and approval of any plans submitted by the Owner for the Property, or uses for the Property, or the Public Improvements; (b) the issuance of any approval, permit, certificate, to the Owner; and (c) the development, construction, maintenance, or use of any portion of the Property or the Public Improvements by the Owner, unless said claims are due to the willful or grossly negligent acts or omissions of the Village, its Corporate Authorities, the Planning and Zoning Commission or Village elected or appointed officials, officers, employees, agents, representatives, engineers, attorneys or any of them.

(iv) The Developer shall, and does hereby agree to, pay the Village for all of the Village's expenses, including without limitation legal fees, court costs and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced in this subsection. Developer's obligation to pay said expenses of the Village shall be capped at \$50,000.00.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have entered into this Development Agreement the date and year first above written.

VILLAGE:

Village of Westmont, an Illinois municipal corporation

By: _____
Village President

ATTEST:

Village Clerk

OWNER:

Bradford Westmont 4 LLC, an Illinois limited liability company

By: _____

Its: _____
Title

Exhibit A

Legal Description

Exhibit B

Site Plan

Exhibit C

Landscape Plan

Exhibit D

Preliminary Plat of Subdivision

Exhibit E

Sign Plans – Lot 1A and Lot 1B

EXHIBIT F

Sign Plan – Lot 5

EXHIBIT G

Preliminary Engineering Plans