

INCREMENTAL TAX REBATE AGREEMENT

THIS INCREMENTAL TAX REBATE AGREEMENT ("**Agreement**"), is dated the _____ day of _____, 2018, and is by and between the VILLAGE OF WESTMONT, an Illinois municipal corporation ("**Village**"), and BRADFORD WESTMONT 4 LLC, an Illinois limited liability company ("**Owner**").

RECITALS

A. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the Village and its residents, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with developers for the purpose of achieving such objectives.

B. Pursuant to 65 ILCS 5/8-1-2.5, the Village is authorized to expend funds for economic development purposes, including making grants to commercial enterprises deemed desirable for the promotion of economic development.

C. The Village is authorized under the provisions of Art. VIII of the State of Illinois Constitution, 1970, to use public funds for public purposes.

D. The Village has created the South Westmont Business District Tax Increment Financing District (the "**TIF District**") by its Ordinance 13-55 and pursuant to the authority given it by the Tax Increment Allocation Redevelopment Act (the "**TIF Act**"), 65 ILCS 5/11-74.4.

E. The Village is authorized by the TIF Act to enter into agreements with developers of property within the TIF District that provide for the payment to such developers of certain incremental tax revenues as more fully set forth in the TIF Act, and pursuant thereto the Village has, by its Ordinance 13-54 (the "**TIF Ordinance**") adopted tax increment financing from incremental real estate tax revenues.

F. The Village is authorized by 65 ILCS 5/8-11-20 to enter into agreements with private parties to share certain sales tax revenues of the Village.

G. Developer (as defined in Recital H below) is the contract purchaser of a certain parcel of land located at the Northwest corner of Cass Avenue and 63rd Street, Westmont, DuPage County, Illinois (the "**Development Parcel**"), which parcel is legally described in **Exhibit A**, attached hereto and incorporated herein by reference, and has the tax identification number set forth in **Exhibit A**.

H. By that certain Economic Development Agreement by and between the Village and Bradford IM Westmont Venture LLC, a Delaware limited liability company ("**Developer**"), which entity is an affiliate of Owner, dated as of the date hereof (the "**Development Agreement**"), the Village and Developer entered into certain agreements with respect to the proposed redevelopment of the Development Parcel, providing, among other things, that Developer intends to develop and maintain the Development Parcel with not less than (i) an

approximately 45,000 square foot commercial building with accessory surface parking for an LA Fitness health club (the "**LA Fitness Development**"), which will be leased to Fitness International, LLC, a California limited liability company, doing business as an LA Fitness health club for an initial term of at least 15 years and in accordance with the Development Agreement, (ii) a commercial building consisting of not less than 30,000 square feet (the "**Commercial Building Development**") with accessory surface parking for a use approved by the Village, which will be leased to one or more commercial users in accordance with the Development Agreement and (iii) additional commercial buildings and other common area and related improvements within the Development Parcel as determined by Developer (the "**Additional Tracts Development**") (the LA Fitness Development, the Commercial Building Development and the Additional Tracts Development may be referred to collectively as the "**Westmont Centre Development**").

I. The Owner intends to cause the Development Parcel to be designed and constructed pursuant to the terms of this Agreement.

J. Fitness International, LLC, intends to enter into a lease agreement with Owner with an initial term of 15 years and to open and operate an LA Fitness health club ("**LA Fitness**") on the Development Parcel in accordance therewith.

K. The LA Fitness Development and the Commercial Building Development on the Development Parcel is an important project to meet the Village's economic development objective of transforming the Development Parcel from an underutilized and partially blighted site to a foundational part of the redevelopment of the South Westmont Business District into a thriving commercial district.

L. The Village has complied with all notice procedures with respect to entering into this Agreement.

M. The Village desires to have the Development Parcel developed in accordance with and pursuant to this Agreement to promote the health, safety, and welfare of the Village and its residents, to prevent the spread of blighting conditions, to encourage further private investment and development, to enhance the Village's tax base, and to increase employment opportunities for the Village and its residents.

N. The Owner has represented to the Village that, without the transactions provided for herein, Westmont Centre Development is not economically feasible and the Developer would not undertake the redevelopment of the Development Parcel as described herein.

O. In light of the reasons articulated in Paragraph M and N, the Village of Westmont Board of Trustees has found and determined that the construction and operation of the Westmont Centre Development, pursuant to the terms of this Agreement, is in the best interest of the Village and the welfare of its residents, and is in accord with valid public purposes.

P. The Corporate Authorities have made the following findings, among others:

(1) The Development Parcel is underutilized and over ninety percent (90%) vacant and has been so for over one year.

(2) The Westmont Centre Development is expected to create job opportunities in the Village.

(3) The Westmont Centre Development will serve to further the development of adjacent areas.

(4) Without this Agreement, the Westmont Centre Development would not be possible.

(5) The Developer meets high standards of creditworthiness and financial strength.

(6) The Westmont Centre Development will strengthen the commercial sector of the Village.

(7) The Westmont Centre Development will enhance the tax base of the Village.

Q. This Agreement has been submitted to the Corporate Authorities of the Village for review and consideration and the Corporate Authorities have undertaken all actions required by law prior to the execution of this Agreement in order to make the same binding upon the Village.

R. This Agreement has been submitted to the Owner for review and consideration and the Owner has undertaken all actions required by law prior to the execution of this Agreement in order to make the same binding upon the Owner.

S. The Parties acknowledge that their respective obligations hereunder to perform pursuant to this Agreement are absolute and unconditional, except where specifically provided to the contrary herein.

NOW, THEREFORE, IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise provided herein, all capitalized words and terms used herein shall have the same meanings ascribed to such words and terms as in the Development Agreement. As used in this Agreement, the following terms shall have the meanings indicated unless a different meaning is specifically provided in this Agreement or unless the context otherwise requires:

"Revenue Note" means that instrument, substantially in the form and content attached hereto as **Exhibit B**, evidencing the limited obligation of the Village of Westmont to repay the registered owner of such instrument designated by Owner, or registered owner's assignees, the principal amount of \$4,500,000.00 plus interest on such principal amount out of Tax Revenues (as defined below) until the earlier to occur of payment in full of the monetary obligation detailed in such instrument or the maturity date of the instrument, in accordance with the terms, rights and obligations more particularly set forth in **Exhibit B** attached hereto and incorporated by reference.

"Sales Tax Revenues" shall mean the Village's aggregate share of any Retailer's Occupation Tax, 35 ILCS 120/1, *et seq.*, Service Occupation Tax, 35 ILCS 115/1, *et seq.*, and, if and when applicable, the Village's Home Rule Retailers' and Service Occupation Taxes, generated by the Westmont Centre Project or by any other commercial use on the Development Parcel.

"Tax Revenues" means, collectively, one-half (1/2) of the Sales Tax Revenues generated by uses on the Development Parcel, one-half (1/2) of any retail-specific taxes, such as the Places for Eating Tax revenues generated by uses on the Development Parcel, one-half (1/2) of any amusement tax revenues generated by uses on the Development Parcel, and one-half (1/2) of hotel tax revenues generated by uses on the Development Parcel, if such taxes are validly enacted by the Village, and, in an amount not to exceed the redevelopment project costs (within the meaning of the TIF Act) in connection with the Development Parcel, one-half (1/2) of the real estate taxes derived from the Development Parcel deposited in the [2018 South Westmont Business District Tax Increment Financing District Redevelopment Project Area Special Tax Allocation Fund – NOTE: INSERT SPECIFIC NAME OF FUND.] created in the TIF Ordinance REIMBURSEMENT.

SECTION 2. REIMBURSEMENT.

Pursuant to an Ordinance hereafter, but prior to Closing, adopted (the **"Revenue Note Ordinance"**), the Village shall issue the Revenue Note to Owner or its nominee at the Closing, provided that Owner submits to the Village Clerk evidence of Developer's expenditure of "redevelopment project costs" (within the meaning of the TIF Act) in the aggregate amount of not less than \$4,500,000.00 of the over \$_____ of redevelopment project costs expected to be incurred by Developer in connection with the Development Parcel. The Parties agree that the costs listed on **Exhibit C** attached hereto and incorporated herein by reference qualify as redevelopment project costs once expended; such exhibit also contains an estimate of costs for each category of costs but such list and such estimates shall not operate as a requirement or limitation or be treated as exhaustive. If at the Closing, Owner has not submitted evidence of expenditure of redevelopment project costs totaling \$4,500,000.00, then issuance of the Revenue Note shall be postponed until such submittal is made. The Revenue Note Ordinance shall pledge the Tax Revenues to the repayment of the Revenue Note. The Revenue Note Ordinance shall be consistent with the Revenue Note and this Agreement and shall otherwise be on terms and conditions reasonably satisfactory to the Parties. The Village shall (i) timely and properly designate the Revenue Note as a "qualified tax-exempt obligation" pursuant to Section 265(b) of the Internal Revenue Code of 1986 as amended (the **"Code"**), and (ii) timely and properly complete and submit to the Internal Revenue Service its Form 8038 or equivalent as applicable, and (iii) take all other steps within its power to make and keep the interest paid pursuant to the Revenue Note exempt from being includible in gross income of the holder of the Revenue Note under the Code.

SECTION 3. UNDERTAKINGS ON THE PART OF THE OWNER.

A. If Developer is in default under the Development Agreement beyond applicable notice and cure periods provided for therein, then the Village may withhold funding provided for under this Agreement and the Revenue Note until such time that said default has been cured.

B. As a term and condition of the LA Fitness Lease or any other Operator lease agreement entered into between Owner and a subsequent retailer or other Operator on the Development Parcel, the lessee shall further agree to, annually until the Revenue Note shall be

satisfied in full or matures, complete and execute the Illinois Department of Revenue's PTAX-1002-21 Form, "Authorization to Release Sales Tax Information to Local Governments," as the same may be amended from time to time, authorizing the release of sales tax information for the most-recently-completed calendar year for commercial operation on the Development Parcel and remit such executed form to the Village for completion and submission to the Illinois Department of Revenue's Local Tax Allocation Division.

C. Owner agrees that each of the LA Fitness Lease and each Operator lease shall include a continuing obligation on the part of such tenant to provide a copy of either such tenant's applicable monthly sales tax return or a memorandum transmitted to the Village as set forth below, detailing the amount of Sales Tax Revenues inuring to the Village generated by such tenant's operation during the relevant reporting period. The memorandum or tax return provided to the Village must be remitted to the Village contemporaneously with the submission of each and every monthly sales tax return form submitted to the Illinois Department of Revenue. Owner further agrees to make the obligations set forth in this paragraph a term and condition of any lease agreement(s) entered into between Owner and a subsequent retailer or other operator on the Development Parcel throughout the life of the Revenue Note.

SECTION 4. REPRESENTATIONS AND WARRANTIES.

A. The Village hereby represents and warrants to the Owner that the performance by the Village of this Agreement will not conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which the Village is a party or by which it is bound, or constitute a default under any of the foregoing, or violate any law, order, writ, injunction or decree of any court, administrative agency or governmental body.

B. The Owner hereby represents and warrants to the Village that the performance by Owner of this Agreement will not conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which the Owner is a party or by which it is bound, or constitute a default under any of the foregoing.

SECTION 5. DEFAULTS.

The occurrence of either A or B by the Village or the Owner, as the case may be, shall constitute an event of default by the Village or the Owner, as the case may be, under this Agreement:

A. Failure to comply with any term, provision or condition of this Agreement within the times herein specified in any respect.

B. In the event a representation or warranty of either party contained herein is not true and correct.

Upon an occurrence of an event of default by either party as hereinabove set forth the other party shall provide written notice specifying the default to the defaulting party. Upon receipt of the notice of default, the defaulting party shall have 30 days to cure the default, if it can reasonably be cured within 30 days, or must begin curing the default and complete curing the default within a reasonable time thereafter, if it cannot be cured within 30 days. Upon the occurrence of an event of default that continues beyond applicable notice and cure periods, the party not in default shall have any and all remedies available at law or in equity.

SECTION 6. NOTICES.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Westmont
31 W. Quincy Street
Westmont, IL 60559
ATTN: Village Manager

With a copy to: Rathje & Woodward, LLC
300 E. Roosevelt Road, Suite 300
Wheaton, IL 60187
ATTN: John R. Zemenak

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

Bradford Westmont 4 LLC
700 Commerce Drive, Suite 130
Oak Brook, Illinois 60523
ATTN: Jay Eck

With a copy to: Daspin & Aument, LLP
300 S. Wacker Drive, Suite 2200
Chicago, IL 60606
ATTN: James H. Marshall

All notices shall be deemed given two (2) business days following deposit in the United States mail with respect to a certified or registered letter, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery or on the same day if sent by personal delivery or telecopy (with proof of transmission). Attorneys for each party shall be authorized to give notices for such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in the manner above specified

SECTION 7. MISCELLANEOUS.

A. Time is of the Essence. Time is of the essence of this Agreement.

B. Further Assurances. The Parties each agree to do, execute, acknowledge and deliver any and all other reasonable documents and instruments and to take all such further reasonable action as shall be necessary or required in order to fully carry out this Agreement and to fully consummate and effect the transaction contemplated hereby.

C. Entire Agreement. This Agreement, together with the exhibits hereto, constitutes the entire agreement of the Parties with respect to the subject matter herein contained and supersedes any and all prior agreements, oral or written, with respect to the subject matter herein contained. There are no representations, warranties, covenants or other agreements between the Parties in connection with the transaction contemplated by this

Agreement other than those expressly set forth herein or expressly contemplated hereby to be executed and delivered by the Parties in accordance with the terms hereof.

D. Remedies Cumulative. The rights and remedies of the Parties under this Agreement shall be non-exclusive, and shall be in addition to all the other remedies available to the Parties, at law or in equity. Failure of either party 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 right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

E. Estoppel Certificate. The Village agrees that it will, from time to time, upon request by the Owner, execute and deliver to Owner and to any parties designated by the Owner, within ten (10) days following demand therefor, an estoppel certificate on Owner's form, certifying (i) that this Agreement is unmodified and in full force and effect (or if there had been modifications, that the same are in full force and effect as so modified), (ii) that there are no defaults hereunder (or specifying any claimed defaults), and (iii) such other matters as may be reasonably requested by Owner.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

G. Acquisition Contingency. Anything in this Agreement to the contrary notwithstanding, if Developer has not acquired the Development Parcel on or before February 1, 2019, then Owner shall notify the Village and, at any time thereafter and prior to the date Developer acquires the Development Parcel, either Owner or the Village may terminate this Agreement, in which event this Agreement shall be null and void and of no further force and effect and neither Owner nor the Village shall have any liability under this Agreement. In the event that Developer has not acquired the Development Parcel on or before February 1, 2019, in lieu of terminating the Agreement, the Developer shall have an automatic six (6) month extension until August 1, 2019 to acquire the Development Parcel, but Developer shall be entitled to this six (6) month extension only in the event that the delay in acquisition is solely caused by the seller of the Development Parcel, and the Owner provides reasonable proof of seller's delay to the Village on or before February 1, 2019.

H. Binding Effect. The Parties intend that the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their grantees, nominees, successors in interest, assignees, heirs, executors, or lessees. Owner shall be required to inform any and all prospective and future successors, nominees and assigns of the obligations contained in this Agreement.

SECTION 8. NO PERSONAL LIABILITY OF OFFICIALS OF THE VILLAGE OR DEVELOPER

No covenant or agreement contained in this Agreement shall be deemed to be the agreement of the Corporate Authorities, any official, officer, partner, member, director, agent, employee, planning consultant or attorney of the Village or Owner, in his or her individual capacity, and no official, officer, partner, member, manager, director, agent, employee or attorney of the Village or Owner shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery, and performance of this Agreement, or any failure in connection therewith.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have thereto set their hands on the date first above written.

ATTEST:

VILLAGE OF WESTMONT, an Illinois
municipal corporation

By: _____

By: _____

Its: _____

Its: _____

BRADFORD WESTMONT 4 LLC, an Illinois
limited liability company

By: **Bradford Real Estate Services Corp.**,
its manager

By: _____

Its: _____

EXHIBIT A

DEVELOPMENT PARCEL

THE SOUTH 855 FEET OF THE EAST 810 FEET OF THE SOUTH EAST ¼ OF THE SOUTH EAST ¼ OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING THEREFROM THE SOUTH 300 FEET OF THE EAST 480 FEET), IN DUPAGE COUNTY, ILLINOIS

PIN: 09 16 406 005

EXHIBIT B

REVENUE NOTE

(To Be Attached)

EXHIBIT C

PRELIMINARY TABLE OF CERTAIN ANTICIPATED REDEVELOPMENT PROJECT COSTS

Development Parcel Purchase Price	\$6,500,000
Engineering, testing, environmental	\$25,155,462
Marketing fees	\$855,000
Closing costs and legal fees in connection with acquisition, financing and leasing	\$400,000
Financing Costs	<u>\$2,378,140</u>

TOTAL ANTICIPATED REDEVELOPMENT PROJECT COSTS: \$36,064,033