

VILLAGE OF BRADLEY

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RESOLUTION NO. R-8-20-3

A RESOLUTION APPROVING A SALES-TAX SHARING AGREEMENT BETWEEN THE  
VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS AND BILL KAY  
OLDSMOBILE, INC.

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ADOPTED BY THE  
BOARD OF TRUSTEES OF THE  
VILLAGE OF BRADLEY

THIS 10<sup>th</sup> DAY OF August, 2020

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Published in pamphlet form by the authority of the Board of Trustees of the Village of Bradley,  
Kankakee County, Illinois this 10<sup>th</sup> day of August, 2020.

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THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS AND BILL KAY  
OLDSMOBILE, INC.**

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**WHEREAS**, the Corporate Authorities of the Village of Bradley, Kankakee County, Illinois, have the authority to adopt resolutions and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

**WHEREAS**, Section 8-11-20 of the Illinois Municipal Code (65 ILCS 5/8-11-20) authorizes the corporate authorities of a municipality to enter into an economic incentive agreement relating to the development or redevelopment of land within its corporate limits; and

**WHEREAS**, Bill Kay Oldsmobile, Inc. (“Bill Kay Honda”), is an Illinois corporation with a primary business address located at 601 Ogden Avenue, Lisle, Illinois 60532; and

**WHEREAS**, Bill Kay Honda operates a Honda dealership at 1360 Locke Drive, Bradley, Illinois 60914, which is located within the Corporate Boundaries of the Village (the “Dealership”); and

**WHEREAS**, Bill Kay Honda has demonstrated its intent to continue investing in and expanding its operations at the Dealership, including but not limited to (i) purchasing a vacant parcel of real estate that is adjacent to and contiguous with the Dealership (the “Parcel”) and (ii) improving said vacant parcel as necessary make it usable as part of the Dealership (collectively, the “Project”); and

**WHEREAS**, the Corporate Authorities of the Village hereby determine and find, as required by law, that:

1. The Parcel that Bill Kay Honda intends to develop in connection with the Project has remained vacant for at least one year prior to the date of this Resolution; and
2. The Project is expected to create or retain job opportunities within the Village; and
3. The Project will serve to further the development of adjacent areas within the Village; and
4. Without an economic incentive agreement, the Project would not be possible; and
5. Bill Kay Honda meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following: (i) corporate debenture ratings of BBB or higher by Standard & Poor’s Corporation or Baa or higher by Moody’s Investors Services, Inc.; (ii) a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or (iii) specific evidence of equity financing for not less than 10% of the total project costs; and
6. The Project will strengthen the Village’s commercial sector; and
7. The Project will enhance the Village’s tax base; and
8. It is in the best interests of the Village to enter into an economic incentive agreement with Bill Kay Honda; and

**WHEREAS**, the Village and Bill Kay Honda have negotiated a Sales Tax Sharing Agreement (the “Agreement”) on terms that are reasonable and acceptable to the Village (a copy of the Agreement is attached hereto as Exhibit A and fully incorporated herein); and

**WHEREAS**, the Agreement does not include the sharing or rebate of any tax that would, but for the Agreement, have been paid to any other another unit of local government where said other unit of local government contains within its corporate boundaries any retail location or warehouse of Bill Kay Honda, from which any tangible personal property is delivered to purchasers; and

**WHEREAS**, it is in the best interests of the Village and its citizens to enter into the Agreement with Bill Kay Honda.

**NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AUTHORITY, AS FOLLOWS:**

**SECTION 1.** The Corporate Authorities hereby find that all of the recitals contained in the preamble to this Resolution are true, correct, and complete and are hereby incorporated by reference hereto and made a part hereof.

**SECTION 2.** The Corporate Authorities of the Village hereby approve of the Agreement, a copy of which is attached hereto as Exhibit A and fully incorporated herein, and declare that it is lawful, reasonable, and acceptable to the Village. The Corporate Authorities of the Village further authorize and direct the Acting Village President to sign, execute, and deliver, and the Village Clerk to attest, the Agreement. In addition, the Corporate Authorities of the Village further authorize and direct the Acting Village President to take any action, including the execution of any document, as may be necessary to fully execute and enter into the Agreement with Bill Kay Honda.

**SECTION 3.** The Corporate Authorities of the Village hereby authorize and direct the Village Finance Director to file any and all reports and other documents as may be required by the Illinois Department of Revenue in connection with the Agreement, in full compliance with all obligations set forth in Section 8-11-21 of the Illinois Municipal Code (65 ILCS 5/8-11-21). All such reports shall be filed no later than thirty (30) days after the execution of the Agreement by the Village President, as required by law.

**SECTION 4.** The Corporate Authorities of the Village hereby state and declare that under no circumstances shall the Agreement authorized by this Resolution be valid or effective until the reports authorized in Section 3 of this Resolution, *supra*, have been filed with and accepted by the Illinois Department of Revenue, as required by law.

**SECTION 5.** In the event that any provision or provisions, portion or portions, or clause or clauses of this Resolution shall be declared to be invalid or unenforceable by a Court of competent jurisdiction, such adjudication shall in no way affect or impair the validity or enforceability of any of the remaining provisions, portions, or clauses of this Resolution that may be given effect without such invalid or unenforceable provision or provisions, portion or portions, or clause or clauses.

**SECTION 6.** All ordinances, resolutions, motions, or parts thereof, conflicting with any of the provisions of this Resolution, are hereby repealed to the extent of the conflict.

**SECTION 7.** The Village Clerk is hereby directed to publish this Resolution in pamphlet form.

**SECTION 8.** This Resolution shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

**PASSED** by the Board of Trustees on a roll call vote on the 10<sup>th</sup> day of August, 2020.

**TRUSTEES:**

ROBERT REDMOND	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
MICHAEL WATSON	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
RYAN LEBRAN	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
BRIAN BILLINGSLEY	Aye - <u>X</u>	Nay - <u>    </u>	Absent - <u>    </u>
DARREN WESTPHAL	Aye - <u>    </u>	Nay - <u>    </u>	Absent - <u>X</u>
BRIAN TIERI	Aye - <u>    </u>	Nay - <u>    </u>	Absent - <u>X</u>

**ACTING VILLAGE PRESIDENT:**

MICHAEL WATSON      Aye -           Nay -           Absent -           Non-voting X

**TOTALS:**              Aye - 4      Nay - 0      Absent - 2

**ATTEST:**

Julie Tambling  
JULIE TAMBLING,  
VILLAGE CLERK

**APPROVED** this 10<sup>th</sup> day of August, 2020.

Michael Watson  
MICHAEL WATSON,  
ACTING VILLAGE PRESIDENT

**ATTEST:**

Julie Tambling  
JULIE TAMBLING,  
VILLAGE CLERK

STATE OF ILLINOIS        )  
                                  )        §§  
COUNTY OF KANKAKEE    )

I, JULIE TAMBLING, Village Clerk for the Village of Bradley, County of Kankakee and State of Illinois, DO HEREBY CERTIFY that the attached is a true, perfect, and complete copy of Resolution number R-8203, "A RESOLUTION APPROVING A SALES-TAX SHARING AGREEMENT BETWEEN THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS AND BILL KAY OLDSMOBILE, INC.," which was adopted by the Village President and Board of Trustees at a meeting held on the 10<sup>th</sup> day of August, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand in the Village of Bradley, County of Kankakee and State of Illinois, on this 10<sup>th</sup> day of August, 2020.

  
\_\_\_\_\_  
JULIE TAMBLING,  
VILLAGE CLERK

(SEAL)

**SALES TAX SHARING AGREEMENT BETWEEN THE VILLAGE OF BRADEY,  
ILLINOIS AND BILL KAY OLDSMOBILE, INC, d/b/a BILL KAY HONDA**

**THIS SALES TAX SHARING AGREEMENT** (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the Village of Bradley, an Illinois Municipal Corporation formed under and by virtue of the constitution and laws of Illinois and located within Kankakee County (the “Village”) and Bill Kay Oldsmobile, Inc, d/b/a Bill Kay Honda (“Bill Kay Honda”), an Illinois Corporation operating within the corporate boundaries of the Village. The Village and Bill Kay Honda are hereinafter sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

*WITNESSETH:*

**WHEREAS**, the Parties are entering into this Agreement pursuant to Section 8-11-20 of the Illinois Municipal Code (65 ILCS 5/8-11-20) (“Code”), with regard to the development of a vacant parcel (the “Subject Property”) located next to Bill Kay Honda’s existing dealership (the “Project”), which is generally located on the southeast corner of the intersection of Locke Drive and Tighe Drive within the Village of Bradley, Kankakee County, Illinois; and

**WHEREAS**, the Subject Property presently bears the tax PIN: 17-09-16-301-033; and

**WHEREAS**, Section 8-11-20 of the Illinois Municipal Code (65 ILCS 5/8-11-20) authorizes the corporate authorities of a municipality to enter into economic incentive agreements relating to development or redevelopment of land within its corporate limits; and

**WHEREAS**, the Village may, under an economic incentive agreement such as this Agreement, agree to rebate or share a portion of the Retailers’ Occupation Taxes received by the Village which have been generated by the development or redevelopment over a finite period of time; and

**WHEREAS**, (i) the Project includes the addition of a new 8,800 sq. ft. building that that will add service bays and a delivery area, as well as expanding Bill Kay Honda’s existing parts department, all in conformance with the site and building plans attached hereto as Group Exhibit 1 and fully incorporated herein; (ii) this Agreement recognizes the significant improvements required by Bill Kay Honda in connection with the development of the Project; and (iii) this Agreement is intended to reimburse Bill Kay Honda for the costs of such improvements; and

**WHEREAS**, the taxable sales made at the Project will not be subject to local Retailers’ Occupation Taxes in another unit of local government; and

**WHEREAS**, the parcel to be developed (the “Subject Property”) consists of approximately one (1) acre, is presently vacant, and has been vacant for a period of at least one year; and

**WHEREAS**, the construction of and operation of the Project will create or retain job opportunities within the Village; and

**WHEREAS**, the Project will serve to further the redevelopment of adjacent areas; and

**WHEREAS**, without this Agreement, the Project would not be possible; and

**WHEREAS**, Bill Kay Honda meets high standards of credit worthiness and financial strength as demonstrated by one or more of the following: (i) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Services, Inc.; (ii) a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or (iii) specific evidence of equity financing for not less than 10% of the total project costs; and

**WHEREAS**, the Project will strengthen the commercial sector of the Village and substantially enhance the tax base of the Village; and

**WHEREAS**, the Corporate Authorities of the Village have determined that it is in the best interest of the Village to enter into this Agreement.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:**

**SECTION 1 - INCORPORATION**

The Preambles to this Agreement are hereby declared to be the finding of the Parties and that said Preambles and all exhibits referred to in the Preambles and this Agreement are incorporated herein as if fully set forth in this Section 1.

**SECTION 2 - CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE**

All undertakings on the part of the Village pursuant to this Agreement are subject to the satisfaction of the following conditions by Bill Kay Honda on or before December 1, 2021, unless otherwise specifically hereinafter stated:

- A. Bill Kay Honda shall develop the Subject Property and complete the Project to the Village's satisfaction and in substantial conformance with the site and building plans attached hereto as Group Exhibit 1.
- B. Prior to any payment by the Village of any sums to Bill Kay Honda, as provided in this Agreement, Bill Kay Honda shall provide the Village with a limited power of attorney, addressed to and in a form satisfactory to the Illinois Department of Revenue ("IDOR"), authorizing IDOR to release to the Village all gross revenues and sales tax information submitted by Bill Kay Honda to IDOR for the Project. In the event that IDOR fails to provide the Village with the necessary tax information, Bill Kay Honda shall cause to be delivered to the Village, on a quarterly basis, the Illinois Retailers' Occupation Tax, Use Tax and Service Occupation Tax returns and/or other documentation submitted by Bill Kay Honda to the IDOR, which detail the amount of Sales Tax (defined below) that Bill Kay Honda paid to IDOR with respect to its dealership and/or the Project. Additionally, in the event that Bill Kay Honda does not

provide such tax returns, or IDOR does not make available to the Village said documentation, Bill Kay Honda shall cause such alternative documentation, acceptable to the Village, which details the amount of Sales Tax that Bill Kay Honda paid to IDOR with respect to the Project.

- C. For purposes of this Agreement, the use of the terms “Sales Tax” and “Sales Tax Revenue” shall be construed to refer to:
- (i) The net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailers’ Occupation Tax Act (35 ILCS 120/1, *et seq.*), as amended, or the Service Occupation Tax Act (35 ILCS 115/1, *et seq.*), as amended, that are generated by Bill Kay Honda’s dealership and/or the Project and collected by the State and distributed to the Village; and
  - (ii) Any other sales tax or similar tax that may be enacted by the State of Illinois, generated by Bill Kay Honda’s dealership and/or the Project and collected by the State and distributed to the Village; and
  - (iii) Any revenues derived by the Village from any tax on receipts from sales which is enacted to replace, in whole or in part, the above referenced tax(es) except for any increased sales tax revenues that are required by state law to be used for a purpose other than as set forth in this Agreement.
- D. The foregoing notwithstanding, the definition of “sales tax” or “sales tax revenue” shall not include (i) any retailer’s or service occupation taxes that have been or may be imposed by the Village pursuant to the Non-Home Rule Municipal Retailers’ Occupation Tax Act (65 ILCS 5/8-11-1.3), as amended, or the Non-Home Rule Municipal Service Occupation Tax Act (65 ILCS 5/8-11-1.4), as amended; or (ii) any Home Rule Municipal Retailers’ Occupation Taxes or Home Rule Service Occupation Taxes that the Village may impose in the future if the Village becomes a Home Rule unit of local government.

**SECTION 3 - UNDERTAKINGS ON THE PART OF THE VILLAGE UPON SATISFACTION OF ALL OF THE CONDITIONS HEREIN STATED**

- A. Upon satisfaction by Bill Kay Honda of all the conditions as set forth in Section 2 above, the Village hereby undertakes to make the payments as set forth in Section 3.B below.
- B. To ensure the proper development of the Subject Property, to ensure completion of the Project, and to foster the continued economic growth of the area, the Village hereby agrees to rebate to Bill Kay Honda one hundred percent (100%) of that net portion of Sales Taxes that are imposed by the State of Illinois, generated by the dealership and/or Project, and distributed to the Village, but only after and to the extent that such Sales Taxes first exceed two hundred and thirty-thousand dollars (\$230,000.00) in any given year. For the avoidance of doubt: the Village shall not rebate any Sales Taxes unless and until Bill Kay Honda first reaches the threshold of two hundred and thirty-thousand dollars (\$230,000.00) in a given year; only after



reaching said threshold shall Bill Kay Honda be entitled to any rebate, and only of any additional Sales Taxes in excess of said threshold. In any year that Bill Kay Honda fails to generate Sales Taxes in excess of two hundred and thirty-thousand dollars (\$230,000.00), Bill Kay Honda shall not be entitled to any rebate for that year, but this fact shall not affect the rebate to which Bill Kay Honda may or may not be entitled in any other year. The Sales Taxes that Bill Kay Honda is entitled to have rebated will hereinafter be referred to as the “Rebated Taxes” where appropriate.

- C. This Agreement and the Sales Tax rebate provided for in Section 3.B, above, shall continue for a period of sixteen (16) years or until the Village has rebated a total of one million five hundred thousand dollars (\$1,500,000.00), whichever occurs first (the “Termination Date”). Under no circumstances shall Bill Kay Honda be entitled to any Sales Tax rebate in excess of this total maximum amount of one million five hundred thousand dollars (\$1,500,000.00).
- D. Payment of any and all Sales Tax rebates to which Bill Kay Honda may be or become entitled shall be calculated as set forth below in quarterly installments until the Termination Date (*see* 3.C, above), subject to the following conditions and restrictions:
  - (i) Commencing with the first calendar month the IDOR reports sales tax receipt after execution of this Agreement (“Starting Date”), the Village shall pay to Bill Kay Honda any rebate to which it is entitled quarterly in arrears, until the Termination Date (as defined in Section 3.C above), provided, however, that no such payments shall be made unless Bill Kay Honda has fully completed the Project in substantial conformance with the site and building plans attached hereto as Group Exhibit 1 no later than December 1, 2021.
  - (ii) Such sums shall be paid from the Rebated Taxes generated exclusively from sales by Bill Kay Honda in connection with the dealership or the Project. The amount due to Bill Kay Honda hereunder shall not be a general obligation of the Village and the Village shall not have an obligation to pay any amounts to Bill Kay Honda except from the Village’s share of Sales Taxes actually received from IDOR. Nothing in this Agreement is intended to constitute an express or implied covenant on the part of Bill Kay Honda to continuously operate a business on the Subject Property. It being understood, that as a consequence of a failure to operate said business shall be the right of the Village to terminate this Agreement, and to cease making payments hereunder.
- E. The Village shall complete and submit a report by electronic filing to the Department of Revenue within thirty (30) days after the execution of this Agreement, as required by 65 ILCS §§ 5/8-11-21(c) and (d).
- F. The Village shall, upon receipt of the IDOR Sales Tax Report reflective of each three (3) or four (4) month period following the Starting Date, pay to Bill Kay Honda the Rebated Taxes, which payments shall continue without interruption until the Termination Date.

- G. During the term of this Agreement, the Village will cause to be created a separate line item for accounting purposes only to be known as the “Bill Kay Honda Rebate.” The amount of the Rebated Taxes shall be accounted for in said line item.
- H. Any amounts paid into the Bill Kay Honda Rebate line item over and above the amount required to be paid to Bill Kay Honda hereunder may be transferred by the Village to its general or other funds without any restriction. Until such time as this Agreement terminates, the Village agrees that it will not take any action or omit to take any action that will affect the continued existence of the Bill Kay Honda Rebate line item or the availability of the Bill Kay Honda Rebate line item to pay Bill Kay Honda.
- I. In the event that any sales tax returns which have been submitted to the Village are amended, Bill Kay Honda agrees to promptly forward a photocopy of such amended sales tax returns to the Village, clearly identifying them as an amendment of a sales tax return previously submitted to the Village.

**SECTION 4 - REPRESENTATIONS AND WARRANTIES OF BILL KAY HONDA**

- A. Bill Kay Honda hereby represents and warrants that the Project requires reimbursement for project costs from the Village in order for it to be completed, and, but for the substantial economic assistance to be given by the Village, as heretofore stated, the Project as contemplated would not be possible.
- B. Bill Kay Honda hereby represents and warrants that at all times it shall comply with all applicable ordinances, resolutions, codes, rules, regulations, guidelines and procedures of the Village and any other governmental entity, including all building and fire code regulations, governing the development of the Project in substantial compliance with the site and building plans attached hereto as Group Exhibit 1.
- C. Bill Kay Honda represents and warrants that it shall comply with all of the terms, provisions, and conditions of this Agreement and it shall use its best efforts to avoid a default under this Agreement or of the financing and/or development of the Project.

**SECTION 5 - AUDIT – RECONCILIATION**

Each payment by the Village to Bill Kay Honda shall be accompanied by a statement executed by the Village Finance Director or the Finance Director’s designee, setting forth the calculations of such payment. The Village Finance Director or the Finance Director’s designee shall further issue a statement to Bill Kay Honda setting forth all payments made to date to Bill Kay Honda. Bill Kay Honda shall have thirty (30) days following the receipt of said payment to contest any of the calculations or information contained in such statements. In the event that Bill Kay Honda shall initiate any such contest, it must be made by written notice to the Village. If such contest shows that the amount paid to Bill Kay Honda was incorrect, either the Village shall pay to Bill Kay Honda the balance of such amount within thirty (30) days of the completion of such contest, or the Village shall set off the amount of any overpayment against the next payment due hereunder, whichever is applicable.

## **SECTION 6 - CONFIDENTIALITY**

The Village acknowledges and agrees that information to be provided by Bill Kay Honda is proprietary and valuable information and to the extent permitted by state or federal law including, but not limited to, the Illinois Freedom of Information Act (“FOIA”), the Village agrees to hold in confidence all sales figures and other information provided by Bill Kay Honda obtained by Bill Kay Honda records in connection with this Agreement, and in connection therewith, the Village shall not copy any such information except (i) as necessary for dissemination to the Village’s agents or employees who are reasonably deemed by the Village to have a need to know such information for purposes of this Agreement, provided that such agents and employees shall hold in confidence such information to the extent required of the Village hereunder; or (ii) to the extent required or permitted by order of court or by state or federal law. The confidentiality requirements of this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind the Village, its successors, assigns and legal representatives for a period of two (2) years from the termination, expiration or cancellation of this Agreement. The Village shall promptly notify Bill Kay Honda of a FOIA request related to this Agreement and/or the commencement of any legal action in regard thereto such that Bill Kay Honda shall have a meaningful opportunity to object to the release of any such confidential information and to take such action as Bill Kay Honda deems necessary in order to protect against the release of such confidential information. The Village shall deny any request for the release of such confidential information if allowed to do so in its sole and absolute discretion; provided, however, the Village shall have no obligation to take any legal action to defend against the release of any such confidential information. Any and all costs and attorney’s fees incurred by the Village in responding to or denying any FOIA request (and/or any other request for information) that relates in any way to this Agreement at Bill Kay Honda’s written request shall be the sole responsibility of Bill Kay Honda.

## **SECTION 7 - DEFAULTS**

- A. The occurrence of any of the following shall constitute a default under this Agreement:
1. Failure to comply with any term, provision or condition of this Agreement within the times herein specified, except to the extent compliance is rendered impossible due to causes beyond the reasonable control of the party in default. For the purposes of this Section, “causes beyond the reasonable control of the party” shall not include any causes related to COVID-19.
  2. In the event that a representation or warranty of Bill Kay Honda contained herein is not true and correct; or
  3. If Bill Kay Honda:
    - (i) Shall be unable, or admits in writing to its inability to pay its debts as they mature; or

- (ii) Makes a general assignment for the benefit of its creditors concerning its debts as they mature; or
- (iii) Is adjudicated a bankrupt; or
- (iv) Files a petition in bankruptcy or to affect a plan or other arrangement with creditors; or
- (v) Files an answer to a creditor's petition admitting the material allegations thereof for an adjudication of bankruptcy or to affect a plan or other arrangement with creditors; or
- (vi) Applies to a court for the appointment of a receiver for substantially all of its assets; or
- (vii) Has a receiver or similar official appointed for substantially all of its assets and such appointment shall not be discharged within sixty (60) days after his appointment or Bill Kay Honda has not bonded against such receivership or appointment; or
- (viii) Has a petition described in (iv) filed against it which remains undismissed for a period of sixty (60) consecutive days, unless the same has been bonded, provided that nothing in this Agreement shall be construed to prevent the assignment of Bill Kay Honda's rights herein for collateral purposes with the prior permission of the Village, which permission will not be unreasonably withheld or denied.

B. In the event of the occurrence of a default, the non-defaulting Party shall provide the defaulting Party written notice of such default and the defaulting Party shall have thirty (30) days to cure such default. Failure to cure shall permit the non-defaulting Party to terminate the Agreement. Failure to cure by Bill Kay Honda shall relieve the Village of any and all of its obligations to pay Bill Kay Honda the any rebate amounts until such time as the Project is again being operated and the default is cured or the Village may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, undertaking, covenant or agreement of Bill Kay Honda or the Village set forth in this Agreement.

C. Notwithstanding the occurrence of a default by Bill Kay Honda as hereinabove set forth, so long as Bill Kay Honda continues to operate at the Project, the Village shall be obligated to make the payments required under Section 3 above. In the event that Bill Kay Honda fails to operate at the Project for any ninety (90) consecutive days after the Starting Date, excluding the failure to operate as a result of a casualty or remodeling, coupled with the occurrence of a default by Bill Kay Honda as hereinabove set forth, which default is not cured within the time permitted herein, then upon at least thirty (30) days prior written notice thereafter from the Village during which time Bill Kay Honda may cure any default, the Village shall be relieved of any and all of its obligations arising hereafter pursuant to this Agreement until such time as Bill Kay Honda is again operating at the Project and the default is cured. Bill

Kay Honda or the Village make take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, undertaking, covenant or agreement of Bill Kay Honda or the Village set forth in this Agreement.

- D. In the case of any default by Bill Kay Honda on the sole basis that Bill Kay Honda has failed to provide a limited power of attorney to the IDOR as required by this Agreement, the Village's sole remedy shall be to withhold the any and all rebate payments attributable to Bill Kay Honda until the Village receives such power of attorney.

## **SECTION 8 – LIMITATION OF LIABILITY**

The sole source of funds for payments to Bill Kay Honda under this Agreement shall be funds which comprise the Rebated Taxes. Bill Kay Honda may not compel any exercise of taxing authority by the Village to make payments provided for hereunder. The provisions of this Agreement do not constitute an indebtedness of the Village or a loan of the credit of the Village within the meaning of any constitutional or statutory provision. Under no circumstances shall the Village be required to pay any monies to Bill Kay Honda from any source other than the Rebated Taxes.

## **SECTION 9 - BUDGET**

To the extent required by law, each year during the term of this Agreement, the Village agrees that it will budget funds as necessary to satisfy its obligations hereunder. Such appropriation shall be a part of the Village's annual budget ordinance adopted in accordance with 65 ILCS 5/8-2-9 or as part of the Village's annual budget adopted in accordance with 65 ILCS 5/8-2-9.4 as the case may be. The Village shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-2-9 or by an amendment to the annual budget pursuant to 65 ILCS 5/8-2-9.6.

## **SECTION 10 - LITIGATION**

Neither the Village nor Bill Kay Honda, nor their respective successors and assigns, shall challenge the legality or enforcement of any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision, or covenant of this Agreement, the Village will not take a position adverse to enforcement of the same. The Village, upon Bill Kay Honda's request, agrees to vigorously defend this Agreement. Bill Kay Honda, in its sole discretion, may petition to intervene in any such action or proceeding and to participate, at its sole cost, in the defense of any claim against the Village which challenges the legality or enforceability of any recital, provision or covenant of this Agreement. Bill Kay Honda shall reimburse the Village for any of its costs and expenses (including reasonable attorneys' fees) incurred as a result of the Village defending this Agreement upon Bill Kay Honda's request. In the event that Bill Kay Honda does not request the Village to defend this Agreement, the Village shall have no obligation to participate in the defense thereof and shall not be obligated to appear, answer or file any pleadings whatsoever. In that event, Bill Kay Honda shall bear the risk of an adverse judgment and shall have no recourse against the Village.

## **SECTION 11 - MAINTENANCE OF BUSINESS**

This Agreement is made contingent upon Bill Kay Honda causing the Project contemplated by this Agreement to begin operating by December 1, 2021 subject to *force majeure* (which does not include any delays caused or related to COVID-19). For all purposes herein, “operating the Project” or other similar phrases shall mean building, staffing, and continuously using the proposed 8,800 sq. foot new building addition (in substantial compliance with the site and building plans attached hereto as Group Exhibit 1) for Bill Kay Honda’s business purposes, including but not limited to additional service bays, a delivery area, and as part of its parts department. After the opening for business of the Project to the public at the Subject Property, the failure of the Project to be so operated for any consecutive ninety (90) days during the term of this Agreement, excluding the failure to operate as a result of a casualty, condemnation, or remodeling, shall, at the election of the Village, result in the termination of this Agreement and the Village shall not be obligated to make any payments which are not then due or which have not been previously earned under the provisions hereof.

## **SECTION 12 - PREVAILING WAGE**

Bill Kay Honda covenants and agrees to pay, and to contractually obligate and cause any general contractor, contractors, and subcontractors to pay the prevailing wage rate as ascertained by the Illinois Department of Labor (the “Department”) for any public improvements included in the Project (including but not limited to any sewer and water utility improvements). If the Department revises such prevailing wage rates, the revised rates shall apply to all such requests. Upon the Village’s request, Bill Kay Honda shall provide the Village with copies of all such contracts entered into by Bill Kay Honda or any applicable general contractor to evidence compliance with this Section.

## **SECTION 13 - LOCAL VENDORS AND CONTRACTORS**

Bill Kay Honda shall use good faith efforts to employ local vendors and contractors when economically feasible in the construction process and in the ongoing marketing and management of the Project. This includes advertising in local publications and media for available positions that are not filled by reassignment of existing employees and notifying the Village when Bill Kay Honda is seeking contractors or employees.

## **SECTION 14 - GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, and the Parties hereby agree that sole and exclusive jurisdiction over any and all disputes arising from or in relation to this Agreement shall be in the Circuit Court for the Twenty-First Judicial Circuit of Kankakee County, Illinois.

## **SECTION 15 - AMENDMENTS**

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

**SECTION 16 - NOTICES**

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the Village

Village President  
The Village of Bradley  
147 South Michigan Ave  
Bradley, IL 60915

With a copy to:

Village Administrator  
The Village of Bradley  
147 South Michigan Avenue  
Bradley, IL 60915

And if to Bill Kay Honda

Bill Kay  
1360 Locke Drive  
Bourbonnais, Illinois 60914

With a copy to:

Ann Brezinski  
Ann Brezinski Law Office  
765 Plum Creek Drive  
Bourbonnais, Illinois 60914

Notices shall be deemed received on the fourth business day following deposit in the United States Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

**SECTION 17 - EFFECTIVE DATE**

This Agreement shall be effective on the first date set forth above.

**SECTION 18 - MUTUAL ASSISTANCE AND CONSENTS**

The Parties agree to do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms of this Agreement, including, without limitation, the enactment by the Village of such ordinances and resolutions and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement. In the event that any Party to this Agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

**SECTION 19 - SEVERABILITY**

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

**SECTION 20 - ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the Parties.

**SECTION 21 - SUCCESSORS AND ASSIGNS**

The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the Parties and their heirs, successors, transferees and assigns. Nothing contained herein shall be deemed to create or impose any covenant or obligation running with or binding upon the land. Neither Bill Kay Honda nor the Village shall assign this Agreement or any rights hereunder to anyone except with the prior written consent of the other Party, provided Bill Kay Honda may assign this Agreement or its rights hereunder to (i) any entity controlling, controlled by, or under common control with Bill Kay Honda (a "Bill Kay Honda Affiliate") or (ii) in connection with a sale or disposal of the assets of Bill Kay Honda or a Bill Kay Honda Affiliate.

**SECTION 22 - FORCE MAJEURE**

Any obligation of a Party hereunder shall be extended by one day for every day that performance is delayed by unusual adverse weather conditions, strike, lockout, civil commotion, Act of God or any other cause beyond such Party's reasonable control; provided, however, that in no event shall (i) financial problems, (ii) inability to pay, or (iii) delays caused by COVID-19 be considered a force majeure event.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date and year first above written, and by so executing this Agreement, they mutually represent and warrant to one another that they have full power and authority to enter into this Agreement.

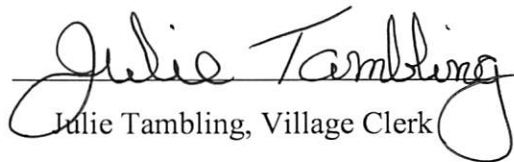
**THE VILLAGE OF BRADLEY**



By: Michael Watson

Its: Acting Village President

Attest:

  
Julie Tambling, Village Clerk

**BILL KAY OLDSMOBILE, INC. d/b/a BILL KAY HONDA**

\_\_\_\_\_  
By: Bill Kay

Its: President