

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
SEPTEMBER 1, 2009 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Sales Tax Rebate Agreement with Zeigler Auto Group	✓ Resolution Ordinance Motion Discussion Only	Michael Baker Deputy Village Manager

SYNOPSIS

A resolution has been prepared authorizing approval of an agreement with Zeigler Auto Group that would provide for a sales tax rebate for the location of a Chrysler/Dodge/Jeep auto dealership at 2311 Ogden Avenue and the relocation of JD Byrider to 2501 Ogden Avenue.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2008-2013 includes *Strong, Diverse Local Economy*. Supporting this goal is the objective *maintain, expand and balance local economy and tax base*.

FISCAL IMPACT

The agreement will require the Village to rebate a portion the tax revenue generated by eligible retail sales based on the terms specified in the agreement. The rebate payments will be expended from the Village's Sales Tax Rebate Fund. It is estimated that the agreement will generate an estimated \$700,000 in new revenues to the Village, which based on the terms of the agreement, would require the Village to rebate \$395,000 to the Zeigler Auto Group.

UPDATE & RECOMMENDATION

This item was discussed at the August 25, 2009 workshop. Staff recommends approval on the September 1, 2009 active agenda.

BACKGROUND

Officials from the Village and Economic Development Corporation have been working closely with representatives of the Zeigler Auto Group over the past several months to assist with the location of a Chrysler/Dodge/Jeep dealership to 2311 Ogden Avenue, previously the site of JD Byrider. This site selection process represents efforts by the Chrysler Corporation to consolidate its dealer network. The Zeigler Auto Group owns other dealerships in Illinois, Indiana and Michigan. It is estimated that when fully operational, the dealership could generate up to \$70 million in taxable sales annually.

In order to facilitate the location of the dealership at this site, it was necessary for JD Byrider to relocate from the 2311 Ogden site. A suitable new location was identified at 2501 Ogden Avenue, the former site of Premier Auto Haus, which relocated to a new location on Warrenville Road in Downers Grove. The Zeigler Auto Group purchased the property on which JD Byrider is to be located.

Zeigler representatives requested a sales tax rebate from the Village as an incentive for the location of Chrysler/Dodge/Jeep dealership and the relocation of JD Byrider. The rebate would apply to the combined

sales from the new dealership and JD Byrider. It is estimated that JD Byrider will generate approximately 6 million in taxable sales annually. The Board of the Economic Development Corporation considered the general terms that are contained in the agreement and recommended approval

The terms of the sales tax rebate agreement include the following:

- Sales taxes received from both the Chrysler/Dodge/Jeep dealership and the JD Byrider location shall be rebated to the Zeigler Auto Group in the following manner:
 - 1) 50% of sales taxes collected up to \$700 million in annual sales
 - 2) 75% of total sales taxes collected in excess of \$700 million in annual sales
- The Village will at all times hold back one quarterly payment which shall be permanently withheld in the event that the terms of the agreement are violated.
- Both of the sites shall be redeveloped in a manner consistent with the plans submitted in order to qualify for the rebate. These improvements include relocation or elimination of curb cuts along Ogden Avenue and conformance with the Ogden Avenue Master Plan.
- The duration of the agreement shall be ten years.

ATTACHMENTS

Resolution

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Manager **DATE:** September 1, 2009
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF A SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, ZEIGLER CHRYSLER DODGE JEEP, JD BYRIDER AND AJZ-DOWNERS GROVE ", as presented.

SUMMARY OF ITEM:

Adoption of this resolution shall authorize execution of a sales tax rebate agreement between the Village of Downers Grove, Zeigler Chrysler Dodge Jeep, JD Byrider and AJZ-downers Grove.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SALES TAX REBATE AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE, ZEIGLER
CHRYSLER DODGE JEEP, JD BYRIDER AND AJZ-DOWNERS GROVE**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Sales Tax Rebate Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Zeigler Chrysler Dodge Jeep – Downers Grove, LLC, a Delaware Limited Liability Company, JD Byrider – Downers Grove, LLC, an Illinois Limited Liability Company and AJZ-Downers Grove, LLC, a Michigan limited liability company (collectively referred to as "Zeigler"), as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, ZEIGLER CHRYSLER DODGE JEEP JD BYRIDER AND AJZ-DOWNERS GROVE

THIS AGREEMENT (“Agreement”), is made and entered into as of the ____ day of _____, 2009 (“Agreement Date”) by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the “Village”), Zeigler Chrysler Dodge Jeep – Downers Grove, LLC, a Delaware Limited Liability Company, JD Byrider – Downers Grove, LLC, an Illinois Limited Liability Company and AJZ-Downers Grove, LLC, a Michigan limited liability company (hereinafter collectively referred to as “Zeigler”). (The Village and Zeigler are sometimes referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the Village is a home rule unit of government in accordance with Article VII, Section 6, of the Constitution of the State of Illinois, 1970; and

WHEREAS, 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 inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the Village;

WHEREAS, JD Byrider – Downers Grove, LLC (“Byrider Dealership”), is currently located within the Village at 2311 W Ogden Avenue, Downers Grove, IL 60515 (“Byrider’s Current Location”) which is legally described as follows:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 1; THENCE EAST, ON SECTION LINE, 847.50 FEET; THENCE NORTH 2 DEGREES 58 MINUTES EAST 1,292.30 FEET TO THE CENTER OF OGDEN AVENUE; THENCE NORTH 80 DEGREES 30 MINUTES EAST, ALONG THE CENTER OF OGDEN AVENUE, 726 FEET; THENCE NORTH 76 DEGREES 48 MINUTES EAST, ALONG THE CENTER OF OGDEN AVENUE, 508.20 FEET; THENCE NORTH 74 DEGREES 55 MINUTES EAST, ALONG THE CENTER OF OGDEN AVENUE, 959.70 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 1 MINUTES EAST 595.30 FEET, THENCE SOUTH 81 DEGREES 54 MINUTES EAST, 393.20 FEET TO AN IRON STAKE IN PUFFER'S WEST LINE AT A POINT 17.36 CHAINS NORTH OF THE SOUTH LINE OF SAID SECTION 1; THENCE NORTH 0 DEGREES 1 MINUTES EAST 754.40 FEET TO THE CENTER LINE OF OGDEN AVENUE; THENCE SOUTHWESTERLY, ALONG THE CENTERLINE OF OGDEN AVENUE, TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

; and

WHEREAS, Zeigler desires to construct a new Chrysler, Dodge and Jeep dealership ("Chrysler Dealership") at Byrider's Current Location and to make certain other improvements at Byrider's Current Location; and

WHEREAS, Zeigler has secured the property located at 2501 W Ogden Avenue, Downers Grove, IL 60515 ("Premier AutoHaus location") and which is legally described as follows:

Lot 1 in Premier AutoHaus Plat of Consolidation, recorded as document R2008-150378, being a consolidation of Lots 1, 2, 3, 4, 5 and 6 in the Southwest quarter of

Section 1 and the Northwest quarter of Section 12, Township 38 North, Range 10, East of the Third Principal Meridian, DuPage County, Illinois.

and which includes the building which currently houses Marcella's Touch Beauty Salon ("Marcella's Building"); and

WHEREAS, Zeigler intends to demolish Marcella's Building at the Premier AutoHaus location, to improve the Premier AutoHaus Location, and to relocate the Byrider Dealership from Byrider's Current Location to the Premier AutoHaus Location; and

WHEREAS, the Village has determined that it is desirable and in the Village's best interests to assist Zeigler in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to the Principals of Zeigler for consideration and review, which Principals have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon Zeigler according to the terms hereof, and any and all action of Zeigler precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE
INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village and of Zeigler according to the tenor and import of the statements in such Recitals.

ARTICLE TWO
DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

“Agreement” means this Sales Tax Rebate Agreement and all of the exhibits and attachments referenced herein and made a part hereof.

“Change in Law” means the occurrence, after the Effective Date, of an event described below, provided (a) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and (b) such event is not caused by the Party relying thereon: Change in Law includes any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this

Agreement; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village or with respect to those made by the Village, only if they violate the terms of this Agreement).

“Corporate Authorities” means the Mayor and Village Council of the Village of Downers Grove, Illinois.

“Day” means a calendar day.

“Party” means the Village and/or Zeigler and its successors and/or assigns as permitted herein, as the context requires.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Project” collectively means the construction of the Chrysler dealership and the improvement of Byrider’s Current Location as well as the demolition of Marcella’s building and the improvement of the Premier AutoHaus location which will become the new location for the Byrider Dealership.

“Sales Tax” or “Sales Tax Revenue” shall mean the net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailers’ Occupation Tax Act and the Service Occupation Tax Act (as said Acts may be amended from time to time) and which are collected by the State and distributed to the Village, and all revenue derived from such taxes.

“State” means the State of Illinois.

“Uncontrollable Circumstance” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions or other similar Act of God;
 - (iv) governmental condemnation or taking other than by the Village;
 - (v) strikes or labor disputes, other than those caused by the acts of Developer;

Uncontrollable Circumstance shall not include: (1) economic hardship or impracticability of performance, (2) commercial or economic frustration of purpose, (3) unavailability of materials, strikes or labor disputes caused by the acts of Zeigler, or (4) a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

“Village” means the Village of Downers Grove, Illinois, an Illinois municipal corporation.

ARTICLE THREE **CONSTRUCTION**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

(a) Definitions include both singular and plural.

(b) Pronouns include both singular and plural and cover all genders.

(c) The word “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(d) Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the terms of this Agreement shall control.

(f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.

(g) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Zeigler is entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.

(h) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Zeigler in a different manner,

Zeigler hereby designates Aaron J. Zeigler or Daniel J. Scheid as its authorized representatives who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Zeigler and with the effect of binding Zeigler in that connection (each such individual being an “Authorized Representative”). Zeigler shall have the right to change its Authorized Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Article 12, paragraph 4.

ARTICLE FOUR
IMPLEMENTATION OF PROJECT

The Village and Zeigler agree to cooperate in implementing the Project in accordance with the Parties respective obligations set forth in this Agreement.

ARTICLE FIVE
VILLAGE'S OBLIGATIONS

A. Incentive Payments. The Village shall pay to Zeigler Sales Tax Rebate Payments based on the following criteria:

1. **Sales Tax Rebate:** If Zeigler successfully completes the Project and continues to operate the Chrysler Dealership at Byrider’s Current Location and the Byrider Dealership at the Premier AutoHaus Location with the point of sale being in Downers Grove, then for a period of ten years commencing on January 1, 2010 (“Rebate Period”), the Village agrees to rebate to Zeigler on a quarterly basis Fifty Percent (50%) of the combined sales tax revenue on the first \$700,000 in annual sales tax revenue received by the Village from the combined sales at the Chrysler Dealership and the Byrider Dealership and Seventy Five Percent (75%) of the combined sales tax revenue for all sales tax revenue received by the Village over \$700,000 annually from the combined sales at the Chrysler Dealership and the Byrider Dealership.

2. **Payment of Sales Tax Rebate:** The amount of the General Rebate shall be paid quarterly. The General Rebates shall be remitted quarterly (March, June, September and December) by the Village as provided herein. For the duration of this Agreement, Zeigler shall execute and provide the Village with a power of attorney letter or other necessary document in form and content reasonably acceptable to the Village which shall authorize the Illinois Department of Revenue to release any and all gross revenue and sales tax information on a monthly basis with respect to the Chrysler Dealership and the Byrider Dealership during the term of this Agreement. Zeigler shall prepare and submit such other additional forms as may be required from time to time by the Illinois Department of Revenue in order to release such information to the Village. In the event that sales tax revenue information is not released to the Village, the Village shall not be required to make the sales tax rebate payments provided for by this Agreement. The Sales Tax Rebate payment shall be computed at the close of each calendar quarter (March 31, June 30, September 30, and December 31) by the Village as provided herein. The Village will make payment to an entity related to Zeigler within thirty (30) days after it receives notification from the State of the sales tax revenue generated by both the Chrysler Dealership and the Byrider Dealership. Payment shall be made payable to AJZ-Downers Grove, LLC (the "Payee") and sent to the following address:

AJZ-Downers Grove, LLC

Attention: Aaron Zeigler

4201 Stadium Drive

Kalamazoo, MI 49008

3. **Compliance with Village Ordinances:** No Sales Tax Rebate Payments shall be made until and unless Zeigler is in compliance with all terms and conditions of any and all

Village Ordinances and all other terms and conditions of this Agreement. The Village shall only be obligated to make Sales Tax Rebate Payments to Zeigler if Zeigler has no outstanding Village ordinance violations. In the event that a violation of a Village ordinance exists for ninety (90) days or more, the Village reserves the right to permanently withhold payment of one quarterly rebate payment for each ninety (90) day violation period. The Village shall not unreasonably withhold the issuance of any permits or rebate payments.

4. ***Village will support moving Byrider Curb Cut.*** The Village agrees that it will support moving the curb cut at Byrider's Current Location as depicted on the attached plan attached hereto as Exhibit A .

ARTICLE SIX
ZEIGLER'S OBLIGATIONS

1. ***Commitment to Continue Operation:*** The parties agree that the Sales Tax Rebate is based in part upon 1) a commitment by Zeigler to continue operations on the Property. To that end, Zeigler agrees to operate the Chrysler Dealership and the Byrider Dealership within the Village for a period of not less than ten (10) years from the date of this Agreement (the "Commitment Period"). The Village shall withhold the first quarterly sales tax rebate payment due under this Agreement representing the period January 1, 2010 through March 31, 2010 in order to ensure that Zeigler continues its commitments hereunder (the "Holdback Payment"). If at any time during the Commitment Period, Zeigler, or a successor, fails to continue operation of the Chrysler Dealership or the Byrider Dealership, then the following conditions shall apply:

(a) If Zeigler, or a successor, fails to continue operation of the Chrysler Dealership during the Commitment Period, the Village shall be released and discharged from any further obligation to make payments under this Agreement related to sales tax

revenue generated by the Chrysler Dealership, however, payments under this Agreement related to sales tax revenue generated by the Byrider Dealership shall continue to be made. The Village shall then be entitled to retain a pro-rata portion of the Holdback Payment which shall be calculated by taking the total sales tax revenue generated by the Chrysler Dealership up to the most recent quarter prior to when the Chrysler Dealership failed to continue operations divided by the total sales tax revenue generated by both the Chrysler Dealership and the Byrider Dealership up to the most recent quarter prior to when the Chrysler Dealership failed to continue operations and then multiplying this ratio times the Holdback Payment.

(b) If Zeigler, or a successor, fails to continue operation of the Byrider Dealership during the Commitment Period, the Village shall be released and discharged from any further obligation to make payments under this Agreement related to sales tax revenue generated by the Byrider Dealership, however, payments under this Agreement related to sales tax revenue generated by the Chrysler Dealership shall continue to be made. The Village shall then be entitled to retain a pro-rata portion of the Holdback Payment which shall be calculated by taking the total sales tax revenue generated by the Byrider Dealership up to the most recent quarter prior to when the Byrider Dealership failed to continue operations divided by the total sales tax revenue generated by both the Byrider Dealership and the Chrysler Dealership up to the most recent quarter prior to when the Byrider Dealership failed to continue operations and then multiplying this ratio times the Holdback Payment.

If Zeigler continues to operate the Chrysler Dealership and the Byrider Dealership within the Village for the entire ten (10) year term of this Agreement, then the entire Holdback Payment shall be released to the Payee designated by Zeigler in Article Five Paragraph Two above .

2. **Elimination of Curb Cut and Ogden Master Plan** Zeigler shall eliminate a curb cut at the Premier AutoHaus Location as depicted on the attached plan attached hereto as Exhibit B and Ziegler agrees to construct the Project in compliance with the Village's Ogden Avenue Master Plan .

3. **Construction of Project:** Zeigler shall diligently pursue obtaining all required permits and shall cause construction of the Project to be prosecuted and completed with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances.

4. **Compliance with Applicable Laws:** Zeigler shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village, unless variances to such ordinances and codes are applied for and received.

5. **Copies of Agreements:** Upon request of the Village, Zeigler shall submit copies of any and all leases, contracts to purchase and property title documents for land subject to the terms of the Agreement.

ARTICLE SEVEN **BREACH**

In the event of breach of any of the terms and conditions of the Agreement, the non-breaching party shall have the right to terminate this Agreement, which will not relieve the breaching party from performance. In addition, the non-breaching party shall have the right, by any action or proceeding at law or in equity, to secure the specific performance of the covenants

and agreements herein contained, and may be awarded damages or failure of performance, or both, **except that the exclusive remedy for the failure to meet the Required Commitment Period is the Holdback Payment as set forth in Article 6, Section 1.** The foregoing rights and remedies shall be cumulative and exclusive. Nothing herein shall modify, **limit or abrogate any right of the Village to retain the Holdback Payment as provided under Article 6, Section 1.**

ARTICLE EIGHT
INDEMNIFICATION

In the event that any third party or parties institute any legal proceedings against the Village and/or Zeigler which related to the terms of this Agreement, then, in that event, Zeigler shall indemnify and hold harmless the Village from any and all such proceedings. Further, Zeigler, upon receiving notice from the Village of such legal proceedings shall assume, fully and vigorously, the entire defense of such lawsuit or proceedings and any and all costs and expenses of whatever nature relating thereto including but not limited to attorney's fees; provided, however, that Zeigler may not at any time settle or compromise such proceedings without the Village's consent .

If the Village in its sole discretion determines that there is or may be a conflict of interest between the Village and Zeigler on an issue of material importance to the Village, or which may reasonably have a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event that the Village exercises this option, then Zeigler shall reimburse the Village for any and all reasonable out of pocket expenses, including but not limited to court costs, attorney's fees and/or other litigation expenses incurred by the Village in connection herewith.

In the event that the Village institutes legal proceedings against Zeigler for a breach of this Agreement, or any term or condition thereof, and secures a judgment in its favor, the court

having jurisdiction thereof shall determine and include in any judgment against Zeigler all costs and expenses of such legal proceedings incurred by the Village.

ARTICLE TEN
TRANSFER OF INTEREST

If Zeigler transfers or sells, in whole or in part, the Chrysler Dealership or the Byrider Dealership, the rights and obligations under this Agreement will transfer to successive owners upon written consent of the Village, which consent shall not unreasonably be withheld. In the event of such transfer, Zeigler, its principals, officers, agents, shareholders and associated entities shall be released from all obligations of this Agreement,.

ARTICLE ELEVEN
LIMITATION OF ACTIONS

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents and employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Zeigler hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by the Village, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of Zeigler against the Village, its officers, directors, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

ARTICLE TWELVE
MISCELLANEOUS PROVISIONS

1. **Additional Documentation:** Each party agrees to execute any additional documents which may be required to carry out the provisions of this Agreement; and Zeigler particularly agrees to execute such other documents which may be necessary to enable the Village to verify the amount of Sales tax rebates to be paid hereunder.

2. **Jurisdiction:** This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be the appropriate State or federal court located within the State of Illinois.

3. **Waiver:** A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

4. **Notice:** Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail return receipt requested, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

With copy to:
Village Attorney
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

All notices to Zeigler shall be sent to:

Harold Zeigler Auto Group
Attention: Aaron Zeigler
4201 Stadium Drive
Kalamazoo, MI 49008

4. **Successors & Assigns:** This Agreement and the covenants, rights, benefits and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, to the extent and as applied hereunder.

5. **Further Assistance and Corrective Instruments:** The Village and Zeigler agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's sound legal discretion.

6. **Time of the Essence:** Time is of the essence of this Agreement.

7. **Counterparts:** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement and any party hereto may execute this Agreement by signing any of such counterparts. Facsimile or portable document format ("PDF") signature shall be acceptable.

8. **Severability:** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

9. **Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

10. **Entire Contract and Amendments:** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Zeigler relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and

agreements, written or oral, between the Village and Zeigler, and may not be modified or amended except by a written instrument executed by the Parties hereto.

11. **Third Parties:** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the Village and Zeigler, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Zeigler, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Zeigler. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

12. **Successors in Interest:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns; provided, however, that, except as provided in Article 10 hereof, Zeigler may not assign its rights under this Agreement without the express written approval of the Village. Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or transfer any interest in the Property without the express written approval of Zeigler.

13. **No Personal Liability of Officials of Village:** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, Village Council member, Village Manager, any official, officer, partner, member, director, agent, employee or attorney of the Village or Zeigler, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or Zeigler 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 that connection.

14. **Repealer:** To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

15. **Term:** This Agreement shall remain in full force and effect for ten (10) years from the date of this Agreement.

16. **Municipal Limitations:** All municipal commitments are limited to the extent required by law.

17. **Effectiveness:** The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to a duly enacted Village ordinance authorizing the execution and adoption of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

VILLAGE OF DOWNERS GROVE, an Illinois
municipal corporation

By: Mayor

ATTEST:

By: Village Clerk

ZEIGLER CHRYSLER DODGE JEEP – DOWNERS GROVE, LLC, a Delaware limited liability company

By: Aaron J. Zeigler
Its: President

ATTEST:

By: Daniel J. Scheid

JD BYRIDER - DOWNERS GROVE, LLC, an Illinois limited liability company

By: Aaron J. Zeigler
Its: President

ATTEST:

By: Daniel J. Scheid

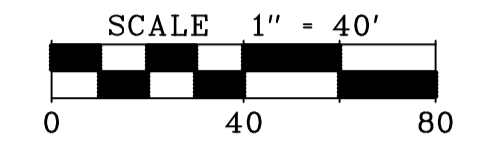
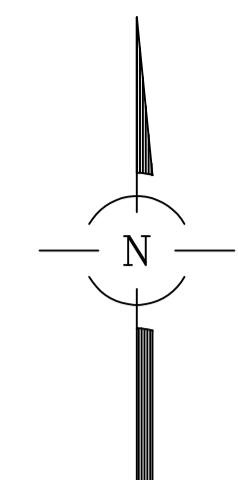
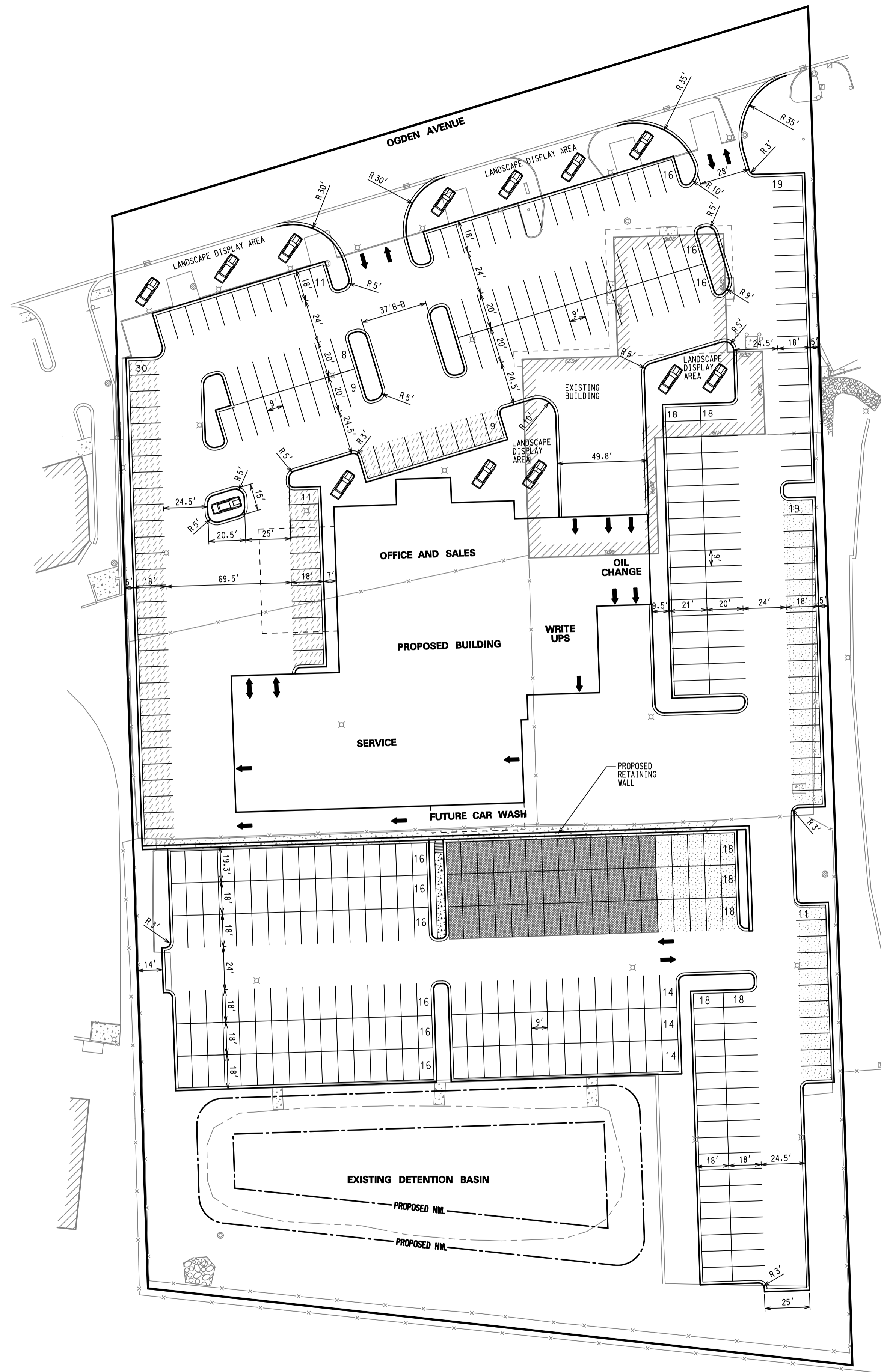
AJZ-DOWNERS GROVE, LLC, a Michigan limited liability company

By: Aaron J. Zeigler
Its: Manager

ATTEST:

By: Daniel J. Scheid

2\WORD\AGRM\ZEIGLER



LEGEND

- INVENTORY PARKING - 305 SPACES
- EMPLOYEE PARKING - 45 SPACES
- CUSTOMER PARKING - 41 SPACES
- SERVICE PARKING - 33 SPACES
- TOTAL - 424 SPACES**

SITE DATA

CURRENT ZONING
LOT AREA
LOT AREA - NET
PROPOSED BUILDING
PARKING PROVIDED

	NO.	DATE	REMARKS

	NO.	DATE	REMARKS

CONCEPTUAL SITE PLAN
HAROLD ZEIGLER AUTO GROUP
CHRYSLER, JEEP, DODGE
DOWNERS GROVE, ILLINOIS

CONSULTING ENGINEERS
SITE DEVELOPMENT ENGINEERS
LAND SURVEYORS

9575 W. Higgins Road, Suite 700,
 Rosemont, Illinois 60018
 Phone: (847) 696-4060 Fax: (847) 696-4065



FILENAME:
6122C-geom.dgn

DATE:
08/12/09

JOB NO.
6122

SHEET
CSP
 1 OF 1

DRAFT

