

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
8/2/2016

SUBJECT:	SUBMITTED BY:
An Ordinance Approving a Redevelopment and Sales Tax Rebate Agreement between the Village and 1815 Ogden, LLC	David Fieldman Village Manager

SYNOPSIS

An Ordinance has been prepared approving a Redevelopment and Sales Tax Rebate Agreement between the Village and 1815 Ogden, LLC (the "Developer").

STRATEGIC PLAN ALIGNMENT

The goals for 2015-2017 include *Strong, Diverse Local Economy*.

FISCAL IMPACT

The redevelopment is projected to generate \$7.3 million in net sales tax revenue in the General Fund for the Village during the 15 year term of the agreement. In the event that the Village makes the sales tax rebate payments for years 2018 to 2024 from the Ogden Tax Increment Finance Fund, the net sales tax revenue in the General Fund could be as much as \$9.6 million (see the attached Projected Sales Tax Revenue).

The Village would reimburse the Developer up to \$5 million from the Ogden TIF Fund for extraordinary redevelopment expenses. The reimbursement would be made upon completion of the redevelopment in late 2017 or early 2018. The Village funds would be placed in escrow prior to the completion of the development (\$4.5 million in 2016 and \$500,000 in 2017). The Ogden TIF Fund is projected to maintain a positive balance during this period.

This fiscal impact does not include the existing Packey Webb Ford (PWF) dealership located at Ogden and Finley. The existing dealership will close once the new dealership opens. PWF has indicated that they intend to operate another dealership from the existing facility.

RECOMMENDATION

Approval on the August 9, 2016 Active Agenda.

BACKGROUND

Packey Webb Ford currently operates a dealership located at Ogden & Finley. The existing facility does not comply with Ford Motor Company requirements. Specifically, there is insufficient parking for new and used cars and an insufficient number of service bays. PWF indicated to the Downers Grove Economic Development Corporation and to Village staff that they will be relocating the dealership to a larger property that meets Ford Motor Company requirements. The only site available in the Village that meets PWF's requirements is the subject property.

The subject property, 1815 Ogden Avenue (south side of Ogden between Lee and Stonewall), is currently vacant and has been vacant for several decades. It was previously used as a salvage yard. The subject site contains several impediments to development that may have contributed to the fact that this parcel has sat vacant for a number of years. Specific site related issues include:

- *Environmental Contamination:* A large portion of the site was previously used as a junk yard. It is known that the site contains lead that must be remediated to Illinois Environmental Protection Agency (IEPA) standards.
- *Wetlands:* The site contains a linear wetland near the south property line. The environmental contamination extends into the wetlands which requires the wetland soil to be mitigated impacting the wetland. PWF will mitigate the wetlands off-site by paying a fee in lieu to the DuPage County Wetland Mitigation Banking Fund.
- *Local Poor Drainage Area (LPDA):* A large portion of the site lies within two LPDA's. Development within the LPDA's must conform to the Village's stormwater management regulations.
- *Significant Elevation Change:* The site contains a 25-foot change in elevation from west to east. This topography is not conducive for commercial redevelopment. The site must be re-graded to accommodate commercial uses.

The Developer is proposing to redevelop the site with a Packey Webb Ford automobile dealership. Additional information about the proposed redevelopment can be found in the staff report for the Planned Unit Development. Financial assistance is required to address the extraordinary expenses due to the issues noted above.

The redevelopment agreement includes the following key terms:

- PWF shall develop the subject site with a new car dealership pursuant to the development plans reviewed and approved by the Village.
- PWF shall complete the development according to the schedule approved by the Village and attached to the redevelopment agreement.
- The Village shall reimburse PWF for TIF eligible expenses in an amount not to exceed \$5 million. The reimbursement shall be paid upon completion of the development and submittal of proof of paid invoices for the TIF eligible expenses.
- The Village shall pay PWF an amount equal to 50% of the municipal sales tax revenue generated by the development. The payments shall be made for a period of 10 years. The Village may make the payments to PWF from the Sales Tax Rebate Fund or the Ogden Tax Increment Financing Fund.
- PWF shall continue operating the dealership for a period of fifteen years from the start of operations at the new dealership.
- In the event PWF fails to continue to operate the dealership, PWF shall reimburse the Village all or a portion of the sales tax rebate payments according to the following schedule:
 - Year one through year five - One hundred percent (100%) of the payments
 - Year six through year ten - seventy-five percent (75%) of the payments
 - Year eleven through year fifteen - fifty percent (50%) of the payments

- The Village shall waive the portion of Downers Grove Sanitary District recapture fee due to the Village for the sanitary sewer improvements previously constructed by the Village.
- Upon PWF opening the dealership at the subject site, the Village shall terminate the existing sales tax rebate agreement for the existing PWF dealership located at Ogden & Finley.

ATTACHMENTS

Ordinance

Redevelopment & Sales Tax Rebate Agreement

Projected Sales Tax Revenue

ORDINANCE NO. _____**AN ORDINANCE APPROVING A REDEVELOPMENT AND SALES TAX REBATE
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND 1815 OGDEN, LLC**

WHEREAS, the Village of Downers Grove (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 of Downers Grove has undertaken to revitalize portions of its Ogden Avenue Corridor and in furtherance of that effort has created, pursuant to the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended (the "TIF Act"), a TIF District to help finance some of the redevelopment costs involved with the revitalization project; 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 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 third parties for the purpose of achieving these purposes; and

WHEREAS, the Village is authorized under the provisions of the TIF Act to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act; and

WHEREAS, to stimulate and induce redevelopment pursuant to the TIF Act, the Village, after giving all notices required by law and after conducting all public hearings required by law, adopted the following ordinances:

(a) Ordinance No. 4247, titled "An Ordinance Approving the Ogden Avenue Corridor Redevelopment Plan and Project" (the "Redevelopment Plan");

(b) Ordinance No. 4248, titled "An Ordinance Designating the Ogden Avenue Corridor Redevelopment Project Area" ("Redevelopment Project Area");

(c) Ordinance No. 4249, titled "An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove, DuPage County, Illinois, in Connection with the Designation of the Ogden Avenue Corridor Redevelopment Project Area"; and

WHEREAS, 1815 Ogden, LLC (the "Developer") is the contract purchaser of certain real property located at 1815 Ogden Avenue, Downers Grove, Illinois ("Property"), as more particularly described in the Redevelopment and Sales Tax Rebate Agreement attached hereto and incorporated herein as Exhibit A ("Agreement"); and

WHEREAS, the Developer seeks to improve the Property with a 53,759 square foot automobile dealership development generally in accordance with the plans depicted in the Agreement; and

WHEREAS, it is necessary and appropriate for the successful completion of the Redevelopment Project approved by Ordinance No. 4247 that the Village enter into the Agreement with the Developer to provide for the development of the Property, thereby implementing and bringing to completion a significant portion of the Redevelopment Plan; and

WHEREAS, the Village proposes to finance certain redevelopment project costs to be incurred in connection with the Redevelopment Project by utilizing tax increment financing in accordance with the TIF Act; and

WHEREAS, the Village has determined that the Agreement includes the necessary and appropriate terms and provisions for the successful completion of the development of the Property; and

WHEREAS, the Village is desirous of having the Property developed for the uses described in the Agreement to eliminate the blight factors and characteristics found in the Property, to serve the needs of the Village, and to produce increased tax revenues for the various taxing districts authorized to levy taxes within the Property; and

WHEREAS, the Mayor and Village Council of the Village of Downers Grove, after due and careful consideration, have concluded that the development of the Property on the terms and conditions set forth in the Agreement will promote sound planning, increase the taxable value of property within the Village, enable the Village to control the development of the area, and otherwise promote, enhance, and serve the best interests and general welfare of the Village and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, DuPage County and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are incorporated into this Ordinance as findings of the Council.

Section 2. Approval of Redevelopment and Sales Tax Rebate Agreement. The Redevelopment and Sales Tax Rebate Agreement shall be, and it is hereby, approved in final form satisfactory to the Village Manager. The Mayor and Village Manager are hereby authorized and directed to execute and deliver the Redevelopment and Sales Tax Rebate Agreement and any other necessary and appropriate related documents after such documents have been properly executed and delivered by the Developer.

Section 3. Conflict. That all ordinances and resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk

EXHIBIT A

REDEVELOPMENT AND SALES TAX REBATE AGREEMENT

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REDEVELOPMENT AND SALES TAX REBATE AGREEMENT

THIS REDEVELOPMENT AND SALES TAX REBATE AGREEMENT (this “Agreement”), is made and entered into as of the 9th day of August, 2016 (“Agreement Date”) by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the “Village”), and **1815 Ogden , LLC**, an Illinois limited liability company, (the “Developer”). (The Village and the Developer 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; and

WHEREAS, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the “Act”), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

WHEREAS, to stimulate and induce redevelopment on Ogden Avenue pursuant to the Act, the Village has adopted the following ordinances (the “TIF Ordinances”), after giving all notices required and after conducting the public hearings required by law:

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1. Ordinance No. 4247 adopted February 6, 2001, titled "An Ordinance Approving the Ogden Avenue Corridor Redevelopment Plan and Project" (the "Redevelopment Plan");
 2. Ordinance No. 4248 adopted February 6, 2001, titled "An Ordinance Designating the Ogden Avenue Corridor Redevelopment Project Area" ("Redevelopment Project Area");
 3. Ordinance No. 4249 adopted February 6, 2001, titled "An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove, DuPage County, Illinois in connection with the Designation of the Ogden Avenue Corridor Redevelopment Project Area";
- and

WHEREAS, Developer or its affiliate is the contract purchaser of an approximate 9.79 acre parcel having a common address of 1815 Ogden Avenue and legally described on **Exhibit "A"** attached hereto (the "Property"), which Property is located within the Redevelopment Project Area; and

WHEREAS, Developer or its affiliate has requested and as of the date hereof the Village is considering an Ordinance rezoning the Property to a Planned Unit Development overlay district, and an Ordinance approving the granting of a planned unit development ("PUD") for the development of an approximately 53,759 square foot car dealership together with common area facilities located on the Property as noted on said approved concept site plan constituting a portion of the PUD ("Concept Site Plan") (the "Developer Project"), and an Ordinance granting certain special use approvals in connection with the Developer Project; and

WHEREAS, it is necessary for the successful completion of the Redevelopment Project (as defined in Article Two) that the Village enter into this Agreement with Developer to provide for the development of the Property, thereby implementing and bringing to completion a portion of the Redevelopment Plan; and

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WHEREAS, Developer has been and continues to be unwilling to undertake the redevelopment of the Property but for certain tax increment financing (“TIF”) incentives from the Village in accordance with the Act and TIF Ordinances and sales tax rebate incentives, which the Village is willing to provide under the terms and conditions contained herein. The Village has determined that it is desirable and in the Village’s best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, the Village, in order to stimulate and induce development of the Redevelopment Project Area, has agreed to finance certain Redevelopment Project Costs (as defined in Article Two) through tax increment revenues all in accordance with the terms and provisions of the Act, TIF Ordinances and this Agreement; 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 Managing Member of the Developer for consideration and review, the Managing Member has taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer’s Managing Member precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

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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 the Developer 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:

“Act” means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5/11-74.4-1, et seq.

“Agreement” means this Redevelopment and Sales Tax Rebate Agreement.

“Certificate of Occupancy” means a certificate of occupancy which grants the Developer or its affiliated tenant the right to occupy the building constituting a portion of the Developer Project without any conditions.

“Change in Law” means the occurrence, after the Agreement Date, of an event described in **Section (a)** below, provided (i) such event materially changes the costs or ability of

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the Party relying thereon to carry out its obligations under this Agreement and (ii) such event is not caused by the Party relying thereon:

a. Change in Law means 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 or with respect to those made by the Village, only if they violate the terms of this Agreement); (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).

“Closing” means the transfer of fee simple title in the Property to Developer.

“Closing Date” means the date on which the Closing occurs.

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

“Day” means a calendar day.

“Developer” means 1815 Ogden, LLC, or any successor in interest thereof permitted pursuant to **Section 10.10** or **Section 22.14** hereof.

“Developer Off-Site Improvements” means those certain off-site improvements (i.e. located outside of the Property, if any) to be constructed by Developer at its sole cost and expense (subject to the provisions of Section 8.4, 8.5 and 8.6 hereof) as shown on the Concept Site Plan attached hereto as Exhibit F; subject to approval by the applicable governmental

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authorities; provided, however, the Parties agree that in no event shall any traffic light be included or required.

“Escrow Agent” has the meaning set forth in Section 8.2 hereof.

“Escrow Agreement” has the meaning set forth in Section 8.2 hereof.

“Escrowed TIF Funds” has the meaning set forth in Section 8.2 hereof.

“Ogden Avenue Redevelopment Tax Increment Fund” means the Special Tax Allocation Fund created for the Redevelopment Project Area pursuant to the Act and the TIF Ordinances.

“Party” means the Village and/or Developer 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.

“Redevelopment Project” means the development, construction, financing, and completion in furtherance of the Developer Project and the Developer Off-Site Improvements.

“Redevelopment Project Costs” means those qualifying redevelopment project costs authorized by the Act and this Agreement, and specifically including those set forth on **Exhibit “B”**.

“Reimbursement Amount” means an amount not to exceed FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00) to be reimbursed or paid to the Developer from the Ogden Avenue Redevelopment Tax Increment Fund.

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“Requisition” means a request by the Developer for a payment or reimbursement of Redevelopment Project Costs pursuant to the procedures set forth in this Agreement and in the form attached hereto as **Exhibit “C”**.

“State” means the State of Illinois.

“Substantial Completion” means (i) the submission of the Remedial Action Completion Report ("RACR") to the Illinois Environmental Protection Agency ("IEPA") and the certification of Geothink, LLC, that the Remedial Action Plan (the "RAP") has been completed, and (ii) issuance of the Certificate of Occupancy for at least 50,000 square feet in the building which is a part of the Developer Project.

“TIF Ordinances” means Ordinances No.'s 4247, 4248 and 4249 all adopted by the Village on February 6, 2001, as described in the Recitals to this Agreement.

“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;

- (vi) shortage or unavailability of essential materials for a period not in excess of sixty (60) days and which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
- (vii) unknown or unforeseeable environmental conditions;
- (viii) unknown or unforeseeable geotechnical conditions which delay construction of the Developer Project for no more than sixty (60) days; and
- (ix) non-performance by the other Party which delays construction.

In connection with a claim by Developer pursuant to (vi) or (viii), Developer must provide, at least fifteen (15) days prior to making such claim, written notice to the Village of said claim. In said written notice, Developer shall document: (i) the basis for the claim, (ii) the length of the expected delay and (iii) the consequences of the same on the development schedule (**Exhibit "D"**), and commit to inform the Village when the delay is over. Notwithstanding the foregoing, in the case of the occurrence of circumstances described in (v) and (vii) above, the Party desiring to rely on such Uncontrollable Circumstances must first provide the other Party with written notice describing the Uncontrollable Circumstance and the anticipated consequences and/or delay arising therefrom.

For each day that Developer is delayed by an Uncontrollable Circumstance, the dates set forth in Article Seven and **Exhibit "D"** hereto shall be extended by one (1) day.

"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. Developer is entitled to rely on the full power

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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 Developer in a different manner, Developer hereby designates J. Bradley Webb (and, in his absence, Greg Webb) 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 Developer and with the effect of binding Developer in that connection (each such individual being an "Authorized Developer Representative"). Developer shall have the right to change its authorized Developer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 22.2.

ARTICLE FOUR

INTENTIONALLY OMITTED.

ARTICLE FIVE

INTENTIONALLY OMITTED.

ARTICLE SIX

IMPLEMENTATION OF REDEVELOPMENT PROJECT.

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

ARTICLE SEVEN

INTENTIONALLY OMITTED.

ARTICLE EIGHT

VILLAGE COVENANTS AND AGREEMENTS.

8.1 Village's Redevelopment Obligations. The Village shall have the obligations set forth in this Article Eight for the development, construction, financing, completion and furtherance of the Redevelopment Project. This Agreement shall not constitute a debt of the Village within the meaning of any constitutional statutory provision or limitation.

8.2 Village Funding at Closing. At Closing of the Property, provided the Developer delivers to the Village evidence that Developer has received all permits or governmental approvals required as a condition precedent to the commencement of the site work on the Property, (including environmental remediation efforts) including those required from the Village and all other agencies (including but not limited to IEPA, IDOT and the Downers Grove Sanitary District) to the extent applicable, funds in the amount of \$4,500,000 (the "Escrowed TIF Funds") shall be withdrawn from the Ogden Avenue Redevelopment Tax Increment Fund, and deposited with First American Title Insurance Company in Chicago, Illinois (the "Escrow Agent"), to be held and disbursed by the Escrow Agent in accordance with the provisions of Sections 8.4, 8.5 and 8.6 of this Agreement and that certain escrow agreement attached hereto as **Exhibit "E"** ("Escrow Agreement"), and the Village shall so cause the Escrowed TIF Funds to be disbursed to Developer. Additionally, upon the Village receiving its second installment of the 2016 taxes due from the County of DuPage (approximately September 30, 2017), funds in the amount of \$500,000 (which sum shall be deemed included in the Escrowed TIF Funds) shall be withdrawn from the Ogden Avenue Redevelopment Tax Increment Fund, and deposited with the Escrow Agent, to be held and disbursed by the Escrow Agent in accordance with the provisions of Sections 8.4, 8.5 and 8.6 of this Agreement and the Escrow Agreement, and the Village shall so cause the Escrowed TIF Funds to be disbursed to Developer.

8.3 Intentionally omitted.

8.4 Reimbursement for Redevelopment Project Costs. Upon Substantial Completion of the Redevelopment Project and the submission to the Village and the Escrow Agent by the Developer of the Requisition(s) for Redevelopment Project Costs paid by Developer and the approval thereof by the Village in accordance with Section 8.5 and Section 8.6 of this Agreement, the Village shall cause the Escrow Agent to reimburse the Developer in accordance with the Escrow Agreement, an amount equal to the amount of Redevelopment Project Costs as represented in the Requisition(s) provided said reimbursement shall not exceed the Escrowed TIF Funds. The provisions of this Section 8.4 shall be included in the Escrow Agreement.

8.5 Payment Procedure. The Village and the Developer agree that Redevelopment Project Costs constituting the Reimbursement Amount shall be paid solely from incremental taxes that were deposited in the Ogden Avenue Redevelopment Tax Increment Fund and which shall be deposited with the Escrow Agent as the Escrowed TIF Funds. The Village represents and warrants to Developer that adequate funds will be maintained by the Village in the Ogden Avenue Redevelopment Tax Increment Fund to deposit the Escrowed TIF Funds with the Escrow Agent in accordance with the provisions of this Agreement and in order to pay the Reimbursement Amount. The Village and Developer intend and agree that the Reimbursement Amount shall be disbursed by the Escrow Agent for payment to the Developer in accordance with the procedures set forth in this Section 8.5 and Section 8.6. Upon Substantial Completion of the Redevelopment Project, payment to the Developer of the Reimbursement Amount for Redevelopment Project Costs shall be made upon request therefor and submission of a Requisition to the Escrow Agent and the Village by the Developer. The Requisition(s) shall be accompanied by appropriate supporting documentation, including, proof of paid invoices of suppliers, contractors or professionals (for non-lienable costs), together with required owners' and contractors' affidavits and lien waivers for lienable costs. The Requisition(s) shall be

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submitted no later than ninety (90) days from Substantial Completion of the Redevelopment Project. The provisions of this Section 8.5 shall be included in the Escrow Agreement.

8.6 Approval and Resubmission of Requisitions. The Village shall give the Developer and Escrow Agent written notice approving or disapproving any Requisition(s) within fourteen (14) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; (ii) any subsequent amendment to the Act or any subsequent decision of a court of competent jurisdiction results in any such payment not being authorized; or (iii) a default pursuant to Article Eighteen of this Agreement by the Developer has occurred and is continuing. If a Requisition is disapproved by the Village, the reason for the disallowance will be set forth in writing to the Developer and Escrow Agent, and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein shall be applicable to resubmittals. Provided that performance of this Agreement has not been suspended or terminated by the Village pursuant to Article Eighteen, the Village shall cause the Escrow Agent to pay to the Developer an amount not to exceed the Reimbursement Amount which is approved by any one or more Requisitions under this Article immediately upon the approval or deemed approval of any such Requisition. The provisions of this Section 8.6 shall be included in the Escrow Agreement.

8.7 Defense of Redevelopment Project Area. In the event that any court or governmental agency, having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement, shall determine that this Agreement is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the Village will, at its sole cost and expense,

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defend the integrity of the Redevelopment Project Area, and at the request and sole cost and expense of the Developer this Agreement. Developer will fully cooperate with the Village in connection with the foregoing.

8.8 Village Cooperation. The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village. The Village shall further promptly process, and consider reasonable requests of Developer for: relief or variances from any Village ordinances; applicable building permits; driveway permits; curb cuts or other permits necessary for the construction of the Redevelopment Project, and for the Certificate of Occupancy for the building constituting a portion of the Redevelopment Project.

ARTICLE NINE

DEVELOPER'S COVENANTS AND AGREEMENTS.

9.1 Developer's Redevelopment Obligations. Developer shall have the obligations set forth in this Article Nine for the development, construction, financing, completion and furtherance of the Redevelopment Project.

9.2 Permit Application Deadlines. Developer shall have applied for (and made all submittal requirements in conformance with Village codes) all (or such phased permits as contemplated herein including the construction schedule set forth in Exhibit D attached hereto) requisite building permits, curb-cut permits and other necessary land use and construction approvals as shall be necessary or appropriate to construct the Developer Project in accordance with the Concept Site Plan (collectively, the "Final Plans") and the construction schedule attached hereto as **Exhibit "D"**. Developer shall diligently proceed with the application for

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permits and construction of the Developer Project on the Property in accordance with the schedule set forth in **Exhibit "D"** hereto.

9.3 Construction Financing Deadline. No later than the Closing Date, Developer shall demonstrate to the Village's reasonable satisfaction that Developer has sufficient funds to pay the cost of the Redevelopment Project net of the Escrowed TIF Funds. To evidence that fact, Developer shall obtain a binding commitment, in form and content that is typical in the industry, for construction financing for the Redevelopment Project in accordance with the terms hereof and the Concept Site Plan, and shall furnish evidence of such commitment to the Village. Alternatively, Developer shall submit evidence to the Village that Developer has sufficient funds to pay the cost of the Redevelopment Project, without obtaining third party financing.

Prior to commencing construction of any portion of the Redevelopment Project, Developer shall provide to Village evidence that all approvals, permits or phased permits as contemplated herein for such portion of the Redevelopment Project from the Village and all other agencies (including but not limited to IEPA, IDOT and the Downers Grove Sanitary District) to the extent applicable have been obtained.

9.4 Acquisition of Property. Developer shall use commercially reasonable efforts to cause the Closing on the acquisition of the Property to occur on or before sixty (60) days after the Agreement Date. The Village acknowledges and agrees that Developer's obligations under this Agreement are contingent on Developer becoming the fee simple title holder of the Property. In the event Developer does not acquire fee simple title by the date which is 120 days after the Agreement Date, Developer shall have the right to terminate this Agreement and in the event of such termination, neither party shall thereafter have any rights or obligations under this Agreement.

9.5 Timing of Developer's Obligations. Developer covenants and agrees to construct or cause to be constructed the Redevelopment Project at the times set forth on **Exhibit "D"** hereto and otherwise as required herein, subject however, to Uncontrollable Circumstances.

9.6 Compliance with Applicable Laws. Consistent with its warranties in Article Fifteen, Developer or its affiliated tenant shall at all times acquire, install, construct, operate and maintain the Redevelopment Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Redevelopment 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. Village shall not enact any law, ordinance, rule or regulation (or amendment thereto) which would have the effect of increasing Developer's obligations hereunder, including an increase in the cost of the Redevelopment Project, unless said law, ordinance, rule or regulation is one of general applicability to all the property in the Village.

9.7 Environmental Conditions on the Property. Prior to the Closing, the Developer shall provide the Village with evidence of IEPA's approval of the RAP, and said evidence shall be a condition precedent to Village's obligation to deposit the Escrowed TIF Funds with the Escrow Agent. Anything above to the contrary notwithstanding, in the event that the Developer determines prior to the Closing Date, that the cost to remediate any soil or ground water contamination of the Property will make construction of the Redevelopment Project prohibitively expensive, the Developer may elect by delivery of notice thereof to the Village prior to the Closing to terminate this Agreement in which event neither party shall have any further rights or obligations under this Agreement.

9.8 Progress Meetings. Developer shall meet with the Village staff and make presentations to the Village staff as reasonably requested by the Village Manager in order to keep the Village apprised of the progress of the development.

9.9 Authorized Representative. Subject to the provisions thereof, Developer has designated in Article Three (h) representatives with full power and authority to meet with Village staff for purposes of coordinating and implementing obligations of the Parties under this Agreement.

9.10 No Further Remediation Letter. Developer agrees to diligently pursue the issuance of a no further remediation letter from the IEPA upon Substantial Completion of the Redevelopment Project. The provisions of this Section 9.10 shall survive the termination of this Article Nine.

9.11 Tax Exempt Status. Consistent with its covenant in Section 10.7, Developer and successor owners shall not assert a tax-exempt status during their respective period of ownership. This prohibition shall run with the land and shall expire on the date the Redevelopment Project Area expires (i.e. February 6, 2024) or an earlier date if agreed by the Village and Developer.

9.12 Real Estate Tax Payments. Developer and successor owners agree to pay all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Redevelopment Project on or prior to the date same is due, and said taxes shall not become delinquent. Developer and successor owners shall deliver evidence of payment of such taxes to the Village upon request.

9.13 Fees and Expenses. Developer shall pay Village imposed permit, inspection review, tap on and impact fees as follows:

a. Developer shall pay all construction and building permit fees, impact fees and other fees described in Section 16.5 related to the Redevelopment Project at the time of the

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applicable permit application provided, however, that the Village hereby waives for Developer and its successors, assigns and transferees of the Property payment of the Village portion of the sanitary recapture fee imposed on the Property pursuant to that certain recapture agreement recorded against the Property as Document No. R2015-137607 ("Village Sanitary Recapture Fee"), and the Village agrees that the Village Sanitary Recapture Fee and any fee in lieu or substitution thereof shall forever be waived and released as an obligation of the Property and shall be null and void; and

b. Developer's failure to pay the fees and expenses described in this Section 9.13, or elsewhere in this Agreement, shall constitute an Event of Default hereunder only if Developer does not, within thirty (30) days after written notice from the Village, make complete payment.

ARTICLE TEN

ADDITIONAL COVENANTS OF DEVELOPER.

10.1 Developer Existence. Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

10.2 Construction of Redevelopment Project. Upon acquisition of the Property, Developer shall diligently pursue obtaining all required permits as provided in Section 9.2, and Developer shall cause construction of the Redevelopment Project on the Property to be prosecuted and completed pursuant to the schedule set forth on **Exhibit "D"** with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

10.3 Indemnification. Developer (use of the term “Developer” herein includes permitted successors and assigns), agrees to indemnify, defend and hold the Village, Mayor, Village Council Members, Village Manager, officers, agents and employees (hereinafter “Indemnified Parties”) harmless from and against any losses, costs, damages, liabilities, claims suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys’ fees and court costs) suffered or incurred by the Indemnified Parties which are caused as a result of:

a. the failure of Developer to comply with any of the terms, covenants or conditions of this Agreement which Developer is obligated to comply with; or

b. the failure of Developer or any of Developer’s contractors to pay contractors, subcontractors or materialmen in connection with the Redevelopment Project; or

c. material misrepresentations or omissions of Developer relating to the Redevelopment Project, Developer’s financials or this Agreement which are the result of information supplied or omitted by Developer or by its agents, employees, contractors or persons acting under the control or at the request of Developer; or

d. the failure of Developer to cure (in accordance with any applicable cure provisions in this Agreement) any material misrepresentations or omissions of Developer in this Agreement relating to the Redevelopment Project within the applicable cure provisions of this Agreement; or

e. any claim or cause of action for injury or damage brought by a third party arising out of the construction or operation of the Redevelopment Project by Developer; or

f. any violation by Developer of local ordinance, state or federal laws, to the fullest extent permitted by law, in connection with the offer and sale of interests in the Developer or any part of the Redevelopment Project, except for information provided by the Village.

g. The occurrence of an Event of Default by Developer.

The provisions of this Section 10.3 shall not apply to a loss which arises out of (in whole or in part) intentional misconduct or negligence on the part of any Indemnified Party, but only to the extent that such Indemnified Parties' misconduct or negligence contributed to the loss, or that the loss is attributable to such Indemnified Parties' misconduct or negligence.

10.4 Insurance. Prior to Closing, Developer (or Developer's contractor) shall deliver to the Village, at Developer's cost and expense, insurance required to be carried by Developer pursuant to Article Seventeen.

10.5 Further Assistance and Corrective Instruments. The Village and Developer 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.

10.6 No Gifts. Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to the Mayor, any Council member, or any officer, employee or agent of the Village, or any other person connected with the Village, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.

10.7 Conveyance. In recognition of the nature of the Redevelopment Project, during the life of the Redevelopment Project Area (i.e., until February 6, 2024) consistent with its covenants in Section 9.11, Developer shall not knowingly undertake to convey the Property to persons whose ownership and use of the Property will cause it to be exempt from payment of property taxes, and will impose in the deed conveying all or any portion of the Property, a prohibition against granting such conveyance consistent with the covenants in Section 9.11.

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10.8 Disclosure. Concurrently with execution of this Agreement, Developer shall disclose to the Village the names, addresses and ownership interests of all Persons that comprise Developer. At the time of execution of this Agreement and prior to Closing, no change shall be made in the persons comprising Developer or in their ownership interests without the consent of the Village.

10.9 Intentionally Omitted.

10.10 Assignment of Agreement.

Without the express written consent of the Village Council, (which may be withheld in the Village Council's reasonable discretion) this Agreement may not be assigned nor may any rights hereunder be transferred by Developer except for Permitted Transfers (as hereinafter defined), until Substantial Completion of the Redevelopment Project. Any proposed assignee of any of Developer's obligations under this Agreement prior to Substantial Completion shall have the qualifications, financial ability, reputation and character necessary, adequate and desirable, in Village's sole discretion, to fulfill these obligations (or, in the event the transfer is related to part of the Property, such obligations to the extent that they relate to such part). The proposed assignee shall execute an assumption and assignment agreement agreeing to adhere to the terms and conditions of this Agreement, as they apply to said assignee, and shall submit such information, including financial information, as may be requested by the Village Council. Before any permissible assignment shall be of any force and effect, Developer shall give notice of such proposed assignment to the Village, and the Village Council shall have thirty (30) days to accept or reject such assignee at its sole discretion. In the event the Village rejects such assignee, the Village shall state the reasons therefor. If the Village does not respond to the notice of such intended assignment within such thirty-day (30) period, such assignment shall be deemed denied. Notwithstanding anything in this Section 10.10, no part of this Section 10.10

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shall require the Village's consent to the collateral assignment hereof to Developer's construction lender or permanent lender, if required thereby or to a Permitted Transfer or to an assignment of this Agreement after Substantial Completion.

10.11 No Transfer without Village's Consent. Prior to Substantial Completion, no portion of the Developer Project shall be transferred or conveyed without the Village Council's prior written approval (other than Permitted Transfers). Before being requested to consent to a transfer (except a Permitted Transfer) of all or any portion of the Property by Developer prior to Substantial Completion to another developer (a "separate developer") who will develop such portion of the Developer Project and the Property), the following must be satisfied regarding such transfer:

a. Any proposed transferee shall, in the Village's sole discretion, have the experience and financial ability necessary to fulfill the obligations undertaken by Developer in this Agreement with respect to the portion of the Developer Project and all rights, duties and responsibilities being transferred. The proposed separate developer shall submit to the Village, for its review and approval, the same financial documents required hereunder of Developer.

b. Any such proposed transferee shall have expressly assumed the obligation of Developer hereunder in writing with respect to the portion of the Developer Project and all rights, duties and responsibilities to be transferred as hereinafter provided.

c. All instruments and legal documents involved and affecting any such transfer from Developer to any transferee shall be submitted to the Village Council for its approval, and no transfer shall be effective until the Village Council has authorized the Village Manager to execute the same. Except in the event of a written agreement authorized by the Village Council, no transfer shall be deemed to relieve Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Developer Project (or portion

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thereof) from any of their obligations with respect thereto as to the interest transferred. Developer shall in any event notify the Village of any transfer of any interest in the Developer Project other than: (i) the execution of easements, licenses, concessions or leases of any part of the Developer's Project or the Property in connection with the operation of an auto dealership, and (ii) transfers to an Affiliate of Developer; as used herein, an "Affiliate of Developer" shall mean an entity which controls, is controlled by, or is under common control with Developer and which has the same manager, members, partners or shareholders owning in the aggregate, more than fifty percent (50%) of the ownership interests in Developer owning more than fifty percent (50%) of the ownership interests in said Affiliate; and as used herein, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise (the foregoing transfers in clauses i and ii shall herein be referred to as the "Permitted Transfers"). Developer shall not be required to obtain Village review, approval or consent to any Permitted Transfer.

d. Upon the conveyance of any portion of the Developer Property to a separate developer prior to Substantial Completion (as consented to by the Village Council, and as evidenced by execution by the separate developer of an assumption and assignment agreement in a form acceptable to the Village), such separate developer shall be responsible for the development of such portion of the Redevelopment Project and Developer shall be relieved from all further liability under this Agreement with respect to such portion of the Redevelopment Project and the Property so transferred. Each separate developer shall be bound by all terms, conditions, and obligation of this Agreement applicable to such separate developer's portion of the Redevelopment Project and Property and, except as set forth below in this section, any reference to Developer in this Agreement shall be deemed to be (or include) a

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reference to a separate developer to the extent such reference is to (or includes) the portion of the Redevelopment Project or the Property owned by such separate developer.

ARTICLE ELEVEN

SALES TAX REBATE PROVISIONS.

11.1 Superceding Legislation. For purposes of this Agreement, the use of the terms “sales tax” and “sales tax revenue” shall be construed to refer to that 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. It is expressly understood that if a governmental or legislative body other than the Village enacts any law or statute which results or which may result in any material changes or amendments to the foregoing sales tax provisions, which changes or amendments prohibit the Village from complying with this Article Eleven or which adversely affect the Village’s ability to comply herewith, then the Village and Developer shall reevaluate the provisions of this Article Eleven and the incentives provided hereunder and may mutually agree to restructure the provisions of this Article Eleven. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time (not more than sixty (60) days from the effective date of the law or statute which has materially affected the Village’s compliance herewith), then the provisions of this Article Eleven shall automatically terminate releasing both parties from all their obligations under this Article Eleven. The use of the terms “sales tax” and “sales tax revenue” shall not be construed to mean any additional taxes imposed by the Village as a home rule municipality.

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11.2 Change in Ownership. Developer agrees that in the event there is a change in the ownership (legal or beneficial) of the Developer Project, or any portion thereof, except in connection with a Permitted Transfer as provided in Section 10.11 hereof or as otherwise agreed to by the Village (said agreement not to be withheld, conditioned or delayed in the case of a change in ownership to a new owner (i) that will continue the operation of a Ford dealership on the Property or (ii) that operates a new auto dealership not currently within the boundaries of the Village), the Village shall no longer be required to pay all or any portion of the incentive payments provided for in this Article Eleven; provided, however, that a change in ownership is not a breach or default by Developer under this Agreement.

11.3 Calculation and Payment of Sales Taxes. For purposes of this Article Eleven, the incentives and inducements set forth in this Article Eleven shall apply only to the Developer Project. In the event that all terms and conditions set forth in this Article Eleven are satisfactorily met by Developer and/or an affiliated tenant, including (a) Substantial Completion and (b) commencement of operations of the new auto dealership on the Property (the date both said conditions in (a) and (b) are first satisfied shall be referred to herein as the "Incentive Payment Start Date"), the Village hereby agrees to pay Developer or its affiliated tenant if so directed by Developer certain sales tax rebates by yearly installments over a period commencing on the Incentive Payment Start Date and expiring on December 31st of the calendar year in which the tenth (10th) anniversary of the Incentive Payment Start Date occurs (the "Incentive Period") as follows, subject, however, to the following conditions and restrictions:

- i. It is understood that each Incentive Payment (as hereinafter defined) will be due and payable solely from the proceeds of sales tax revenue received by the Village from the Developer Project on the Property.

- ii. It is acknowledged and understood by and between the Parties hereto that the Village receives sales tax revenue monthly, and that the taxes generated by sales in any one month are distributed to the Village approximately three months later (e.g., taxes generated by sales in July are generally not received by the Village until October).
- iii. The calendar year in which the Incentive Payment Start Date occurs shall hereinafter be referred to as the "Initial Payment Year," and each calendar year in the Incentive Period shall be a "Payment Year."
- iv. For each Payment Year, the Village and the Developer shall each be entitled to fifty percent (50%) of the sales tax revenue received from retail sales generated by the Developer Project (each such payment payable to Developer shall be referred to as an "Incentive Payment").
- v. The Incentive Payments shall be computed at the close of each Payment Year by the Village as provided herein. The Village will make yearly payments to the Developer (or its affiliated tenant if so directed by Developer) within thirty (30) days after it receives notification from the State of the sales tax revenue generated by the Developer Project for each month in the preceding Payment Year.

Notwithstanding the foregoing, at the Village's option, the Incentive Payments may be made from the Ogden Avenue Redevelopment Tax Increment Fund. As such, Developer shall provide Village with an itemized list of all paid Redevelopment Project Costs on or before the Incentive Payment Start Date.

11.4 Disclosure of Sales Tax Information. Upon the request of the Village, the Developer (or its affiliated tenant, as applicable) shall execute and provide the Village with a power of

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attorney letter (or other necessary document), in form and content reasonably acceptable to the Village Attorney, which letter shall be addressed to the Illinois Department of Revenue and shall authorize the Illinois Department of Revenue to release any and all gross revenue and sales tax information with respect to the operation of the Developer Project on the Property to the Village during the Incentive Period. In addition to said letter upon the request of the Village, Developer (or its affiliated tenant) shall prepare and submit such other or 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. Finally, in the event that the sales tax revenue information is not released by the State due to the failure of Developer (or its affiliated tenant) to execute the necessary authorization and/or release upon the request of the Village, same shall not be a breach or default by Developer under this Agreement but as a consequence of such failure and as the Village's sole remedy, the Village shall not be required to make any of the Incentive Payments provided for in this Article Eleven.

11.5 Commitment to Continue Dealership. The Parties agree that all Incentive Payments are based in part upon: 1) a commitment by the Developer (or its affiliated tenant) to continue operation of the Developer Project as a new auto dealership on the Property for a period of not less than fifteen (15) years from the Incentive Payment Start Date; and 2) a scheduled reimbursement of such Incentive Payments, if the terms of this commitment are not fulfilled as hereinafter provided. To that end, Developer (or its affiliated tenant) agrees to continue the operation of a new car dealership(s) on the Property and shall continue to offer automotive sales with the point of sale being in Downers Grove, Illinois for fifteen (15) years from the Agreement Date. If, at any time during this time period, the Developer (or its affiliated tenant), or a successor, fails to offer automotive sales of new automobiles as proposed by the Developer (except due to an Uncontrollable Circumstance), then the Village shall be released and

discharged from any further obligation to make Incentive Payments under this Article Eleven, and the Developer or its successors shall reimburse the Village in accordance with Section 11.6 of this Agreement. The failure to meet this commitment in this Section 11.5 is not a breach or a default by Developer, but rather a foreseeable event for which the offsetting terms have been agreed to in Section 11.6 of this Agreement.

11.6 Reimbursement for Failure to Operate. In the event Developer (or its affiliated tenant), or any approved successor, fails to continue operation of a new auto dealership on the Property as provided in Section 11.5 of this Agreement, Developer (or its affiliated tenant), or such approved successor, shall reimburse to the Village within sixty (60) days after receipt of a written demand from the Village specifying the amount of the reimbursement all or a portion of the Incentive Payments paid hereunder according to the following schedule:

If said event first commences during:

- Year one (1) through year five (5) after the Incentive Payment Start Date - One hundred percent (100%) of the Incentive Payments;
- Year six (6) through year ten (10) after the Incentive Payment Start Date - Seventy-five percent (75%) of the Incentive Payments; and
- Year eleven (11) through year fifteen (15) after the Incentive Payment Start Date - Fifty percent (50%) of the Incentive Payments.

After the expiration of a sixty (60) day written demand by the Village to Developer or its successors, specifying the amount due, the Village may, in its sole discretion, pursue any and all available legal remedies to recover said monies, including, without limitation, an action in law or in equity to recover the amounts owed.

11.7 Prevailing Wage. Developer (or its affiliated tenant) agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by the Illinois

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Department of Labor (IDOL). Developer further agrees to contact IDOL for a determination of applicability of the Prevailing Wage Act to the projects contemplated by this Agreement. If required by IDOL, Developer agrees to pay the prevailing wage rates and to require that all of its subcontractors pay prevailing wage rates to any laborers, workers or mechanics who perform work on the projects contemplated by this Agreement which are subject to the Prevailing Wage Act. The current applicable rates for DuPage County are provided at the State of Illinois - Department of Labor website. Developer recognizes and agrees that it is solely responsible for compliance with the Prevailing Wage Act and in the event Developer breaches such obligation, Developer agrees to fully indemnify, defend and hold harmless the Village with regard to any actions or proceedings instituted regarding such compliance.

11.8 Termination of Existing Agreement. The Developer and Village agree that as of the Incentive Payment Start Date, that certain existing First Amendment Redevelopment / Sales Tax Rebate Agreement between the Village and Packey Webb Ford, LP dated September 4, 2012 shall terminate EXCEPT with respect to sales that occurred prior to the Incentive Payment Start Date and all applicable provisions in connection with such sales shall survive such termination.

ARTICLE TWELVE

INTENTIONALLY OMITTED

ARTICLE THIRTEEN

INTENTIONALLY OMITTED

ARTICLE FOURTEEN

ADHERENCE TO VILLAGE CODES AND ORDINANCES.

All development and construction of the Redevelopment Project shall comply in all respects with the provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the Village and all other germane codes and ordinances of the Village in effect on the date that an application for a building permit and/or earth moving permit for such development or construction is filed, and from time to time during construction that are applicable, except as otherwise provided herein and to the extent all such codes and ordinances are of general applicability to all property within the Village. Developer has examined and is familiar with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental regulations and land use regulations, codes, ordinances, federal, state and local ordinances, and the like, and represents and warrants that the Developer Project will be developed in accordance with same.

ARTICLE FIFTEEN

REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until Substantial Completion of the Redevelopment Project:

15.1 Organization and Authorization. Developer is an Illinois limited liability company duly organized and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there

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are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Redevelopment Project.

15.2 Non-Conflict or Breach. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or results in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

15.3 Location of Developer Project. The Developer Project will be located entirely within the Property.

15.4 Financial Resources. Developer and any Affiliate to which portions of this Agreement are assigned has sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.

ARTICLE SIXTEEN

REPRESENTATIONS AND WARRANTIES OF THE VILLAGE.

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

16.1 Organization and Authority. The Village is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

16.2 Authorization. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the Village, (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

16.3 Litigation. To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village or the Redevelopment Project Area in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

16.4 Connections. The Village hereby agrees to permit the connection of all water lines and storm sewer lines located in the Redevelopment Project Area or Village utility lines existing or constructed in the Property or near the perimeter of the Property, provided that Developer complies with all requirements of general applicability promulgated by the Village for such

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connections. Developer shall grant utility easements as may be necessary or appropriate to accommodate the utilities shown on the final plans approved by the Village.

16.5 Permit Fees. Subject to the conditions contained in Section 9.15, Developer shall be obligated to pay, in connection with the development of the Redevelopment Project, only those building, permit, engineering, tap on, inspection fees, and other applicable fees that are assessed on a uniform basis throughout the Village and are of a general applicability to other property within the Village

ARTICLE SEVENTEEN

LIABILITY AND RISK INSURANCE.

17.1 Liability Insurance Prior to Completion. At the Closing, Developer (or Developer's contractor) shall procure and deliver to the Village, at Developer's (or such contractor's) cost and expense, and shall maintain in full force and effect until each and every obligation of Developer contained herein has been fully paid, or performed, a policy or policies of comprehensive liability insurance and, during any period of construction, contractor's liability insurance, structural work act insurance and worker's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than Two Million and no/100 Dollars (\$2,000,000.00) each occurrence and Five Million and no/100 Dollars (\$5,000,000.00) total. All such policies shall be in such form and issued by such companies as shall be reasonably acceptable to the Village to protect the Village and Developer against any liability incidental to the use of or resulting from any claim for injury or damage occurring in the Property, or the construction and improvement thereof by Developer, except to the extent arising from Village (or its agents, employees and contractors) acts or omissions (in which case the Village shall look solely to its own insurance). Each such policy shall name the Village as an

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additional insured and shall contain an affirmative statement by the issuer that it will give written notice to the Village at least thirty (30) days prior to any cancellation or amendment of its policy. Developer, may satisfy its insurance obligations in this Article Seventeen by way of a blanket policy or policies which includes other liabilities, properties and locations. Developer shall provide to the Village a replacement certificate not less than 30 days prior to expiration of any policy.

17.2 Builder's Risk Prior to Completion. Prior to Substantial Completion, evidenced by issuance of a Certificate of Occupancy by the Village, Developer shall keep in force at all times builders risk insurance on a completed value basis, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of work performed and equipment, supplies and materials furnished for the Developer Project (including on-site stored materials), all as to work by Developer. Such insurance policies shall be issued by companies reasonably satisfactory to the Village. All such policies shall contain a provision that the same will not be canceled or modified without prior thirty-(30) day written notice to the Village.

ARTICLE EIGHTEEN

EVENTS OF DEFAULT AND REMEDIES.

18.1 Developer Events of Default. Subject to the provisions of Article Eleven which shall control in the event of a conflict, the following shall be Events of Default with respect to this Agreement:

a. If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall

constitute an Event of Default only if Developer does not remedy the default, within thirty (30) days after written notice from the Village.

b. Intentionally omitted.

c. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any covenant, warranty or obligation contained in this Agreement; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and the Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice.

d. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

e. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by

Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.

f. Failure to have funds to meet Developer's obligations; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the Village.

g. Sale, assignment, or transfer of the Developer Project prior to Substantial Completion except in accordance with this Agreement.

h. Change in the manager of Developer (other than to John Webb or Greg Webb).

i. Developer abandons the Developer Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than thirty (30) days for any reason other than: (i) Uncontrollable Circumstances or (ii) if Developer is ahead of its planned construction schedule.

j. Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the Developer does not, within thirty (30) days after written notice from the Village, remedy the default.

18.2 Village Events of Default. The following shall be Events of Default with respect to this Agreement:

a. Except as provided in Section 18.2(d) hereof, if any material representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default, within thirty (30) days after written notice from Developer.

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- b. Intentionally omitted
- c. Except as provided in Section 18.2(d) hereof, default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default or breach shall not constitute an Event of Default if the Village, commences cure within thirty (30) days after written notice from Developer and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.
- d. Failure to have funds to meet the Village's obligations and/or failure to deposit the Escrowed TIF Funds with the Escrow Agent at Closing.

18.3 Remedies for Default.

In the case of an Event of Default hereunder:

- a. The defaulting party shall, upon written notice from the non-defaulting party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a nonmonetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than 10 additional days in the case of monetary default or 30 additional days in the case of nonmonetary default unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.
- b. In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their

several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.

c. In the case of an Event of Default by Developer, in addition to any other remedies at law or in equity, the Village shall be relieved of its obligations under this Agreement.

18.4 Intentionally omitted.

18.5 Intentionally omitted.

18.6 No Waiver by Delay or Otherwise. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

18.7 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

ARTICLE NINETEEN

EQUAL EMPLOYMENT OPPORTUNITY.

19.1 No Discrimination. Developer will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, or physical or mental handicap. To the fullest extent permitted by law, Developer will take affirmative action to ensure that applicants are employed and treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, age, marital status, or physical or mental handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Village setting forth the provisions of this nondiscrimination clause.

19.2 Advertisements. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer related to the Developer Project, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, marital status, or physical or mental handicap.

19.3 Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Redevelopment Project shall contain language similar to that recited in **Section 19.1** and **19.2** above.

ARTICLE TWENTY

INTENTIONALLY OMITTED.

ARTICLE TWENTY-ONE
INTENTIONALLY OMITTED.

ARTICLE TWENTY-TWO
MISCELLANEOUS PROVISIONS.

22.1 Cancellation. In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan with respect to the Property, including Developer's duty to build the Redevelopment Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the Village in connection with the Redevelopment Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction (any such finding being referred to herein as "Superceding Order") and such declaration shall materially affect the Redevelopment Plan or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Redevelopment Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village terminates this Agreement pursuant to this Section 22.1, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided, however, that (i) the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and (ii) the cancellation or termination of this Agreement shall have no effect on the provisions of and the

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performance of the Village's obligations under the Escrow Agreement including release of the Escrowed TIF Funds upon the occurrence of Substantial Completion unless the release of the Escrowed TIF Funds is prohibited by the Superceding Order; and (iii) the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded document.

22.2 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by telex, telegram, telecopy or email, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village:	Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 Attn: Village Manager
With a copy to:	Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 Attn: Enza Petrarca, Village Attorney
If to Developer:	1815 Ogden, LLC 2150 West Ogden Avenue Downers Grove, IL 60575 Attn: J. Bradley Webb
with a copy to:	Pachter, Gregory & Raffaldini, P.C. 100 Village Green, Suite 200 Lincolnshire, IL 60069 Attn: Patricia B. Gregory, Esq.
If to Lender:	_____ _____ _____ Attn: _____

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means provided that notices of default sent by electronic means are also immediately sent by one of the other approved methods. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

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

22.4 Integration. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

22.5 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.

22.6 Recordation of Agreement. Developer shall be responsible for recording this Agreement with the DuPage County Recorder's Office.

22.7 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.

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

22.9 Intentionally Omitted.

22.10 Entire Contract and Amendments. This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

22.11 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 Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

22.12 Waiver. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

22.13 Cooperation and Further Assurances. The Village and Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying,

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assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

22.14 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 **Section 10.10** hereof, Developer 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.

22.15 Intentionally omitted.

22.16 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

22.17 No Personal Liability of Officials of Village or Developer. 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 Developer, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or Developer 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.

22.18 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.

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22.19 Term. This Agreement shall remain in full force and effect until termination of the Redevelopment Project Area (i.e., February 6, 2024) or until otherwise terminated pursuant to the terms of this Agreement; provided, however, that all Developer's construction obligations hereunder shall terminate at Substantial Completion.

22.20 Estoppel Certificates. Each of the parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which such parties shall specify the basis for such claim), that the requesting party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting party. If either party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

22.21 Municipal Limitations. All municipal commitments are limited to the extent required by law.

ARTICLE TWENTY-THREE

MORTGAGE HOLDERS.

23.1 Notice to Mortgage Holders. Whenever the Village shall deliver any notice or demand to Developer with respect to any alleged default of this Agreement by Developer, the Village shall at the same time deliver to each holder of record (a "Holder") of any mortgage, deed of trust or other security interest and the lessor under any sale-leaseback or grantee under any other conveyance for financing ("Security Interest") a copy of such notice or demand, provided the Village has been advised of the name and address of any such Holder. Unless and until the Village is notified otherwise, the only Holder that is to receive copies of notices or demands in

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accordance with this Article is the lender identified in **Section 22**. Each such Holder shall (insofar as the rights of the Village are concerned) have the right at its sole option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default; provided, however, in the event of a default by Developer under this Agreement which is not curable by such Holder (e.g., insolvency or bankruptcy or the need to take possession of property), such Holder shall be deemed to have cured such non-curable defaults by its execution of the assumption agreement contemplated in the later portions of this **Section 23.1**. Such Holder and its successors in interest shall be deemed only to have assumed the obligation of Developer for as long as such Holder has an interest in and possession of a portion of the Property but only pursuant to the terms of an Assumption and Assignment Agreement in a form reasonably acceptable to Holder and Village. No Holder shall be obligated by the provisions of this Agreement to construct or complete any improvements or to guarantee such construction or completion, notwithstanding the collateral assignment of this Agreement to such Holder by Developer. Nothing contained in this Agreement shall be deemed to permit or authorize any Holder or successor to undertake or continue the construction or completion of any improvements (beyond the extent necessary to conserve or protect the improvement or construction already made) until such holder or successor shall expressly assume the obligations of Developer (with respect to the portion of the Property in which the Holder has a Security Interest) to the Village as set forth in this Agreement by written agreement reasonably satisfactory to the Village. No such assumption agreement will relieve Developer of any of its obligations under this Agreement. Any such Holder or other entity properly completing such improvements shall be entitled, upon written request made to the Village, to a certificate of occupancy from the Village with respect to such improvements in accordance with applicable code and the provisions of this Agreement. Nothing in this **Section 23.1** shall be deemed to

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grant any such Holder referred to in this **Section 23.1** any rights or powers beyond those granted under such Holder's underlying agreement with Developer. Each Holder by recording its encumbrance against the Property agrees that this Agreement and the obligations hereunder shall, at the Holder's option, remain superior to such lien subject to the provisions of a tri-party agreement, if any, entered into by Village, Developer and Holder prior to the Closing ("Tri-Party Agreement").

ARTICLE TWENTY-FOUR

EFFECTIVENESS.

The Agreement Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to duly enacted Village ordinance authorizing the execution of and adoption this Agreement. Developer shall execute this Agreement promptly upon passage of the aforesaid Village ordinance.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 home rule corporation

By: Village Manager

ATTEST:

By: Village Clerk

DEVELOPER:

1815 Ogden, LLC, an Illinois limited liability company



By:
Name: J. Bradley Webb
Its: Member

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EXHIBIT "A"

Legal Description for Property

ALL LOT 4 AND LOT 5 (EXCEPT THE WESTERLY 165 FEET OF THE NORTH 264 FEET THEREOF) IN BRANIGAR BROS' OGDEN AVENUE FARMS, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 15, 1921 AS DOCUMENT 146501, IN DU PAGE COUNTY, ILLINOIS.

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EXHIBIT "B"**Redevelopment Project Costs**

Category (TIF Statute reference)	TIF Eligible Per Statute
SURVEY, PLANS AND PROFESSIONAL SERVICES (q)(1)	\$992,722.00
PROPERTY ASSEMBLY COSTS (q)(2)	\$1,600,000.00
SITE PREPARATION (q)(2)	
* Grading and Excavation	\$1,192,050.00
* Environmental and Wetland Remediation	\$1,315,650.00
* Environmental Site Improvement Costs	\$909,760.00
* Onsite Infrastructure	\$1,940,100.00
OFFSITE/PUBLIC IMPROVEMENTS (q)(4)	\$279,800.00
RELOCATION EXPENSES (q)(8)	\$15,000.00
CONSTRUCTION PERIOD INTEREST (q)(11)	\$182,250.00
MISCELLANEOUS SOFT COSTS (q)(2)(q)(4) (general conditions, construction fees, insurance & testing)	\$514,529.00
	\$8,941,861.00

EXHIBIT "C"**Form of Requisition****Certificate of Redevelopment Project Costs**

This is to certify that the Redevelopment Project to be constructed by 1815 Ogden, LLC ("Developer") pursuant to that certain Redevelopment and Sales Tax Rebate Agreement dated August 9, 2016 executed by and between the Village of Downers Grove ("Village") and the Developer, is Substantially Complete (as such term is defined in the Redevelopment Agreement), and Developer has paid all contractors involved in the performance of the Redevelopment Project Costs (as defined in the Redevelopment Agreement) as evidenced by the supporting documents attached hereto. Furthermore, the Developer has received paid receipts and/or releases of liens for all Redevelopment Project Costs, which receipts and/or releases of liens are included in the supporting documents attached hereto. The Developer hereby requests immediate reimbursement from the Village of Downers Grove and First American Title Insurance Company, as Escrow Holder pursuant to that certain Post-Closing Escrow Agreement dated _____, 2016 executed by and among Developer, the Village and Escrow Holder ("Escrow Agreement"), in the amount of \$_____ of the Village TIF Funds held by the Escrow Holder. Said funds to be wired to Developer pursuant to wire instructions to be delivered by Developer to Escrow Holder.

1815 OGDEN, LLC

By: _____
 Name: _____
 Its: _____

EXHIBIT "D"**PROJECT SCHEDULE**

		Outside Date
1.	Receipt of all Village Zoning & PUD Approvals	October 15, 2016
2.	Receipt of Village Approvals Regarding Redevelopment Agreement for TIF and Sales Tax Rebate	October 15, 2016
3.	Submission by Developer to Village for permit for Site Work	September 19, 2016
4.	Receipt of Site Work Approval from Village	November 16, 2016
5.	Receipt of IEPA Approval of Remedial Action Plan	November 15, 2016
6.	Closing on Property	Within 14 days of receipt of approvals in Item Nos. 4 and 5, or such earlier date as Developer may determine.
7.	Commencement of site work and/or environmental remediation	Within ten (10) days of Closing on the Property and receipt of site work permit if required by the Village
8.	Submit Building Permit Application and Plans to Village	November 16, 2016
9.	Submit DuPage County Commercial impact fee application	November 16, 2016
10.	Submit for IDOT Driveway Permit	August 31, 2016
11.	Submit for Downers Grove Sanitary District (DGSD) Permit	October 5, 2016
12.	Receipt of Building Permit from Village, DGSD Permit and IDOT Permit	January 4, 2017
13.	Commence Construction of Building	Within ten (10) days of receipt of permits in Item No. 12
14.	Submit Remedial Action Plan status report to IEPA	April 30, 2017
15.	Submission of Remedial Action Completion Report to IEPA	November 30, 2017
16.	Substantial Completion of Project	January 31, 2018
17.	Opening for Business	February 28, 2018

The foregoing dates are subject to extension for Uncontrollable Circumstances in accordance with the provisions of the Redevelopment Agreement.

EXHIBIT "E"**Escrow Agreement****POST-CLOSING
ESCROW AGREEMENT**

This Post-Closing Escrow Agreement (the "**Agreement**") is made this ___ day of _____, 2016 by and between **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the "**Village**"), **1815 OGDEN, LLC**, an Illinois limited liability company ("**Developer**") and **FIRST AMERICAN TITLE INSURANCE COMPANY** ("**Escrow Holder**").

RECITALS

A. Developer and the Village executed that certain **REDEVELOPMENT AND SALES TAX REBATE AGREEMENT** dated August 9, 2016 (the "**Redevelopment Agreement**") with respect to the property located at 1815 W. Ogden Avenue, Downers Grove, Illinois (the "**Property**").

B. On the date hereof, Developer shall become the fee simple title holder of the Property (the "**Closing Date**.")

C. Pursuant to the Redevelopment Agreement, on the Closing Date provided certain conditions are satisfied (the "**Escrow Funding Conditions**"), the Village is required to deposit from TIF funds the sum of \$4,500,000 ("**Initial Village TIF Funds**") for the benefit of Developer, to be held by Escrow Holder until certain conditions have been satisfied in accordance with the Redevelopment Agreement ("**Disbursement Conditions**").

D. Furthermore, pursuant to the Redevelopment Agreement, upon receipt of the second (2nd) installment of real property taxes in October 2017, the Village shall deposit an additional \$500,000 ("**Additional Village TIF Funds**") with the Escrow Holder (which together with the Initial Village TIF Funds shall herein be referred to as the "**Village TIF Funds**"), to be held by Escrow Holder for the benefit of Developer until the Disbursement Conditions have been satisfied.

E. The Village and Developer acknowledge that the Escrow Funding Conditions have been satisfied, and the Village shall deposit the Initial Village TIF Funds on this Closing Date.

NOW THEREFORE, in consideration of the mutual covenants, promises and undertakings contained herein, the parties hereto agree as follows:

1. INITIAL DEPOSITS

1.1 Village will deposit the Initial Village TIF Funds with the Escrow Holder via wire transfer on the Closing Date (the “**Initial Village Deposits**”).

2. SUBSEQUENT DEPOSITS.

2.1 Village will deposit the Additional Village TIF Funds with the Escrow Holder via wire transfer promptly upon receipt of the second (2nd) installment 2016 real estate taxes in October 2017.

2.2 Not later than ninety (90) days after Substantial Completion (as that term is defined in the Redevelopment Agreement), the Developer shall deposit with the Escrow Holder and deliver to the Village the following:

- i. Owner’s and general contractor’s sworn statement with regard to all Redevelopment Project Costs (as defined in the Redevelopment Agreement), together with final lien waivers from the general contractor and all subcontractors and materialmen with respect to all lienable Redevelopment Project Costs and proof of paid invoices with respect to all non-lienable Redevelopment Project Costs (collectively, the “**Supporting Documents**”); and
- ii. A completed and executed requisition in the form attached hereto as Exhibit A (“**Requisition**”).

3. DISBURSEMENTS.

3.1 Upon receipt of the Supporting Documents and Requisition from Developer, Escrow Holder shall provide the Village with copies of the same via email. Not later than fourteen (14) days after receipt of the Requisition and Supporting Documents, the Village shall deliver to Escrow Holder and Developer either written approval or disapproval of such request, and if disapproval, the specific reason(s) for such disapproval consistent with the provisions of Section 8.6 of the Redevelopment Agreement.

If Village does not approve the Developer’s request, Developer may re-submit a revised Requisition and/or Supporting Documents so as to obtain Village approval. Any re-submission shall be approved or disapproved by the Village within fourteen (14) days of receipt.

3.2 Upon receipt by Escrow Holder of the Village’s approval of the Requisition, Escrow Holder shall promptly disburse to Developer the Village TIF Funds which is the subject of the Requisition approved by the Village.

3.3 At acceptance of this Escrow Agreement, the Developer shall deposit the escrow fee to be charged by the Escrow Holder in the performance of its obligations under this Escrow Agreement. The Developer hereby indemnifies and holds harmless the Village for any claim, cost, expense, loss or damage arising out of any failure by Developer to pay promptly when due all charges and fees incurred by the Escrow Holder in the performance of its obligations under this Escrow Agreement except those arising from any default by the Village under this Escrow Agreement or the Redevelopment Agreement.

4. MISCELLANEOUS.

4.1 Time is of the essence with respect to this Escrow Agreement.

4.2 In the event that any provision of this Escrow Agreement shall be held invalid or unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Escrow Agreement.

4.3 This Escrow Agreement shall be construed under the laws of the State of Illinois.

4.4 In the event that the Village or Developer commences an action to enforce any of the provisions of this Escrow Agreement, the provisions of the Redevelopment Agreement shall govern as between Developer and the Village with respect to responsibility for legal fees. The Village and Developer agree to indemnify and hold Escrow Holder harmless from and against any costs, claims or expenses incurred in connection with the performance of the Escrow Holder's duties hereunder, unless such costs, claims or expenses were occasioned by Escrow Holder's bad faith, gross negligence or its willful disregard of this Escrow Agreement.

4.5 The recitals set forth above are hereby incorporated by reference into this Escrow Agreement as integral and material terms hereof. This Escrow Agreement binds, applies to and inures to the benefit of, as the case may require, the heirs, executors, administrators, successors and assigns of the parties hereto. All provisions in the Redevelopment Agreement shall remain in full force and effect.

4.6 Any notices sent pursuant to this Escrow Agreement, shall be sent in accordance with the following:

To Developer:	1815 Ogden, LLC c/o Packey Webb Ford 2150 West Ogden Avenue Downers Grove, Illinois 60575 Email: brad.webb@packeywebbford.com
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with a copy to:	Patricia Gregory, Esq. Pachter, Gregory & Raffaldini, P.C. 100 Village Green, Suite 200 Lincolnshire, Illinois 60069
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Tel: (847) 317-7370
Email: patg@pgr-law.com

To the Village: Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515
Attn: Enza Petrarca, Village Attorney

To Escrow Holder: Kina Johnson
National Commercial Escrow Officer
First American Title Insurance Company
30 North LaSalle St., Suite 2700
Chicago, IL 60602
Tel: (312) 917-7223
Email: kjohnson@firstam.com

4.7 This Escrow Agreement may be executed by the parties in counterparts, via pdf, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

4.8 Limitation of Duties of Escrow Holder.

- i. Escrow Holder shall have no duties or responsibilities other than those expressly set forth herein. Escrow Holder shall have no duty to enforce any obligation of any person to make any delivery or to enforce any obligation of any person to perform any other act. Escrow Holder shall be under no liability to the other parties hereto or to anyone else by reason of any failure on the part of any party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. Except for amendments to this Escrow Agreement hereinafter referred to and except for the instructions given to Escrow Holder by the parties hereto in accordance with this Escrow Agreement, Escrow Holder shall not be obligated to recognize any agreement between any or all of the persons referred to herein.
- ii. In its capacity as Escrow Holder, Escrow Holder shall not be responsible for the genuineness or validity of any security, instrument, document or item deposited with it and shall have no responsibility other than to faithfully follow the instructions contained herein, and shall not be responsible for the validity or enforceability of any security interest of any party and it is fully protected in acting in accordance with any written instrument given to it hereunder by any of the parties hereto and reasonably believed by Escrow Holder to have been signed by the proper person. Escrow Holder may assume that any person purporting to give any notice hereunder has been duly authorized to do so.

- iii. It is understood and agreed that the duties of Escrow Holder are purely ministerial in nature. Escrow Holder shall not be liable to the other parties hereto or to anyone else for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith and in the exercise of reasonable judgment, except for acts of willful misconduct or gross negligence. Escrow Holder may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by Escrow Holder), statement, instrument, report or other paper of document, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information which is reasonably believed by Escrow Holder to be genuine and to be signed or presented by the proper person or persons. Except as specifically set forth herein, Escrow Holder shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Escrow Agreement or any of the terms hereof, unless evidenced by a final judgment or decree of a court of competent jurisdiction in the State of Illinois or a Federal Court of such State, or writing delivered to Escrow Holder signed by the property party or parties and, if the duties or rights of Escrow Holder are affected, unless it shall give its prior written consent thereto.
- iv. Trust Account. Because Escrow Holder is not itself a bank, it may commingle the Escrow Deposits with other escrow deposits in a trust account not used for payroll or accounts payable in order to facilitate placing the Escrow Deposits in a segregated interest bearing account and to disburse the Escrow Deposits once they have been removed from said segregated interest bearing account in accordance with the terms of this Escrow Agreement.
- v. Investment. Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto: provided, that any direction to Escrow Holder for such investment shall be expressed in WRITING and contain the consent of the Village and Developer, and also provided that the Escrow Holder is in receipt of a fully executed W-9 containing the taxpayer's identification number and required investment instructions. Escrow Holder will, upon request, furnish information concerning its procedures and fee schedules for investment.
- vi. In the event the Escrow Holder is requested to invest deposits hereunder, First American Title Insurance Company shall not be held responsible for any loss of principal interest which may be incurred as a result of making the investment or redeeming said investment for the purposes of this Escrow Agreement.
- vii. Direction not to Invest/Right to Commingle. Except as to deposits of

funds for which Escrow Holder has received express written direction concerning investment or other handling, the parties hereto direct the Escrow Holder NOT to invest any funds deposited by the parties under the terms of this Escrow Agreement and waive any rights which they may have under Section 2-8 of the Corporate Fiduciary Act to receive interest on funds deposited hereunder. In the absence of any authorized direction to invest funds, the parties hereto agree that the Escrow Holder shall be under no duty to invest or reinvest any such funds at any time held by it hereunder; and further, that Escrow Holder may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-8 of the Corporate Fiduciary Act and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish the Escrow Holder's obligation to apply the full amount of the deposits in accordance with the terms of this Escrow Agreement.

- viii. Resignation of Escrow Holder. Escrow Holder may resign as Escrow Holder hereunder giving thirty (30) days prior written notice to that effect to each of the parties to this Escrow Agreement. In such event, the successor Escrow Holder shall be selected and approved by the parties hereto, which approval will not be unreasonably withheld or unduly delayed. Such party that will no longer be serving as Escrow Holder shall deliver, against receipt, to such successor Escrow Holder, the documents, if any, and funds held by such party, to be held by such successor Escrow Holder, pursuant to the terms and provisions of this Escrow Agreement. If no such successor has been designated on or before the effective date of such party's resignation, the current Escrow Holder shall continue until such successor is appointed; provided, however, its sole obligation thereafter shall be to safely keep all documents and funds then held by it and to deliver the same to the person, firm or corporation designated as its successor or until directed by a final order or judgment of a court of competent jurisdiction in the State of Illinois or a Federal Court in such State, whereupon Escrow Holder shall make disposition thereof in accordance with such order or judgment. If no successor Escrow Holder is designated and qualified within thirty (30) days after Escrow Holder's resignation is effective, such party that will no longer be serving as Escrow Holder may apply to any court of competent jurisdiction for the appointment of a successor Escrow Holder.
- ix. Disputes/Circumstances not Contemplated. If any dispute arises with respect to the disbursement of any funds on deposit, and Escrow Holder is unsure as to its duties as a result, Escrow Holder may continue to hold said funds and documents until either in receipt of a joint order from the parties or a court order directing payment. In such instance, Escrow Holder may elect to commence an action in interpleader and in conjunction therewith

remit the funds and documents to a court of competent jurisdiction pending resolution of such dispute, and the parties hereto hereby indemnify and hold harmless Escrow Holder for any action taken by it in good faith in the execution of its duties hereunder. The parties further agree that the cost of any such action shall be deducted from the funds held prior to disbursement.

- x. The parties acknowledge that Escrow Holder shall be governed solely by the terms and provisions contained in this Escrow Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Webb Redevelopment Agreement Draft 7/21/16

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date first above written.

DEVELOPER:

1815 OGDEN, LLC, an Illinois limited liability company

By: _____

Its: _____

VILLAGE:

VILLAGE OF DOWNERS GROVE, an Illinois Municipal Corporation

By: _____

Name: _____

Its: _____

Attest: _____

Village Clerk

ESCROW HOLDER:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Name: _____

Its: _____

**EXHIBIT A
FORM OF REQUISITION**

Certificate of Redevelopment Project Costs

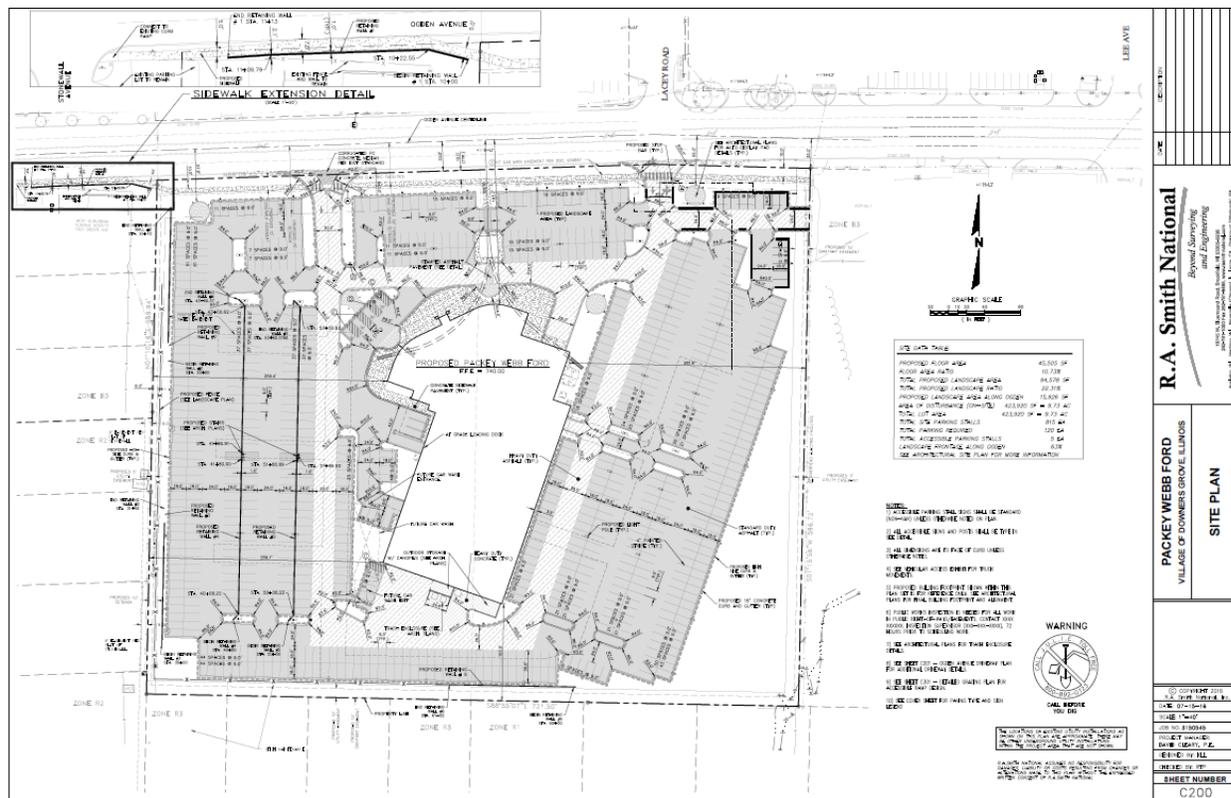
This is to certify that the Redevelopment Project to be constructed by 1815 Ogden, LLC ("Developer") pursuant to that certain Redevelopment and Sales Tax Rebate Agreement dated August 9, 2016 executed by and between the Village of Downers Grove ("Village") and the Developer, is Substantially Complete (as such term is defined in the Redevelopment Agreement), and Developer has paid all contractors involved in the performance of the Redevelopment Project Costs (as defined in the Redevelopment Agreement) as evidenced by the supporting documents attached hereto. Furthermore, the Developer has received paid receipts and/or releases of liens for all Redevelopment Project Costs, which receipts and/or releases of liens are included in the supporting documents attached hereto. The Developer hereby requests immediate reimbursement from the Village of Downers Grove and First American Title Insurance Company, as Escrow Holder pursuant to that certain Post-Closing Escrow Agreement dated _____, 2016 executed by and among Developer, the Village and Escrow Holder ("Escrow Agreement"), in the amount of \$_____ of the Village TIF Funds held by the Escrow Holder. Said funds to be wired to Developer pursuant to wire instructions to be delivered by Developer to Escrow Holder.

1815 OGDEN, LLC

By: _____
Name: _____
Its: _____

EXHIBIT "F"

Concept Site Plan



R.A. Smith National
Surveying and Engineering
 10000 N. Central Expressway, Suite 100, Dallas, TX 75243
 (972) 412-1234

PACKEY WEBB FORD
 VILLAGE OF TOWNHOMES DEVELOPMENT
SITE PLAN

DATE: 7/21/16
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SHEET NUMBER: C200

Projected Village and PWF Sales Tax Revenue, 2018-2030

	Annual Sales	Rebated to PWF	General Fund Revenue	General Fund Revenue if Rebates are Paid by the Ogden TIF Fund
2018	\$619,140	\$309,570	\$309,570	\$619,140
2019	\$631,523	\$315,761	\$315,761	\$631,523
2020	\$644,153	\$322,077	\$322,077	\$644,153
2021	\$657,036	\$328,518	\$328,518	\$657,036
2022	\$670,177	\$335,089	\$335,089	\$670,177
2023	\$683,581	\$341,790	\$341,790	\$683,581
2024	\$697,252	\$348,626	\$348,626	\$697,252
2025	\$711,197	\$355,599	\$355,599	\$355,599
2026	\$725,421	\$362,711	\$362,711	\$362,711
2027	\$739,930	\$369,965	\$369,965	\$369,965
2028	\$754,728		\$754,728	\$754,728
2029	\$769,823		\$769,823	\$769,823
2030	\$785,219		\$785,219	\$785,219
2031	\$800,924		\$800,924	\$800,924
2032	\$816,942		\$816,942	\$816,942
Total	\$10,707,046	\$3,389,705	\$7,317,341	\$9,618,772