

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
4/18/2017

SUBJECT:	SUBMITTED BY:
An Ordinance Approving a Redevelopment Agreement/Sales Tax Agreement between the Village and Westmont Lincoln, LLC	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance approving a Redevelopment Agreement/Sales Tax Rebate Agreement between the Village of Downers Grove and Westmont Lincoln, LLC (“Lincoln”).

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

The Lincoln certified pre-owned dealership is expected to generate \$22 million in annual taxable sales. After the payment of the sales tax rebates per the proposed agreement, the Village is expected to receive \$110,000 in annual revenue for the first 5 years of the agreement and \$220,000/year for the last 5 years of the agreement.

UPDATE & RECOMMENDATION

This item was discussed at the April 11, 2017 Village Council meeting. Staff recommends approval at the April 18, 2017 Village Council meeting.

BACKGROUND

Lincoln owns the property at 216 Ogden Avenue and is requesting assistance from the Village to redevelop the property with the construction of a certified pre-owned automobile dealership. Lincoln will make on-site improvements to the property including the construction of a showroom, a new front façade, the addition of a free-standing sign, repair to the existing parking lot, landscaping, and maintaining screening on the northern lot line in compliance with the Ogden Avenue Master Plan.

The agreement includes the following key terms:

- Lincoln shall substantially complete the project by no later than July 1, 2018 in accordance with the approved plans.
- Lincoln shall comply with all Village ordinances and applicable laws and shall diligently pursue obtaining all required permits for the construction of the project.
- Lincoln shall operate a dealership for a period of not less than ten (10) years from the effective date of the agreement. If Lincoln fails to operate the dealership for ten (10) years, it shall reimburse the

Village for all or a portion of the sales tax rebate payments according to a schedule included in the agreement.

- The Village shall rebate fifty percent (50%) of the annual sales tax paid to the Village from the automobile dealership for a period of five (5) years.
- The Village shall withhold all payments for one-quarter. If Lincoln fails to operate the dealership per the terms of the Agreement, the withheld payment shall be automatically forfeited to the Village.
- The Village shall not make any payments until the improvements have been completed.

ATTACHMENTS

Ordinance

Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: April 18, 2017
(Name)

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

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE APPROVING A REDEVELOPMENT/SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND WESTMONT LINCOLN, LLC", as presented.

ajp

SUMMARY OF ITEM:

Adoption of the attached ordinance shall approve a Redevelopment/Sales Tax Rebate Agreement with Westmont Lincoln, LLC for the property located at 216 Ogden Avenue.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____**AN ORDINANCE APPROVING A REDEVELOPMENT/SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND WESTMONT LINCOLN, 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, 65 ILCS 5/8-11-20 authorizes municipalities to enter into economic incentive agreements in order to encourage the development or redevelopment of land within their corporate limits; 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, Westmont Lincoln, LLC (the "Developer") is the owner of certain real property located at 216 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 Lincoln Certified Pre-Owned 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

**A REDEVELOPMENT/SALES
TAX REBATE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND
WESTMONT LINCOLN, LLC**

This Agreement made and entered into this ____ day of _____, 20____, by and between the Village of Downers Grove, Illinois, an Illinois Municipal Corporation situated in the County of DuPage, Illinois (the "Village") and Westmont Lincoln, LLC d/b/a Ogden Lincoln Certified Pre-Owned Center (Collectively referred to as "Lincoln") located at 216 Ogden Avenue.

WITNESSETH:

WHEREAS, the Village is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution, and;

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

WHEREAS, 65 ILCS 5/8-11-20 authorizes municipalities to enter into economic incentive agreements in order to encourage the development or redevelopment of land within their corporate limits; and

WHEREAS, 65 ILCS 5/8-1-2.5 authorizes municipalities to expend funds for economic development purposes within their corporate limits;

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, after giving all notices required and after conducting the public hearings required by law:

1. Ordinance No. 4247, titled "*An Ordinance Approving the Ogden Avenue Corridor Redevelopment Plan and Project*" (the "Redevelopment Plan");
2. Ordinance No. 4248, titled "*An Ordinance Designating the Ogden Avenue Corridor Redevelopment Project Area*" ("Redevelopment Project Area");
3. 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.*"

WHEREAS, Lincoln owns the property and desires construct an automobile dealership (Lincoln) on land within the Village of Downers Grove located at 216 Ogden Avenue, Downers Grove, Illinois, and legally described as follows (the "Property"):

PARCEL 1:

THAT PART OF LOTS 7 AND 8 IN BLOCK 1, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF LOT 7, AFORESAID, AND A LINE 115 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 5 IN BLOCK 1, AFORESAID; THENCE SOUTH ALONG SAID PARALLEL LINE 160 FEET TO A POINT 40 FEET NORTH OF THE SOUTH LINE OF LOT 7, AFORESAID; THENCE SOUTHWESTERLY 56.61 FEET TO A POINT IN THE SOUTH LINE OF LOT 8, AFORESAID, 155 FEET WEST OF THE EAST LINE OF LOT 5 IN BLOCK 1, AFORESAID, EXTENDED SOUTH; THENCE WEST 45 FEET TO THE SOUTHWEST CORNER OF LOT 8, AFORESAID; THENCE NORTH ALONG THE WEST LINE OF LOT 8, AFORESAID, 200 FEET TO THE NORTHWEST CORNER THEREOF; THENCE EAST ALONG THE NORTH LINE OF SAID LOTS 84.20 FEET TO THE PLACE OF BEGINNING, ALL IN ARTHUR T. MCINTOSH AND COMPANY'S THIRD OGDEN AVENUE SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 31, 1924 AS DOCUMENT 186703, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT OF 15 FEET IN WIDTH FOR THE BENEFIT OF PARCEL 1 FOR THE PURPOSE OF INGRESS AND EGRESS, TOGETHER WITH THE RIGHT TO CONSTRUCT, MAINTAIN, AND REPLACE AND REMOVE A DRIVEWAY ON THE EASEMENT PREMISES AS CREATED BY WARRANTY DEED MADE BY MARTIN OIL SERVICE, INC., A CORPORATION OF ILLINOIS TO CHESTER J. CROSS, DATED JULY 20, 1970 AND RECORDED SEPTEMBER 11, 1970 AS DOCUMENT R70-32708 ALONG THE NORTH BOUNDARY OF THE FOLLOWING DESCRIBED PROPERTY: THAT PART OF LOTS 5, 6, AND 7 IN BLOCK 1, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF LOT 5, AFORESAID, 100.00 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE WEST PARALLEL WITH THE NORTH LINES OF LOTS 5, 6 AND 7, A DISTANCE OF 115.00 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF LOT 5, AFORESAID, 100.00 FEET TO THE NORTH LINE OF LOT 7, AFORESAID; THENCE EAST ALONG THE NORTH LINE OF LOTS 7, 6 AND 5 AFORESAID, 115.00 FEET TO THE NORTHEAST CORNER OF LOT 5, AFORESAID; THENCE SOUTH ALONG THE EAST LINE OF LOT 5, AFORESAID, 100.00 FEET TO THE PLACE OF BEGINNING, ALL IN ARTHUR T. MCINTOSH AND COMPANY'S THIRD OGDEN AVENUE SUBDIVISION, OF THE SOUTH 9 CHAINS OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE SECTION 4, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:

LOTS 9 AND 10 IN BLOCK 1 IN ARTHUR T. MCINTOSH AND COMPANY'S THIRD OGDEN AVENUE SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 31, 1924 AS DOCUMENT 186703, IN DUPAGE COUNTY, ILLINOIS.

(Commonly known as 216 Ogden Avenue, Downers Grove, IL 60515)

WHEREAS, Lincoln endeavors to operate a Lincoln Certified Pre-Owned automobile dealership, on the Property and make on-site improvements such as constructing a showroom, constructing a new front façade, adding a free standing sign, repairing its existing parking lot, landscaping the site, maintaining screening on the northern lot line all in accordance with the Ogden Avenue Master Plan (the "Redevelopment Project"); and,

WHEREAS, the Village has determined that the Redevelopment Project will promote economic development as well as other benefits within the Village by creating employment opportunities and enhancing the Village's tax base and seeks to assist Lincoln in its endeavors to enhance and improve the Property; and

WHEREAS, the Village and Lincoln agree that in order to construct the Redevelopment Project, it is necessary that the Village provide an incentive in the form of certain sales tax rebate assistance in accordance with the law and the terms of this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. Incorporation of Recitals: The foregoing recitals are hereby incorporated and adopted as set forth herein.

2. General Terms:

a) Lincoln, after receipt of the promises and inducements contained herein, agrees to redevelop the Property to construct and operate a Lincoln Certified Pre-Owned automobile dealership (the "Dealership") in substantial accordance with the Design Plan attached hereto and incorporated herein by reference as Exhibits A & B. Specifically, Lincoln agrees to construct a showroom, construct a new front façade, add a free standing sign, repair its existing parking lot,

landscape the site, and maintain screening on the northern lot line. It is understood and agreed that specific plans, including but limited to architecture, building, zoning, sign requirements and landscape plans for the Property must be submitted to and approved by the Village in relation to the Property as required by the Village Municipal Code. The Village agrees to expeditiously review all required plans and required permits after submission thereof. Lincoln shall obtain all necessary permits prior to beginning any such improvements on the Property. The Redevelopment Project shall be constructed substantially in accordance with the plans and specifications approved by the Village. The Redevelopment Project described in this paragraph must be completed no later than July 1, 2018. Lincoln agrees to submit to the Village proof of all paid invoices for all work performed in connection with the Redevelopment Project.

b) The parties hereto acknowledge, and Lincoln represents and warrants, that it requires economic assistance from the Village in order to commence and complete the Redevelopment Project, and that, but for said economic assistance, the Redevelopment Project as contemplated would not be economically viable, nor would the funds necessary for its commencement and completion be available.

c) 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 Agreement or which adversely affect the Village's ability to comply herewith, then the Village and Lincoln shall

reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. 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 this Agreement shall automatically terminate releasing both parties from their obligations hereunder. 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

d) For purposes of this Agreement, the incentives and inducements set forth herein shall apply only to Lincoln and the Redevelopment Project.

e) Lincoln agrees that in the event there is a change in the ownership (legal or beneficial) of the Dealership, or any portion thereof, except as provided in Section 8 or Permitted Transfers, the Village shall no longer be required to pay all or any portion of the incentive payments provided for in this Agreement. For purposes of this Agreement, Permitted Transfers shall mean transfers to an entity which controls, is controlled by, or is under common control with Lincoln and which has the same manager, members, partners or shareholders owning in the aggregate, more than fifty percent (50%) of the ownership interests in Lincoln; 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. Lincoln shall not be required to obtain Village review, approval or consent to any Permitted Transfer.

In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Lincoln, including the construction, development and operation of the Dealership on the Property, the Village hereby agrees to pay Lincoln certain sales tax rebates ("Incentive Payments") 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 fifth (5th) 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 the amount of each Incentive Payment will be due and payable solely from the proceeds of sales tax revenue received by the Village from the Dealership on the Property. However, the Village reserves the right to make payments from any Village funding source it deems appropriate, including but not limited to the Ogden Avenue Redevelopment Tax Increment Fund. As such, Lincoln shall provide Village with an itemized list of all paid redevelopment project costs on or before the Incentive Payment Start Date.
- 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 and the Initial Payment Year (or portion thereof), the Village and Lincoln shall each be entitled to fifty percent (50%) of the sales tax revenue received from retail sales generated by the Redevelopment Project (each such payment payable to Lincoln 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 Lincoln within one-hundred twenty (120) days after it received notification from the State of the sales tax revenue generated by Lincoln for each month in the preceding Payment Year.
- f) The Village shall withhold an amount equal to one quarter (1/4) of the Incentive Payment due to Lincoln for each year to ensure compliance with Section 5 of this Agreement (the "Holdback Funds"). The amount of the Holdback Funds shall be adjusted annually and either increased or released based upon the amount the Incentive Payment for the applicable Payment Year. At no time will the amount of the Holdback Funds exceed one quarter (1/4) of the Incentive Payment for the applicable Payment Year. If Lincoln fails to continue to operate the Dealership in accordance with Section 5, the Holdback Funds shall be automatically forfeited to the Village in

accordance with Section 6. Upon expiration of the term of this Agreement, if Lincoln is in compliance with Section 5, the Holdback Funds shall be paid to Lincoln.

3. Disclosure: Lincoln shall execute and provide the Village with a power of attorney letter (or other necessary document), in form and content reasonably acceptable to the Village 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 on a monthly basis with respect to the operation of the Dealership on the Property to the Village during the Incentive Period. In addition to said letter, Lincoln 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 Lincoln to execute the necessary authorization and/or release, the Village shall not be required to make any of the Incentive Payments provided for in this Agreement.

4. Construction of Redevelopment Project: Lincoln shall submit plans for the construction of the Redevelopment Project on or before December 31, 2017, and shall not cause or permit the existence of any violation of Village ordinances, including but not limited to the Village's building code, zoning ordinances, fire code and any and all rules and regulations thereunder. Lincoln shall have completed construction of the Redevelopment Project and shall have begun operations and sales from Lincoln on or before July 1, 2018. If the conditions of this Section are not met, this Agreement shall be declared null, void and of no legal effect.

5. Commitment to Continue Dealerships: The parties agree that all Incentive Payments are based in part upon: 1) a commitment by Lincoln to continue operation of the Dealership, or an equivalent dealership, on the Property for a period of not less than ten (10) 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. To that end, Lincoln agrees to continue the operation of a new and/or used car Dealership on the Property and shall continue to offer automotive sales with the point of sale being in Downers Grove for ten (10) years from the Incentive Payment Start Date. If, at any time during this time period, Lincoln, or a successor, fails to offer automotive sales of new and/or used automobiles as proposed by Lincoln, then the Village shall be released and discharged from any further obligation to make payments under this Agreement, and Lincoln or its successors shall reimburse the Village in accordance with Section 6 of this Agreement. The failure to meet this commitment is not a breach, but rather a foreseeable event for which the offsetting terms have been agreed to in Section 6 of this Agreement.

6. Reimbursement: In the event Lincoln, or any approved successor, fails to continue the operation of the Dealerships on the Property as provided in Section 5 of this Agreement, Lincoln, or such approved successor, shall forfeit the Holdback Funds and shall reimburse to the Village within sixty (60) days of receipt of a written demand from the Village specifying the amount of the reimbursement of the Incentive Payments due hereunder according to the following schedule:

If said event occurs during:

- * *Year one through year three - One hundred percent (100%) of the Incentive Payment*
- * *Year four through year six - seventy-five percent (75%) of the Incentive Payment*
- * *Year seven through ten - fifty percent (50%) of the Incentive Payment*

After the expiration of a sixty (60) day written demand by the Village to Lincoln 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, proceeding with an action in law or in equity to recover the amounts owed.

7. Limitation of Actions: No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents and employees, in any amount or in excess of any specific

sum agreed by the Village to be paid to Lincoln hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by the Village, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of Lincoln against the Village, its officers, directors, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

8. Assignments: Lincoln shall not assign this Agreement to any person or entity without the prior written consent of the Village, said consent not to be unreasonably withheld. No such assignment shall be effective, even if consented to by the Village, unless and until the Assignee acknowledges in writing to the Village that the obligations of the Village to Lincoln or any Assignee hereunder are contingent upon certain obligations on the part of Lincoln which such Assignee is willing to assume. Notwithstanding any such assignments and/or assumption of responsibility, Lincoln shall remain liable for all of its agreements, covenants and obligations and the performance thereof pursuant to this Agreement.

9. Prevailing Wage: Lincoln is hereby notified by the Village that work contemplated by this Agreement may be subject to the Prevailing Wage Act 820 ILCS 130/1 *et seq.* Lincoln agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by the Illinois Department of Labor (IDOL). Lincoln 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, Lincoln agrees to pay the prevailing wage rates and to require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform work on the projects contemplated by this Agreement. For applicable rates, go to the State of Illinois - Department of Labor website and use the most current DuPage County rate. Lincoln recognizes and agrees that it is solely responsible for compliance with the Prevailing Wage Act and agrees to fully indemnify,

defend and hold harmless the Village pursuant to Section 10 below with regard to any actions or proceedings instituted regarding such compliance.

10. Indemnification: In the event that any third party or parties institutes any legal proceedings against the Village and/or Lincoln, which relate to the terms of this Agreement, then, in that event, Lincoln shall indemnify and hold harmless the Village from any and all such proceedings. Further, Lincoln, upon receiving notice from the Village of such legal proceedings, shall assume, fully and vigorously, the entire defense of such lawsuit or proceedings and any and all costs and expenses of whatever nature relating thereto; provided, however, that Lincoln may not at any time settle or compromise such proceedings without the Village's consent and even then only so long as such settlement or compromise does not involve an admission of wrongdoing on the part of the Village, nor any liability on the part of the Village, monetary or otherwise.

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

In the event that the Village institutes legal proceedings against Lincoln for a breach of this Agreement, or any term or condition hereof, and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in any judgment against Lincoln all costs and expenses of such legal proceedings incurred by the Village, including but not limited to court costs, reasonable attorney's fees and witnesses' fees, incurred in connection therewith. Either party may, in

its sole discretion, appeal any judgment rendered in relation thereto.

11. Breach: In the event of breach of any of the terms and conditions of this Agreement, the non-breaching party shall have the right to terminate this Agreement, which will not relieve the breaching party from performance. In addition, the non-breaching party shall have the right, by any action or proceeding at law or in equity, to secure the specific performance of the covenants and agreements herein contained, and may be awarded damages or specific performance, or both, except that the exclusive remedy for the failure to meet the Section 5 commitment is the payment of the scheduled reimbursements as set forth in Section 6. The foregoing rights and remedies shall be cumulative and exclusive. Nothing herein shall modify, limit or abrogate any right of the Village to a refund as provided under Section 6 of this Agreement.

12. Amendments: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings by and between the parties relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those expressly set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with the law and reduced in writing and signed by them.

13. Time: Time is of the essence under this Agreement and all time limits set forth herein are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

14. Notices: Any notices required in this Agreement shall be effective when in writing and upon mailing by certified mail return receipt requested, or by delivering the same in person or to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

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

All notices to Westmont Lincoln

15. Exhibits: Exhibits attached hereto are hereby incorporated in and made a part of this Agreement.

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

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

18. Authorization to Execute: The officers of Lincoln who have executed this Agreement hereby warrant that he/she has been lawfully authorized by Lincoln to execute this Agreement on behalf of Lincoln.

WITNESS their hands and seals the day and year first above written.

THE VILLAGE OF DOWNERS GROVE, ILLINOIS,
 an Illinois Municipal Corporation

By _____
 Mayor

Attest _____
 Village Clerk

Date _____

WESTMONT LINCOLN, LLC,
an Illinois Limited Liability Company

By 

Attest _____
Secretary

Date April 5, 2017

\\nw\Agr.17\STRA-Lincoln-212-Ogden

EXHIBIT A
Design Plan



LINCOLN CERTIFIED PRE-OWNED CENTER
 OGDEN LINCOLN

216 OGDEN AVENUE
 DOWNERS GROVE ILLINOIS
 FEBRUARY 20, 2017





SOUTH ELEVATION
SCALE 1/8"=1'-0"



WEST ELEVATION
SCALE 1/8"=1'-0"

PROPOSED EXTERIOR RENOVATIONS FOR
OGDEN LINCOLN
28 OGDEN AVENUE
DOWNERS GROVE, ILLINOIS

DM&S ARCHITECTS, P.C.
117 HEATH PLACE
WESTMONT, ILLINOIS 60090