

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

☐ Resolution or Ordinance (Blue) ☐ Waiver of First Requested
☒ Recommendations of Boards, Commissions & Committees (Green)
☐ Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE : April 12, 2022, (BOT) Date: April 21 , 2022

SUBJECT: An Ordinance Authorizing a Business Retention Economic Incentive Agreement for Heritage Cadillac, Inc., located at 303 W. Roosevelt Road.

SUBMITTED BY: William J. Heniff, AICP, Director of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Ordinance approves an Business Retention Economic Incentive Agreement between the Village and Heritage Cadillac, Inc., an Illinois corporation (the "Business Owner") and associated with a parcel of approximately 8.13 acres in area and located at 303 West Roosevelt Road (the "Property"). The Business Owner seeks to make capital improvements to the Property consisting of demolition and building a new motor vehicle sales showroom, building electric motor vehicle infrastructure, installation electric vehicle charging stations and parking lot storm sewer and paving improvements. The estimated costs of the project range from \$5,500,000 to over \$7,000,000. The Village will reimburse the Developer from funds established within the Village Economic Development Fund, which was approved by Ordinances 7990 through 7992 in October, 2021. Fund availability shall be available in an amount not to exceed 50 percent of the eligible project costs or \$3,500,000, whichever is less, over the 20 year life of the Agreement. Reimbursements shall be solely performance based and based upon a tiered schedule of vehicles sold on the premises and subject to other performance measures and obligations.

The incentive request was introduced to the Economic & Community Development Committee at their November 8, 2021 meeting and the ECDC directed staff and Village Counsel to prepare a final Agreement for Village Board consideration. As the incentive exceeds the ten year incentive policy limitation provision, the request is being placed on Items for Separate Action.

Review (as necessary):

Finance Director _____ Date _____
Village Manager _____ Date _____

MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development 

MEETING DATE: April 21, 2022

RE: **Heritage Cadillac Inc. Business Retention Economic Incentive Agreement**

Attached is a Business Retention Economic Incentive Agreement for Heritage Cadillac, located at 303 W. Roosevelt Road. The Agreement has been reviewed by Heritage's Counsel and is being placed on the April 21, 2022 Village Board meeting agenda for consideration and approval under Items for Separate Action.

BACKGROUND

Heritage Cadillac, Inc., is seeking to make significant capital investments to their existing new and pre-owned vehicle dealership and ancillary repair facility on their 8.13-acre site. During Summer and Fall, 2021, they identified a potential capital investment of up approximately \$7,000,000 to the property, which will consist of new construction/renovation items, property maintenance upgrades and Electronic Vehicle Conversion upgrades. To that end, they sought incentive assistance from the Village which is intended to help offset the aforementioned costs, in an amount of fifty percent (50%) of the proposed additional capital investment to their facility, up to a cap of \$3,500,000. Heritage also represented that they were considering relocation options outside of the Lombard's corporate limits.

This item was introduced and discussed at length a Special Meeting of the ECDC on November 17, 2021. Kane McKenna & Associates, the Village economic development consultant completed a review of the incentive request as well. The ECDC unanimously recommended to direct staff to work with Village Counsel and Heritage representatives to complete a negotiation effort and prepare a performance based Business Retention Incentive Agreement for Village Board consideration.

TERM SHEET EXECUTIVE SUMMARY

Parties: Heritage Cadillac Inc. and the Village of Lombard.

Controlling Elements:

- Illinois Municipal Code (65 ILCS 5/8-1-2.5) (the “Economic Development Statute”) to appropriate and expend funds for economic development purposes.
- Ordinance 7990 “An Ordinance Establishing an Economic Development Fund,” to provide a Village funding source for business retention activities;
- Ordinance 7991 “An Ordinance Authorizing Additions and Amendments to the Village of Lombard Financial Policies Regarding the Year End General Fund Reserve Maintenance Policy adopted July 21, 2016,” providing funds into the Economic Development Fund; and
- Ordinance 7992 “An Ordinance Approving a Lombard Business Retention Economic Incentive Policy,” to provide for economic incentives to retain businesses.

Project:

- Heritage desires to substantially upgrade the dealership by building a new motor vehicle sales showroom, building electric motor vehicle infrastructure, installation electric vehicle charging stations and making parking lot storm sewer and paving improvements, which is necessary in order for the dealership to remain on the property and in the Village.
- The projected cost is estimated to be approximately \$5,500,000.00 to \$7,000,000.00.
- The project is expected to create and maintain job opportunities; serve to further the development of adjacent areas and stabilize the Roosevelt Road corridor; without the agreement, the project would not be possible; strengthen the commercial sector; stabilize and enhance the tax base; meets eligibility requirements in the Business Retention Economic Incentive Policy; and is in the best interests of the Village.

OBLIGATIONS OF HERITAGE

Key Pre-Construction Submissions and Reviews:

1. Within 120 days after the approval date, the Heritage shall provide the Village with the construction plans and associated costs.
2. Within 180 days, the Heritage shall provide the Village with a construction schedule.

3. On or before December 31, 2022, Heritage shall apply for all zoning approvals needed from the Village to construct and operate the Project.
4. On or before the later of April 1, 2023 or granting of the zoning approvals needed from the Village to construct and operate the Project, Heritage shall apply for demolition and building permits.

Construction of the Project:

1. On or before August 1, 2023, construction of all portions of the Project shall commence.
2. On or before June 1, 2024, completion of the Project shall occur, meaning that the Project has received a final certificate of occupancy and zoning certificate from the Village.
3. Within 30 days of completion of the Project, the Heritage shall supply the Village with a sworn statement of the final paid construction costs of the Project.
4. The Project shall be built and operated in accordance with all applicable Village codes.
5. Heritage shall be responsible for the payment of all fees, in relation to the construction of the Project, as well as any required by any other governmental entities.
6. Heritage shall comply with, and require its contractors to comply with, the Illinois Prevailing Wage Act, 820 ILCS 130/0.01, *et seq.*, in relation to the project construction.

Operations:

1. The Dealership shall operate as a General Motors Cadillac motor vehicle dealership, or another premium motor vehicle dealership other than, or in addition to, General Motors Cadillac, as approved by the Village, considering the market valuation of the vehicles anticipated to be sold.
2. The Dealership shall, as an ancillary use, also operate a motor vehicle service facility and a motor vehicle repair facility.
3. The Dealership shall employ no less than fifty (50) full-time equivalent employees (the "FTE Standard").
4. The Dealership shall generate Property Taxes and Sales Taxes. All motor vehicles at the Dealership sold, transferred or conveyed to a purchaser shall produce Sales Taxes.
5. The Subject Property shall not be asserted to have a tax-exempt status.

6. The property's assessed value shall not be challenged, contested or a reduction sought thereto, such that the minimum equalized assessed value (EAV) for any given year for the property. No property tax challenge, contest or reduction shall be made such that the EAV for any given year for the property would be less than the base minimum EAV.
7. The Dealership shall operate in compliance with all applicable laws and requirements.
8. Heritage agrees to promptly pay all property taxes and governmental charges of general applicability that may be lawfully assessed.
9. Heritage shall timely provide the Village with documents and information requested regarding the Heritage's and the Dealership's obligations.
10. Heritage shall reimburse the Village for any third-party costs incurred by the Village associated with the negotiation, or preparation, of the Agreement.

VILLAGE OBLIGATIONS AND UNDERTAKINGS

1. Standard Village cooperation provisions pertaining to permits and approvals.
2. If the Substantial Completion Date is on or before July 1, 2024, and if the conditions precedent and ongoing conditions are met, the Village shall make incentive payments:
 - a. The total Incentive Payments shall not exceed the lesser of 50% of the Project Costs or \$3,500,000.00 ("Incentive Cap"). If economic incentives, for the electric vehicle portion of the Project is received from General Motors, the State or the federal government, then:
 - (a) Heritage shall inform the Village of the amount of the alternative incentive; (b) Heritage shall provide the Village with the entity name that awarded the alternative incentive; (c) Heritage shall provide the Village with documents reflecting the terms of the alternative incentive; and (d) the incentive cap shall be reduced by the amount of the alternative incentive.
 - b. Incentive payments shall be made until the earlier of the Incentive Cap being reached or 20 years after the second April 1 after the substantial completion date, so as to allow the Heritage the opportunity to receive up to 20 incentive payments. The Agreement shall remain in full force and effect until December 31, 2045.
 - c. Heritage shall receive incentive payments annually from the Economic Development Fund.

The amount of each incentive payment shall be based on the number of vehicles sold during the preceding twelve (12) month period of January 1 through December 31 of the applicable year, as follows:

Tier	Annual Vehicles Sold	Annual Amount of Public Assistance
1	1,351 or greater	\$218,000
2	1,251-1,350	\$210,000
3	1,051-1,250	\$178,000
4	1,001-1,050	\$166,000
5	951-1,000	\$158,000
6	901-950	\$150,000
7	851-900	\$141,000
8	801-850	\$133,000
9	751-800	\$125,000
10	701-750	\$117,000
11	less than 701	\$113,000

“Annual Vehicles Sold” means the number of retail sales of new motor vehicles at the Dealership that produced Sales Taxes, plus the number of retail sales of operable pre-owned motor vehicles at the Dealership that produced Sales Taxes plus the number of retail sales of leased motor vehicles at the Dealership that produced Sales Taxes.

- d. Heritage shall submit to the Village an annual “Request for Incentive Payment,” including the following:
 - i. The number of vehicles sold;
 - ii. The Illinois Department of Revenue ST-556 “Sales Tax Transaction Return,”
 - iii. Documents and information establishing the FTE Standard was met; and
 - iv. A statement of whether the Heritage is following the Agreement.
- e. The Village shall review such requests, and, if entitled to receive an Incentive Payment, within thirty (30) days of receipt of the Incentive Payment Request, the Village shall pay the Incentive Payment to the Heritage from the Fund.
- f. For Heritage to receive an Incentive Payment, there must be an adequate balance in the Fund to pay the Incentive Payment, or a portion thereof. If the Fund has an inadequate

balance to make the full incentive payment due in a given year, the amount owed shall carryover until paid and may result in an extension of this Agreement.

- g. Incentive payments shall not be in excess of the incentive cap.
- h. If the State either eliminates, or reduces Sales Taxes received by the Village by 60% or more from the sales tax rate as of the effective date, which is 1%, without providing an alternate source of revenue to make up the difference, the Village shall no longer have the obligation to pay the incentive payments and the agreement shall terminate.

ACTION REQUESTED

Attached is an Ordinance authorizing the Economic Incentive Agreement between the Village and Heritage Cadillac for consideration and approval on Separate Action. Staff will provide a summation of the Agreement at the Village Board meeting.

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING
A BUSINESS RETENTION ECONOMIC INCENTIVE AGREEMENT
FOR THE HERITAGE CADILLAC DEALERSHIP REDEVELOPMENT
IN THE VILLAGE OF LOMBARD, ILLINOIS**

BE IT ORDAINED, by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village of Lombard (the “Village”) find as follows:

- A. The Village is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The Village deems it to be of significant importance to encourage development and redevelopment within the Village, and to retain successful businesses operating in the Village.
- C. 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 encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to 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 take action in the best interests of the Village.
- D. Pursuant to Article VII, Section 10 of the 1970 Illinois Constitution, the Village has the authority to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or ordinance.
- E. The Village is authorized under Section 8-1-2.5 of the Illinois Municipal Code (65 ILCS 5/8-1-2.5) (the “Economic Development Statute”) to appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any commercial enterprise, that are deemed necessary or desirable for the promotion of economic development within the Village.

- F. The Village has adopted three (3) ordinances related to the expenditure of funds for economic development purposes for qualifying business retention and economic development incentive activities:
1. In Ordinance 7990, entitled "An Ordinance Establishing An Economic Development Fund," adopted October 21, 2021, the Village established an "Economic Development Fund" to provide a Village funding source for business retention activities;
 2. In Ordinance 7991, entitled "An Ordinance Authorizing Additions And Amendments To The Village Of Lombard Financial Policies Regarding The Year End General Fund Reserve Maintenance Policy Adopted July 21, 2016," adopted October 21, 2021, the Village amended its "Year-End General Fund Reserve Maintenance Policy" to provide for funds to be deposited into the Economic Development Fund if certain conditions are met; and
 3. In Ordinance 7992, entitled "An Ordinance Approving A Lombard Business Retention Economic Incentive Policy," adopted October 21, 2021, the Village adopted a "Business Retention Economic Incentive Policy" to provide for economic incentives to retain businesses.
- G. Heritage Lombard, L.L.C., a Delaware limited liability company (the "Property Owner"), owns approximately eight and thirteen-hundredths (8.13) acres of real property commonly known as 303 West Roosevelt Road, Lombard, Illinois 60148 (the "Subject Property"), as legally described in **EXHIBIT 1** attached hereto and made part hereof, on which Heritage Cadillac Inc., an Illinois corporation (the "Business Owner") operates a General Motors Cadillac motor vehicle dealership, a used motor vehicle dealership and an ancillary motor vehicle repair facility (collectively the "Dealership").
- H. The Dealership operates under a Village-approved conditional use planned development granted in Ordinance 5309, entitled "An Ordinance Granting Conditional Uses For A Planned Development With Deviations For Wall Signage; Motor Vehicle Sales, Service And Repair; And More Than One Principal Building In The B4 Corridor Commercial District," adopted June 5, 2003, which allows the Dealership to conduct motor vehicle sales, and ancillary service and repair activities on the Subject Property.
- I. Business Owner desires to substantially renovate, improve and upgrade the Dealership by building a new motor vehicle sales showroom, building electric motor vehicle infrastructure, installation electric vehicle charging stations and making parking lot storm sewer and paving improvements

(collectively the "Project"), which Project the Property Owner approves of, and which Project is necessary in order for the Dealership to remain on the Subject Property and in the Village.

- J. Business Owner represented to the Village that the Project, if constructed, would allow Heritage Cadillac to (1) remain one of the Village's top retail sales tax generating businesses for the next twenty (20) years or more, (2) retain and grow employment opportunities in the Village and (3) potentially drive new business to the Village.
- K. The projected cost of the Project is estimated to be approximately Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) to Seven Million and No/100 Dollars (\$7,000,000.00).
- L. Business Owner and the Village acknowledge that Business Owner requires economic assistance from the Village in order to complete the Project, and that the Project would not be economically feasible as proposed, but for the economic assistance promised by the Village in the "Business Retention Economic Incentive Agreement for the Heritage Cadillac Dealership Redevelopment in the Village of Lombard, Illinois" attached hereto in **EXHIBIT 2** and made a part hereof (the "Economic Incentive Agreement").
- M. The Village finds that:
 - 1. The Project is expected to create and maintain job opportunities within the Village;
 - 2. The Project will serve to further the development of adjacent areas and stabilize the Roosevelt Road corridor in which the Subject Property is located;
 - 3. Without the Economic Incentive Agreement, the Project would not be possible;
 - 4. The Project will strengthen the commercial sector of the Village;
 - 5. The Project will stabilize and enhance the tax base of the Village;
 - 6. The Project meets the eligibility requirements for a business retention incentive in the Business Retention Economic Incentive Policy; and
 - 7. The Economic Incentive Agreement is made in the best interests of the Village.

- M. In accordance with the Economic Development Statute, it is in the best interests of the Village to approve the Economic Incentive Agreement, so that economic development and redevelopment on the Subject Property, within the vicinity of the Subject Property, and within the Village as a whole may continue, the economic development and redevelopment, pursuant to the Economic Development Statute, being the Village's public purpose for providing the incentive set forth in the Economic Incentive Agreement.

SECTION 2: That based upon the foregoing, and pursuant to the Economic Development Statute, the Economic Incentive Agreement, attached hereto as **EXHIBIT 2**, is hereby approved, and the Village President and Village Clerk of the Village be and they are hereby authorized and directed to execute and deliver the Economic Incentive Agreement, as well as execute and deliver such other instruments as may be necessary or convenient to carry out the terms of the Economic Incentive Agreement.

SECTION 3: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as provided by law.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Passed on first reading this ____ day of _____, 2022.

First reading waived by action of the Board of Trustees this ____ day of _____, 2022.

Passed on second reading this ____ day of _____, 2022, pursuant to a roll call vote as follows.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2022.

Keith Giagnorio, Village President

ATTEST:

Elizabeth Brezinski, Village Clerk

Published by me in pamphlet form this ____ day of _____, 2022.

Elizabeth Brezinski, Village Clerk

EXHIBIT 1

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

LOT 1 IN THE HERITAGE CADILLAC PLAT OF SUBDIVISION, BEING A SUBDIVISION LOCATED WITHIN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 19 OF TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED SEPTEMBER 9, 2005 AS DOCUMENT R2005-198825, IN DUPAGE COUNTY, ILLINOIS.

Parcel Identification Number: 06-19-200-016

Common Address: 303 West Roosevelt Road, Lombard, Illinois 60148

EXHIBIT 2

**BUSINESS RETENTION ECONOMIC INCENTIVE AGREEMENT FOR THE
HERITAGE CADILLAC DEALERSHIP REDEVELOPMENT IN THE VILLAGE OF
LOMBARD, ILLINOIS**

(attached)

**BUSINESS RETENTION ECONOMIC INCENTIVE AGREEMENT
FOR THE HERITAGE CADILLAC DEALERSHIP REDEVELOPMENT
IN THE VILLAGE OF LOMBARD, ILLINOIS**

This **BUSINESS RETENTION ECONOMIC INCENTIVE AGREEMENT FOR THE HERITAGE CADILLAC DEALERSHIP REDEVELOPMENT IN THE VILLAGE OF LOMBARD, ILLINOIS** (the "Agreement") is made and entered into this ____ day of _____, 2022, and is by, between and among the **VILLAGE OF LOMBARD**, an Illinois non-home rule Village corporation (the "Village"), and **HERITAGE CADILLAC INC.**, an Illinois corporation (the "Business Owner"). The Village and the Business Owner shall be collectively referred to herein as the "Parties" and individually as a "Party."

In consideration the mutual promises, covenants and agreements contained herein, another consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto agree as follows:

RECITALS

- A. The Village deems it to be of significant importance to encourage development and redevelopment within the Village, and to retain successful businesses operating in the Village.
- B. 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 encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to 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 take action in the best interests of the Village.
- C. Pursuant to Article VII, Section 10 of the 1970 Illinois Constitution, the Village has the authority to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or ordinance.
- D. The Village is authorized under Section 8-1-2.5 of the Illinois Municipal Code (65 ILCS 5/8-1-2.5) (the "Economic Development Statute") to appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any commercial enterprise, that are deemed necessary or desirable for the promotion of economic development within the Village.
- E. The Village has adopted three (3) ordinances related to the expenditure of funds for economic development purposes for qualifying business retention and economic development incentive activities:

1. In Ordinance 7990, entitled “An Ordinance Establishing An Economic Development Fund,” adopted October 21, 2021, the Village established an “Economic Development Fund” to provide a Village funding source for business retention activities;
 2. In Ordinance 7991, entitled “An Ordinance Authorizing Additions And Amendments To The Village Of Lombard Financial Policies Regarding The Year End General Fund Reserve Maintenance Policy Adopted July 21, 2016,” adopted October 21, 2021, the Village amended its “Year-End General Fund Reserve Maintenance Policy” to provide for funds to be deposited into the Economic Development Fund if certain conditions are met; and
 3. In Ordinance 7992, entitled “An Ordinance Approving A Lombard Business Retention Economic Incentive Policy,” adopted October 21, 2021, the Village adopted a “Business Retention Economic Incentive Policy” to provide for economic incentives to retain businesses.
- F. Heritage Lombard, L.L.C., a Delaware limited liability company (the “Property Owner”), owns approximately eight and thirteen-hundredths (8.13) acres of real property commonly known as 303 West Roosevelt Road, Lombard, Illinois 60148 (the “Subject Property”), legally described and depicted, respectively, in **EXHIBITS A-1** and **A-2**, attached hereto and made part hereof, on which the Business Owner operates a General Motors Cadillac motor vehicle dealership, a used motor vehicle dealership and an ancillary motor vehicle repair facility (collectively the “Dealership”).
- G. The Dealership operates under a Village-approved conditional use planned development granted in Ordinance 5309, entitled “An Ordinance Granting Conditional Uses For A Planned Development With Deviations For Wall Signage; Motor Vehicle Sales, Service And Repair; And More Than One Principal Building In The B4 Corridor Commercial District,” adopted June 5, 2003, which allows the Dealership to conduct motor vehicle sales, and ancillary service and repair activities on the Subject Property (the “Planned Development Ordinance”).
- H. Business Owner desires to substantially renovate, improve and upgrade the Dealership by building a new motor vehicle sales showroom, building electric motor vehicle infrastructure, installation electric vehicle charging stations and making parking lot storm sewer and paving improvements, as further described and depicted in **EXHIBITS B-1** and **B-2**, respectively, attached hereto and made a part hereof (collectively the “Project”), which Project the Property Owner approves of, and which Project is necessary in order for the Dealership to remain on the Subject Property and in the Village.
- I. The Business Owner represented to the Village that the Project, if constructed, would allow Heritage Cadillac to (1) remain one of the Village’s top retail sales tax

generating businesses for the next twenty (20) years or more, (2) retain and grow employment opportunities in the Village and (3) potentially drive new business to the Village.

- J. The projected cost of the Project is estimated to be approximately Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) to Seven Million and No/100 Dollars (\$7,000,000.00), as more fully set forth on **EXHIBIT C** attached hereto and made part hereof.
- K. The Village finds that:
1. The Project is expected to create and maintain job opportunities within the Village;
 2. The Project will serve to further the development of adjacent areas and stabilize the Roosevelt Road corridor in which the Subject Property is located;
 3. Without this Agreement, the Project would not be possible;
 4. The Project will strengthen the commercial sector of the Village;
 5. The Project will stabilize and enhance the tax base of the Village;
 6. The Project meets the eligibility requirements for a business retention incentive in the Business Retention Economic Incentive Policy; and
 7. This Agreement is made in the best interests of the Village.
- L. Business Owner and the Village acknowledge that Business Owner requires economic assistance from the Village in order to complete the Project, and that the Project would not be economically feasible as proposed, but for the economic assistance promised by the Village in this Agreement.
- M. Because the Project would not be economically feasible but for the economic assistance promised by the Village in this Agreement, the Village agrees, pursuant to the terms of this Agreement, to make economic incentive payments to Business Owner of up to fifty percent (50%) of the Project costs up to a not to exceed amount of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00), for up to a twenty (20) year period, subject to the terms and conditions of this Agreement.
- N. Business Owner is unable and / or unwilling to undertake the redevelopment of the Subject Property with the Project, but for the economic incentives to be provided by the Village in accordance with the Economic Development Statute, which the Village indicated it was willing to provide, under the terms and conditions contained

herein. The Parties acknowledge and agree that, but for the economic incentives to be provided by the Village, Business Owner cannot successfully and economically redevelop the Subject Property with the Project as proposed by the Business Owner. The Village has determined that it is desirable and in the Village's best interest to assist Business Owner, in the manner set forth herein and as this Agreement.

- O. This Agreement has been submitted to the Corporate Authorities of the Village (as defined below) 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.
- P. This Agreement has been submitted to the Business Owner for consideration and review, and the Business Owner has taken all actions required to be taken prior to the execution of this Agreement, and any and all actions of the Business Owner precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- Q. The Village is desirous of having the Subject Property rehabilitated with the Project in order to serve the needs of the Village, increase employment opportunities, stimulate commercial growth and economic development, and stabilize the tax base of the Village and, in furtherance thereof, the Village is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the Village and Business Owner hereby agree as follows:

I. RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate, and incorporate such recitals into this Agreement as if fully set forth herein.

II. 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, and as follows:

- A. **"Change in Law"** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) 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); (2) the order or judgment of any federal or State court, administrative agency or other governmental body (other than the Village); or (3) 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). Change in Law, for purposes of this Agreement, shall also include 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 actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the Village, except as provided herein).

- B. **"Village Code"** means the Village of Lombard Village Code, as amended.
- C. **"Corporate Authorities"** means the President and Board of Trustees of the Village of Lombard, Illinois.
- D. **"Day"** means a calendar day.
- E. **"Effective Date"** means the day on which this Agreement is executed by the last of the signatories, as set forth below, with said date appearing on page 1 hereof.
- F. **"Party / Parties"** means the Village and / or the Business Owner, individually/collectively, and their respective successors and / or assigns as permitted herein, as the context requires.
- G. **"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.
- H. **"State"** means the State of Illinois.

- I. **"Uncontrollable Circumstance"** means any event which:
1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
 2. is one or more of the following events:
 - a. a Change in Law that materially alters the obligations of a Party;
 - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
 - c. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - d. governmental condemnation or taking other than by the Village;
 - e. strikes or labor disputes, or work stoppages not initiated by the Business Owner or the Village;
 - f. unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authorities having jurisdiction other than the Village including but not limited to, the Illinois Department of Transportation and / or the Illinois Environmental Protection Agency;
 - g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
 - h. unknown or unforeseeable geo-technical or environmental conditions;
 - i. major environmental disturbances;
 - j. vandalism; or
 - k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in Section II.1.2.g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that a Party is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day without penalty or damages to either Party.

- J. **"Property Taxes"** means taxes received by the Village pursuant to the Property Tax Code (35 ILCS 200/1-1, *et seq.*), as amended, or any taxes

received by the Village as a replacement for the taxes currently received pursuant to the Property Tax Code.

- K. **"Sales Taxes"** means taxes received by the Village pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1, *et seq.*, as amended, and the Service Occupation Tax Act, 35 ILCS 115/1, *et seq.*, as amended, or any taxes received by the Village as a replacement for the taxes currently received pursuant to the Retailers' Occupation Tax Act or the Service Occupation Tax Act.

III. CONSTRUCTION OF TERMS

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 words "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, 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, or his / her designee, 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. The Business

Owner is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.

- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Business Owner in a different manner Business Owner hereby designates Wayne Balogh 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 the Business Owner and with the effect of binding the Business Owner in that connection (such individual being designated as an "Authorized Business Owner Representative"). The Business Owner shall have the right to change its Authorized Business Owner Representative by providing the Village with written notice of such change from both authorized representatives which notice shall be sent in accordance with Section VII.E. of this Agreement.

IV. COOPERATION OF THE PARTIES

The Village and the Business Owner agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement, and specific approvals by the Village in the future, relative to the development of the Property and the Project, including zoning applications relative thereto, and Village-issued permits and approvals relative thereto.

V. OBLIGATIONS OF BUSINESS OWNER AND CONDITIONS PRECEDENT TO VILLAGE UNDERTAKINGS

- A. **Condition Precedent.** Each of the Business Owner's and the Dealership's obligations in this Article V. shall be a condition precedent to the Village's financial undertakings in this Agreement. The Village shall have no financial obligations under this Agreement until the satisfaction by Business Owner and the Dealership of each and every condition precedent of this Article V. The Village shall have no financial obligations under this Agreement unless the ongoing obligations of the Business Owner and the Dealership in this Article V. remain satisfied.
- B. **Pre-Construction Submissions and Reviews.** Subject to Uncontrollable Circumstances:
 - 1. Within one hundred twenty (120) days after the Effective Date, the Business Owner shall provide the Village with the Project construction plans and associated Project construction costs (the "Plans and Costs Submittal"). The Village shall review the Plans and

Costs Submittal by construction discipline, either through an internal Village staff review, utilization of the *Means Construction Manual*, or other comparable construction documents, and / or a third-party review, to determine whether the proposed scope of work and proposed costs in the Plans and Costs Submittal are commercially reasonable. If, the Village finds, in its reasonable discretion, that the costs are not reflective of market conditions, the Village reserves the right to request that the Business Owner provide additional documentation and information setting forth the rationale and basis for the proposed Project costs in the Plans and Costs Submittal. Categories of Project costs in the Plans and Costs Submittal shall be subject to the not to exceed amounts in **EXHIBIT C**. Through this review, if the Village determines that the Project costs in the Plans and Costs Submittal are reasonable, the Village shall provide a written correspondence to the Business Owner confirming the Project costs in the Plans and Costs Submittal and establishing the Village-approved "Project Costs," which Project Costs shall not exceed Seven Million and No/100 Dollars (\$7,000,000.00). Additional improvements to the Subject Property, not included in the Plans and Costs Submittal, shall not be eligible for inclusion in the Project Costs.

2. Within one hundred eighty (180) days after the Effective Date, the Business Owner shall provide the Village with a Project construction schedule.
3. On or before the later of August 1, 2022, or thirty (30) days after the Business Owner's submission of all information and materials needed for the Village to determine which zoning actions the Village believes are required for the Business Owner to construct and operate the Project, the Village shall provide the Business Owner with a list of the zoning actions which the Village believes are required for the Business Owner to construct and operate the Project, including amendments to the Planned Development Ordinance to allow the Business Owner to construct and operate the Project. However, the list to be provided by the Village to the Business Owner under this Section V.B.4. shall not constitute a representation or promise by the Village that any zoning approvals or relief for the Project will be approved, as such the decision on such approvals are in the sole and absolute discretion of the Corporate Authorities after a public hearing held before the Village's Plan Commission.
4. On or before December 31, 2022, the Business Owner shall apply for all zoning approvals and relief needed from the Village for the Business Owner to construct and operate the Project, including such

amendments to the Planned Development Ordinance as are needed to construct and operate the Project.

5. On or before the later of April 1, 2023 or granting of the zoning approvals and relief needed from the Village for the Business Owner to construct and operate the Project, the Business Owner shall (a) apply with the Village for demolition and building permits for the Project, and (b) apply for all necessary Project permits and approvals from all governmental agencies having jurisdiction over the Property, other than the Village, as may be necessary to commence construction of the Project.

C. Construction of the Project.

1. Subject to Uncontrollable Circumstances:
 - a. On or before August 1, 2023, construction of all portions of the Project shall commence.
 - b. On or before June 1, 2024, completion of the Project shall occur, meaning that the Project has received a final certificate of occupancy and zoning certificate from the Village.
 - c. Within thirty (30) days of completion of the Project, the Business Owner shall supply the Village with a sworn statement of the final paid construction costs of the Project certified as true by an officer of the Business Owner, paid lien waivers related thereto, and such other information and materials as are reasonably requested by the Village's Finance Director. The Business Owner represents and warrants that all such information produced to the Village pursuant to this provision is, to the best of the Business Owner's knowledge, true and accurate, and agrees and acknowledges that the Village may, and does, rely on the truth and accuracy of said information as a basis for its entering into this Agreement. The date the Business Owner provides the Village with the sworn statement, lien waivers and information reasonably requested by the Village's Finance Director shall be the "Substantial Completion Date."
2. The Project shall be built and operated in accordance with all applicable ordinances, rules and regulations of the Village. Business Owner shall not knowingly cause or permit the existence of any violation of Village ordinances, rules or regulations, including, but not limited to, Article VX of the Village Code (i.e., the Building Code, the Sign Ordinance, the Subdivision & Development Ordinance and the

Zoning Ordinance), and all rules and regulations thereunder applicable to the Project.

3. The Business Owner shall be responsible for the payment of any and all fees, applicable to the development approval in relation to, and / or the construction of, the Project, as provided for by the Village Code as well as any required by any other governmental entities as required to facilitate the Project.
4. The Business Owner shall comply with, and require its contractors and subcontractors to comply with, the Illinois Prevailing Wage Act, 820 ILCS 130/0.01, *et seq.*, in relation to the construction of the Project.

D. Operation of the Project.

1. The Dealership shall operate as a General Motors Cadillac motor vehicle dealership, or another premium motor vehicle dealership other than, or in addition to, General Motors Cadillac, as approved by the Village in its sole discretion, taking into account the market valuation of the vehicles anticipated to be sold on the Subject Property.
2. The Dealership shall, as an ancillary use to the use set forth in Section VI.D.1. above, also operate a motor vehicle service facility and a motor vehicle repair facility.
3. The Dealership shall employ no less than fifty (50) full-time equivalent employees (the "FTE Standard").
4. The Dealership shall generate Property Taxes and Sales Taxes. All motor vehicles at the Dealership sold, transferred or conveyed to a purchaser shall produce Sales Taxes.
5. The Subject Property shall not be asserted to have a tax-exempt status.
6. The assessed value of the Subject Property shall not be challenged, contested or a reduction sought thereto, such that the minimum equalized assessed value for any given year for the Subject Property would be less than the amounts shown in **EXHIBIT D** attached hereto and made part hereof (the "Minimum EAV"). No property tax challenge, contest or reduction shall be made on the Subject Property such that the minimum equalized assessed value for any given year for the Subject Property would be less than the Minimum EAV.

7. The Dealership shall operate in compliance with the Village Code, and all applicable laws, regulations and requirements.
8. The Business Owner hereby covenants and agrees to promptly pay, or cause to be paid, before becoming delinquent, subject to any appeal rights, any and all Property Taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project and the Subject Property.
9. The Business Owner and the Dealership shall be in compliance with their obligations in this Agreement.
10. The Business Owner shall timely provide the Village with documents and information requested by the Village regarding the Business Owner's and the Dealership's obligations in this Agreement.
11. Upon receipt of an invoice prepared and transmitted by the Village, along with any necessary supporting documentation, the Business Owner shall reimburse the Village for any third-party costs incurred by the Village associated with the negotiation, or preparation, of this Agreement, as set forth in Chapter 16 of the Village Code, entitled "Cost Recovery."

VI. VILLAGE OBLIGATIONS AND UNDERTAKINGS

- A. **Village Cooperation.** The Village agrees to cooperate with the Business Owner in Business Owner's attempts to obtain all necessary approvals, licenses and / or permits from any governmental or quasi-governmental entity other than the Village and, upon request of the Business Owner, will promptly execute any applications or other documents (upon their approval by the Village) which the Business Owner intends to file with such other governmental agencies, quasi-governmental agencies and / or utility companies in regard to the Project. The Village shall further promptly respond to, and / or process, and consider reasonable requests of the Business Owner for applicable building approvals and / or permits, or other approvals, permits and / or licenses necessary for the construction of the Project. Approval of any building approvals and / or permit applications and / or engineering plans and / or operating licenses shall be contingent on the Business Owner providing all required and requested documentation including, but not limited to, building plans required to substantiate that said improvements fully conform with all applicable State statutes and also all Village ordinances and codes, as well as receipt of all required building approvals from any federal, State, regional or county agencies having applicable jurisdiction.

B. Incentive Amount, Conditions and Payment.

1. If the Substantial Completion Date is on or before July 1, 2024, and if the conditions precedent in Article V. of this Agreement are satisfied, and so long as the ongoing conditions in Article V. are met, the Village shall pay the Business Owner incentive payments as set forth in this Section VI.B. (each an "Incentive Payment" and together the "Incentive Payments").
2. The total amount of the Incentive Payments from the Village to the Business Owner shall not exceed the lesser of fifty percent (50%) of the Project Costs or Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) (the lesser amount shall be the "Incentive Cap"). If an economic incentive, or economic incentives, for the electric vehicle portion of the Project is received from General Motors, the State or the federal government (collectively the "Alternative Incentive"), then: (a) the Business Owner shall promptly inform the Village of the amount of the Alternative Incentive; (b) the Business Owner shall provide the Village with the name of the entity that awarded the Alternative Incentive; (c) the Business Owner shall provide the Village with documents and information reflecting the terms and conditions of the Alternative Incentive; and (d) the Incentive Cap shall be reduced by the amount of the Alternative Incentive.
3. The Incentive Payments shall be made until the earlier of the Incentive Cap being reached or twenty (20) years after the second April 1 after the Substantial Completion Date, so as to allow the Business Owner the opportunity to receive up to twenty (20) Incentive Payments.
4. The Business Owner shall receive Incentive Payments once per year from the Economic Development Fund as follows:
 - a. The amount of each Incentive Payment shall be based on the number of vehicles sold at the Dealership during the preceding twelve (12) month period of January 1 through December 31 (each an "Annual Incentive Period"), starting on the first January 1 after the Substantial Completion Date, and the amount of the Incentive Payment shall be calculated for each such twelve (12) month period of January 1 through December 31 as follows:

Tier	Annual Vehicles Sold	Annual Amount of Public Assistance
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1	1,351 or greater	\$218,000
2	1,251-1,350	\$210,000
3	1,051-1,250	\$178,000
4	1,001-1,050	\$166,000
5	951-1,000	\$158,000
6	901-950	\$150,000
7	851-900	\$141,000
8	801-850	\$133,000
9	751-800	\$125,000
10	701-750	\$117,000
11	less than 701	\$113,000

“Annual Vehicles Sold” means the number of retail sales of new motor vehicles at the Dealership that produced Sales Taxes, plus the number of retail sales of operable pre-owned motor vehicles at the Dealership that produced Sales Taxes plus the number of retail sales of leased motor vehicles at the Dealership that produced Sales Taxes.

- b. Before March 1 after the second January 1 after the Substantial Completion Date, and on or before each March 1 thereafter while this Agreement is in effect, the Business Owner shall submit to the Village’s Finance Director a sworn “Request for Incentive Payment,” in the form attached hereto as **EXHIBIT E** and made a part hereof (an “Incentive Payment Request”), which shall include the following information and materials relative to the Annual Incentive Period for which the Incentive Payment Request is being made:
 - i. The number of Annual Vehicles Sold;
 - ii. The Illinois Department of Revenue ST-556 “Sales Tax Transaction Return,” or any supplemental form or revision thereof (the “Sales Tax Form”), submitted to the Illinois Department of Revenue for each Annual Vehicle Sold, or, if the Sales Tax Form is no longer submitted to the Illinois Department of Revenue, then the information and materials included in a Sales Tax Form as of the Effective Date;
 - iii. Documents and information establishing the FTE Standard was met; and
 - iv. A statement of whether the Business Owner and the Dealership are in compliance with the Agreement.

- c. The Village shall review the Incentive Payment Request, and, if the Business Owner is entitled to receive an Incentive Payment, within thirty (30) days of receipt of the Incentive Payment Request, the Village shall pay the Incentive Payment to the Business Owner from the Economic Development Fund. The Village may request documents and information to confirm whether the Business Owner is entitled to receive an Incentive Payment. Each day the Village waits for documents and information from the Business Owner shall extend the thirty (30) days Village review period in this Section VI.B.4.c. If the Village determines that the Business Owner is not entitled to receive an Incentive Payment, the Village shall provide the Business Owner with a written explanation within thirty (30) days of receipt of the Incentive Payment Request, and the Business Owner may resubmit the Incentive Payment Request after correcting the deficiencies noted by the Village.
- d. In order for the Business Owner to receive an Incentive Payment, there must be an adequate balance in the Economic Development Fund to pay the Incentive Payment, or a portion thereof. If the Economic Development Fund has an inadequate balance to make the full Incentive Payment due in a given year, the amount owed shall carryover until paid and may result in an extension of this Agreement.
- e. The Incentive Payments shall not be in excess of the Incentive Cap.
- f. If the State either eliminates, or reduces, Sales Taxes received by the Village by sixty percent (60%) or more from the Sales Tax rate as of the Effective Date, which is one percent (1%), without providing an alternate source of revenue to make up the difference during the term of this Agreement, the Village shall no longer have the obligation to pay the Incentive Payments and this Agreement shall terminate. The Village shall provide the Business Owner with written notice of any such actions by the State.
- g. **THE INCENTIVE PAYMENTS TO BE MADE TO THE BUSINESS OWNER UNDER THIS AGREEMENT ARE A SPECIAL LIMITED OBLIGATION OF THE VILLAGE AND ARE PAYABLE SOLELY FROM AVAILABLE FUNDS IN THE ECONOMIC DEVELOPMENT FUND. PROPERTY TAXES AND SALES TAXES SHALL NOT BE AVAILABLE TO PAY THE INCENTIVE PAYMENTS. THE INCENTIVE**

PAYMENTS SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS, A LIEN OR A LOAN AGAINST THE GENERAL FUNDS, THE GENERAL TAXING POWERS OR CREDIT OF THE VILLAGE, OR A MORAL OBLIGATION OF THE VILLAGE, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE BUSINESS OWNER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE VILLAGE, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE INCENTIVE PAYMENTS. FUNDS IN THE ECONOMIC DEVELOPMENT FUND ARE THE SOLE SOURCE OF FUNDS TO BE USED TO PAY THE INCENTIVE PAYMENTS.

VII. GENERAL PROVISIONS

- A. **Assignment.** This Agreement may not be assigned by the Business Owner. In the event the Business Owner corporate entity is sold, this Agreement may be transferred with the Village's written permission, which permission the Village shall reasonably grant. If the Village grants written permission for the transfer of this Agreement, the sale of the Business Owner corporate entity shall not relieve the successor owner thereof of any violations, breaches or defaults by Business Owner existing as of the date of said sale and transfer.
- B. **Business Owner Authority.** Business Owner hereby represents and warrants that it is a corporation authorized to do business in, and in good standing with, the State of Illinois. Business Owner further represents and warrants that all corporate action necessary to make Business Owner's obligations hereunder enforceable against Business Owner have been taken, and that no further approvals or actions are required.
- C. **Village Deposit into Economic Development Fund.** The Village hereby represents and warrants, so long as Business Owner is in compliance with its obligations in this Agreement, that, as of the date the Village issues a building permit for the Project, the Village shall deposit funds equal to the Incentive Cap in the Economic Development Fund and that it will take no action to terminate funding to the Economic Development Fund during the term of this Agreement and any extension thereof.
- D. **Defaults; Remedies.**
 - 1. In the event of any default under or violation of this Agreement, the Party not in default or violation shall serve notice upon the Party in default or in violation, written notice specifying the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default

within thirty (30) days from written notice of such default or, if more than thirty (30) days is needed to cure the default, the Party shall commence the cure within thirty (30) days from written notice of such default and the Party shall proceed to cure the default within the earliest reasonable time thereafter. In the event of default by the Village of its obligations to Business Owner as provided for herein, Business Owner's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction. Business Owner will not be entitled to any monetary damages from the Village, and hereby expressly waives any claim for monetary damages. The prevailing Party in any court proceeding between the Parties regarding a default under this Agreement shall be entitled to recover its reasonable attorney's fees and court costs from the other Party.

2. In the event of a default by Business Owner of the terms of this Agreement, following the notice and cure period, the Village shall be relieved of any and all future obligations pursuant to this Agreement and such obligations on the part of the Village shall be immediately cancelled and without any force and effect. Notwithstanding the termination of this Agreement, the Village may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, undertaking, covenant or agreement of Business Owner set forth in this Agreement.
3. Business Owner acknowledges that the Village has approval authority relative to the development and construction of the Project, and enforcement authority relative to any Village Code violations which may occur in relation to the Project or the Subject Property, both during and after the completion of the Project, and that the Village's exercising of said authority shall not be deemed a default by the Village under this Agreement. Notwithstanding any term in this Agreement to the contrary, Business Owner does not waive, and make seek, judicial review of the Village's approval authority relative to the development and construction of the Project, and enforcement authority relative to any Village Code violations which may occur in relation to the Project or the Subject Property, to the same extent, and through the same avenues, as other business owners in the Village.
4. If the Dealership ceases selling motor vehicles, no capital asset included in the Project Costs shall be conveyed, auctioned or sold without the express written consent of the Village, to be given in the Village sole and absolute discretion.

- D. **Indemnification.** The Business Owner shall hold harmless, indemnify and defend the Village, and its elected officials, officers, agents and employees, relative to any litigation, claims or causes of action arising out of or related to the Business Owner's or the Business Owner's officers', agents', employees' or contractors' acts

or omissions relative to the Subject Property, the Dealership, the terms and conditions of this Agreement, or the Incentive Payments, during the term of the Agreement.

- E. **Notices.** All notices and requests required pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, or by personal or overnight delivery, as follows:

If to Business Owner: Heritage Cadillac Inc.
303 West Roosevelt Road
Lombard, Illinois 60148
Attn: Wayne Balogh

With a copy to: Langhenry, Gillen, Lundquist & Johnson, LLC
311 S. County Farm Road - Suite L
Wheaton, Illinois 60187
Attn: Steven R. Johnson

If to the Village: Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

with copies to: Finance Director
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

Director of Community Development
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

and: Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attn: Jason A. Guisinger / Gregory T. Smith

or at such other addresses as either Party may indicate in writing to the other Party. Service by personal or overnight delivery shall be deemed to occur at the time of the delivery, and service by certified mail, return receipt requested, shall be deemed to occur on the third day after mailing.

- F. **Law Governing.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either

Party as a result of entering into the Agreement shall be in the Eighteenth Judicial Circuit Court of DuPage County, Illinois.

- G. **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.
- H. **Limitation of Liability.** Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Village created by or arising out of this Agreement shall not be a general debt of the Village on, or a charge against, the Village's general credit or taxing powers, but shall be a limited obligation payable solely out of the Economic Development Fund as set forth herein.
- I. **No Waiver or Relinquishment of Right to Enforce Agreement.** Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a wavier or relinquishment of the Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- J. **Article and Paragraph Headings.** All Article and Paragraph headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.
- K. **Village's Authorization to Execute.** The Village President and Village Clerk of the Village hereby warrant that they have been lawfully authorized by the President and Board of Trustees to execute this Agreement.
- L. **Amendment.** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Business Owner and the Village relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced to writing and signed by them.
- M. **Counterparts.** This Agreement may be executed in two (2) counterparts, each of which, taken together, shall constitute one and the same instrument.
- N. **Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

- O. **Limited Joinder.** The Property Owner joins this Agreement solely for the limited purposes of acknowledging its approval of the Project and agreeing to be bound by the obligations in Section VII.C.4. of the Agreement. The Property Owner is neither a “Party,” nor one of the “Parties,” as those terms are defined herein.
- P. **Term.** This Agreement shall remain in full force and effect until December 31, 2045.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties and the Property Owner have executed Agreement as of the date of the last signatory below, which date shall be inserted on page 1 of this Agreement.

VILLAGE OF LOMBARD,
an Illinois municipal corporation

HERITAGE CADILLAC INC.,
an Illinois corporation

By: _____
Keith Giagnorio
Village President

By: _____

ATTEST:

ATTEST:

By: _____
Elizabeth Brezinski
Village Clerk

By: _____
Name: _____
Title: _____

Date: _____

HERITAGE LOMBARD, L.L.C.,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio and Elizabeth Brezinski, personally known to me to be the Village President and Village Clerk of the Village of Lombard, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Council of said Illinois corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the _____ and _____ of Heritage Cadillac Inc., an Illinois corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such _____ and _____, they signed and delivered the said instrument and caused the corporate seal of said Illinois corporation to be affixed thereto, pursuant to authority given by the shareholders of said Illinois corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of Heritage Lombard, L.L.C., a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as such _____, he / she signed and delivered the said instrument pursuant to authority given by said Delaware limited liability company, as his / her free and voluntary act, and as the free and voluntary act and deed of said Delaware limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2022.

Notary Public

EXHIBIT A-1

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

Lot 1 in the Heritage Cadillac Plat of Subdivision, being a subdivision located within the West half of the Northeast Quarter of Section 19 of Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat recorded September 9, 2005 as Document R2005-198825, in DuPage County, Illinois.

Parcel Identification Number: 06-19-200-016

Common Address: 303 West Roosevelt Road, Lombard, Illinois 60148

EXHIBIT A-2
DEPICTION OF THE SUBJECT PROPERTY



HERITAGE CADILLAC DEALERSHIP
303 W ROOSEVELT ROAD

EXHIBIT B-1

DESCRIPTION OF THE PROJECT

Heritage has been operating in the Village of Lombard for fifty-seven (57) years at its location on Roosevelt Road, one of the gateways into the Village of Lombard. Currently, Heritage occupies an approximately eight (8) acre parcel with 53,000 square feet under roof including a body shop and a 25,000 square foot warehouse. It employs approximately sixty-five (65) to seventy (70) people comprised of mechanics, sales and management personnel, parts department staff, body shop staff, and a group of clerical and administrative personnel. Since 2014, Heritage has generated almost \$2.7 million in sales tax revenue for the Village at an average annual amount of \$382,619.00.

General Motors has developed a New Image Program that requires Heritage to demolish its current showroom and re-face the exterior cladding on all customer-facing exterior walls at a cost of more than \$4 million dollars. In addition, Heritage needs to spend between \$1,000,000 and \$1,250,000 to repave the asphalt to remain at the Lombard location. Heritage is the largest Cadillac dealership in Illinois and a leader in its sales space. Heritage will be the first Chicagoland Cadillac dealership to incorporate an Electronic Vehicle Conversion either here in Lombard at a cost of between \$500,000 and \$700,000. To make the conversion, the existing location needs an upgrade from 208-volt power to 480-volt power and the installation of a minimum of five (5) charging stations. Heritage expects to spend \$7 million on this upgrade to its facility.

As a Cadillac franchise, Heritage Cadillac, Inc. ("Heritage") is obligated to meet certain requirements from General Motors to remain in good standing. Aside from meeting sales volume and customer service requirements, one of the ways that Heritage can remain in good standing with General Motors is to participate in the Cadillac Corporate Identity Program ("CCIP"). In short, the CCIP for Heritage involves upgrading internal client facing areas of the dealership to provide comfortable, high-end sales, service and waiting areas commensurate with the expectations of Cadillac customers for technology and function. The external part of the CCIP for Heritage requires construction of an entirely new building for the customer showroom, replacement of all exterior cladding, a new parking lot, and upgraded electrical service capable of meeting the needs of Cadillac's first dealership in the Chicagoland area to focus on electrical vehicle sales.

Heritage has retained Gensler, a nationally renowned architectural firm known for creating high-end conceptual drawings for luxury vehicle brands, for the Heritage project. These conceptual drawings have been shared with the Village of Lombard and Keller, Inc., an established design/build contractor familiar with the needs of Heritage ownership to provide first-class construction of this turnkey project.

EXHIBIT B-2
DEPICTION OF THE PROJECT







EXHIBIT C
PROJECT ESTIMATED COSTS



Heritage Cadillac
03/28/2022

PRELIMINARY BUDGET PRICING

EV Upgrades			\$ per Sq.Ft.	Sq. Ft.	
	EV Stations	Low			\$150,000
		High			\$250,000
				Low Total	\$150,000
				High Total	\$250,000

New Showroom			\$ per Sq.Ft.	Sq. Ft.	
	Demolition				\$100,000
	Addition	Low	\$350	6550	\$2,292,500
		High	\$450	6550	\$2,947,500
				Low Total	\$2,392,500
				High Total	\$3,047,500

New Finishes			\$ per Sq.Ft.	Sq. Ft.	
	Finishes	Low	\$300	5243	\$1,572,900
		High	\$400	5243	\$2,097,200
				Low Total	\$1,572,900
				High Total	\$2,097,200

Service Drive			\$ per Sq. Ft.	Sq. Ft.	
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	Flooring	Low	\$20	2335	\$46,700
		High	\$25	2335	\$58,375
	Trench Drains				\$30,000
				Low Total	\$76,700
				High Total	\$88,375

Façade Renovations			\$ per Sq. Ft.	Sq. Ft.	
	Painting & ACM	Low	\$10	26540	\$265,400
		High	\$15	26540	\$398,100
				Low Total	\$265,400
				High Total	\$398,100

Sitework per previous				Total	\$1,313,278
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Budget Low	\$5,770,778
Budget High	\$7,194,453

Thank you for allowing Keller the opportunity to submit this preliminary budget to you.

Please note that these prices are budgetary only based on preliminary meetings and similar past project comparables. They are not final project costs and are subject to changes based on narrowing project scope. Upon determining if this project is financially feasible, we welcome the chance to move forward with the final design process, local planning, approvals, permitting, site planning, engineering, finalization of the site and building plans, competitive bidding process and the construction phases.

Respectfully submitted,

Luke Sebald
Project Manager

EXHIBIT D
MINIMUM EAVS

<u>Levy Year</u>	<u>Minimum EAV</u>
2022	\$2,188,455
2023	\$2,245,005
2024	\$2,303,016
2025	\$2,362,526
2026	\$2,423,574
2027	\$2,486,200
2028	\$2,550,443
2029	\$2,616,347
2030	\$2,683,953
2031	\$2,753,307
2032	\$2,824,452
2033	\$2,897,436
2034	\$2,972,306
2035	\$3,049,111
2036	\$3,127,900
2037	\$3,208,725
2038	\$3,291,639
2039	\$3,376,695
2040	\$3,463,949
2041	\$3,553,458
2042	\$3,645,279
2043	\$3,739,474
2044	\$3,836,102
2045	\$3,935,227

EXHIBIT E
INCENTIVE PAYMENT REQUEST
(attached)

INCENTIVE PAYMENT REQUEST NO. _____

To: Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Attention: Village Finance Director

From: Heritage Cadillac Inc., an Illinois corporation (the "Business Owner")

Subject: Business Retention Economic Incentive Agreement for the Heritage Cadillac Dealership Redevelopment in the Village of Lombard, Illinois (the "EIA")¹

Dated: _____, 20__

The Business Owner requests that the Village of Lombard (the "Village") approve this Incentive Payment Request No. _____ (the "Request") pursuant to Section VI.B.4. of the EIA. The Business Owner hereby certifies, represents and warrants the following to the Village under oath and penalty of perjury:

1. This Request is for the Annual Incentive Period of _____, 20__ to _____, 20__ (the "Applicable Incentive Period").

2. The Business Owner requests that the Village approve this Request and pay the Business Owner an Incentive Payment in the amount of _____ Dollars (\$_____).

3. The number of Annual Vehicles Sold during the Applicable Incentive Period was _____ (_____).

4. The Illinois Department of Revenue ST-556 "Sales Tax Transaction Return," or any supplemental form or revision thereof, for each Annual Vehicle Sold during the Applicable Incentive Period are attached hereto in EXHIBIT 1 and made a part hereof. The documents in EXHIBIT 1 are accurate, true, complete and do not omit information that would render the same misleading.

5. The FTE Standard was met for the Applicable Incentive Period. Documents and information establishing that the FTE Standard was met for the Applicable Incentive Period are attached hereto in EXHIBIT 2 and made a part hereof. The documents in EXHIBIT 2 are accurate, true, complete and do not omit information that would render the same misleading.

¹ Capitalized terms herein, that are not defined herein, have the meanings specified in the EIA.

6. The Business Owner and the Dealership were in compliance with the EIA during the Applicable Incentive Period and are in compliance with the EIA as of the date of this Request.

7. This Request has been executed by a duly authorized officer of the Business Owner.

8. The Village may request documents and information to confirm whether the Business Owner is entitled to receive the requested Incentive Payment, and the Business Owner shall timely provide such documents and information.

Signature

Name

Date: _____, 20__

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

EXHIBIT 1

SALES TAX TRANSACTION RETURNS FOR EACH ANNUAL VEHICLE SOLD

(attached)

EXHIBIT 2

**DOCUMENTS AND INFORMATION ESTABLISHING THAT
THE FTE STANDARD WAS MET**

(attached)