



Lake County Illinois

Master

File Number: 08-0870

File ID: 08-0870

Type: Resolution

Status: Joint Committee

Version: 1

Reference:

Controlling Body: Health & Community Services Committee

File Created Date : 11/05/2008

File Name: Economic Development Incentive Agreement between Gregory Gesualdo and Gregory Chrysler Jeep, Inc. and Lake County

Final Action:

Title: Joint Resolution approving and authorizing execution of an Economic Development Incentive Agreement between Gregory Gesualdo and Gregory Chrysler Jeep, Inc. and Lake County.

Notes:

Sponsors:

Agenda Date:

Attachments: Chrysler Jeep Agreement 11-11-08

Enactment Number:

Authorizer:

Hearing Date:

Entered by: MOtahal@lakecountyil.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Health & Community Services Committee	11/11/2008	Approved and referred on to Financial and Administrative Committee				Pass
	Action Text:	A motion was made by Member Spielman, seconded by Member Cunningham, that this Resolution be Approved and referred on to Financial and Administrative Committee. The motion carried by the following vote: The motion carried by the following vote:					
	Notes:	<i>Presented by Barry Burton. Overall outcome - we had 2 dealership - we now have 4 dealerships.</i>					
1	Financial and Administrative Committee	11/12/2008	Recommended for adoption to the Regular Agenda				Pass
	Action Text:	A motion was made by Member Stolman, seconded by Member Mountsier, that this Resolution be Recommended for adoption to the Regular Agenda. The motion carried by the following vote:					
	Notes:	<i>Barry Burton explained this Resolution.</i>					
1	Lake County Board	11/18/2008					

Text of Legislative File 08-0870

Title

Joint Resolution approving and authorizing execution of an Economic Development Incentive Agreement between Gregory Gesualdo and Gregory Chrysler Jeep, Inc. and Lake County.

Body

WHEREAS, the County recognizes the importance of maintaining a viable economic sector to enhance the long term viability of the tax base within unincorporated Lake County; and

WHEREAS, as part of these continuing efforts, the County and Fair Oaks Land, LLC entered into an October 11, 2005, Economic Development Incentive Agreement with respect to approximately 8.5 acres located on Grand Avenue east of U.S. Route 45 in unincorporated lake County; and

WHEREAS, the agreement provided for the abatement of sales taxes for a period not to exceed ten (10) years or until \$1,250,000 in Economic Incentive Payments have been paid by the County pursuant to the terms of that Agreement, whichever occurred first; and

WHEREAS, the agreement also contained certain rights enabling Fair Oaks Land, LLC to transfer its interest in the Agreement to other franchised automobile dealerships or to another business that would generate at least the same amount of gross receipts; and

WHEREAS, Fair Oaks Land LLC has informed the County that it has sold approximately 4.0 acres of the 8.5 acres to Gregory Gesualdo for operation of an automobile dealership by Gregory Chrysler Jeep, Inc. and sold the remaining approximately 4.5 acres to a third party for operation of a separate automobile dealership, and requested that the County consent to the transfer of the interest of Fair Oaks Land LLC in the October 11, 2005, Economic Development Incentive Agreement; and

WHEREAS, Gregory Gesualdo and Gregory Chrysler Jeep, Inc. are now the owner and operator of the 4.0 acres, respectively; and

WHEREAS, the incentives payments set forth in the October 11, 2005, Economic Development Incentive Agreement are proposed to be split evenly between the owner and operator of the 4.5 acre parcel and the owner and operator of the 4.0 acre parcel, such that Gregory Gesualdo and Gregory Chrysler Jeep, Inc. shall be eligible to receive a maximum abatement of sales taxes of \$625,000 over a ten (10) year period; and

WHEREAS, in order to effectuate the transfer of the interest of Fair Oaks Land LLC in the October 11, 2005, Economic Development Incentive Agreement to Gregory Gesualdo and Gregory Chrysler Jeep, Inc., the Health & Community Services and Financial & Administrative Committees herewith recommend that the County Board Chairman be authorized to execute a new Economic Development Agreement with Gregory Gesualdo and Gregory Chrysler Jeep, Inc., a copy of which is attached hereto and made part hereof.

NOW, THEREFORE, BE IT RESOLVED, that the Chairman of the County Board is hereby authorized to execute an Economic Development Agreement with Gregory Gesualdo

and Gregory Chrysler Jeep, Inc., a copy of which is attached hereto and made part hereof.

DATED, at Waukegan, Lake County, Illinois, on this 18th day of November, A.D., 2008.

Staff Summary

- In 2005, the County and Fair Oaks Land, LLC entered into an Economic Development Incentive Agreement providing for the abatement of sales taxes for a period not to exceed ten (10) years or until \$1,250,000 in Economic Incentive Payments have been paid by the County.
- The agreement also contained rights enabling Fair Oaks Land, LLC to transfer its interest in the Agreement to other franchised automobile dealerships.
- Fair Oaks Land, LLC sold the property to two auto dealerships.
- The incentive payments are proposed to be split evenly between the owners of the two parcels.
- Gregory Gesualdo and Gregory Chrysler Jeep, Inc., are now the owner and operator of the 4.0 acres, and shall be eligible to receive a maximum abatement of sales taxes of \$625,000 over a ten (10) year period.

**This Document Prepared by
and after Recording Return To:**

Peter M. Friedman
Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603

This Space for Recorder's Use Only

**ECONOMIC DEVELOPMENT AGREEMENT BY, BETWEEN AND AMONG
THE COUNTY OF LAKE, GREGORY GESUALDO, AND GREGORY CHRYSLER JEEP, INC.**

DATED AS OF Oct. 31st, 2008

**ECONOMIC DEVELOPMENT AGREEMENT BY, BETWEEN AND AMONG
THE COUNTY OF LAKE, GREGORY GESUALDO, AND GREGORY CHRYSLER JEEP, INC.**

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2008 ("**Effective Date**"), by, between and among the **COUNTY OF LAKE**, an Illinois body politic and corporate ("**County**"); **GREGORY GESUALDO** ("**Owner**"); and **GREGORY CHRYSLER JEEP, INC.**, an Illinois corporation ("**Operator**") (collectively, the "**Parties**").

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. RECITALS.

A. In recognition of the importance of a successful business environment to the County's tax base, the County desires to enhance the long-term viability of the County's tax base and strengthen the competitive advantage of conducting business within the County by providing assistance and incentives to owners of local businesses for the improvement of their businesses.

B. The County desires to implement economic incentive activities for existing businesses within the County to further its goals of enhancing the County's tax base and strengthening the competitive advantage of conducting business within the County.

C. Fair Oaks Land, LLC ("**Previous Owner**") and the County were parties to that certain Agreement dated October 11, 2005, covering approximately 8.5 acres located on Grand Avenue east of U.S. Route 45, in unincorporated Lake County, Illinois. Pursuant to Section 13.C of that Agreement, the Previous Owner had certain rights to transfer its interest in that Agreement to another franchised automobile dealership. The Previous Owner transferred approximately 4.5 acres of the approximately 8.5 acres owned by the Previous Owner to a third party for operation of an automobile dealership franchise. The Previous Owner has subsequently transferred the remaining property along with its corresponding rights to the Agreement to the Owner.

D. The Owner is or will remain the owner and the operator will be the operator of a Chrysler Jeep automobile dealership franchise on an approximately 4.0-acre parcel located on Grand Avenue east of U.S. Route 45, in unincorporated Lake County, Illinois, and legally described in **Exhibit A** attached hereto, and by this reference, incorporated herein ("**Property**").

E. The Parties desire to enter into this Agreement to enable the use of the Property in a manner that will enhance the business environment of the County and to effectuate the transfer of interest in the October 11, 2005 Agreement to another franchised automobile dealership as contemplated by Section 13.C therein with respect to the 4.0 acre portion of the original approximately 8.5 acres.

F. Based on information provided by the Previous Owner, it is the County's understanding that the 8.5 acres that includes the Property, though commercially zoned, were encumbered with significant physical impediments to viable commercial development, including, among other things, adverse soil conditions, significant drainage and slope impediments, and

wetlands protection requirements, all of which created unique and considerable development hardships and costs to the Previous Owner necessary to make the Property a tax-producing parcel.

G. The Parties wish to declare the October 11, 2005 Agreement null and void as of the Effective Date of this Agreement and in lieu thereof agree to the terms and conditions contained in this Agreement.

SECTION 2. DEFINITIONS. Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

A. "**Commencement Date**" means the date established pursuant to Section 3 of this Agreement.

B. "**Corporate Authorities**" means the Chairman and County Board of the County of Lake, Illinois.

C. "**County Sales Tax**" means that portion or component of the Sales Taxes generated by the Operator from sales on all or any portion of the Property that the County actually receives from the State of Illinois' Local Government Tax Fund under the applicable provisions of Chapter 35 of the Illinois Compiled Statutes and 30 ILCS 105/6z-18 (at the time of this Agreement, this "local portion" of the 6.75 percent retailers' occupation tax and service occupation tax is one percent, or 16 percent of tax collections). "**County Sales Tax**" shall not include (i) the tax (.25 percent at the time of this Agreement) imposed, in addition to the 6.75 percent retailers' occupation tax and service occupation tax, pursuant to 70 ILCS 3615/4.03; and (ii) that portion or component of the Sales Taxes generated by the Operator from sales on all or any portion of the Property that the County receives from the State of Illinois' County and Mass Transit District Fund under the applicable provisions of Chapter 35 of the Illinois Compiled Statutes and 30 ILCS 105/6z-20 (at the time of this Agreement, this "County portion" of the 6.75 percent retailers' occupation tax and service occupation tax is .25 percent, or 4 percent of tax collections).

D. "**Dealership**" means the automobile dealership franchise owned by the Owner (or, pursuant to the terms and conditions of this Agreement, by the Owner's successors or assigns), located on the Property, and primarily engaged in the sale of new and used automobiles and trucks and related parts and services.

E. "**Economic Incentive Payment**" means the amount of the payment payable to the Owner by the County pursuant to the Economic Incentive Payments under Section 4 of this Agreement.

F. "**Force Majeure**" means a strike, lockout, act of God, or other factor beyond a party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall not include delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property.

G. "**Gross Receipts**" shall have the meaning ascribed to it in the Retailers' Occupation Tax Act.

H. "**Property**" means that certain property legally described in Exhibit A attached hereto and, by this reference, incorporated herein.

I. "**Retailers' Occupation Tax Act**" means the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as the same has been, and may, from time to time hereafter be, amended.

J. "**Sales Taxes**" means any and all taxes imposed and collected by the State of Illinois pursuant to the Retailer's Occupation Tax Act, the Service Use Tax Act, 35 ILCS 110/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*, including, without limitation, a vehicle lease tax that is substituted, in whole or in part, for any or all of the foregoing.

K. "**Sales Tax Year**" means the period of time commencing on the Commencement Date and ending on the date that is one year after the Commencement Date, and each of the nine succeeding years thereafter.

L. "**Term**" means the term of this Agreement as established pursuant to Section 8 of this Agreement.

SECTION 3. COMMENCEMENT OF ECONOMIC INCENTIVE PAYMENTS.

The "Commencement Date" under this Agreement is hereby declared to be the first day of the month immediately following the Effective Date of this Agreement.

SECTION 4. ECONOMIC INCENTIVE PAYMENTS.

A. **Maximum Total Payments.** In no event shall the County's Economic Incentive Payments to the Owner exceed \$625,000 as a result of this Agreement ("**Maximum Payment**"). This limitation shall apply regardless of whether time remains in the Term of this Agreement (as established pursuant to Section 8 of this Agreement) at the time the County has made the Maximum Payment.

B. **Calculation of Economic Incentive Payments.** Beginning on the Commencement Date, for any Sales Tax Year in which the County Sales Tax generated from the Property is equal to or greater than \$50,000 ("**Minimum Sales Tax Level**"), the County shall pay an Economic Incentive Payment to the Owner in an amount equal to 50 percent of that portion of the County Sales Tax that is equal to or above the Minimum Sales Tax Level. For any Sales Tax Year in which the total County Sales Tax is less than the Minimum Sales Tax Level, the County shall have no obligation to pay to the Owner any portion of the County Sales Tax for that particular Sales Tax Year.

C. **County Payment.** Within 120 days after the end of the twelfth month of each Sales Tax Year, the County shall pay the applicable Economic Incentive Payment for that particular Sales Tax Year to the Owner, based on the records of the Illinois Department of Revenue. The County acknowledges that the Owner intends to treat the Sales Tax Rebate as a non-shareholder contribution to capital. If, for any reason, the State of Illinois fails to distribute the County Sales Tax revenue to the County in sufficient time for the County to make its annual payment, the County shall provide notice of that fact to the Owner. In that event, the County shall make the required Economic Incentive Payment within 60 days after the date on which the County actually receives the County Sales Tax revenue due the County for the applicable

payment period. To the extent necessary, as determined by the County, the Parties agree that the County may require the Owner and the Operator to submit such specified financial statements and copies of the applicable State of Illinois Sales Tax Reports as are necessary to verify the amount of Sales Tax generated by the Operator. The Operator shall sign a release authorizing the State of Illinois to issue the reports to the County.

D. **Change in the Law.**

1. **Existing Law.** The Parties acknowledge and agree that the County's obligation to pay the Economic Incentive Payments to the Owner is predicated on existing State law governing the distribution of Sales Taxes to the County, including, without limitation, the Retailers' Occupation Tax Act. The Parties further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois counties and/or municipalities. The Parties make express provision for the effect of any change upon the operation of this Agreement in Paragraph 2 of this Subsection.

2. **Change in Law.** In the event that the State of Illinois amends, alters or repeals the Retailers' Occupation Tax Act or makes any other promulgation, enactment, or change in law ("**Change in Law**") that eliminates or substantially reduces the distribution of Sales Taxes to the County, or otherwise alters the distribution formula in a manner that prevents the Parties from determining with a reasonable degree of certainty the precise amount of the County Sales Tax, the provisions of this Agreement with regard to County Sales Tax generated from the Property on or after the effective date of the Change in Law shall automatically terminate and become null and void and be of no further force or effect, and the County shall have no obligation whatsoever to pay to the Owner any of the County Sales Tax generated on or after the effective date of the Change in Law. However, if a Change in Law results in replacement taxes for the Sales Taxes directly resulting from Gross Receipts of the Operator as contemplated in this Agreement, then, for purposes of this Agreement, the replacement taxes shall be defined as Sales Taxes, subject in all respects to the County's actual receipt of its portion of the replacement taxes as well as the County's authority under state law to provide for the payment of the Economic Incentive Payments on the replacement taxes, as contemplated in this Agreement.

E. **Limited Liability.** Notwithstanding any other provision of this Agreement to the contrary, the County's obligation to pay the Economic Incentive Payments shall not be a general debt of the County or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the County Sales Tax received by the County, as specifically defined in Section 2 of this Agreement. Neither the Owner nor the Operators shall have any right to, and they both agree that they shall not, compel any exercise of the taxing power of the County to pay the Economic Incentive Payments, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the County (unless the County refuses to make the payment to the Owner in violation of this Agreement). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future Board member, other elected or appointed officer, official, agent, representative, employee, or attorney of the County in his or her individual capacity.

F. **Annexation; Closure; Refund.**

1. **Annexation.** During the Term of this Agreement (a) neither the Owner nor the Operator shall take any action, either directly or indirectly, to cause or allow the Property to be voluntarily annexed into any municipality, and (b) the Owner and the Operator shall take all actions necessary, file all applicable objections, and otherwise object to and contest any attempt by any municipality to forcibly or involuntary annex the Property.

2. **Refund.** In the event that, at any time during the Term of this Agreement, the Owner or the Operator abandons, closes, or terminates the use of the Property for the Dealership ("**Closure**"), or the Property is annexed (either voluntarily or involuntarily) so that the Property is no longer in unincorporated Lake County ("**Annexation**"), then (a) the provisions of this Agreement with regard to County Sales Tax generated from the Property shall, as of the date of Closure or as of the date on which any successful attempt at Annexation of the Property is initiated under Illinois law, as the case may ("**Refund Effective Date**"), automatically terminate and become null and void and be of no further force or effect, and the County shall have no obligation whatsoever to perform any of the Economic Incentive Payment obligations under this Section of this Agreement; and (b) the Owner shall be required to refund to the County the entire amount of the Economic Incentive Payments received by the Owner prior to the Refund Effective Date.

SECTION 5. REAL PROPERTY VALUATION.

The Owner and the Operator recognize that the County has legitimate interests and concerns regarding the valuation and assessment of the Property for real estate tax purposes. Accordingly, the Owner and the Operator shall (a) notify the County prior to the commencement or initiation of any protest or appeal by the Owner or the Operator of the real property valuation of the Property established by the Lake County Assessor and (b) not initiate any protest or appeal that seeks a property valuation that is disproportionate to, or inconsistent with, the actual use of the Property.

SECTION 6. FORCE MAJEURE.

Whenever a period of time is provided for in this Agreement for the Owner, Operator, or the County to perform any act or obligation, and the Owner, Operator, or the County, as the case may be, is unable to perform or complete the act or obligation because of a Force Majeure, then upon the occurrence of the Force Majeure, the time period for the performance and completion of the acts or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT.

A. **Litigation.** If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against any party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of any party to perform its obligations under, or otherwise to comply with, this Agreement ("**Litigation**"), the party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other parties and shall thereafter keep the other parties fully informed concerning all aspects of the Litigation.

B. **Defense.** The Parties do hereby agree to use their respective best efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto. Each party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Parties do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 8. TERM.

This Agreement shall be in full force and effect from and after the Effective Date and shall continue until the date that is 10 years after the Commencement Date ("**Term**"); provided, however, that the Owner shall be entitled to receive the Economic Incentive Payment from the County for the tenth Sales Tax Year after the termination of the Agreement, pursuant to and in accordance with the payment schedules and procedures set forth in Section 4(C) of this Agreement. This Agreement shall, during its Term, inure to the benefit of and be enforceable by the Parties, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

SECTION 9. RELEASE OF INFORMATION.

The Owner and Operator agree to execute and provide all documentation necessary to cause the Illinois Department of Revenue to release to the County the Sales Tax generated by the Owner and Operator from the Property, including copies of State of Illinois Sales Tax Reports, during each of the Sales Tax Years pursuant to applicable State law.

SECTION 10. PAYMENT OF COUNTY FEES AND COSTS.

In addition to any other costs, payments, fees, charges, contributions, or dedications specifically required by this Agreement, the Owner and Operator respectively shall pay to the County, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions required by applicable County codes, ordinances, resolutions, rules, or regulations. If any money due from the Owner or Operator respectively to the County is not paid to the County by the Owner or Operator within 30 days after a demand for the payment, then that money, together with interest and costs of collection, including legal fees and administrative expenses, shall be a debt of, and an obligation owed by, the Owner and Operator jointly and severally to the County and the County shall have the right to collect that amount, with interest and costs, including legal fees and administrative expenses, from either the Owner or Operator, or both.

SECTION 11. LIABILITY AND INDEMNITY OF COUNTY.

A. **No Liability for County Review.** The Owner and Operator acknowledge and agree (1) that the County is not, and shall not be, in any way liable for any violations of restrictive covenants applicable to the Property that may occur, or for any damages or injuries that may be sustained, as the result of the County's review and approval of any plans for the Property, or as a result of the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; and (2) that the County's review and approval of any of the plans and the issuance of any of the approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Owner or Operator,

or any of their heirs, successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.

B. **County Procedures**. The Owner and Operator acknowledge that notices, meetings, and hearings have been properly given and held by the County with respect to the approval of this Agreement and agree not to challenge any of those actions on the grounds of any procedural infirmity or of any denial of any procedural right.

C. **Indemnity**. The Owner and Operator agree to, and do each individually and collectively hereby, hold harmless and indemnify the County, the Corporate Authorities, all County elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of those parties in connection with (i) the County's review and approval of any plans, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; (ii) any actions taken by the County pursuant to Subsection B of this Section; (iii) the development, construction, and maintenance of the Property; (iv) the violation of any restrictive covenant applicable to the Property; and (v) the performance by the Owner of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

D. **Defense Expenses**. The Owner and Operator shall, and do each individually and collectively hereby agree to, pay, without protest, all expenses incurred by the County defending itself with regard to any and all of the claims identified in Subsection C of this Section. These expenses shall include all out-of-pocket expenses, including attorneys' and experts' fees.

SECTION 12. ENFORCEMENT.

A. **Enforcement**. The Parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Owner and Operator agree that they will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the County, or any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney, of the County on account of the negotiation, execution, or breach of this Agreement. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the County shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings and structures within the Property at any time when the Owner or Operator have failed or refused to meet fully any of their obligations under this Agreement.

B. **Notice and Cure**. None of the Parties may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party or parties of the breach or alleged breach and allowing 30 days to cure the breach or alleged breach. If the breach cannot be cured within the 30-day period ("***Time for Cure***"), then the Time for Cure shall be extended accordingly, provided that the notified party or parties have promptly commenced to cure the breach and continued to prosecute the cure of the breach with diligence.

SECTION 13. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

A. **Obligations**. The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including reasonable attorneys' fees,

shall constitute both the personal obligation of the party liable for its payment, and the successors of that party.

B. **Binding Effect.** The Owner and Operator acknowledge and agree that this Agreement shall be binding upon the Owner and Operator and any and all of their heirs, successors, and assigns and the successor owners of record of all or any portion of the Property.

C. **Prohibited Assignments.** It is the express intent of the Parties that, except as expressly provided or allowed in this Subsection, this Agreement, and all of the rights and privileges granted herein, are for the sole and exclusive benefit of the Owner and the Operator. Accordingly, notwithstanding any provision of this Agreement, in the event that either the Owner or the Operator does, or attempts to, voluntarily or involuntarily transfer its interests in the Property or the Dealership, in whole or in part, without the prior consent of the Corporate Authorities, this Agreement, and all of the rights and privileges granted herein, shall, at the option of the County, become null and void and be of no force or effect. Notwithstanding the foregoing, (1) the Operator shall have the right, upon delivery of advance notice to the County, to transfer its interest in this Agreement without County consent to an entity that continues to operate the Dealership and is wholly owned by the Owner or to an entity that is an authorized Chrysler Jeep dealership for operations on the Property; and (2) the Corporate Authorities shall not withhold its consent if the Operator provides evidence that it proposes to transfer its interest in the Dealership to another franchised automobile dealership or a business use permitted (or otherwise allowed by the County) under applicable County codes and ordinances, which dealership or business is intended and expected, with a reasonable degree of certainty, to generate at least the same amount of Gross Receipts as was generated by the Dealership in the Sales Tax Year immediately preceding the year in which the transfer occurs. No transfer under this Subsection shall be allowed unless and until the transferee executes an agreement prepared by the County agreeing to be bound by all of the terms and conditions of this Agreement and releasing the Owner, the Operator, or both, as the case may be, from their respective obligations under this Agreement.

SECTION 14. REPRESENTATIONS AND WARRANTIES.

In order to induce the County to enter into this agreement and to grant the rights herein provided, the Owner and Operator hereby warrant and represent to the County as follows:

A. The Owner is a duly organized, validly existing corporation in good standing under the laws of the State of Illinois, and the Operator is a duly organized, validly existing limited liability company in good standing under the law of the State of Illinois.

B. The Owner and the Operator have the authority and the legal right to make, deliver, execute, and perform this Agreement and have taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.

C. All necessary consents of any Board of Directors, shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.

D. The consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the County, and the State of Illinois with respect to

distribution of Sales Taxes) has been obtained in connection with the execution, delivery, performance, validity, and enforceability of this Agreement.

E. The individuals executing this Agreement on behalf of the Owner have the power and authority to execute and deliver this Agreement on behalf of the Owner and the individuals executing this Agreement on behalf of the Operator have the power and authority to execute and deliver this Agreement on behalf of the Operator.

F. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of the Owner or the Operator; (ii) will not result in a breach or default under any agreement to which the Owner or Operator is a party or to which the Owner or the Operator, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which the Owner, the Operator, and/or the Property, in whole or in part, is or are subject.

SECTION 15. GENERAL PROVISIONS.

A. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supercedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement. The October 11, 2005, Agreement between the County and the Previous Owner is hereby declared to be null and void and of no further force or effect and the County and the Previous Owner are released from all obligations thereunder.

B. **Amendments and Modifications.** No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

C. **Notices.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the County shall be addressed to, and delivered at, the following address:

County of Lake
County Building
18 North County Street
Waukegan, IL 60085
Attention: County Administrator

With a copy to:

Chief, Civil Trial Division
Lake County State's Attorney's Office
18 North County Street, 3rd Floor
Waukegan, IL 60085

Notices and communications to the Owner and Operator shall be addressed to, and delivered at, the following address:

Gregory Chrysler Jeep, Inc.
18550 West Grand Avenue
Lake Villa, IL 60046
Attention: Mr. Gregory Gesualdo

With a copy to:

Statland & Valley
111 E. Wacker Drive
Chicago, IL 60601
Attention: Jay L. Statland, Esq.

D. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflict of laws rules, of the State of Illinois.

E. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

F. **Change in Laws.** Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include the laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. **Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

H. **Time of Essence.** Time is of the essence in the performance of this Agreement.

I. **No Third Party Beneficiaries.** Except as expressly provided in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or valid against the County.

J. **Non-severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the entire remainder of this Agreement shall, thereupon, be null and void and of no further force and

effect, it being the intent of the Parties that all of the provisions of this Agreement shall be treated as an individual whole.

K. **Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

L. **Exhibit.** Exhibit A is attached to this Agreement, and by this reference incorporated in and made a part of, this Agreement. In the event of a conflict between Exhibit A and the text of this Agreement, the text of this Agreement shall control.

M. **Counterparts.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

N. **Waiver.** Neither the County the Owner, nor the Operator shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the County, the Owner, or the Operator to exercise at any time any of those rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the County's, the Owner's, or the Operator's right to enforce those rights or any other rights.

O. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

P. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

Q. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

COUNTY OF LAKE

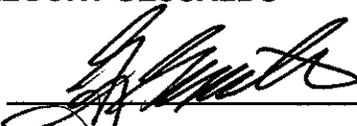
Willard Helander
County Clerk

Suzi Schmidt
County Board Chairman

ATTEST:

GREGORY GESUALDO

By: _____

By:  _____

Its: _____

Its: _____

ATTEST:

GREGORY CHRYSLER JEEP, INC.

By: _____

By:  _____

Its: _____

Its: _____

5706503_v3

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
)
COUNTY OF LAKE) SS

This instrument was acknowledged before me on _____, 2008, by Suzi Schmidt, the **COUNTY BOARD CHAIRMAN** of the **COUNTY OF LAKE**, an Illinois body politic and corporate, and by Willard Helander, the County Clerk of said body politic and corporate.

Given under my hand and official seal this ____ day of _____, 2008.

Notary Public

My Commission expires: _____

SEAL

STATE OF ILLINOIS)
)
COUNTY OF LAKE) SS

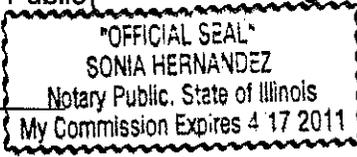
This instrument was acknowledged before me on October 31, 2008, by _____, the _____ of **GREGORY CHRYSLER JEEP INC.**, an Illinois corporation, and by _____, the _____ of said corporation.

Given under my hand and official seal this 31 day of October, 2008.

Sonia Hernandez

Notary Public

My Commission expires: 4/17/2011



SEAL

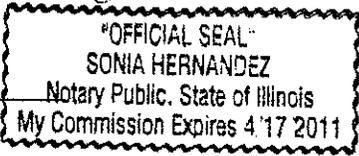
STATE OF ILLINOIS)
)
COUNTY OF LAKE) SS

This instrument was acknowledged before me on October 31, 2008, by **GREGORY GESUALDO**, an individual.

Given under my hand and official seal this 31 day of October, 2008.

Sonia Hernandez
Notary Public

My Commission expires: 4/17/2011



SEAL

EXHIBIT A

Legal Description of the Property

Parcel One:

Lot 2 in Lakeside Ford Resubdivision, being a Subdivision in Section 7, Township 45 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded January 30, 2008 as Document 6299825, in Lake County, Illinois.

Parcel Two:

Easement for the benefit of Parcel One for the purpose of draining stormwater run-off to the stormwater management facilities, as contained in Article 2.06 of the Declaration recorded as Document Number 5443826.

Parcel Three:

A non-exclusive easement for the use, maintenance, repair and replacement of a driveway and roadway to provide for permanent vehicular and pedestrian ingress and egress, created by Cross Easement Agreement between Fair Oaks Land, LLC, and Gregory Gesualdo dated February 6, 2007 and recorded February 19, 2007 as Document Number 6139888 located as shown and described on Exhibit C attached thereto.

Parcel Four:

A non-exclusive perpetual stormwater easement for the use, maintenance, repair and replacement of a storm sewer drainage system under and upon the following described property to provide for (i) discharging stormwater into the storm sewer and drainage system as depicted on Exhibit C of the within described document and (ii) the discharge or flow of stormwater across and through the burdened land to the retention pond located on Outlot B (as described in the Plat of The Shires of Cambridge recorded on December 1, 2003, as Document Number 5443825 and the Declaration for The Shires of Cambridge recorded on December 1, 2003 as Document Number 5443826, as this easement is created by Storm Sewer Cross-Easement Agreement by and between Fair Oaks Land, LLC, and Gregory Gesualdo, dated February 6, 2007, and recorded February 19, 2007 as Document Number 6139889, located as shown and described in Exhibit C attached thereto.

Common Mailing Address: 18850 W. Grand Avenue, Lake Villa, Lake County, Illinois 60046

**P.I.N. 07-07-316-013 (for 2007 tax year).
07-07-316-015 (for 2008 tax year-new P.I.N.)**