

## **SALES TAX REBATE AGREEMENT**

**THIS AGREEMENT** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **VILLAGE OF ORLAND PARK**, an Illinois home rule municipality (the "Village") and **BETTENHAUSEN MOTOR SALES, INC.**, an Illinois corporation (herein referred to as the "Dealership").

### **WITNESSETH:**

**WHEREAS**, the Dealership is the Tenant in possession pursuant to a Lease with Option to Purchase with TDOP, LLC, an Illinois Limited Liability Company, as the Owner of certain real estate located within the corporate limits of the Village of Orland Park, Illinois located at 15941 S. 94<sup>th</sup> Avenue, Orland Park, Illinois (the "Property"), with the legal description set forth on Exhibit A attached hereto, which Property is to be developed by the Dealership for automobile sales and service facilities (the "Development"); and

**WHEREAS**, the Dealership anticipates generating sufficient sales tax revenue from the Development to provide in excess of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00); and

**WHEREAS**, the Village of Orland Park hereby finds that:

1. The Property is currently zoned in the BIZ General Business District; and
2. The Development is expected to create or retain job opportunities within the Village of Orland Park; and
3. The Development will serve to further the improvement and development of adjacent areas; and
4. Without this Agreement, the Dealership would reconsider its plans to develop and occupy this Property, and this project would not be possible; and
5. The Dealership meets high standards of creditworthiness and financial strength; and
6. The Development will strengthen the commercial sector of the Village; and
7. The Development will enhance the tax base of the Village; and
8. The Development will create increased sales tax revenue for the Village; and
9. This Agreement is made in the best interests of the Village; and
10. The project is necessary to enhance development in this area of the Village; and

11. The benefit of the Development is public in nature and will promote the public welfare of the Village.

**WHEREAS**, the Village in adopting this Agreement is exercising powers provided in the Illinois Municipal Code, as well as its Home Rule Powers under the Illinois Constitution as set forth hereinafter; and

**NOW THEREFORE**, in consideration of the mutual promises herein contained and other good and valuable consideration the receipt and sufficiency whereof is hereby acknowledged, the parties hereto agree as follows:

1. **RECITALS:** The foregoing recitals are incorporated herein, by reference, as if fully set forth.

2. **CONSTITUTIONAL AND LEGISLATIVE AUTHORITY:**

- A. The Illinois Constitution of 1970 provides in pertinent part:

Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities. (Article VII, Section 10(a))

- B. The Illinois statutes provide that municipalities such as the Village may enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality, and related thereto may agree to share or rebate a portion of any retailers' occupation taxes received by the municipality that were generated by the development or redevelopment over a finite period of time. (65 ILCS 5/8-11-20).

- C. Pursuant to Article 7, §6(a), of the Illinois Constitution, the Village of Orland Park, which has a population of more than 25,000 is a home rule unit. A home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, goals and welfare; to license; to tax; and to incur debt.

3. **DEFINITION:**

**"Dealership"** - unless otherwise provided, the term "Dealership" shall mean, **BETTENHAUSEN MOTOR SALES, INC.**, an Illinois corporation, its successors, divisions, and subsidiaries, and its respective successor divisions, subsidiaries and/or corporate designees.

4. **ECONOMIC INCENTIVES:** It is understood by the parties and declared by the Village that the Development is unique since the Dealership, as the user of this Property, will likely generate substantial Village Sales Tax Revenue (as hereinafter defined) not ordinarily realized by such a use. It is also understood by the parties and declared by the Dealership that the Dealership may reconsider its plans for the Development but for the incentives provided by this Agreement. Therefore, the incentives contained in this Agreement are unique to this situation and Property. The Dealership will comply in all respects with the Retailer's Occupation Tax Act (35 ILCS 115/1 et seq.) and the Service Occupation Tax Act (35 ILCS 120/1 et seq.) and will permit the individual sales tax reporting to be given to the Village.
5. **VILLAGE SALES TAX REBATE:** Annually for three (3) consecutive years beginning with the period from January 1, 2010, through December 31, 2012, the Village shall pay to the Dealership a sum which totals Fifty Percent (50%) of the Village Sales Tax Revenue for such annual period that is attributable to gross sales within the State of Illinois originated by the Development on the Subject Property within the Village which are subject to those taxes contemplated by Paragraph 6 below. The term "Sales Tax Revenue" means the Sales Tax Revenue received by the Village in each of the three (3) calendar years. This Agreement shall terminate at the completion of said three (3) year period including the reporting period or when the sales tax rebate payments totaling ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) have been paid to the Dealership, whichever is first to occur.

6. **SALES TAX REBATE MECHANISM:**

**Definitions:** For the purpose of this Agreement, the use of the terms "Village Sales Tax" and "Village Sales Tax Revenue" shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailer's Occupation Tax Act and the Service Occupation Tax Act (as said acts may be amended), or any other "sales tax," "service tax" or similar tax that may be enacted by the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois, and which are collected by the State of Illinois and distributed to the Village. Currently such net portion is one percent (1%) of the total amount of gross sales within the State of Illinois originated by the Development within the Village which is subject to the aforementioned tax.

**Sales Tax Reports:** The Dealership shall furnish to the Village copies of any and all Illinois sales tax returns and any amended Illinois sales tax returns for the applicable twelve (12) month period, together with a cover letter containing the Dealership's calculation of the Village Sales Tax to be rebated according to this Agreement (collectively, the "Reports"). Such reports shall be delivered no later than fifteen (15) days after the filing with the Illinois Department of Revenue or successor agency of the Illinois sales tax return for the last month of the applicable twelve (12) month period. To the extent permitted by law, the Village shall maintain the confidentiality of the information contained in such Reports, but shall be permitted to disclose such information and documents on a confidential need-to-know basis to employees and

consultants as the Village, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. In the event that the Village receives a request pursuant to the Illinois Freedom of Information Act for information contained in the Reports, prior to the Village refusing to provide such information, the Village shall immediately notify the Dealership, providing a copy of the request, and the Dealership shall have the opportunity within seven (7) days after receipt of such notice from the Village to notify the Village that it consents to the request. In the event that no consent is received within said time period, the Village shall refuse to disclose the information and shall not thereafter disclose the information without the consent of the Dealership unless compelled to do so by Court Order. In the event that action is ever commenced against the Village pursuant to the Illinois Freedom of Information Act or similar statute as a result of withholding any documents provided by the Dealership, the Dealership agrees to indemnify and hold the Village harmless with respect to any attorney's fees or costs or judgments imposed on or incurred by the Village as a result of such action; provided, that the Village has notified the Dealership of the applicable request as specified above and the Village has followed the Dealership's instructions in responding to such request. The Dealership understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments to the Dealership pursuant to this Agreement. The Dealership also agrees upon the request of the Village to furnish such consents or waivers as may be required by the Illinois Department of Revenue to allow the Illinois Department of Revenue to furnish the sales tax information concerning the individual Dealership's facilities required herein.

**Reimbursement Mechanism:** Not later than thirty (30) days after the receipt of the tax or distribution from the Illinois Department of Revenue or Successor Agency, the Village shall remit in full to the Dealership at the address specified below the Dealership's share of the Village Sales Tax Revenue for that particular reporting period.

If any distribution applicable to a period within the three (3) year period set forth hereinabove is received by the Village after the three (3) year period, it shall be paid to the Dealership subject to the reduction requirements of this "Rebate Mechanism" Section.

Any payments determined to be due to the Dealership from the Village based upon the Reports shall be reduced by the amount of any and all collection fees, including but not limited to the "Seller's Discount", imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or successor agency for collection of the Village Sales Tax Revenues.

7. **REMEDIES:** Upon a breach of this Agreement, any of the parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, in accordance with Paragraph 8 below, the party alleged to have failed to perform its obligations. No breach of this Agreement may be found to have occurred if performance

has commenced to the satisfaction of the complaining party within thirty (30) days of receipt of such notice and is being continuously and diligently pursued.

It is further understood and agreed that the Village shall be relieved of any and all of its obligations arising hereunder, and such obligations on the part of the Village shall be immediately canceled, become null and void, and be without any force or effect in the event that, within three (3) years of the date of this Agreement, the Dealership a) discontinues its Dodge, Chrysler and/or Jeep dealerships on the Property, with or without its/their replacement by another automobile line, or b) relocates its dealership to any location outside the corporate limits of the Village. Additionally, in the event either a) or b), above, occurs within three (3) years of the date of this Agreement, as agreed liquidated damages and not as a penalty, the Dealership will reimburse the Village all of the sales tax revenue rebated to the Dealership by the Village.

8. **ADDRESS FOR NOTICES:** All notices and other communications in connection with the Agreement shall be in writing, and any notice, communication or payment hereunder shall be deemed delivered to the addresses thereof five (5) days after deposit in any main or branch United States Post Office, certified or registered mail, postage prepaid, or two (2) days after deposit thereof with any nationally known and reputable overnight courier service, delivery charges prepaid, or on the date of delivery, if personally delivered, in any case, addressed to the parties respectively as follows:

If to the Dealership: Bettenhausen Motor Sales, Inc.  
Attn: Michael H. Bettenhausen  
15941 S. 94<sup>th</sup> Avenue  
Orland Park, Illinois 60462

with a copy to: David L. Anders  
Hutchison, Anders and Hickey  
16860 Oak Park Avenue – Suite 101  
Tinley Park, Illinois 60477

with a copy to: E. Kenneth Friker  
Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia Avenue – Suite 10  
Orland Park, Illinois 60462

By notice complying with the requirement of this paragraph, each party shall have the right to change the address or addresses for all further notices, other communications and payment to such party; provided, however, that notice of a change of address, addressee or both shall not be effective until actually received.

9. **AMENDMENTS:** The parties agree that the term of this Agreement may be extended by mutual agreement of the parties and that this Agreement and any exhibits attached hereto may be amended only by a signed written agreement of the parties.
10. **NO WAIVER OF RIGHT TO ENFORCE AGREEMENT:** Failure of any 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 any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
11. **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements on the subject matter of Sales Tax Rebates, negotiations and exhibits and is a full integration of the entire Agreement of the parties relating to the subject matter hereof.
12. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the Dealership and its respective successors and assigns, and upon successor corporate authorities of the Village and successor municipalities.
13. **TERM OF AGREEMENT:** This Agreement shall be binding upon the parties and their respective successors and assigns, commencing as of the date hereof, and for a term extending to the date of the last payment or abatement required pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the obligations of the Dealership and the Village pursuant to the confidentiality obligations in Paragraph 6 above shall survive the termination of the remainder of this Agreement.
14. **FORCE MAJEURE:** This Agreement may be suspended for a period not to exceed two (2) years at the option of either the Village or the Dealership if an Act of God, which could not be avoided by the exercise of due care, prevents the Dealership from performing its business from the Property as contemplated by this Agreement for more than thirty (30) days due to damage to or destruction of the Development offices or other facilities on the Property.
15. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first above written.

**VILLAGE OF ORLAND PARK**  
**an Illinois Home Rule Municipality**

**By:** \_\_\_\_\_  
**Daniel J. McLaughlin, Village President**

**ATTEST:**

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**David P. Maher, Village Clerk**

**BETTENHAUSEN MOTOR SALES, INC.,**  
**an Illinois corporation**

**By:** \_\_\_\_\_  
**President**

**ATTEST:**

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**Secretary**

STATE OF ILLINOIS                      )  
  )  
COUNTY OF COOK                      ) SS  
  )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that **DANIEL J. MC LAUGHLIN**, personally known to me to be the Village President of the **VILLAGE OF ORLAND PARK**, and **DAVID P. MAHER**, personally known to me to be the Village Clerk of said Village, 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 Village President and Village Clerk, they signed and delivered said instrument as their free and voluntary act, and as the free and voluntary act and deed of said Village for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_, respectively the \_\_\_\_\_ President and \_\_\_\_\_ Secretary of **BETTENHAUSEN MOTOR SALES, INC.**, a Illinois corporation and not individually, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ President and \_\_\_\_\_ Secretary, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

## Notary Public

**Exhibit A**

**Legal Description**