

**SECOND AMENDED AND RESTATED
BUSINESS DEVELOPMENT AGREEMENT
(TERRY'S LINCOLN MERCURY, INC.)**

THIS SECOND AMENDED AND RESTATED BUSINESS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 18th day of July, 2011, by and between the VILLAGE OF ORLAND PARK, Cook and Will Counties, Illinois, an Illinois municipal corporation duly organized and existing under the laws of the State of Illinois ("Orland Park") and TERRY'S LINCOLN MERCURY, INC., an Illinois corporation ("Terry's").

WHEREAS, Terry's conducts its auto dealership/repair business at 9401 West 143rd Street, Orland Park, Illinois ("Dealership"); and

WHEREAS, Orland Park has determined that is essential to the economic and social welfare of Orland Park that Orland Park promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the corporate limits of Orland Park; and

WHEREAS, Orland Park is a home rule municipality with full power and authority to provide certain incentives in the promotion of economic development, among these being a sales tax abatement for retail establishments; and

WHEREAS, Orland Park desires to have Terry's a) expand the Dealership and sales area within the existing paved areas, excluding the detention area b) relocate the main entrance to the Dealership to coordinate and align such entrance with an entrance on the north side of 143rd Street as a part of the Orland Crossings development at such location, and c) retain the Dealership identification sign in its present location due to Terry's dedication of additional 143rd Street right-of-way, as such will help to improve the social and economic welfare of Orland Park, and that the proposed improvements contemplated in this Agreement will enhance the tax base of Orland Park to the benefit of Orland Park and other governmental entities, and that the

powers exercised hereunder are found to be in furtherance of a public use and essential to the public interest; and

WHEREAS, Terry's desires to conclude its plans to improve the Dealership and its business property as outlined above; and

WHEREAS, it is anticipated that the improvements to be located on the Dealership business property will generate increased real estate tax revenues and sales tax revenues for Orland Park; and

WHEREAS, it is anticipated that the improved Dealership facility will generate increased employment opportunities; and

WHEREAS, the above Dealership improvements would not be economically feasible for Terry's without Orland Park's economic assistance; and

WHEREAS, in order to make it economically feasible for Terry's to improve the Dealership as outlined above and as further described herein, Orland Park has agreed to reimburse Terry's for a portion of the site and off-site improvement costs a) through the use of a rebate of a portion (not to exceed \$1,000,000.00) of the Sales Tax Revenue generated by Terry's within the corporate limits of Orland Park in the manner set forth in paragraph 8 hereof; and

WHEREAS, the President and Board of Trustees have determined that entering into this Agreement is in the best interests of Orland Park; and

WHEREAS, this Agreement amends and restates the Amended and Restated Business Development Agreement entered into by Orland Park and Terry's on December 21, 2009, which prior Amended and Restated Business Development Agreement is, upon execution hereof, null and void and completely replaced by this Second Amended and Restated Business Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth, it is mutually agreed as follows:

1. **Recitals**: That the recitals set forth hereinabove are incorporated herein by reference, as if fully set forth.

2. **Legislative Authority:** Orland Park is a home rule municipality pursuant to Article VII, Section 6(a) of the 1970 Illinois Constitution. Orland Park represents that the adoption of this Agreement is within its scope of authority and that it is duly authorized and empowered to enter into and carry out the terms of this Agreement.

3. **Off-Site Improvements:** Other than pursuant to this Agreement, Orland Park shall have no obligation to incur any expense as may be required to complete the off-site improvements, if any, for the development contemplated herein.

4. **Commencement of Construction:** Unless unforeseen events or unforeseen increases in the costs of construction occur, Orland Park and Terry's agree to promptly commence and diligently pursue construction activities, including expanding the Dealership sales and service facility at 9401 West 143rd Street and relocating its main entrance no later than December 31, 2011.

5. **Retention of Dealership Sign:** Due to a 143rd Street right-of-way dedication heretofore made by Terry's to facilitate roadway expansion, Orland Park will permit the refacing of the existing monument sign. Upon proper application by Terry's, Orland Park will grant such permits as may be needed for new sign inserts, provided that any new signage shall comply with the Village sign requirements as set forth in the Village Land Development Code.

6. **143rd Street Entrance Location:** Except for Terry's share of traffic signalization which shall be paid by Orland Park, Orland Park shall extend to Terry's such non-financial assistance as the parties hereto deem necessary and appropriate to cause the relocation of Terry's main 143rd Street entrance to be coordinated and aligned with the entrance to the retail development known as Orland Crossings on the north side of 143rd Street.

7. **Apple Towing Service:** Subject to compliance with Orland Park's vehicle towing policies, and on a rotating basis with other vehicle towing service firms, Orland Park shall continue its use of Apple Towing during the term of this Agreement and provided Apple Towing is controlled by Terry's and Terry's remains a viable automobile dealership in Orland Park.

8. **Sales Tax Rebate Provisions:** In consideration of Terry's making the aforesaid Property improvements in Orland Park in substantial accordance with detailed plans and specifications to be submitted to Orland Park, as well as preliminary site plan and landscaping plans, which approved plans and specifications will be hereafter made an addendum to this Agreement, Orland Park agrees to remit to Terry's certain monies as follows:

SALES TAX REBATE – MOTOR VEHICLE SALES: Provided that the aforesaid improvements have begun on or before December 31, 2011 (the actual date of commencement of improvements to be determined by Terry's and with written notice to Orland Park), for the period commencing on January 1, 2012, and ending December 31, 2013 Orland Park shall allocate fifty percent (50%) of the Retailer's Occupation Tax and the Retailer's Service Occupation Tax (hereinafter collectively "Sales Tax Revenue") that is collected by Terry's as a result of business transactions (sales of new and used motor vehicles and automotive parts and accessories) occurring within the corporate limits of Orland Park, and which is received, either directly or indirectly, by Orland Park up to a maximum of \$1,000,000.00. Commencing January 1, 2014, the Base Amount, as hereinafter defined, shall be retained by Orland Park. After retention of the Base Amount, Orland Park shall pay one hundred percent (100%) of the remaining Sales Tax Revenue to Terry's. It is the intent of the parties that no distribution or remittance to Terry's of Sales Tax Revenues shall be required in such period until such time as the Base Amount has been received either directly or indirectly by Orland Park.

- (1) **Base Amount:** The "Base Amount" shall be an amount equal to the average annual Lincoln/Mercury Sales Tax Revenue received by the Village for calendar years 2010, 2011 and 2012. Without first obtaining the consent of Orland Park for other sales, the Base Amount and gross sales subject to the rebate provided for herein shall consist only of sales by Terry's of new and used vehicles and trucks, and automotive parts and accessories.
- (2) **Duration:** The obligation of Orland Park to reimburse Terry's from its collected Lincoln/Mercury Sales Tax Revenues shall continue until the first to occur of either of the following events:
 - (a) Terry's (or its successor) fails to operate on the Dealership property a new and used motor vehicle dealership; or
 - (b) Orland Park has reimbursed Terry's the total sum of \$1,000,000.00 from rebates paid to Terry's pursuant to this paragraph 8.

9. **Sales Tax Reports:** Within fifteen (15) days after the expiration of each calendar quarter of the term of this Agreement, Terry's shall provide Orland Park with a statement signed by one of its officers as to the dollar amount of Sales Tax Revenue paid to the State of Illinois for the benefit of Orland Park during the prior calendar quarter. Additionally, Terry's shall maintain and have available for inspection by Orland Park copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other Sales Tax information filed with the State of Illinois or appropriate governmental entity, which documents are being held available for Orland Park for purposes of identifying Sales Tax Revenues collected pursuant to this Agreement. Additionally, Orland Park shall use its best efforts to obtain such Sales Tax information directly from the Illinois Department of Revenue or the State of Illinois. To the extent permitted by law, Orland Park shall endeavor to maintain the confidentiality of the information contained in such reports, but shall be permitted to disclose such information and documents to employees and consultants as Orland Park, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. Terry's understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments to Terry's pursuant to this Agreement. Terry's also agrees, upon the request of Orland Park, 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 to Orland Park sales tax information concerning the Terry's dealership.

10. **Reimbursement Mechanism:** Not later than forty-five (45) days after the receipt of the signed statement from Terry's for the applicable calendar quarter, Orland Park shall remit in full to Terry's, Terry's share of the Sales Tax Revenue for that particular calendar quarter. Orland Park shall be under no obligation to remit any monies whatsoever until all Sales Tax Revenues are received from the Illinois Department of Revenue for the applicable calendar quarter, but Orland Park reserves the right to make such earlier and additional payments in such amounts and at such times as Orland Park, in its sole discretion, deems appropriate. Any payments determined to be due to Terry's from Orland Park based upon Terry's statement or its

sales tax returns shall be reduced by the amount of any and all collection fees imposed upon Orland Park by the State of Illinois or the Illinois Department of Revenue for collection of the Sales Tax Revenues.

11. Limitations of Liability: No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Orland Park, its officers, agents and employees, in any amount or in excess of any specific sum agreed by Orland Park to be paid to Terry's hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Orland Park, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of Terry's against Orland Park, its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by Orland Park. No recourse under or upon any obligation, covenant or agreement of the Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Terry's, its officers, agents and employees, in excess of their obligations to Orland Park hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Terry's, its officers, agents and employees, in excess of their obligations hereunder.

12. Mutual Assistance: Orland Park and Terry's agree to do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

13. Provisions Concerning Limitation on Debt: The receipt of Sales Tax Revenues, either directly or indirectly, from Terry's, as provided earlier in this Agreement, shall be a condition precedent to any obligation of Orland Park to pay monies to Terry's and, as such, no debt from Orland Park to Terry's shall exist unless Orland Park has first received, during any calendar year, either directly or indirectly, Sales Tax Revenues in excess of the sum of the Base Amount for that calendar year.

14. Governing Law, Waiver and Notices: This Agreement shall be governed by the laws of the County of Cook, the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state or federal court located within the County of Cook and State of Illinois. A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement. Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail, return receipt requested, or by delivering the same in person or to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Orland Park shall be sent to:

Village Manager
Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462

With copies to:

E. Kenneth Friker
Klein, Thorpe and Jenkins, Ltd.
15010 South Ravinia Avenue – Suite 10
Orland Park, Illinois 60462

Director of Finance
Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462

All notices to Terry's shall be sent to:

Terry's Lincoln Mercury, Inc.
Attn: Terry Kunes
9401 West 143rd Street
Orland Park, Illinois 60462

With a copy to:

James F. Dunneback
James F. Dunneback, P.C.
14535 John Humphrey Drive, Suite 101
Orland Park, Illinois 60462

or to such other addresses as a party may designate for itself by notice given from time to time to the other parties in the manner provided herein.

15. **Time is of the Essence:** Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof, and they hereby acknowledge that the successful performance of this Agreement requires their continued cooperation.

16. **Breach:** Subject to the provisions of paragraph 11 hereof, upon a breach of this Agreement, either of the parties, by any 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.

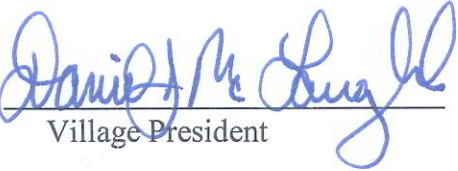
17. **Entire Agreement:** The parties agree to the following other mutual covenants:

- A. **Entire Agreement:** This instrument contains the entire agreement between the parties with respect to the transaction contemplated in this Agreement. The prior Amended and Restated Business Development Agreement between the parties dated December 21, 2009, and any amendments thereto prior to this Agreement are null and void and of no further legal effect.
- B. **Severability:** If any provision of this Agreement is held invalid by a court of competent jurisdiction, after exhaustion of all appeals or periods for such, or in the event such a court shall determine that Orland Park does not have the power to perform any such provision, after exhaustion of all appeals or periods for such, such provision shall be deemed to be excised herefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Orland Park from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves Orland Park of any of its monetary obligations under Section 8 of this Agreement, then this Agreement shall terminate.
- C. **Amendment:** This Agreement may be amended, altered or revoked at any time, in whole or in part, by filing with this Agreement a written instrument setting forth such changes signed by all of the parties to this Agreement.
- D. **Binding On:** This Agreement shall be binding on the parties, and their respective successors, assigns, and legal representatives.
- E. **Section and Other Headings:** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.


- F. **Assignment:** Terry's shall not assign this Agreement to any person or entity without the prior written consent of Orland Park, which consent shall not be unreasonably withheld, provided, however, Orland Park agrees to consent to an assignment to a motor vehicle dealer. No such assignment shall be effective, even if consented to by Orland Park, unless and until the Assignee assumes in writing the obligations of Terry's hereunder and, notwithstanding such assignment and assumption, Terry's shall remain liable for all of its obligations and the performance thereof pursuant to this Agreement.
- G. **Permits and Approvals:** Terry's recognizes and agrees that Orland Park has sole discretion with regard to all approvals and permits including, but not limited to, approval of the final development plan, excavation permits, grading permits, building permits and occupancy permits, and failure on the part of Orland Park to grant any required approval or issue any required permit shall not be deemed as the cause of default under this Agreement, or give rise to any claim against or liability to Orland Park pursuant to this Agreement.
- H. **Authorization to Execute:** The officers of Terry's who have executed this Agreement warrant that they respectively have been lawfully authorized by the Board of Directors of Terry's to execute this Agreement on its behalf. The Village President and Village Clerk of Orland Park hereby warrant that they have been lawfully authorized by the Village Board of Orland Park to execute this Agreement. Terry's and Orland Park shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, by-laws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.
- I. **Defaults:** Failure on the part of Terry's to comply with any term, representation, warranty, provision or condition of this Agreement after written notice thereof from Orland Park and failure to cure within forty-five (45) business days thereafter shall constitute an event of default. Upon an occurrence of an event of default, the non-defaulting party shall be relieved of any and all of its obligations arising pursuant to this Agreement, and such obligations shall be immediately cancelled and without any force or effect, and the non-defaulting party may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance and observance of any obligation, understanding, covenant or agreement as aforesaid, including, but not limited to, costs incurred by use of its employees, officers and attorneys.

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

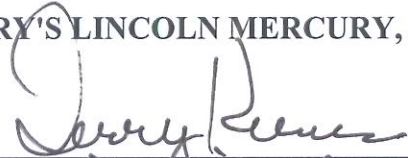
VILLAGE OF ORLAND PARK

By: 
Village President

ATTEST:


Village Clerk

TERRY'S LINCOLN MERCURY, INC.

By: 
Its: President

ATTEST:
