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March 24, 2017

**HAND DELIVERED**

Ms. Karie Friling  
Director of Development Services  
Village of Orland Park  
14700 S. Ravinia Avenue  
Orland Park, Illinois 60462

**Re: Zeigler Infiniti of Orland Park**

Dear Karie:

Enclosed for the Village's permanent records is the original "Development Agreement (Zeigler Infiniti of Orland Park)," which was recorded with the Cook County Recorder of Deeds on March 22, 2017 as Document No. 1708115123.

If you have any questions, please call.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.



E. Kenneth Friker

Enc.



1708115123

Doc# 1708115123 Fee \$94.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/22/2017 02:14 PM PG: 1 OF 29

This document prepared by:  
E. Kenneth Friker  
On Behalf of the Village of Orland Park  
Klein, Thorpe and Jenkins, Ltd.  
15010 S. Ravinia – Suite 10  
Orland Park, Illinois 60462

For Recorder's Use Only

**DEVELOPMENT AGREEMENT  
(Zeigler Infiniti of Orland Park)**

**INTRODUCTION**

1. This Agreement entered into this 20<sup>th</sup> day of February, 2017, by and among the VILLAGE OF ORLAND PARK, an Illinois municipal corporation (hereinafter referred to as the "Village"), AJZ-INFINITI ORLAND PARK, LLC, an Illinois limited liability company ("Owner") and ZEIGLER INFINITI ORLAND PARK, LLC, a Michigan limited liability company ("Developer").

2. The property subject to this Agreement and legal title to which is vested in Owner (excepting such portion as is dedicated to the public), is legally described as follows:

THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (EXCEPT THE WEST 1 ROD OF THE NORTH 80 RODS THEREOF) OF SECTION 23, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF 159<sup>TH</sup> STREET AS DEDICATED PER DOCUMENT NO. 10909314, AND NORTH OF A LINE BEING 876.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 27-23-100-013 and 27-23-100-014

The said property is hereinafter referred to as the "Subject Property."

PA

3. The Subject Property is located at 8751 W. 159<sup>th</sup> Street and consists of approximately six (6) acres of land.

4. The Subject Property is zoned in the BIZ General Business District and is proposed to be developed by the Developer for a 22,300 square foot, two-story motor vehicle sales facility at the southeast corner of 159<sup>th</sup> Street and 88<sup>th</sup> Avenue.

5. The Village of Orland Park is a Home Rule Unit pursuant to the provisions of the Illinois Constitution, Article VII, Section 6, and the terms, conditions and acts of the Village under this Agreement are entered into and performed pursuant to the Home Rule powers of the Village and the statutes in such cases made and provided.

### **RECITALS:**

1. The parties hereto desire that the Subject Property be developed in the Village, subject to the terms and conditions as hereinafter set forth, and that the Subject Property be subdivided and developed in the manner as set forth in this Agreement.

2. The Developer, with Owner's consent, has petitioned the Village for a special use permit with modifications, a variance and a request to subdivide the Subject Property as more fully hereinafter set forth.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and codes and ordinances of the Village including the filing of a petition by the Developer requesting a special use for the Subject Property to enable the development of the Subject Property as herein provided. The Village has caused the issuance of proper notice and held all necessary hearings to effectuate such special use as herein provided, including all hearings as are necessary to effectuate the plan of development herein set forth.

4. All reports by all relevant governmental entities have been submitted enabling appropriate action by the Village Board of Trustees to achieve the following:

(a) Adoption and execution of this Agreement by ordinance;

(b) Adoption of such ordinances as are necessary to effectuate the terms and provisions of this Agreement, including the classification of the Subject Property for purposes of the subdivision, variance and special use permit with modifications pursuant to the terms and conditions of this Agreement;

(c) The adoption of such other ordinances, resolutions and actions as may be necessary to fulfill and implement this Agreement pursuant to the terms and conditions herein contained.

5. The parties hereto have determined that it is in the best interests of the Village, the Owner and Developer and in furtherance of the public health, safety, comfort, morals and welfare of the community to execute and implement this Agreement, and that such implementation of this Agreement and development of the Subject Property pursuant to its terms and conditions will constitute an improvement of the tax base of the Village, be in

implementation of the comprehensive plan of the Village, and will constitute a preservation of environmental values.

6. Owner and Developer covenant and agree that they will execute all necessary directions and issue all necessary instructions and take all other action necessary to perform their respective obligations hereunder.

SECTION ONE: Special Use with Modifications, Variance, Subdivision, Plan Approval and Design Standards.

A. The Village, having held the necessary hearings before the relevant governmental bodies pursuant to statute and ordinances in such cases made and provided and pursuant to requisite notice having been given, shall by adoption of proper ordinance(s), concurrently with the execution and delivery of this Agreement:

1. Cause the Subject Property to be granted a special use under the Village Land Development Code (the "Code") to construct, operate and maintain a new approximately 22,300 square foot, motor vehicle sales facility at the southeast corner of 159<sup>th</sup> Street and 88<sup>th</sup> Avenue with modifications to enable parking between the building and the street on two frontages, reduce the required landscape foundation plantings on the north and east facades, and reduce the number of landscape islands from 34 to 22.

2. Cause the Subject Property to be granted the following three (3) variances: increase the parking capacity in excess of 20% from 74 spaces to 326 spaces, reduce less than 50% the amount of masonry used below the windows on the east elevation, and increase the lighting intensity from a maximum of 10 foot-candles at the property line to 50 foot-candles and from fifteen foot-candles interior to the site to 30 foot-candles.

B. The Subject Property shall be developed substantially in accordance with the preliminary site plan titled "Preliminary Site Plan Zeigler Orland Park", appended hereto and incorporated herein as EXHIBIT A, prepared by Spaceco Inc., dated 6/15/16, last revised 9/14/16, sheet number P-GM 4 of 6, subject to the following conditions to be performed by Developer:

1. Install a sidewalk and crosswalk connecting the building to the 159<sup>th</sup> Street pedestrian network.
2. Disallow the use of a public announcement system exterior to the building.
3. Keep all garage doors to service areas closed during the servicing of vehicles.
4. Meet all final engineering and building code related items.
5. Complete any temporary vehicle inventory storage onsite by May 1, 2018 or end of construction, whichever occurs first.

C. The Subject Property shall be developed substantially in accordance with the Elevations titled "New Dealership Facility for: Zeigler Infiniti", prepared by Linden Group, sheet A-4.0, dated 9/14/16, subject to the conditions outlined above and the following:

The Developer shall reasonably screen the rooftop mechanical units from view of the neighbors to the south.

D. The Developer shall submit a Plat of Subdivision signed by Owner to the Village for recording.

E. The Developer shall submit a final landscape plan, for separate review and approval by the Village within 60 days of final engineering approval.

F. All project and building signage shall be subject to review and approval by the Village, not to be unreasonably withheld, delayed or conditioned, and shall be consistent with the Village sign ordinance as set forth in the Code; and

G. The Developer shall comply with applicable laws and regulations concerning its development of the Subject Property.

SECTION TWO: Contributions.

Upon application for the initial building permit, Developer shall pay to the Village the transportation exaction fees as provided in Article 5, Section 5-112 H. 6. of the Code.

SECTION THREE: Storm Water Retention/Detention and Storm Sewers.

Storm water runoff emanating from the subject Property shall be retained or detained in the detention pond at the southeast corner of the Subject Property. Developer shall be required to submit a landscape plan that will include a Maintenance and Monitoring plan for the detention pond. In addition, a fifteen (15) foot wide naturalized landscape area is required around the pond with an eight (8) foot coexistent maintenance area. The design criteria, construction and maintenance of the storm sewers shall be in accordance with all standards of the Village in force on the date of final plan, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plat approval, and shall be completed by the Developer at its expense. All storm water detention/retention facilities located on the Subject Property shall be perpetually owned and maintained by the Developer.

SECTION FOUR: Water Supply.

Developer shall be required to construct and install at its expense all necessary on-site water mains to service the Subject Property. All such water mains shall be sized, constructed and installed in accordance with the Code and final engineering plans approved by the Village. The Developer shall pay to the Village the required water connection charge(s) based upon the size of the connection(s) in accordance with Village ordinances. The Developer shall maintain the water mains and appurtenances until final acceptance by the Village.

SECTION FIVE: Sanitary Sewers.

Developer shall construct and install at its expense all necessary sanitary sewers to service the Subject Property in accordance with the Code and final engineering plans approved by the Village. Said sewers shall be sized as required by the Village. All required fees are due

before a building permit will be issued. The design criteria and construction of the sanitary sewers shall be in accordance with all standards of the Village in force on the date of final plan, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plan approval, and shall be completed by the Developer at its expense. The Developer shall maintain the sanitary sewer mains and appurtenances until final acceptance by the Village.

**SECTION SIX: Sidewalks, Street Lights, Streets and Landscaping.**

All sidewalks and multi-use paths shown on the preliminary site plan (EXHIBIT A), as said plan may be finally approved and as conditioned., shall be constructed by Developer to the applicable Village standards and shall be maintained until final acceptance by the Village. Developer shall construct all street lights and all necessary electrical wiring required by the Village in order to meet all applicable Village standards. Developer shall maintain the street lighting until final acceptance by the Village. The Developer is responsible for energizing the street lights with the local energy supplier. Developer shall construct and install all landscaping requirements per the final landscape plan, meeting all Village Codes. Developer shall work with the appropriate municipal jurisdiction(s) along 88<sup>th</sup> Avenue to complete said construction of sidewalks and multi-use paths and to dedicate fifty (50) feet of public right-of-way to the Village of Orland Hills for 88<sup>th</sup> Avenue.

**SECTION SEVEN: Easements.**

Owner and Developer agree at the time of approval of this Development Agreement to grant to the Village, and/or obtain grants to the Village, of all necessary easements for the provision of sewer, water, street, or other utilities, including cable television, or for other improvements which may serve not only the Subject Property, but other properties in the general area, such as cross-access easements.

All such easements to be granted shall name the Village and/or other appropriate entities designated by the Village as grantee hereunder. It shall be the responsibility of Owner and Developer to obtain all easements, both on-site and off-site, necessary to serve the Subject Property.

**SECTION EIGHT: Developmental Codes and Ordinances and General Matters.**

The development of the Subject Property shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the Village as they exist on the date hereof, or, with respect to codes and ordinances subsequently adopted by the Village for the protection of life, health and safety and applicable to similar commercial buildings Village-wide, as are in existence during development of the Subject Property. Planning and engineering designs and standards, and road construction and dedication of public improvements, shall be in accordance with the then existing ordinances of the Village, or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the Village of Orland Park at such time.

No occupancy permit shall be issued for any building prior to the completion and acceptance by the Village of any required public improvements. Any required public improvements shall be completed within one (1) year from the date hereof and the Developer shall deliver to the Village an irrevocable letter of credit (the form of security Developer has elected to provide) in a form satisfactory to and from a bank or financial institution and in an amount as provided for in the Code. Said Letter of Credit is to include all costs related to required lighting, landscaping, roadway, sidewalk, walking path, sewer and water lines and storm water management facilities. The Village may, in its discretion, permit the amount of said letter of credit to be reduced, from time to time, as major public improvements are completed. The Village may also require an increase, from time to time, if the estimated cost of completing the public improvements increases more than 3% per annum.

SECTION NINE: Utilities.

All electricity, telephone, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at Developer's option as long as the underground facilities do not conflict with Village-maintained infrastructure.

SECTION TEN: Impact Requirements.

Owner and Developer agree that any and all contributions, dedications, donations and easements provided for in this Agreement substantially advance legitimate governmental interests of the Village, including, but not limited to, providing its residents, with access to and use of public utilities, streets, fire protection, and emergency services. Owner and Developer further agree that the contributions, dedications, donations and easements required by this Agreement are uniquely attributable to, reasonably related to, and made necessary by the development of the Subject Property.

SECTION ELEVEN: Sales Tax Rebate.

The Village and Developer shall enter into the Sales Tax Rebate Agreement in substantially the form attached hereto as EXHIBIT B.

SECTION TWELVE: Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities, for a period of ten (10) years from the date of execution hereof and any extended time that may be agreed to by amendment.

The terms and conditions of this Agreement relative to the payment of monies to the various contributions to the Village, construction and/or dedication of public improvements, granting of easements to the Village, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION THIRTEEN : Notices.

Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the Village:

1. Daniel J. McLaughlin  
Village President  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462
2. John C. Mehalek  
Village Clerk  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462
3. E. Kenneth Friker  
Village Attorney  
Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia Avenue – Suite 10  
Orland Park, Illinois 60462

For the Developer:

1. Zeigler Auto Group II, Inc.  
Zeigler Infiniti of Orland Park  
Attn: Daniel Scheid  
4201 Stadium Drive  
Kalamazoo Michigan, 49008
2. Zeigler Infiniti of Orland Park  
Attn: Daniel Scheid  
11030 W 159TH ST  
Orland Park, IL 60467

For the Owner:

1. AJZ-Infiniti Orland Park, LLC  
4201 Stadium Drive  
Kalamazoo, MI 49008

or such other addresses as any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

SECTION FOURTEEN: Signs.

The location of any sign upon the Subject Property shall be in accordance with an approved Signage Plan and the Village's Sign Ordinance, as set forth in the Code, and shall have reasonable setbacks from streets and highways as the interest of safety may require.

SECTION FIFTEEN: Reimbursement of Village for Legal and Other Fees and Expenses.

A. To Effective Date of Agreement.

The Developer, concurrently with the issuance of the building permit, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (1) the costs incurred by the Village for engineering services;
- (2) all reasonable attorneys' fees incurred by the Village; and
- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

B. From and After Effective Date of Agreement.

Except as hereinafter provided, upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all enumerated reasonable expenses and costs incurred by Village in the administration of the Agreement, including and limited to engineering fees, attorneys' fees and out of pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to the Developer upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Developer at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Developer.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against any party hereto, which relate to the terms of this Agreement, then, in that event, the Owner and/or

Developer as the case may be on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (1) Neither Owner nor Developer shall make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (2) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village, the Owner and/or Developer on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Owner and/or Developer shall reimburse the Village from time to time on written demand from the President of Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other reasonable expenses of litigation, incurred by the Village in connection therewith.

In the event a party hereto institutes legal proceedings against any other party for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the unsuccessful party all expenses of such legal proceedings incurred by the successful party, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred in connection therewith. Any party may, in its sole discretion, appeal any such judgment rendered in favor of another party.

**SECTION SIXTEEN: Warranties and Representations.**

The Owner and Developer represent and warrant to the Village as follows:

1. Owner is the legal title holder and the owner of record of the Subject Property as indicated on the first page of this Agreement.
2. Developer proposes to develop the Subject Property in the manner contemplated in this Agreement.
3. Other than Owner and Developer, no other entity or person has any interest as of the date hereof in the Subject Property or its development as herein proposed.
4. Owner and Developer have provided the legal description of the Subject Property set forth in this Agreement and the attached Exhibits and said legal description is accurate and correct.
5. With respect to any real estate herein which will become property of the Village, Owner and Developer warrant and represent, to the best of their knowledge, that during the period of their ownership or control over said Subject Property they have no knowledge of, nor

reason to suspect, that there has been any underground storage (or other) tank or any presence, disposal, release or threatened release of hazardous substances or hazardous wastes on, from or under the property, by or through Owner, Developer or any other party whatsoever. Owner and Developer similarly represent and warrant that to the best of their knowledge, there was no underground storage (or other) tank and not any presence, disposal, release or threatened release of hazardous substances or hazardous waste on, from or under the property prior to Owner's or Developer's ownership or control of the Subject Property.

Owner and Developer similarly further represent and warrant that to the best of their knowledge, the Subject Property (including underlying soil and ground water conditions) is not in violation of any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other relating to hygienic or environmental conditions, and during ownership or control of the property by Owner or Developer, no party has stored or disposed of any flammable explosives, radioactive materials, hazardous waste, toxic substances or other related materials on, under or about the property. Owner and Developer shall and do hereby agree to indemnify, protect, defend, and hold the Village harmless from and against any claims, losses, demands, costs, proceedings, suits, liabilities, damages and causes of action, including consequential damages and attorneys' fees of counsel selected by the Village and other costs of defense incurred, arising against or suffered by the Village of its assigns as a consequence, directly or indirectly, of any misrepresentation by Owner or Developer of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

SECTION SEVENTEEN: Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner, Owner and Developer shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it or them by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released them from any or all of such obligations.

SECTION EIGHTEEN: No Waiver or Relinquishment 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 either 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.

SECTION NINETEEN: Village Approval or Direction.

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be

given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

SECTION TWENTY: Singular and Plural.

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

SECTION TWENTY-ONE: Section Headings and Subheadings.

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions hereunder whether covered or relevant to such heading or not.

SECTION TWENTY-TWO: Recording.

A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of the Developer.

SECTION TWENTY-THREE: Authorization to Execute.

The officers of Owner and Developer executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on their behalf. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Owner, Developer and Village shall, upon request, deliver to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

SECTION TWENTY-FOUR: Amendment.

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, 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 in writing and signed by them.

SECTION TWENTY-FIVE: Counterparts.

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION TWENTY-SIX: Curing Default.

The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default, or such additional time as is reasonably required to cure the default so long as the cure of default is commenced within said thirty (30) days, and efforts to effect such cure of default are diligently prosecuted to completion.

SECTION TWENTY-SEVEN: Conflict Between the Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

SECTION TWENTY-EIGHT: Severability.

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, 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 Village from performance under such invalid provision of this Agreement.

SECTION TWENTY-NINE: Definition of Village.

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

SECTION THIRTY: Execution of Agreement.

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof which date shall be the effective date of this Agreement.

VILLAGE OF ORLAND PARK, an  
Illinois Municipal Corporation

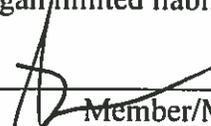
By:   
Village President

ATTEST:

By:   
Village Clerk

OWNER:

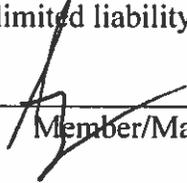
AJZ-INFINITI ORLAND PARK, LLC,  
A Michigan limited liability company

By:   
Member/Manager

DEVELOPER:

ZEIGLER INFINITI ORLAND PARK, LLC,  
a Michigan limited liability company

By: \_\_\_\_\_

  
Member/Manager

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS









## SALES TAX REBATE AGREEMENT

**THIS AGREEMENT** entered into this 20<sup>th</sup> day of February, 2017, by and among the **VILLAGE OF ORLAND PARK**, an Illinois home rule municipality (the "Village"), **ZEIGLER NISSAN ORLAND PARK, LLC**, a Michigan limited liability company ("Nissan Dealership") and **ZEIGLER INFINITI ORLAND PARK, LLC**, a Michigan limited liability company ("Infiniti Dealership").

### **WITNESSETH:**

**WHEREAS**, the Infiniti Dealership occupies real estate located within the corporate limits of the Village of Orland Park, Illinois, located at 8751 W. 159<sup>th</sup> Street, Orland Park, Illinois (the "Infiniti Property"), which is to be operated by the Infiniti Dealership for an automobile sales and service facility; and

**WHEREAS**, the Nissan Dealership occupies real estate located within the corporate limits of the Village of Orland Park, Illinois, located at 8550 W. 159<sup>th</sup> Street, Orland Park, Illinois (the "Nissan Property"), which is to be operated by the Nissan Dealership for an automobile sales and service facility; and

**WHEREAS**, the Infiniti Dealership and Nissan Dealership are subsidiaries of Zeigler Auto Group II, Inc., a Michigan limited liability company (collectively the "Zeigler Dealerships"); and

**WHEREAS**, the Infiniti Dealership is to construct a new Infiniti dealership on the Infiniti Property, and the Nissan Dealership is to renovate the existing Nissan dealership on the Nissan Property (collectively the "Development"); and

**WHEREAS**, both the Nissan Dealership and Infiniti Dealership have existing sales tax rebate agreements in place with the Village, dated May 2, 2011 and May 2, 2011 respectively; and

**WHEREAS**, this Agreement shall terminate and replace the said two existing Zeigler Nissan and Infiniti sales tax rebate agreements; and

**WHEREAS**, the Zeigler Dealerships anticipate generating an additional \$35 million dollars in additional taxable sales as well as providing employment for fifty (50) new employees generating significant additional annual payroll; and

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

1. Both the Infiniti Property and the Nissan Property are currently zoned in the BIZ General Business District; and

EXHIBIT B

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 Zeigler Dealerships would reconsider its plans to relocate to this Orland Park site, renovate and improve this Property, and this project would not be possible; and
5. The Zeigler Dealerships meet 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:**

**"Nissan Dealership"** - unless otherwise provided, the term "Nissan Dealership" shall mean the Nissan dealership located at 8550 W. 159<sup>th</sup> Street, Orland Park, which is owned and operated by Zeigler Nissan Orland Park, LLC, a subsidiary of Zeigler Auto Group II, Inc., a Michigan limited liability company.

**"Infiniti Dealership"** - unless otherwise provided, the term "Infiniti Dealership" shall mean the Infiniti dealership located, or to be located, at 8751 W. 159<sup>th</sup> Street, Orland Park, which is owned and operated by Zeigler Infiniti Orland Park, LLC, a subsidiary of Zeigler Auto Group II, Inc., a Michigan limited liability company.

**"Zeigler Dealerships"** - unless otherwise provided, the term "Zeigler Dealerships" shall mean **Zeigler Nissan Orland Park, LLC** and **Zeigler Infiniti Orland Park, LLC**, subsidiaries of Zeigler Auto Group II, Inc., a Michigan limited liability company.

4. **ECONOMIC INCENTIVES:** It is understood by the parties and declared by the Village that the Development is unique since the Zeigler Dealerships, as the user of the Infiniti Property and Nissan 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 Zeigler Dealerships that the Zeigler Dealerships may reconsider their 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 the respective properties. The Zeigler Dealerships 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 a maximum ten (10) consecutive years beginning with the period from February 20, 2017, through February 20, 2027, the Village shall pay to the Zeigler Dealerships a sum which totals Fifty Percent (50%) of

the Incremental 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 Infiniti Property and the Nissan Property within the Village which are subject to those taxes contemplated by Paragraph 6 below. The term "Incremental Sales Tax Revenue" means the increase in Sales Tax Revenue received by the Village in excess of the Sales Tax Revenue received by the Village in the calendar year 2015 (the "Base Amount"). In the case of the Sales Tax Revenue received by the Village in 2015 attributable to the Zeigler Dealerships, the Base Amount was \$338,658.00. This Agreement shall terminate at the completion of said ten (10) year period including the reporting period or when the sales tax rebate payments totaling SIX MILLION DOLLARS (\$6,000,000.00) has been paid to the Zeigler Dealerships, or either of them, whichever is first to occur. The Base Amount, as herein defined, shall be retained by the Village. After retention of the Base Amount, the Village shall pay fifty percent (50%) of the remaining Sales Tax Revenue to the Zeigler Dealerships, and the Village shall retain the other fifty percent (50%). It is the intent of the parties that no distribution or remittance to the Zeigler Dealerships shall be required in any year in the term of this Agreement until such time as the Base Amount has been received either directly or indirectly by the Village.

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 Zeigler Dealerships shall furnish to the Village copies of any and all Illinois sales tax returns and any amended Illinois sales tax returns for the applicable quarterly period, together with a cover letter containing the Zeigler Dealerships' 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 quarterly period provided, however, in the event the Reports are not received by the Village within fifteen (15) days after the filing with the Illinois Department of Revenue or Successor Agency then Zeigler shall have a 10-day cure period to provide the Reports to the Village upon notice from the Village that the Reports were not received by the Village. 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 Zeigler Dealerships, providing a copy of the request, and the Zeigler Dealerships 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 Zeigler Dealerships 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 Zeigler Dealerships, the Zeigler Dealerships 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 Zeigler Dealerships of the applicable request as specified above and the Village has followed the Zeigler Dealerships' instructions in responding to such request. The Zeigler Dealerships understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments to the Zeigler Dealerships pursuant to this Agreement. The Zeigler Dealerships 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 Zeigler Dealerships' 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 Zeigler Dealerships in one single payment made payable to AJZ-Infiniti Orland Park, LLC (at the address specified below) the Zeigler Dealerships' share of the Village Sales Tax Revenue for that particular reporting period.

If any distribution applicable to a period within the ten (10) year period set forth hereinabove is received by the Village after the ten (10) year period, it shall be paid to the Zeigler Dealerships subject to the reduction requirements of this "Reimbursement Mechanism" Section.

Any payments determined to be due to the Zeigler Dealerships 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. **ADDITIONAL DEALERSHIP OBLIGATIONS:** The Village's obligation to make sales tax rebate payments to the Zeigler Dealerships is conditioned upon the Zeigler Dealerships:
  - A. Providing to the Village evidence satisfactory to the Village (in the form of paid receipts, cancelled checks, etc.) verifying that the combined expansion and

renovation costs for the Nissan Dealership and the Infiniti Dealership, including land costs, has incurred in excess of SIX MILLION DOLLARS (\$6,000,000.00);

- B. Receiving all Village approvals required for all site plans, elevations, signage and building permits; and
- C. The Village receives the full sales tax base amount of THREE HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED AND FIFTY-EIGHT DOLLARS (\$338,658.00) from Zeigler Dealerships, or either of them, prior to any share of new incentive sales tax.

8. **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 9 below, the party alleged to have failed to perform its or their 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 ten (10) years of the date of this Agreement, the Zeigler Dealerships a) discontinues either the Nissan Dealership or the Infiniti Dealership, with or without its replacement by another automobile line (provided, however, if the Zeigler Dealerships sell or otherwise transfer either the Nissan Dealership or the Infiniti Dealership to another owner and such owner continues to operate the Nissan Dealership or the Infiniti Dealership within the corporate limits of the Village, then this Agreement shall continue and be assignable to such new owner) or b) relocates either Nissan Dealership or the Infiniti Dealership to any location outside the corporate limits of the Village. Additionally, in the event either a) or b), above, occurs within ten (10) years of the date of this Agreement or the Dealerships cease to operate as a Nissan Dealership and an Infiniti Dealership, as agreed liquidated damages and not as a penalty, the Zeigler Dealerships will reimburse the Village all of the sales tax revenue rebated to the Zeigler Dealerships by the Village provided, however, in the event that either of the manufacturers of Nissan or Infiniti vehicles cease to continue to manufacture or sell such vehicles, the Zeigler Dealership shall not be obligated to reimburse the Village for the portion of the sales tax rebated by the Village attributable to sales of vehicles manufactured by the manufacturer that has ceased operations. The obligation to reimburse the Village as herein provided shall be the joint and several obligation of the Infiniti Dealership and the Nissan Dealership.

9. **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 Infiniti Dealership: Zeigler Auto Group II, Inc.  
Attn: Daniel Scheid  
4201 Stadium Drive  
Kalamazoo, MI 49008

with a copy to: Pete Roth  
Varnum Law  
333 Bridge Street  
Suite 1700  
Grand Rapids, MI 49054

If to the Nissan Dealership: Zeigler Auto Group II, Inc.  
Attn: Daniel Scheid  
4201 Stadium Drive  
Kalamazoo, MI 49008

with a copy to: Pete Roth  
Varnum Law  
333 Bridge Street  
Suite 1700  
Grand Rapids, MI 49504

If to Village: Daniel J. McLaughlin, Village President  
Village of Orland Park  
14700 South Ravinia Avenue  
Orland Park, IL 60462

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

10. **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.
11. **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.
12. **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.
13. **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding upon the Dealership and their respective successors and assigns, and upon successor corporate authorities of the Village and successor municipalities.
14. **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.
15. **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.
16. **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.

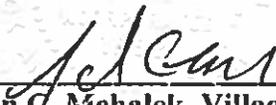
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first above written.

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

By: 

Daniel J. McLaughlin, Village President

ATTEST:

  
\_\_\_\_\_  
John C. Mehalek, Village Clerk

**ZEIGLER NISSAN OF ORLAND PARK, LLC,  
a Michigan limited liability company**

By: \_\_\_\_\_  
Member/Manager

**ZEIGLER INFINITI OF ORLAND PARK, LLC,  
a Michigan limited liability company**

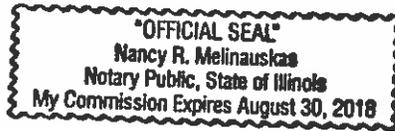
By: \_\_\_\_\_  
Member/Manager

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 DANIEL J. MC LAUGHLIN, personally known to me to be the Village President of the VILLAGE OF ORLAND PARK, and JOHN C. MEHALEK, 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 6<sup>th</sup> day of March, 2017.

Nancy R. Melinauskas  
Notary Public

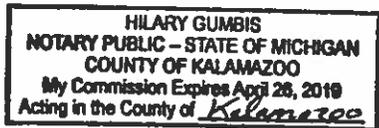


STATE OF ILLINOIS        )  
                                      ) SS.  
COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Aaron Zeigler, personally known to me to be the member/manager of ZEIGLER NISSAN OF ORLAND PARK, LLC, a Michigan limited liability company, and the same person whose name is subscribed to the foregoing instrument as said member/manager of ZEIGLER NISSAN OF ORLAND PARK, LLC, 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 28 day of February, 2017.

Hilary Gumbis  
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 the above-named Aaron Zeigler, personally known to me to be the member/manager of ZEIGLER INFINITI OF ORLAND PARK, LLC, a Michigan limited liability company, and the same person whose name is subscribed to the foregoing instrument as said member/manager of ZEIGLER INFINITI OF ORLAND PARK, LLC, 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 28 day of February, 2017.

Hilary Gumbis  
Notary Public

