

CITY OF PLANO AND GC INVESTMENT PROPERTIES, INC.
ECONOMIC INITIATIVE AGREEMENT
RETAIL SALES TAX REBATE
(Outlying Parcel)

THIS ECONOMIC INITIATIVE AGREEMENT is made and entered into as of the _____ day of _____, 2019 by and between the City of Plano, an Illinois Municipal Corporation located in Kendall County, Illinois, (the “City”) and GC Investment Properties, Inc., an Illinois Corporation and Gjovik Ford, Inc., an Illinois Corporation (the “OWNER/DEVELOPER”).

RECITALS

- A. The City is an Illinois municipality and enters into this AGREEMENT pursuant to 65 ILCS 5/8-11-20 and 65 ILCS 5/8-11-21 (“**Enabling Statute**”), and the City’s Retail Sales Tax Rebate Program Policy. The City has determined that it has the authority to enter into this AGREEMENT.

- B. The OWNER/DEVELOPER is the Contract Purchaser and intends to develop a Ford Sales and Service Dealership and Quick Lane Facility on a portion of the real property located west of Mitchell Road and south of Route 34, in the City of Plano, which development is the subject of an Economic Incentive Agreement entered into simultaneously with this Agreement, and OWNER/DEVELOPER wishes to and intends to develop the adjacent “Outlying Parcel”, legally described in the attached Exhibit “A”, (the “Property”) (“Development Project”) for the use of other businesses or entities OWNER/DEVELOPER has demonstrated to the City’s satisfaction that the OWNER/DEVELOPER has the experience and capacity to complete the Development Project. The OWNER/DEVELOPER and the City have determined that without the financial assistance provided under this AGREEMENT the Development Project would not be possible and that the OWNER/DEVELOPER would not undertake the Development Project. The OWNER/DEVELOPER has expressly conditioned the undertaking of the Development Project on the City’s agreement to pledge a portion of the Sales Tax Revenues (defined later) generated by the Development.

The City deems it to be of significant importance to encourage development within the City in order to maintain a viable real estate tax and sales tax base and promote employment opportunities. Accordingly, the City makes the following findings as required by the Enabling Statute:

- 1. The property has remained vacant for at least one (1) year;

- 2. The project is expected to create or retain job opportunities within the CITY and serve to strengthen the commercial sector and tax base of the

CITY;

3. The project will serve to further the development of adjacent areas;
 4. Without the agreement, the project would not be possible;
 5. The developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following:
 - a) Corporate debenture ratings of BBB or higher by Standard and Poor's Corporation of Baa or higher by Moody's Investors Service, Inc.
 - b) A letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or
 - c) Specific evidence of equity financing for not less than 10% of the total project cost.
 6. The Development Project will strengthen the commercial sector of the municipality;
 7. This Agreement is made in the best interest of the City to maintain and revitalize business within the City by assuring opportunities for development and attracting sound and stable commercial growth and to promote the public interest and to enhance the tax base of the City; and
 8. Pursuant to the Illinois Municipal Code, as amended ("**Code**"), the City has authority to enter into this AGREEMENT.
- D. Subject to the terms and conditions of this AGREEMENT, the City agrees to share with or rebate to the OWNER/DEVELOPER a portion of any Retailers' Occupation taxes received by the City that are generated by the development
- E. This AGREEMENT has been submitted to the Corporate Authorities of the City for consideration and review. The Corporate Authorities have given all notices and taken all actions required to be taken prior to the execution of this AGREEMENT.

NOW THEREFORE, to induce the Developer to undertake the Development Project on the Outlying Parcel and in consideration of the OWNER/DEVELOPER's Agreement to undertake the Development Project and the City's AGREEMENT to make the Rebate Payments to the OWNER/DEVELOPER; and in consideration of the mutual promises, covenants, stipulations and Agreements herein contained the parties agree as follows:

1. **Incorporation of Recitals.**

The recitals and the findings of fact set forth above are incorporated hereby by this reference as if fully set forth herein.

2. **Economic Initiative Agreement/Retail Sales Tax Rebate.**

- A) The CITY acknowledges that this AGREEMENT will provide incentives for development within the Outlying Parcel, which will provide sales tax benefits to the CITY. The CITY shall, upon application by OWNER/DEVELOPER or its assigns, pursuant to 65 ILCS 5/8-11-20 and 5/8-11-21 or any other statutory means, enact all Ordinances and execute all Agreements and documents to share the sales tax generated by Commercial Retail Establishments on the property and received by the CITY (Rebate Payments) subject to the following limitations:
- i. This Agreement shall be for a base period of eighteen (18) years.
 - ii. For the first fifteen (15) years of this Agreement, commencing with the date of the issuance of the Certificate of Occupancy for the first Generator in the Outlying Parcel, OWNER/DEVELOPER shall receive “**Rebate Payments**” equal to 90% of the CITY portion of the allocated sales tax revenue and the CITY shall retain 10%.
 - iii. For the next three (3) years (years 16 – 18) of this Agreement, OWNER/DEVELOPER shall receive “**Rebate Payments**” equal to 75% of the CITY portion of the allocated sales tax revenue and the CITY shall retain 25%. And
 - iv. In the event OWNER/DEVELOPER has not recovered all of its authorized expenses (as set out in Section 2B (ii) and (iii) of this Agreement below) at the end of the initial eighteen (18) year period, OWNER/DEVELOPER shall automatically receive annual extensions for up to an additional five (5) years until recovery in full. During the extended period, OWNER/DEVELOPER shall receive “**Rebate Payments**” equal to 75% of the CITY portion of the allocated sales tax revenue and the CITY shall retain 25%.
- B)
- i. For purposes of this AGREEMENT a “Commercial Retail Establishments” shall be any user that collects sales tax as part of its operation. A Commercial Retail Establishment may also be referred to herein as a “**Generator**”.
 - ii. OWNER/DEVELOPER will present to the CITY its estimate of the development costs for which it seeks Rebate Payments, for each respective “**Generator**” of sales tax on any parcel

of real property to be developed within the “Outlying Parcel Project”. The costs will be set forth and itemized on an Exhibit which will be attached to each Amendment to this Agreement for each specific “**Generator**”. OWNER/DEVELOPER, with the assistance of the CITY, intends to seek recapture from Developers of adjacent properties for certain of the development costs expended or advanced by the OWNER/DEVELOPER if City requires oversizing of utilities. The final total of Rebate Payments shall be agreed to in writing in Amendments to this Agreement or in separate Initiative Agreements for each specific Development; but in no event shall they be less than 50% of qualified expenses advanced for the development and construction for the benefit of all “**Generators**” in the Outlying Parcel as to Non-Public improvements and 100% Rebate payment for the cost of all Public Improvements.

- iii. For purposes of this Agreement the term “authorized expenses” shall be defined as any costs or funds advanced pertaining to development, City entitlements, design and installation of public improvements, drainage facilities, and engineering and construction costs for the development of any portion of the Outlying Parcel for a Generator’s use.

- C. CITY and OWNER/DEVELOPER agree that, in order to provide for the orderly development of Outlying Parcel, a Planned Unit Development Agreement will be entered into between the parties; and shall be approved by the CITY setting out the usual and customary terms and conditions for site, building and related issues

3. **Incentive Reimbursement Amounts.**

- A. The CITY shall distribute the municipal share of the sales tax revenue generated by any Generator in accordance with the formula set forth in Sub-paragraph 2 A of this AGREEMENT. All incentive payments shall be made only from the City’s portion of the allocated sales tax revenue generated by any Generator on the Outlying Parcel determined and calculated in accordance with the provisions of Section 2 (A) of this Agreement.
- B. **Sales Tax and Sales Tax Revenue Defined.** The term “Sales Tax” and “Sales Tax Revenue” used throughout this AGREEMENT refer to the CITY’S share of the revenues generated by the sale of merchandise or services from and collected under the Retailer’s Occupation Tax, or the CITY’S share of any other “sales 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, based upon gross sales, and located within

the State of Illinois, that is collected by the Generators as a result of business transactions occurring on the Property.

- C. In the event OWNER/DEVELOPER has not recovered its entire Incentive Reimbursement Amounts within the term of this Agreement, OWNER/DEVELOPER may recover any deficiency balance remaining at the termination date of this Agreement, until fully satisfied, from sales tax revenues derived from the Ford Dealership/Quick Lane Facility Generators in accordance with the terms of the Incentive Agreement for that Parcel. RECIPROCALLY, in the event OWNER/DEVELOPER has not recovered its entire Incentive Reimbursement Amounts within the term of the Incentive Agreement for the Ford Dealership/Quick Lane Parcel, OWNER/DEVELOPER may recover any deficiency balance remaining at the termination date of that Agreement, until fully satisfied, from sales tax revenues derived from Generators on the Outlying Parcel in accordance with the terms of the Incentive Agreement for that Parcel.
- D. Payment Obligation. The CITY agrees to pay OWNER/DEVELOPER or its assignee the OWNER/DEVELOPER'S proportionate share of the sales tax remittances made to the CITY by the Illinois Department of Revenue (DOR) within thirty (30) days of receipt by the CITY of the remittances and the Reports from the DOR, all consistent with any future reporting periods from time to time modified by the Illinois Department of Revenue and provided to the CITY by the DOR certifying the sales tax generated by each Generator on the Property, and continuing until the Incentives are paid to the OWNER/DEVELOPER as set forth in this AGREEMENT.
- (i) Provided, however, if the CITY no longer receives sales tax revenues by a Generator due to a change in Illinois statutes, then the CITY shall make payments to the OWNER/DEVELOPER from any alternate sources of revenue provided to the CITY by the State, if any are made, which are intended, specifically, as a replacement or substitute for sales tax revenue presently received by the CITY and generated from Generators on the project.
- E. Sources of Funds to Pay Reimbursable Development Project Costs.
- (i) Funds necessary to pay for the Incentives are solely derived from the sales tax or service/entertainment taxes generated by the Generators. This pledge of tax revenues hereby is approved by the CITY.
- (ii) In order to comply with the terms of this AGREEMENT, OWNER/DEVELOPER shall require in writing all tenants in the Development Project

Property and any subsequent purchasers of any portion of the Development Project Property to direct the Illinois Department of Revenue to provide the CITY with a breakdown of sales tax being remitted to the CITY for each Generator. In the event OWNER/DEVELOPER or a Generator fails to provide the CITY with written authority for the release of said information from the Illinois Department of Revenue the CITY shall have no duty to remit sales tax proceeds from that Generator to the OWNER/DEVELOPER.

4. **Assignability.**

It is expressly agreed and understood by the parties to this AGREEMENT that the benefits contemplated in this AGREEMENT and 65 ILCS 5/8-11-20 and 5/8-11-21 are assignable at the option of the OWNER/DEVELOPER. Absent a specific written AGREEMENT between the OWNER/DEVELOPER and the CITY, the OWNER/DEVELOPER shall be permitted to assign any of its rights and benefits under this AGREEMENT. Upon such written Assignment by the OWNER/DEVELOPER, Assignee shall have only those rights and benefits assigned by the OWNER/DEVELOPER under this AGREEMENT and applicable law, and shall be entitled to enforce same by any legal or equitable remedy.

5. **Reimbursement Procedures.**

- A. **Sales Tax Reports.** OWNER/DEVELOPER agrees to cause all Generators to execute and deliver to the City a written direction, in form and content acceptable to the City and the Illinois Department of Revenue (“DOR”), authorizing the DOR to release to the City the sales tax figures for the Generator, on a quarterly basis or other DOR reporting basis during the term of this AGREEMENT. The City agrees to take the necessary action to initiate the transaction. Should the DOR cease to release the sales tax information to the City, OWNER/DEVELOPER and all Generators shall be responsible for any further action to obtain the sales tax information from the DOR and shall be responsible for submittal of the sales tax information from the DOR and shall be responsible for submittal of the sales tax information as provided for in the next paragraph of this AGREEMENT.
- B. In the event the DOR fails to submit to the City the normal reporting period sales tax information for any Generator as provided for in Section 5 A above, OWNER/DEVELOPER shall cause Generators to, contemporaneous with the filing of sales tax reports with the Illinois Department of Revenue or successor agency, furnish to the City copies of any and all sales tax returns, sales tax reports, amendments, or any other paper filed with the State of Illinois, said Department of Revenue or other appropriate governmental entity, pertaining to the Generators, and certified as being true and correct, which documents are being provided to the City for purposes of identifying sales tax revenues received from Generators subject to the terms of this AGREEMENT.

- C. **Confidentiality.** The City acknowledges and agrees that information to be provided by Generators are proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to OWNER/DEVELOPER and/or OWNER/DEVELOPER's affiliates and/or Generator and/or Generator's affiliates, and to the extent permitted by state of federal law, including but not limited to Section 7(1)(g) of the Illinois Freedom of Information Act, the City agrees to hold in confidence all sales figures and other information provided by OWNER/DEVELOPER or Generators or obtained from OWNER/DEVELOPERS' or Generators' records in connection with this AGREEMENT, and in connection therewith, the City shall not copy any such information except as necessary for dissemination to the City's agents or employees as permitted hereinafter. The City shall be permitted to disclose such information (i) to its agents or employees who are reasonably deemed by the City to have a need to know such information for purposes of this AGREEMENT; provided, that such agents and employees shall hold in confidence such information to the extent required of the City hereunder or (ii) to the extent required by order of court or by state of federal law. The confidentiality requirements of this AGREEMENT shall survive any expiration, termination or cancellation of this AGREEMENT and shall continue to bind the City, its successors, assigns and legal representatives for a period of five (5) years from the termination, expiration or cancellation of this AGREEMENT.

6. **Audit.**

Each payment by the City to OWNER/DEVELOPER shall be accompanied by a statement executed by the City Treasurer or the Treasurer's designee, setting forth the calculations of such payment and identifying the sales tax return period to which the payment relates. The City Treasurer or the Treasurer's designee shall further issue a statement setting forth all payments made to date (cumulative) to OWNER/DEVELOPER. OWNER/DEVELOPER shall have one (1) year following the receipt of said payment to contest any of the calculations or information contained in said statements. OWNER/DEVELOPER shall have the right to review all sales tax reports provided to the City relating to any Generator within thirty (30) days of receipt by the CITY of a written request, approved by the Generator, from the OWNER/DEVELOPER.

7. **Default/Right to Cure.**

No party shall be deemed in default hereunder until such Party has failed to cure the alleged default with thirty (30) days in the case of a monetary default, or within thirty (30) days in the case of a non-monetary default, from notice of such default from the other Party; provided, however, if the nature of such non-monetary default is such that it cannot reasonably be cured within such thirty (30) days period, then such Party shall not be deemed in default if such Party commences to cure such default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

In the event of a default and except as may be otherwise provided herein to the contrary, the non-defaulting party may: (i) terminate this AGREEMENT upon written notice to the defaulting party, recover from the defaulting party all damages incurred by the non-defaulting party; (ii) except as may be otherwise expressly provided to the contrary herein, seek specific performance of this AGREEMENT, and, in addition, recover all damages incurred by the non-defaulting party; (the parties declare it to be their intent that this AGREEMENT may be specifically enforced); (iii) pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the non-defaulting party. Notwithstanding the foregoing the liability of the City is limited to its obligation to remit to OWNER/DEVELOPER its portion sales taxes actually received by the City.

8. **Additional OWNER/DEVELOPER and CITY AGREEMENTS:**

In consideration of the substantial increase in the real estate tax base for the CITY of Plano and all governmental bodies within Little Rock Township, the parties further agree as follows:

- A. OWNER/DEVELOPER of the Development Project property shall pay or reimburse the City for the actual amounts of fees incurred by the City including, but not limited to Engineering Review Fees, Water Meter Fees, Plumbing Inspections, Attorney Fees, and items similar to those contemplated in Paragraph 8 A of the Incentive Agreement for the Ford Dealership/Quick Lane Facility.
- B. The CITY shall waive any and all other fees normally charged to OWNER/DEVELOPER for the Development Project Property.

9. **Additional Covenants.**

- A. **Time.** Time is of the essence unless otherwise stated in this AGREEMENT and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.
- B. **Binding Effect.** This AGREEMENT shall be construed and enforced in accordance with the laws of the State of Illinois.
- C. **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 City 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.
- D. **Notices.** All notices and requests required pursuant to this AGREEMENT shall be sent by certified mail as follows:

To OWNER/DEVELOPER: GC investment Properties, Inc.
C/O _____

With copies to: Law Offices of Daniel J. Kramer
1107A S. Bridge St.
Yorkville, IL 60560

To the City: City of Plano
17 East Main Street
Plano, IL 60545
Attention: City Clerk

With copies to: Thomas W. Grant, or his Successor in Office
200 Hillcrest Ave.
P.O. Box 326
Yorkville, IL 60560

- E. Authority to Execute. The signatories of the parties hereto warrant that they have been lawfully authorized by the City Council of the City and the OWNER/DEVELOPER, to execute this AGREEMENT on their behalf.
- F. Attorneys' Fees. If a party commences a legal proceeding to enforce any of the terms of this AGREEMENT, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party to be fixed by the court in the same action.
- G. Relationship of the Parties. Nothing herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent or of partnership or joint venture between the Parties, it being understood and agreed that no provision herein, nor any acts of the parties, shall be deemed to create any relationship between the parties.
- H. Remedies Not Exclusive. Except as may be otherwise expressly provided herein, the various rights and remedies herein contained and reserved to each of the parties, except as herein otherwise expressly provided, are not exclusive of any other right or remedy of such party, but are cumulative and in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by either party shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

- I. Duty to Build: OWNER/DEVELOPER and CITY are entering into this Agreement based upon the covenant that OWNER/DEVELOPER shall build a Ford Dealership on the adjacent “**Development Project**”. In the event the Ford Dealership is not built then this Agreement shall be of no force and effect. OWNER/DEVELOPER may elect at its discretion to build or not build a Quick Lane Facility in conjunction with the adjacent “**Development Project**”.
- J. Effective Date. This AGREEMENT shall not become effective unless and until the OWNER/DEVELOPER acquires the Property from the current owner of the Property.

IN WITNESS WHEREOF, this AGREEMENT is entered into at Plano, Illinois, as of the date and year shown above.

CITY OF PLANO,
an Illinois Municipal Corporation,

By: _____

Its: Mayor

Attest: _____
City Clerk

Date: _____

OWNER/DEVELOPER:

By: _____

Dated: _____

Prepared by:
Law Offices of Daniel J. Kramer
1107A S. Bridge St.
Yorkville, IL 60560
630.553.9500

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LEGAL DESCRIPTION