

ECONOMIC INCENTIVE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 2021, by and between the Village of Romeoville, an Illinois Municipal Corporation ("Village") and Suncera Motor Cars, Inc., a Pennsylvania corporation ("Dealer").

RECITALS

WHEREAS, the Village of Romeoville is a home rule unit of government pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970 and may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Village has for the past several years experienced the rapid development of new residential units and a consequent growth in population; and

WHEREAS, the additional needs and demands created by an increased population within the Village have created the need for additional types of land uses and development within the corporate limits of the Village, including but not limited to, the development of commercial uses including national retailers or retailers of nationally branded products that would provide goods and services to Village residents that are presently unavailable for purchase within the existing corporate limits of the Village; and

WHEREAS, the Village desires that any such new retail development should be capable of generating substantial retailers' occupation tax revenues to assist the Village in conducting its operations without the necessity of resorting to property tax increases, and further that such retail development should proceed in as expeditious a fashion as possible, so as to accelerate the receipt of such retailers' occupation tax revenues by the Village; and

WHEREAS, while the Village recognizes the importance of free and open economic competition, and the healthy nature of increased competition resulting from the creation of new retail businesses within the Village, the Village likewise desires to maintain a healthy economic climate for all existing business within the Village; and

WHEREAS, the Village has determined that securing the location of retail operations is itself a highly competitive endeavor, and that the successful location of such retail operations at a particular location at a desired time may necessitate the use of a variety of incentives, including but not limited to the retailers' occupation tax incentives permitted by 65 ILCS 5/8-11-20; and

WHEREAS, Dealer has considered a number of sites for the location of a new automobile dealership concentrating its business primarily in the sale of new Mercedes passenger automobiles, but also including the servicing of vehicles and the sale of used vehicles in connection therewith (the "Dealership"), and such other activities that are customary and ancillary to the operations of a new vehicle sales and service facility,

including a site on a portion of the property legally described in Exhibit A (the “Property”), which is attached hereto and incorporated herein by reference; and

WHEREAS, the Property along with other property is subject to an annexation agreement approved by Village Ordinance No. _____ (the “Annexation Agreement”); and

WHEREAS, the Village has determined that proposed development of the Dealership on the Property by Dealer is eligible to be the subject of an economic incentive agreement as contemplated by 65 ILCS 5/8-11-20 and will satisfy the criteria set forth in 65 ILCS 5/8-11-20; and

WHEREAS, the Village finds pursuant to 65 ILCS 5/8-11-20:

- (a) That the Property has remained vacant for at least one year; and
- (b) That the proposed Dealership is expected to create or retain job opportunities within the Village which job opportunities will consist of both construction-related jobs and permanent jobs; and
- (c) That the proposed Dealership will serve to further the development of adjacent areas within the Village including but not limited to the Weber Road/Airport Road commercial corridor; and
- (d) That without this Agreement, securing the commitment of Dealer to construct and operate the Dealership would not be economically feasible at this time without the economic incentives provided in this Agreement; and
- (e) That Dealer meets high standards of credit worthiness and financial strength; and
- (f) That the development of the proposed Dealership will strengthen the commercial sector of the Village; and
- (g) That the development of the proposed Dealership will enhance the tax base of the Village; and
- (h) That this Agreement is made in the best interest of the Village.

WHEREAS, after due and careful consideration, the Corporate Authorities having determined that it is in the best interests of the Village to enter into this Agreement to provide economic incentives for the development of the proposed Dealership pursuant to 65 ILCS 5/8-11-20 and pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which is hereby mutually acknowledged by the parties, the Village and Dealer hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. Development Requirements. As a condition of the Village's obligation to make any payments, reimbursements, incentives or rebates hereunder, Dealer shall be obligated to execute the Annexation Agreement, close on its purchase of the Property, and submit to the Village for its review and approval all submittals necessary to the Village's adoption of an ordinance granting a special use permit for planned unit development/final development plan approval, including but not limited to site, landscaping and engineering plans (the foregoing submittals shall hereinafter be collectively referred to as the "FSLE Plans"), which FSLE Plans shall comply fully with the applicable ordinances, codes and resolutions of the Village. Without otherwise limiting, modifying or affecting the foregoing, Dealer shall comply in all respects with the applicable ordinances, codes and resolutions of the Village in connection with the development and use of the Property, subject to the terms of the Annexation Agreement.

3. Retailers' Occupation Tax Incentive Payments and Other Incentives.

A. Incentive. Dealer and the Village acknowledge that Dealer shall develop the Dealership within a portion of the Property in substantial accordance with the site plan numbered _____ prepared by Manhard Engineering. Subject to the approval of Mercedes-Benz USA, LLC, the Dealership shall be named "Romeoville Mercedes-Benz" or "Mercedes-Benz of Romeoville". Upon the issuance by the Village of a certificate of occupancy for the Dealership, and the occurrence of the opening of the Dealership for business, Dealer shall become eligible, subject to the provisions of Sections 3.A-1 and 3.B. hereof, to begin receiving retailers' occupation tax reimbursement incentives from the Village in an amount equal to seventy percent (70%) of the Illinois retailers' occupation tax arising from the Dealership as a result of payments which are collected by the State of Illinois (the "State") and thereafter actually distributed to the Village per year, consisting of the Village's distributive share of the retailers' occupation tax payments required and collected by the State pursuant to 35 ILCS 120/3 and thereafter actually distributed to the Village pursuant to 30 ILCS 115/2, to the extent that such retailers' occupation tax payments were collected from or generated by the Dealership. The retailers' occupation tax reimbursement incentive is limited to the extent that the retailers' occupation tax payments are collected by the State from, and/or generated by, the retail sales activity of the Dealership. Subject to the provisions of Section 3.A-1 and Section 3.B, the total of such retailers' occupation tax reimbursement incentives that shall be paid by the Village to the Dealer during the term of this Agreement shall not exceed the sum of Six Million Five Hundred Thousand and No/100 Dollars (\$7,000,000.00). Upon the receipt by Dealer of the sum of Seven Million and No/100 Dollars (\$7,000,000.00) in retailers' occupation tax reimbursement incentive payments hereunder, the right of Dealer to receive any further

retailers' occupation tax reimbursement payments hereunder shall immediately terminate and become of no further force or effect.

A-1. Modification of Incentive Payment Percentage. Dealer shall be entitled to receive retailers' occupation tax incentive payments from the Village at the percentage contemplated by Section 3.A. from the date on which the conditions set forth in Section 3.A. are satisfied until the tenth (10th) anniversary thereof. From and after the tenth (10th) anniversary of such date, Dealer shall be entitled to receive retailers' occupation tax incentive payments from the Village in an amount equal to fifty percent (50%) of all the retailers' occupation tax arising from the Dealership as a result of payments which are collected by the State and thereafter actually distributed to the Village per year, as otherwise contemplated by Section 3.A., until such time as Dealer has received retailers' occupation tax incentive payment in the total amount of Seven Million and No/100 Dollars (\$7,000,000.00).

B. Conditions on Incentive Payments. Notwithstanding anything herein to the contrary, the right of Dealer to receive retailers' occupation tax reimbursement payments contemplated above in Section 3.A. and Section 3.A-1 as well as the obligation of the Village to make any such payments shall be subject to the following conditions:

- i) The Village shall have no obligation under this Agreement to make any payments to Dealer in any sum in excess of Seven Million and No/100 Dollars (\$7,000,000.00). The Village shall not have any obligation to make any payments hereunder from any fund or sources of funds or monies other than retailers' occupation tax payments collected by the State and distributed to the Village and which were initially generated and paid as a result of retail sales activity of the Dealership.
- ii) In the event the Dealership shall at any time thereafter cease to operate for any reason for a period of more than twelve (12) consecutive months (other than on account of an event of Force Majeure (as defined below)) the right of Dealer to receive any reimbursement of retailers' occupation tax incentive payments under this Agreement shall terminate as of the expiration of such twelve (12) month period.
- iii) Notwithstanding any other provision of this Agreement, Dealer shall not be entitled to receive any payments whatsoever under this Agreement unless, 1) on or before August 1, 2021, the Village shall have issued a building permit for the construction of the Dealership, 2) the Village has issued a certificate of occupancy for the Dealership and 3) the Dealership shall have opened for business by July 1, 2022.
 - a) These conditions are specifically subject to the following provision. "Force Majeure", for purposes of this Agreement, shall mean a delay or failure of performance, if and to the extent that such delay or performance is caused by occurrences beyond the reasonable control

of Dealer, its agents, employees, contractors, subcontractors and consultants, including but not limited to acts of God or the public enemy, fire or other casualty, acts of terrorism or threats of acts of terrorism, public disorders, pandemics, sabotage, earthquakes, tornados, floods, other adverse weather events, strikes, labor or employment difficulties, delays in transportation, inability to obtain necessary materials or permits due to existing or future laws, orders, rules or regulations of governmental authorities, or any other causes, whether direct or indirect. The delay or failure of performance shall not be within the reasonable control of Dealer, or its respective agents, employees, contractors, subcontractors and consultants. This Force Majeure provision does not apply to delay or failure of performance which by the exercise of reasonable diligence Dealer is able to prevent. Dealer shall not be entitled to the benefits of this Force Majeure provision unless it gives the Village reasonably prompt written notice of the existence of any event, occurrence or condition which it believes constitutes an event of Force Majeure.

- b) In the event that the construction of the Dealership and opening for business shall fail to satisfy the conditions of this Section 3.B(iii), subject only to such delays as may be permitted under the Force Majeure provision, any and all rights to retailers' occupation tax reimbursement incentive payments contemplated by this Agreement with respect to the potential retailers' occupation tax reimbursement incentives contemplated to be generated from within the Property shall immediately terminate and become null and void and of no further effect.
- iv) At all times during the term of this Agreement, subject to the approval of Mercedes-Benz USA, LLC, the name of the Dealership contemplated to be developed hereunder shall be "Romeoville Mercedes-Benz", "Mercedes-Benz of Romeoville" or such substantially equivalent name as may be reasonably approved by the Village, provided, however, that the Village shall have no obligation hereunder to approve any Dealership name that includes the name of any other political subdivision or geographic designation other than "Romeoville".

C. Timing of Incentive Payments; Required Documentation. Subject to the conditions of Section 3.B., all sharing of retailers' occupation tax incentive payments contemplated or required to be made hereunder by the Village to Dealer shall be made within 30 days of the last to occur of i) the receipt of the necessary documentation from the Illinois Department of Revenue to establish the amount of retailers' occupation tax collected and paid to the State by the Dealer from the Dealership, and ii) the actual receipt by the Village from the State of the total amount of the Village's periodic distributive share of such retailers' occupation tax collected and paid to the State by the Dealer from the Dealership located within the Property. All determinations of the amount of any reimbursement of retailers' occupation tax incentive payments due or owing hereunder

shall be made by the Village Finance Director based on the provisions of this Agreement, the documentation and information to be provided to the Village by the Illinois Department of Revenue as contemplated by this Section 3.C, and the amount of retailers' occupation tax monies actually paid to the Village arising from retailers' occupational taxes generated by the Dealership within the Property, together with such other relevant retailers' occupation tax related information as may be made available to the Village from time to time by the State. Based on information provided to the Village by the Illinois Department of Revenue, the Village anticipates that the Illinois Department of Revenue will provide the relevant documentation to establish the amount of retailers' occupation tax collected and paid to the State of Illinois by the Dealership three times per year: in June (for tax collections made during the preceding January through April), October (for tax collections made during the preceding May through August) and February (for tax collections made during the preceding September through December).

D. Access to the Premises. The Village understands and agrees the site is constrained by a lack of access necessary for the conduct of an automobile dealership and that the delivery of vehicles with current access would present a material concern for traffic and the safety of the customers of the dealership, occupants of the adjoining residential development under construction and adjoining businesses. In order to provide the access necessary to the conduct of the business of an automobile dealership and the delivery of vehicles thereto, Dealer advises Village that it will be required to install such deceleration lanes from Weber Road to the north and south access points to the dealership as are required by the County of Will, and also to install one or more culverts to provide contiguity and access for vehicular travel between the north and south parcels of the development as required and approved by all necessary state and federal agencies, including but not limited to the Army Corps of Engineers. In consideration of the additional expense to be incurred by the Dealership in connection with the aforementioned deceleration lanes between Weber Road and the Dealership property and the culvert installation necessary within the Dealership property, the Village has established the amount of the incentive as set forth in Section 3.A of this Agreement, and in addition thereto, Village shall reimburse Dealership in an amount not to exceed \$500,000.00 for costs incurred by the Dealership in connection with the construction of such improvements, and upon (i) Dealership's presentation to Village of documentation evidencing the completion of the construction of the improvements at issue, (ii) the making of full payment for the work for which reimbursement of expense is then being sought, (iii) the acceptance and approval of the work by all relevant governmental authorities having jurisdiction over the same and (iv) the issuance by the Village of a certificate of occupancy for the Dealership building and the opening of the Dealership building to the general public for the conduct of Dealership business.

4. Miscellaneous.

A. The parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

B. This Agreement is valid and binding and shall continue to be valid and be binding from and after the date of this Agreement until Dealer has received retailers' occupation tax reimbursement incentive payments in the amount of Seven Million and No/100 Dollars (\$7,000,000.00) unless terminated for lack of performance of the conditions set forth in Section 3.B, and reimbursement as provided in Section 3D., above.

C. The failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreement, 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. No action taken by any party to this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or equity.

D. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. Dealer may assign this Agreement to (i) any other person or entity acquiring the Dealership from Dealer provided that such assignee assumes all of Dealer's obligations hereunder and (ii) to any lender providing financing to Dealer as collateral for such loan; provided that in either case Dealer may retain the right to receive the Incentive Payments payable by the Village under Sections 3A and 3A-1 of this Agreement.

E. This Agreement sets forth all agreements, understandings, and covenants between and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties.

F. If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word, or designation contained herein.

G. This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

H. The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

I. This Agreement may be reproduced. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

J. Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

K. Notices, including Notice to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village or
the corporate authorities:

Village of Romeoville
1050 W. Romeo Road
Romeoville, Illinois 60446
Attn: Village Manager

With a copy to:

Richard E. Vogel
Tracy, Johnson & Wilson
2801 Black Road, 2nd Floor
Joliet, Illinois 60435

If to Dealer:

Daniel Sunderland, President
Orland Park Imports, Inc.
8430 W. 159th Street
Orland Park, IL 60462

With a copy to:

David Nocera, Vice President
Orland Park Imports, Inc.
8430 W. 159th Street
Orland Park, IL 60462

And a copy to:

Sosin, Arnold & Schoenbeck, Ltd.
Suite 205
9501 W. 144th Place
Orland Park, IL 60462
Attn: David B. Sosin

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

“Village”

VILLAGE OF ROMEOVILLE,
A municipal corporation,

By: _____
Village President

ATTEST:

By: _____
Village Clerk

“Dealer”

Suncera Motor Cars, Inc., a Pennsylvania
corporation

By: _____
Daniel Sunderland, President

EXHIBIT A
Legal Description