

SALES TAX REBATE AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2007, by and between the **CITY OF PARK RIDGE**, an Illinois home rule municipality (the "City") and **NAPLETON CADILLAC, INC.**, an Illinois corporation, its successors and assigns (the "Owner") collectively, (the "Parties").

WITNESSETH:

WHEREAS, Owner has previously operated a Cadillac Dealership on real estate which it owns in the City of Park Ridge, Illinois, located at 200 N. Northwest Highway, Park Ridge, Illinois with the legal description on attached Exhibit "A" ("Former Cadillac Site"); and

WHEREAS, the Former Cadillac Site is located within a Tax Increment Financing District and its redevelopment will generate at least \$400,000.00 in tax increments; and

WHEREAS, Owner operates certain automobile dealerships in the City as follows: Cadillac, Pontiac and Buick (collectively "the Dealerships"). (The owner also maintains a Lincoln-Mercury Dealership in the City, but it is not subject to this Agreement); and

WHEREAS, the Owner anticipates that the Cadillac, Pontiac and Buick - Dealerships will continue to generate substantial sales tax revenue to the City; and

WHEREAS, the City has previously entered into a Redevelopment Agreement dated January 5, 2005 (the "RDA") with the Park Ridge Corporation, LLC ("PRC") for the development of the Former Cadillac Site; and

The City finds as follows:

1. Pursuant to extensive negotiations, the Owner intends to sell the Former Cadillac Site to PRC for development pursuant to the Redevelopment Agreement; and
2. PRC expects to develop the site with multi-family residential units consistent with the Redevelopment Agreement; and
3. The PRC development of the Site will serve to further the development of adjacent areas and enhance the real estate tax base of the City; and
4. Without this Agreement, Owner would consider relocating the Cadillac Dealership outside the City; and

5. The continued presence of the Cadillac Dealership in the City will maintain and potentially increase sales tax revenue for the City; and
6. Owner meets high standards of creditworthiness and financial strength; and
7. The Agreement is made in the best interests of the City; and
8. This Agreement will promote the general welfare of the City; and

WHEREAS, the City, 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 of this Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS:** The foregoing recitals are incorporated herein, by reference, as if fully set forth in this Agreement.
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 City 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 City of Park Ridge, 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. **ECONOMIC INCENTIVES:** It is understood by the Parties that the Owner will likely continue to generate City Sales Tax Revenue (as defined below) not otherwise realized by the City. It is also understood by the Parties and declared by Owner that Owner may consider moving its Dealership outside the City but for the incentives provided by this Agreement. It is also understood that, but for this Agreement, the Owner might not be able to sell the Former Cadillac Site to PRC. Therefore, the incentives contained in this Agreement are unique to this situation and Property. Owner 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 City.
4. **CITY SALES TAX REBATE:** On an annual basis, commencing with January 1, 2008, the City shall, under all circumstances, retain the first TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) of sales tax receipts generated by the Dealerships. The next ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) of such tax generated by the Dealerships shall be paid to the Owner by the City. Any sales tax revenue received by the City from the Dealership in excess of \$300,000.00 shall be shared 50/50 by the Parties.

The foregoing formula shall be applied annually, on a calendar year basis, and shall be in effect from January 1, 2008 through December 31, 2023 or until the total rebate to the Owner reaches TWO MILLION DOLLARS (\$2,000,000.00), whichever comes first. The City's obligations, set forth in this paragraph 4, are subject to the conditions set forth in paragraph 9.

5. **SALES TAX REBATE MECHANISM:**

Definitions: For the purpose of this Agreement, the use of the terms "City Sales Tax" and "City Sales Tax Revenue" shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the City pursuant to the Retailer's Occupation Tax Act (as the act may be amended), or any other "sales tax," that may be enacted by the State of Illinois, and which is collected by the State of Illinois and distributed to the City. Currently such net portion is One Percent (1.00 %) of the total amount of gross sales within the State of Illinois originated by the Dealerships within the City.

Sales Tax Reports: Owner shall furnish to the City 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 Owner's calculation of the City 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. Alternatively, Owner shall authorize, in writing, the Illinois Department of Revenue to disclose to the City the amount of the City's share of Sales Tax received on behalf of Owner's retail sales business. To the extent permitted by law, the City 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 City, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. In the event that the City receives a request pursuant to the Illinois Freedom of Information Act for information contained in the Reports, prior to the City refusing to provide such information, the City shall immediately notify Owner, providing a copy of the request, and Owner shall have the opportunity within seven (7) days after receipt of such notice from the City to notify the City that it consents to the request. In the event that no consent is received within said time period, the City shall refuse to disclose the information and shall not thereafter disclose the information without the consent of Owner unless compelled to do so by Court Order. In the event that action is ever commenced against the City pursuant to the Illinois Freedom of Information Act or similar statute as a result of withholding any documents provided by Owner, Owner agrees to indemnify and hold the City harmless with respect to any attorney's fees or costs or judgments imposed on or incurred by the City as a result of such action; provided, that the City has notified Owner of the applicable request as specified above and the City has followed Owner's instructions in responding to such request. Owner understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments to Owner pursuant to this Agreement. Owner also agrees upon the request of the City 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 NAPLETON CADILLAC, INC. facilities in the City.

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

If any distribution applicable to a period within the fifteen year period is received by the City after the fifteen year period, it shall be paid to Owner subject to the reduction requirements of this "Reimbursement Mechanism" Section.

Any payments determined to be due to Owner from the City 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 City by the State of Illinois or the Illinois Department of Revenue or successor agency for collection of the City Sales Tax Revenues.

6. **TAX INCREMENT PAYMENT:** The City shall reimburse the Owner for up to Four Hundred Thousand Dollars (\$400,000.00) in demolition and environmental clean up costs for the Former Cadillac Site ("Environmental Reimbursement"). This obligation of the City shall ultimately be paid from revenues generated by the increment from the Tax Increment Financing District in which the Former Cadillac Site is included. Any expenses incurred by the Owner for environmental clean up and demolition that exceed Four Hundred Thousand Dollars (\$400,000.00) shall not be paid by the City, but shall be the sole responsibility of the Owner. The Owner shall hold the City harmless with respect to any claims that PRC may make against the City for such reimbursement. The City's obligations, set forth in this paragraph 6, are subject to the conditions of paragraph 9.
7. **GREENWOOD AND BUSSE UPGRADE:** The Owner's Dealership located at Greenwood and Busse in the City shall be remodeled and upgraded in accordance with Exhibit "B", which is attached to and made a part of this Agreement.
8. **NO REMOVAL FOR 180 MONTHS:** It is a covenant of this Agreement that the Owner will keep the Dealerships in the City until at least December 31, 2023. If any Dealership is removed from the City, to a location outside the City, prior to December 31, 2023, the City shall be entitled to be reimbursed by the Owner, for any sales tax rebate paid to the Owner pursuant to this Agreement on a prorated basis. The basis of the proration shall be a ratio of the number of full months that have elapsed prior to the moving of the Dealership and to 180 months that this Agreement requires that the Dealerships remain in the City. Once any one of the Dealerships is moved, the City shall have no further obligations pursuant to this Agreement.
9. **SALE OF FORMER CADILLAC SITE.** This Agreement is subject to the closing on the sale of the Former Cadillac Site, not later than December 31, 2008, with PRC or with such other buyer as may be approved by the City. The December 31, 2008 date may be extended in writing on mutual agreement of the Parties. Such other buyer must present, for the City's approval, a plan for developing the site in substantial accordance with the RDA. No Sales Tax Rebate pursuant to paragraph 5 or Environmental Reimbursement pursuant to paragraph 6 shall be payable to the Owner until such a plan has been approved by the City and the Closing on the sale of the Former Cadillac Site to the Developer whose plan has been approved. If the owner has made payments for items reimbursable pursuant to paragraph 6 above, such reimbursement shall be made by the City within 60 days of closing.
10. **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 11 below, the party alleged to have failed to perform its obligations. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party within thirty (30) days of receipt of such notice and is being continuously and diligently pursued.

11. **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 Owner: William Napleton
Park Ridge Buick
501 Busse Highway
Park Ridge, IL 60068

with a copy to: David B. Sosin
Sosin, Lawler & Arnold, Ltd.
11800 S. 75th Avenue, Suite 300
Palos Heights, IL 60463

If to City: City of Park Ridge
Timothy W. Schuenke, City Manager
505 Butler Place
Park Ridge, IL 60068

with copies to: Everette M. Hill, Jr.
Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, IL 60606

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.

12. **AMENDMENTS:** The Parties agree that this Agreement and any exhibits attached hereto may be amended only by a signed written agreement of the Parties.

13. **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.
14. **NO PROTEST OF TAX RATE.** Owner shall not, during the term of this Agreement, protest, contest or otherwise seek to lower the property tax rate applied to the property at Greenwood and Busse. This shall not prevent the Owner from contesting the assessed valuation.
15. **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.
16. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Owner, and its successors, assigns, divisions, subsidiaries, or corporate designees, and upon successor corporate authorities of the City and successor municipalities. The City shall have the right to approve any party to whom the developer may wish to assign this Agreement. Such approval shall not be unreasonably withheld.
17. **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.

CITY OF PARK RIDGE
an Illinois Home Rule Municipality

By: _____
Timothy W. Schuenke, City Manager

ATTEST:

City Clerk

NAPLETON CADILLAC, INC., an
Illinois corporation

By: _____
_____, **President**

Attest:

_____, Secretary