

**J.P. "RICK" CARNEY**  
DUPAGE COUNTY RECORDER  
FEB. 12, 2002 10:30 AM  
OTHER 06-19-100-003  
027 PAGES R2002-044079

**RESOLUTION R77-02**

**AUTHORIZING THE SIGNATURE OF PRESIDENT AND  
CLERK ON AN AGREEMENT**

**725 W. Roosevelt Road, Lombard  
PIN: 06-19-100-028**

**541 W. Roosevelt Road, Lombard  
PIN: 06-19-100-003**

**525 W. Roosevelt Road, Lombard  
PIN: 06-19-100-030**

**Return To:**

**Village of Lombard  
Department of Community Development  
255 E. Wilson Avenue  
Lombard, IL 60148**

**ECONOMIC INCENTIVE AGREEMENT FOR  
RON POSTMA AUTO SALES**

THIS AGREEMENT is entered into on this 15<sup>th</sup> day of November, 2001, by the **VILLAGE OF LOMBARD**, DuPage County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "**Village**"); and **RON POSTMA AUTO SALES, INC.**, an Illinois Corporation (hereinafter referred to as "**Postma**").

WITNESSETH:

Pursuant-to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, and 65 ILCS 5/8-11-20, and in consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

**I.           PRELIMINARY STATEMENTS**

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A.     The Village is a municipality lawfully existing under the constitution and laws of the State of Illinois.
  
- B.     Ronald J. Postma, as Trustee of the Ronald J. Postma Declaration of Trust dated December 10, 1993, has purchased certain existing property containing a vacant commercial building (the "**Subject Property**") legally described in EXHIBIT "A" attached hereto and made part hereof, and located within the boundaries of the Village. Postma will improve the Subject Property, demolish the existing structure, redevelop the Subject Property for new and used auto sales, stock with merchandise and expand its existing sales operation on the adjoining property legally described in EXHIBIT "B" attached hereto and made a part hereof (the "**Existing Property**"; the Subject Property and the Existing Property are collectively referred to as the "**Property**", and such redevelopment is hereinafter referred to as the "**Project**"), pursuant to a conceptual plan for the Project attached hereto as EXHIBIT "C", and made part hereof, (hereinafter referred to as the "**Concept Plan**"), which commercial space, previously occupied by China Buffet, has been vacant since April, 2000. Such commercial space is also, and always was intended to be maintained as a commercial use. Due in part to the failure of various commercial uses at the Subject Property over the last five (5) years, the Subject Property has not been served as a viable commercial property. The parties agree that Postma's operation of an automobile sales store on Roosevelt Road is an essential element in, and a catalyst to, the success of the corridor and the resulting employment opportunities within the Village and the strengthening of the Village's tax base.

- C. The Village is desirous of having the Subject Property renovated and operated in accordance with the Concept Plan in order to service the needs of the Village and its residents, and the Project, if completed, will increase employment opportunities in the Village, arrest decline in economic conditions existing in the Village, stimulate commercial growth and enhance the tax base of the Village; and, in furtherance thereof, the Village contemplates certain incentives under the terms and conditions hereinafter set forth to assist in such.
- D. The parties hereto acknowledge, and Postma represents and warrants that the Project requires economic assistance from the Village in order to complete the same, and, but for the economic assistance to be given by the Village, the Project as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- E. For the purposes of this Agreement, the use of the terms "sales tax" and "Sales Tax Revenue" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as "State") for distribution to the Village pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., and the Service Occupation Tax Act, 35 ILCS 115/1 et seq., (as said acts maybe amended) 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 Village, which are subject to the aforementioned taxes.
- F. Based on the foregoing, and in accordance with 65 ILCS 5/8-11-20, the Corporate Authorities of the Village specifically find as follows:
1. That the buildings on the Subject Property have remained less than significantly unoccupied or underutilized for a period of at least one (1) year;
  2. That the Project is expected to create and retain job opportunities within the municipality;
  3. That the Project will serve to further the development of adjacent areas;
  4. That without this Agreement, the Project would not be possible;
  5. That Postma meets high standards of creditworthiness and financial strength;
  6. That the Project will strengthen the commercial sector of the Village;
  7. That the Project will enhance the tax base of the Village; and
  8. That this Agreement is made in the best interest of the Village.

II. CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by Postma on or before the dates hereinafter specified. In the event Postma does not comply in all material respects with the conditions precedent set

forth in this Article II, then all obligations on the part of the Village pursuant to this Agreement shall be cancelled, and the Village shall have no further obligations with regard to the Project, and any right on the part of Postma to demand performance thereof shall be deemed waived and also cancelled and of no force and effect.

- A. By June 1, 2002, Postma shall have obtained final approval of its Final Development Plan for the Project in accordance with the regulations and ordinances of the Village, it being understood that the Village in its capacity as a municipal corporation has sole discretion to approve all plans for development within the Village, and the Village shall not be deemed to have caused a default hereunder or have any liability for its failure to approve the final development plan for the Project, except for its willful misconduct. "**Final Development Plan**" shall mean any and all documents, plans and drawings submitted to the Village in order to obtain any permit or license required by the Village relative to the Project.
- B. By August 1, 2002, Postma must have obtained final approval of its plans from any other governmental unit or agency, which has jurisdiction or authority over any portion of the Project and/or plans.
- C. By August 1, 2002, Postma must have delivered to the Village a certified statement that its total investment in the Project, including the use of the proceeds hereunder, totals not less than \$1.1 million. Said certification shall be over the signature of the chief financial officer of Postma. Postma shall allow the Village Manager or his designee to review a breakdown of and supporting documentation for Postma's investment in the Project. All such information shall be considered confidential proprietary information of Postma and shall not be disclosed to any other person or entity by the Village or its Finance Director without the written consent of Postma. For the purposes of this subsection, it is the intent of the parties that such information shall be deemed exempt from public disclosure pursuant to 5 ILCS 140/7(g), or any future recodification thereof.
- D. By September 1, 2002, Postma shall have obtained approval from the Village of all required building permits and paid all associated fees, it being understood that the Village has sole discretion to issue any such approval and its failure to approve any required permit shall not be deemed to be a default to have been caused or permitted by the Village and the Village shall have no liability therefore, except for its willful misconduct.
- E. By September 1, 2002, Postma shall have paid all sign permit fees and all other fees and expenses relating to the Project which are required by applicable Village ordinances.
- F. Within sixty (60) days after closing on the Subject Property, Postma shall have delivered to the Village a certified copy (certified by the Recorder of DuPage County, Illinois) of its recorded deed to the Subject Property.

- G. By September 1, 2002, Postma shall have certified to the Village that there exists no material default under this Agreement and that Postma has no known outstanding violations of any Village ordinance, rule or regulation or of any applicable law of the State of Illinois or any agency thereof pertaining to the Project which are not being contested in a lawful manner.
- H. Postma shall have incorporated the Subject Property into the operation of its auto sales store on or before November 1, 2002 (hereinafter referred to as the "**Opening Date**"), except in the event Postma is unable to open the Subject Property for business due to any strike, lockout, labor dispute, construction delays, civil disorder, riot, war, casualty or act of God, or other similar event beyond the reasonable control of Postma.

### III. UNDERTAKINGS ON THE PART OF THE VILLAGE

A. Upon satisfaction by Postma of all the conditions hereinabove stated in Article II, and delivery to the Village of a certificate from Postma that all representations and warranties contained in Paragraph V hereof are true and correct, as provided in paragraph B (5) below, the Village shall begin to make the Annual Installment Payment provided for below.

B. The Village hereby agrees to pay Postma the Annual Installment Payment (as hereafter defined), beginning on April 3, 2003, and continuing on each anniversary thereof for the lesser of (i) ten (10) years from the Opening Date, or (ii) until the Village has paid Postma an aggregate amount of three hundred thousand and no/100 dollars (\$300,000), subject to the following calculations, deductions, terms and conditions:

1) The "**Annual Installment Payment**" shall mean an amount equal to the Sales Tax Revenue received by the Village from the State of Illinois, which is generated from sales on the Property. All amounts paid to Postma will be due and payable solely from the Sales Tax Revenues received by the Village from the Project for the preceding calendar year. All amounts paid to Postma will be due and payable solely from the Sales Tax Revenue received by the Village from the Project on the dates provided above.

However, if the Village no longer receives Sales Tax Revenues from the Project due to a law change by the State of Illinois, then the Village shall make payments to Postma from any alternate sources of revenue provided to the Village by the State of Illinois specifically as a replacement or substitute for Sales Tax Revenue presently received by the Village (hereinafter referred to as the "**Alternate Source Revenue**") and, in that event, the payment to Postma shall be calculated as if the Village were continuing to receive the Sales Tax Revenues at a rate equal to the sales tax rate applicable to the Village's share of the State of Illinois sales tax immediately prior to the elimination of the Village's Sales Tax Revenues, multiplied by Postma's gross sales that

would have been subject to State of Illinois sales tax. The amount to be tendered to Postma from any Alternate Source Revenues shall be subject to a proportionate reduction in the event that the Alternate Source Revenues do not constitute, or are not intended to constitute, a one hundred percent (100%), dollar for dollar, replacement of the Sales Tax Revenues previously received by the Village. In the event that the Alternate Source Revenues are not received by the Village in installment payments paralleling Sales Tax Revenue receipts, the parties shall revise the Annual Installment Payment requirement to reflect the actual schedule of receipts from Alternate Source Revenues. Notwithstanding the foregoing, the payment to Postma from Alternate Source Revenues is contingent upon the ability of the Village to obtain, and confirm as accurate, gross sales by Postma that would have been subject to State of Illinois sales tax in the same form that such information would have been furnished to the Illinois Department of Revenue. In the event that said gross sales figures cannot be obtained and/or confirmed as accurate by the Village, the Village shall have no obligation to tender any payments hereunder to Postma.

2) The Village will withhold and retain annually the first \$330,000 in Sales Tax Revenue received during any Annual Installment Payment period. The Village will annually distribute any excess over the first \$330,000 to Postma. It is recognized by the parties hereto that some Annual Installment Payments may be in the amount of \$0.00 as a result of the Village's withholding rights as outlined above.

3) In no event shall the Village be obligated under this Agreement to make Annual Installment Payments to Postma, which, in the aggregate over the life of this Agreement, exceed \$300,000.

4) Prior to making each Annual Installment Payment, the Village shall mail to Postma a letter, itemizing the gross sales tax receipts received from the State of Illinois for the preceding year, from the operation of Postma on the Property, any deductions to be retained by the Village, and the net dollar amount to be paid to Postma pursuant to this Agreement.

5) Annually, but no later than January 31st of each year during the term of this Agreement, Postma shall complete and deliver to the Village the certification in the form as attached hereto as EXHIBIT "D" and made a part hereof.

C. The Village shall provide for Annual Installment Payments required under this Agreement by appropriating an adequate amount therefor in its annual budget ordinance for the fiscal year in which such payments are due. The payments shall be the limited obligation of the Village payable solely out of the Sales Tax Revenues received from the Project or the Alternative Source Revenues.

- D. The payments to Postma hereunder shall be considered as reimbursement to Postma and applied: (i) first to the cost of the land acquisition of the Subject Property; and (ii) then to the cost of the acquisition of the improvements located on the Subject Property.
- E. In the event Postma fails to deliver to the Village all of the foregoing certifications within the time periods set forth, or otherwise violates any term or provision of this Agreement, then in such event, the Village shall have no obligation to make any payment to Postma until such time as any such failure or violation is corrected to the reasonable satisfaction of the Village, and all rights of Postma to demand any current or future payment from the Village shall be deemed waived until such failure or violation is so corrected.

**IV. UNDERTAKINGS ON THE PART OF RON POSTMA AUTO SALES**

- A. Postma shall demolish the existing structure, and redevelop and complete the Project in accordance with the schedule set forth herein and in accordance with the Concept Plan and Final Development Plan, and all applicable ordinances, rules and regulations of the Village in existence as of the date of such approval, and all rules and regulations thereunder.
- B. Postma recognizes and agrees that the Village has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of the Final Development Plan, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to any claim against or liability to the Village pursuant to this Agreement, unless such failure arises out of the negligence or misconduct of the Village.
- C. Postma shall provide the Village with a power of attorney letter addressed to, and in a form satisfactory to, the Illinois Department of Revenue authorizing the Illinois Department of Revenue to release to the Village Finance Director, for each calendar month, all gross revenue and Sales Tax Revenue information relating to its automobile sales store operation on the Property, which letter shall authorize such information to be released to the Village and shall be in the form attached hereto as EXHIBIT "E", and made part hereof, or such other or additional forms as required from time to time by the Illinois Department of Revenue in order to release such information to the Village. No payments required under this Agreement shall have to be made by the Village without receipt of satisfactory information from the Illinois Department of Revenue indicating the Sales Tax Revenue generated by Postma's operation on the Property for the time period covered by the applicable Annual Installment Payment. All such information received by the Village shall be considered confidential proprietary information of Postma and shall not be disclosed to any other person or entity by the Village or its Finance Director without Postma's written consent. For the purposes of this subsection

it is the intent of the parties that such information shall be deemed exempt from public disclosure pursuant to 5 ILCS 140/7(g), or any future recodification thereof.

- D. Postma hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that it may at any time be lawfully finally assessed with respect to the Project and Subject Property; provided, however, that Postma may withhold any such tax payment for which it has filed a formal protest, with a certified copy forwarded to the Village, pursuant to a prescribed statutory procedure allowing for such nonpayment until the protest has been ruled upon; provided further, however, that any payment required after such protest is ruled upon shall be promptly paid.
- E. Postma shall give the Village notice regarding any defaults on the payment of any sales taxes due to the Illinois Department of Revenue generated from the Property.

V. **REPRESENTATIONS AND WARRANTIES OF RON POSTMA AUTO SALES**

- A. Postma hereby represents and warrants that the Project requires economic assistance from the Village in order to complete the Project and the operation of the automobile sales store in accordance with the approved Final Development Plan, and, but for the economic assistance to be given by the Village as heretofore stated, the Project as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- B. Postma hereby represents and warrants that the Project shall be constructed and fully completed in a good and workmanlike manner in accordance with the approved Final Development Plan approved by the Village.
- C. Postma hereby represents and warrants that it will not knowingly violate any applicable local zoning ordinance or regulation, building or fire code regulation, or any other applicable Village ordinance, resolution or regulation as they relate to the Project unless they are being contested in a lawful manner.
- D. Postma hereby represents and warrants that it will not knowingly violate any applicable law, rule or regulation of the State of Illinois, County of DuPage or the United States of America, and all agencies thereof as they relate to the Project, unless they are being contested in a lawful manner.
- E. Postma hereby represents and warrants that it is a corporation, authorized to do business in the State of Illinois.



- F. Postma will begin construction on the Project on or before September 1, 2002 and the Opening Date shall be on or before November 1, 2002 except in the event Postma is unable to open for business due to any strike, lockout, labor dispute, construction delays, civil disorder, riot, war, casualty or act of God or other similar event beyond the reasonable control of Postma.
- G. Postma hereby represents and warrants that the total investment in the Project, including the use of the proceeds hereunder, shall not be less than \$1.1 million with a land purchase price of \$1,030,000.
- H. Postma hereby states on information that the legal title holder and the owner of record of the Subject Property as of the date of this Agreement is known as Ronald J. Postma, as Trustee of the Ronald J. Postma Declaration of Trust dated December 10, 1993.
- I. Postma hereby represents and warrants that (i) it shall be the sole operator of the automobile sales store on the Property for a period of five (5) years after the Opening Date, unless Toyota fails to renew Postma's dealer contract, or, as a condition of such renewal, requires Postma to relocate its automobile sales store; and (ii) it shall continuously operate its store in a manner substantially similar to its present operation on the Existing Property (except for temporary closings for remodeling; closings due to strike, lockout, labor dispute, unavailability of inventory or materials, act of God, governmental actions, war, riot, fire, casualty or weather, and any repair or rebuilding associated therewith; or any other closing not exceeding fourteen (14) days). During the first ten (10) years, or until the Village has paid an aggregate of \$300,000 under this Agreement, whichever comes first, Postma represents and warrants that the Property will be operated as an automobile sales store by Postma or one of the following acceptable comparable auto dealers: Lexus, Ford, Chevy, Cadillac, Chrysler, Nissan, Acura, Honda, Porsche, BMW, or Buick. In the event that Postma desires to substitute a comparable retailer not mentioned above, said substitution shall be subject to the prior written consent of the Village, said consent not to be unreasonably withheld. In the event Postma ceases to operate the Property as an automobile sales store and desires to substitute one of the aforementioned acceptable comparable automobile dealers, or another comparable retailer as approved by the Village, to operate said automobile sales store, in no event shall the substituted retailer be any retailer then currently operating, or who has operated within the twelve (12) month period preceding the substitution, as an automobile sales store within the Village of Lombard.
- J. Postma hereby represents and warrants that it shall maintain at all times hazard insurance or self insurance reserves in an amount sufficient to cover a total casualty loss to the Subject Property and shall provide proof of such coverage or reserves to the Village upon request.
- K. Postma represents and warrants that if any of the improvements to be built on the Subject Property and/or the existing building are destroyed in whole or in part by any

cause whatsoever during the first five (5) years after the Opening Date, then such improvements (excluding the existing building scheduled to be razed) shall be re-built to a comparable size and quality as the original improvements, or as otherwise approved by the Village.

- M. Postma hereby represents and warrants that attached as EXHIBIT "A" is the legal description of the Subject Property and that said legal description is accurate and correct.

## VI. DEFAULTS

The occurrence of any one of the following shall constitute an event of default by Postma under this Agreement:

- A. Failure to comply with any term, provision or condition of this Agreement within the times herein specified;
- B. In the event a representation or warranty of Postma contained herein is not materially true and correct.
- C. If Postma shall:
- 1) become insolvent; or
  - 2) be unable, or admits in writing its inability, to pay debts as they mature; or
  - 3) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its or their property; or
  - 4) be adjudicated a bankrupt; or
  - 5) file a petition in bankruptcy or to elect a plan or other arrangement with creditors; or
  - 6) file an answer to a creditor's petition (admitting the material allegations thereof) for an adjudication of bankruptcy or to elect a plan or other arrangement with creditors; or
  - 7) apply to a court for the appointment of a receiver for any asset; or
  - 8) have a receiver or similar official appointed for any of its assets, or, if such receiver or similar official is appointed without the consent of Postma and such appointment shall not be discharged within sixty (60) days after said appointment or Postma has not bonded against such receivership or appointment.
- D. Upon an occurrence of an event of default by Postma as hereinabove set forth, the Village shall provide written notice specifying the default to Postma. Upon receipt of the notice of default, Postma shall have thirty (30) days to cure the default, if it can be cured within thirty (30) days, or must begin curing the default and complete curing the default within a reasonable time thereafter, if it cannot be cured within thirty (30) days.

If the event of default is not cured by Postma within the time set forth above, this Agreement may be terminated by the Village and, in that event, the Village shall be relieved of any further obligations arising pursuant to this Agreement and such obligations on the part of the Village shall be immediately cancelled and without any further force or effect. Upon an occurrence of an event of default by Postma as hereinabove set forth, any monies due under this Agreement shall be placed into an escrow account and held by the Village until such time as the default is cured. In the event the default is not cured within the time set forth above, and this Agreement is terminated by the Village, all money in the aforementioned escrow account shall be retained by the Village and Postma shall have no claim against said funds.

- E. If Postma permanently closes its automobile sales store operation on the Subject Property for more than sixty (60) days (except closings due to strike, lockout, labor dispute, unavailability of inventory or materials, act of God, governmental actions or change in law, war, riot, or any repair or rebuilding associated therewith) during the term of this Agreement, and this Agreement is terminated by the Village as provided above, Postma shall repay to the Village all sums paid by the Village hereunder to Postma.
- F. It is understood by the parties hereto that the occurrence of any event of default shall not toll the running of the ten (10) year period limitation of Article III, Paragraph B above.
- G. If Postma fails to operate as an automobile sales store on the Subject Property for a period of five (5) years after the satisfaction by the Village of its obligation under Article III, Paragraph B of this Agreement, Postma shall repay to the Village all sums paid by the Village hereunder to Postma, unless Toyota fails to renew Postma's dealer contract, or, as a condition of such renewal, requires Postma to relocate its automobile sales store.

**VII. NOTICES**

All notices and requests required pursuant to this Agreement shall be sent by certified mail as follows:

If to Postma: Ronald J. Postma

Lombard Toyota  
725 W Roosevelt Rd  
Lombard, IL 60148

With copies to: David Brown

Much Shelist Freed Denenberg  
Ament & Rubenstein, P.C.  
200 North LaSalle Street, Suite 2100  
Chicago, IL 60601

If to the Village:

Village Manager  
Village of Lombard  
255 E. Wilson Avenue  
Lombard, IL 60148

With copies to:

Finance Director  
Village of Lombard  
255 East Wilson  
Lombard, Illinois 60148

Director of Community Development  
Village of Lombard  
255 East Wilson  
Lombard, Illinois 60148

Thomas P. Bayer, Village Attorney  
Klein, Thorpe and Jenkins, Ltd.  
20 N. Wacker Dr.  
Suite 1660  
Chicago, IL 60606

or at such other addresses as the parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

**VIII. LAW GOVERNING**

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and for the purposes of any lawsuit between the parties concerning this Agreement, its enforcement or the subject matter thereof, venue shall be in DuPage County, Illinois.

**IX. ASSIGNMENT**

Postma shall not assign this Agreement to any person or entity without the prior written consent of the Village. No such assignment shall be effective, even if consented to by the Village, unless and until the assignee assumes in writing the obligations of Postma hereunder, and upon such assumption in writing, Postma shall be released from and no longer be liable for any of its obligations and the performance thereof pursuant to this Agreement. Notwithstanding the foregoing, Postma may assign this Agreement and the payments due hereunder, without the consent of the Village, to a Related Entity at any time while this Agreement is in effect, or if Postma is not in default and more than five (5) years have passed since the Opening Date, then, Postma may assign this Agreement and the remaining payments due hereunder to any acceptable automobile sales store, as defined in Article V, Paragraph J, if the assignee assumes the obligations of Postma hereunder, and upon such assumption in writing, Postma shall be released from and no longer be liable for any of its obligations and the performance thereof pursuant to this Agreement.

**X. 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.

**XI. BINDING EFFECT**

This Agreement shall inure to the benefit of and shall be binding upon the Village and Postma and their respective successors and assigns, subject however to the provisions of Articles IX and XII hereof.

**XII. LIMITATIONS OF LIABILITY**

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Postma hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents or employees in excess of such amounts and all and any such rights or claims of Postma against

the Village, its officers, agents or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Postma, its officers, agents or employees, in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Postma, its officers, agents and employees in excess of their obligations hereunder.

**XIII. CONTINUITY**

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

**XIV. 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 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.

**XV. 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.

**XVI. SECTION HEADINGS AND SUBHEADINGS**

All Article 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 thereunder whether covered or relevant to such heading or not.

**XVII. AUTHORIZATION TO EXECUTE**

The corporate officers of Postma who have executed this Agreement warrant that they respectively have been lawfully authorized by the Board of Directors of Postma to execute this Agreement on its behalf. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. Postma and the Village shall deliver, upon request, to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

**XVIII. AMENDMENT**

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Postma and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings either oral or written, expressed or implied, between them, other than are herein set forth. 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.

**XIX. COUNTERPARTS**

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

**XX. CONFLICT BETWEEN THE TEXT AND EXHIBITS**

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

**XXI. 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 here from and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the Village of any of its monetary obligations under Section III of this Agreement, then this Agreement shall terminate.

**XXII. 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.

**XXIII. 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.

IN WITNESS WHEREOF, this Agreement as of the date and year first written above.

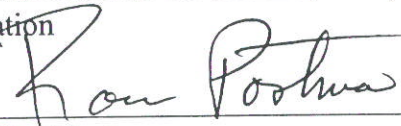
VILLAGE OF LOMBARD, an Illinois Municipal Corporation

By:   
Village President

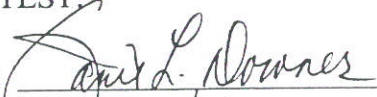
ATTEST:

By:   
Village Clerk

RON POSTMA AUTO SALES, INC., an Illinois Corporation

By:   
President

ATTEST:

By:   
Secretary Notary





**EXHIBIT A**  
**SUBJECT PROPERTY**  
(Page 1)

PARCEL 1: THAT PART OF THE NORTHWEST FRACTIONAL  $\frac{1}{4}$  OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH  $\frac{1}{4}$  CORNER OF SAID SECTION AND RUNNING THENCE WEST ON THE SECTION LINE 727.43 FEET TO THE NORTHWEST CORNER OF TRACT 7 IN MILLER'S PLAT OF SURVEY RECORDED NOVEMBER 16, 1954 AS DOCUMENT 737192; THENCE CONTINUING WEST ON THE SECTION LINE 87.50 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING WEST ON THE SECTION LINE 87.50 FEET TO THE NORTHEAST CORNER OF LOT 1 IN HERSHEL HARRIS' SURVEY RECORDED MARCH 18, 1954 AS DOCUMENT 710727; THENCE SOUTHERLY ON THE EAST LINE OF SAID SURVEY AND SAID LINE EXTENDED A DISTANCE OF 346.75 FEET; THENCE EAST ON A LINE FORMING A RIGHT ANGLES WITH THE LAST DESCRIBED COURSE, A DISTANCE OF 87.50 FEET; THENCE NORTH AT RIGHT ANGLES WITH THE LAST DESCRIBED COURSE A DISTANCE OF 346.53 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART FALLING WITHIN THE FOLLOWING DESCRIBED PROPERTY TAKEN FOR AND USED FOR ROOSEVELT ROAD RUNNING ALONG THE NORTHERLY LINE THEREOF: THAT PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT A POINT IN THE NORTH LINE OF SAID SECTION THAT IS 652.43 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST  $\frac{1}{4}$  (SAID POINT BEING THE NORTHWEST CORNER OF TRACT 6 IN MILLER'S PLAT OF SURVEY RECORDED NOVEMBER 16, 1954 AS DOCUMENT 737192) AND RUNNING THENCE WEST 250.0 FEET TO THE NORTHEAST CORNER OF HERSHEL HARRIS' SURVEY RECORDED MARCH 18, 1954 AS DOCUMENT 710727; THENCE SOUTHERLY ON THE EAST LINE OF SAID SURVEY 44.90 FEET TO A POINT 50.0 FEET SOUTH OF THE CENTER LINE OF PAVEMENT IN ROOSEVELT ROAD; THENCE EAST PARALLEL WITH SAID CENTER LINE OF PAVEMENT 250.0 FEET TO THE WEST LINE OF SAID TRACT 6; THENCE NORTH OF SAID WEST LINE 47.7 FEET TO THE POINT OF BEGINNING AND EXCEPT THAT PART TAKEN FOR ROOSEVELT ROAD BY CONDEMNATION CASE 86ED-71), IN DU PAGE COUNTY, ILLINOIS.

**EXHIBIT A**  
**SUBJECT PROPERTY**  
(Page 2)

PARCEL 2: THAT PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH  $\frac{1}{4}$  CORNER OF SAID SECTION AND RUNNING THENCE WEST ON THE SECTION LINE, 727.43 FEET TO THE NORTHWEST CORNER OF TRACT 7 IN MILLER'S PLAT OF SURVEY RECORDED NOVEMBER 16, 1954 AS DOCUMENT 737192, FOR A POINT OF BEGINNING; THENCE CONTINUING WEST 87.50 FEET TO A POINT THAT IS 87.50 FEET EAST OF THE NORTHEAST CORNER OF HERSCHEL HARRIS' SURVEY RECORDED MARCH 18, 1954 AS DOCUMENT 710727; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID HERSCHEL HARRIS' SURVEY AND LINE EXTENDED, A DISTANCE OF 346.53 FEET; THENCE EAST ON A LINE FORMING A RIGHT ANGLES WITH THE LAST DESCRIBED COURSE, A DISTANCE OF 162.50 FEET; THENCE NORTH ON A LINE FORMING A RIGHT ANGLES WITH THE LAST DESCRIBED COURSE, A DISTANCE OF 73.0 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 7 OF MILLER'S PLAT OF SURVEY; THENCE WEST ON A LINE FORMING A RIGHT ANGLES WITH THE LAST DESCRIBED COURSE, A DISTANCE OF 75.0 FEET TO THE SOUTHWEST CORNER OF TRACT 7 AFORESAID; THENCE NORTH ON A LINE FORMING A RIGHT ANGLES WITH THE LAST DESCRIBED COURSE, AND THE WEST LINE OF SAID TRACT 7, A DISTANCE OF 273.31 FEET TO THE POINT OF BEGINNING, (EXCEPT THAT PART FALLING WITHIN THE FOLLOWING DESCRIBED PROPERTY TAKEN FOR AND USED FOR ROOSEVELT ROAD, RUNNING ALONG THE NORTHERLY LINE THEREOF; THAT PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT A POINT IN THE NORTH LINE OF SAID SECTION THAT IS 652.43 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST  $\frac{1}{4}$  (SAID POINT BEING THE NORTHWEST CORNER OF TRACT 6 IN MILLER'S PLAT OF SURVEY RECORDED NOVEMBER 16, 1954 AS DOCUMENT 737192) AND RUNNING THENCE WEST 250.0 FEET TO THE NORTHEAST CORNER OF HERSCHEL HARRIS' SURVEY RECORDED MARCH 18, 1954 AS DOCUMENT 710727; THENCE SOUTHERLY ON THE EAST LINE OF SAID SURVEY, 44.9 FEET TO A POINT 50.0 FEET SOUTH OF THE CENTER LINE OF PAVEMENT IN ROOSEVELT ROAD; THENCE EAST PARALLEL WITH SAID CENTER LINE OF PAVEMENT 250.0 FEET TO THE WEST LINE OF SAID TRACT 6; THENCE NORTH ON SAID WEST LINE 47.7 FEET TO THE POINT OF BEGINNING AND EXCEPT THAT PART TAKEN FOR ROOSEVELT ROAD BY CONDEMNATION CASE NO. 86ED-92), IN DU PAGE COUNTY, ILLINOIS.

**EXHIBIT A**  
**SUBJECT PROPERTY**  
(Page 3)

PARCEL 3: TRACT 7 OF MILLER'S PLAT OF SURVEY RECORDED NOVEMBER 16, 1954 AS DOCUMENT 737192 (EXCEPT THAT PART FALLING WITHIN THE FOLLOWING DESCRIBED PROPERTY TAKEN FOR AND USED FOR ROOSEVELT ROAD RUNNING ALONG THE NORTHERLY LINE THEREOF: THAT PART OF THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT A POINT IN THE NORTH LINE OF SAID SECTION THAT IS 652.43 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST ¼ (SAID POINT BEING THE NORTHWEST CORNER OF TRACT 6 IN MILLER'S PLAT OF SURVEY RECORDED NOVEMBER 16, 1954 AS DOCUMENT 737192) AND RUNNING THENCE WEST 250.0 FEET TO THE NORTHEAST CORNER OF HERSCHEL HARRIS' SURVEY RECORDED MARCH 18, 1954 AS DOCUMENT 710727; THENCE SOUTHERLY ON THE EAST LINE OF SAID SURVEY 44.9 FEET TO A POINT 50.0 FEET SOUTH OF THE CENTER LINE OF PAVEMENT IN ROOSEVELT ROAD; THENCE EAST PARALLEL WITH SAID CENTER LINE OF PAVEMENT 250.0 FEET TO THE WEST LINE OF SAID TRACT 6; THENCE NORTH ON SAID WEST LINE 47.7 FEET TO THE POINT OF BEGINNING AND EXCEPT THAT PART TAKEN FOR ROOSEVELT ROAD BY CONDEMNATION CASE NO. 86ED-92), IN DU PAGE COUNTY, ILLINOIS.

**EXHIBIT "B"**  
**EXISTING PROPERTY**

PARCEL #1

LOT 1 IN RON POSTMA SUBDIVISION A SUBDIVISION IN THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1986 AS DOCUMENT R86-127771 IN DUPAGE COUNTY, ILLINOIS.

Commonly known as: 725 W. Roosevelt Road, Lombard, IL 60148  
Parcel Number: 06-19-100-028

PARCEL #2

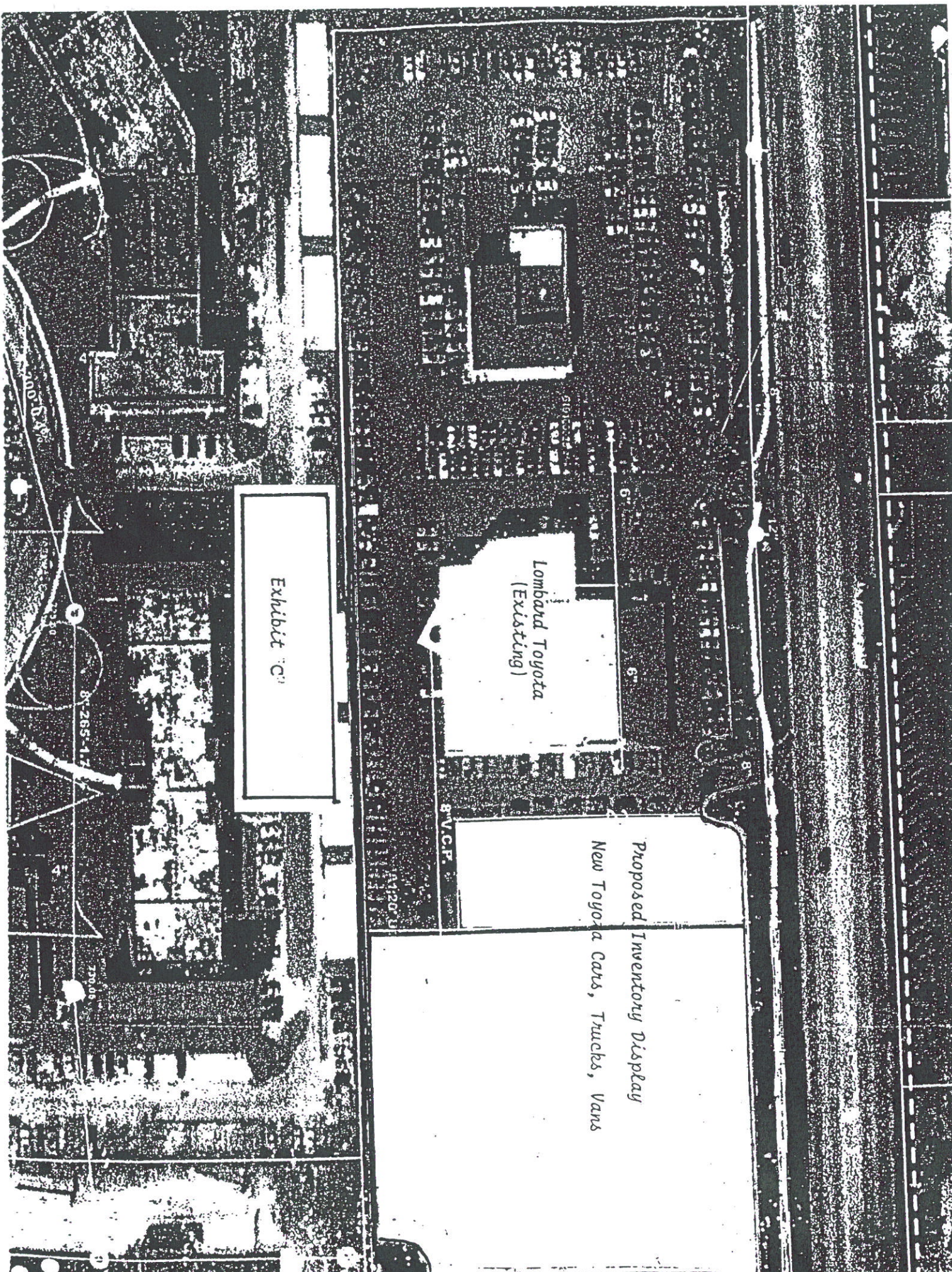
THAT PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION AND RUNNING THENCE WEST ON THE SECTION LINE 902.43 FEET FOR A PLACE OF BEGINNING; THENCE SOUTH ON A LINE FORMING A RIGHT ANGLE WITH THE CENTER LINE OF THE CONCRETE PAVEMENT ON ROOSEVELT ROAD 273.75 FEET TO AN IRON STAKE; THENCE WEST ON A LINE FORMING A RIGHT ANGLE WITH THE LAST DESCRIBED COURSE, 75 FEET TO AN IRON TAKE; THENCE NORTH 273.94 FEET TO A POINT IN THE SECTION LINE WHICH IS 75 FEET WEST OF THE PLACE OF BEGINNING, THENCE EAST ON THE SECTION LINE 75 FEET TO THE PLACE OF BEGINNING, ALSO KNOWN AS LOT 1 IN H. HARRIS' PLAT OF SURVEY, IN DUPAGE COUNTY, ILLINOIS.

(75' lot between Lombard Toyota and restaurant building)

Commonly known as: 541 W. Roosevelt Road, Lombard, IL 60148  
Parcel Number: 06-19-100-003

EXHIBIT-L

N.



Lombard Toyota  
(Existing)

Proposed Inventory Display  
New Toyota Cars, Trucks, Vans

Exhibit C

400-0-000

8-265-1-7

720-08

8-V.C.P.

01200 J

WATER RETENTION

POSTMA PROPERTY

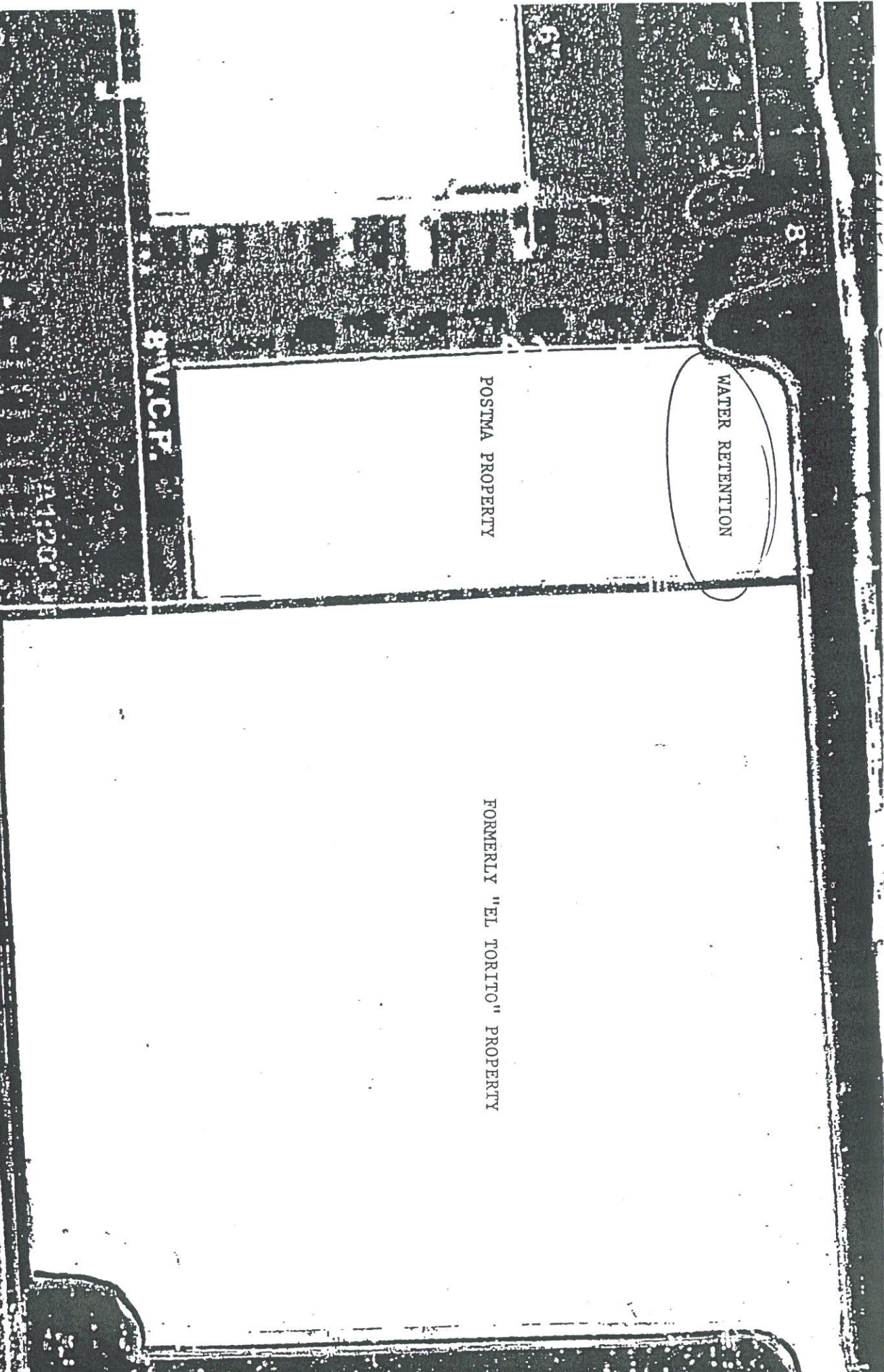
FORMERLY "EL TORITO" PROPERTY

B.V.C.F.

41:20

8

6



## EXHIBIT D

### CERTIFICATE OF REPRESENTATIONS AND WARRANTIES

**RON POSTMA AUTO SALES, INC.**, an Illinois corporation, hereby certifies that the following representations and warranties made by it, pursuant to Section V of the Economic Incentive Agreement between Ron Postma Auto Sales and the Village of Lombard dated \_\_\_\_\_, still remain true and correct as of the date of this certification as follows:

- A. Ron Postma Auto Sales hereby represents and warrants that it will not knowingly violate any applicable local zoning ordinance or regulation, building and fire code regulation, or any other applicable Village ordinance, resolution or regulation as they relate to the Project unless they are being contested in a lawful manner.
- B. Ron Postma Auto Sales hereby represents and warrants that it will not knowingly violate any applicable law, rule or regulation of the State of Illinois, County of DuPage or the United States of America, and all agencies thereof as they relate to the Project, unless they are being contested in a lawful manner.
- C. Ron Postma Auto Sales hereby represents and warrants that it is a corporation, authorized to do business in the State of Illinois.
- D. Ron Postma Auto Sales hereby represents and warrants that the legal title holder and the owner of record of the Subject Property as of the date of this hereof is known as Ronald J. Postma, as Trustee of the Ronald J. Postma Declaration of Trust dated December 10, 1993.
- E. Postma hereby represents and warrants that (i) it shall be the sole operator of the automobile sales store on the Property for a period of five (5) years after the Opening Date, unless Toyota fails to renew Postma's dealer contract, or, as a condition of such renewal, requires Postma to relocate its automobile sales store; and (ii) it shall continuously operate its store in a manner substantially similar to its present operation on the Existing Property (except for temporary closings for remodeling; closings due to strike, lockout, labor dispute, unavailability of inventory or materials, act of God, governmental actions, war, riot, fire, casualty or weather, and any repair or rebuilding associated therewith; or any other closing not exceeding fourteen (14) days). During the first ten (10) years, or until the Village has paid an aggregate of \$300,000 under this Agreement, whichever comes first, Postma represents and warrants that the Property will be operated as an automobile sales store by Postma or one of the following acceptable comparable auto dealers: Lexus, Ford, Chevy, Cadillac, Chrysler, Nissan, Acura, Honda, Porsche, BMW, or Buick. In the event that Postma desires to substitute a comparable retailer not mentioned above, said substitution shall be subject to the prior written consent of the Village, said consent not to be unreasonably withheld. In the event Postma ceases to operate the Property as an automobile sales store

and desires to substitute one of the aforementioned acceptable comparable automobile dealers, or another comparable retailer as approved by the Village, to operate said automobile sales store, in no event shall the substituted retailer be any retailer then currently operating, or who has operated within the twelve (12) month period preceding the substitution, as an automobile sales store within the Village of Lombard.

- F. Ron Postma Auto Sales hereby represents and warrants that it shall maintain at all times hazard insurance or self insurance reserves in an amount sufficient to cover a total casualty loss to the Subject Property and shall provide proof of such coverage or reserves to the Village upon request.
  
- G. Ron Postma Auto Sales represents and warrants that if any of the improvements to be built on the Subject Property and/or the existing building are destroyed in whole or in part by any cause whatsoever during the first five years after the Opening Date, then such improvements (including the existing building) shall be re-built to a comparable size and quality as the original improvements, or as otherwise approved by the Village.

**RON POSTMA AUTO SALES, INC.**, an  
Illinois corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT E**

**POWER OF ATTORNEY LETTER AUTHORIZING  
THE ILLINOIS DEPARTMENT OF REVENUE  
TO RELEASE GROSS REVENUE AND SALES TAX INFORMATION  
TO THE VILLAGE OF LOMBARD**

The undersigned is an authorized officer (agent, principal) of Ron Postma Auto Sales, Inc., an Illinois Corporation ("Taxpayer") which is doing business as an automobile sales store (the "Store") located at 725 W. Roosevelt Road, in Lombard, Illinois (the "Village").

In order to induce the development of the Store, the Village is utilizing certain sales tax revenues in order to provide certain benefits with respect to said development.

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("DOR") to release to the Village the monthly amount of municipal retailer's occupation tax and municipal service occupation tax generated by Taxpayer, as shown in required filings with DOR.

TAXPAYER

RON POSTMA AUTO SALES, an Illinois Corporation

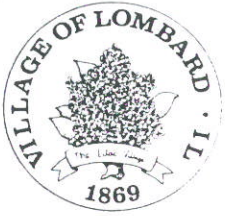
By: \_\_\_\_\_

TAXPAYER ILLINOIS SALES TAX #  
\_\_\_\_\_

SUBSCRIBED and SWORN  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

NOTARY

\_\_\_\_\_  
(Seal)

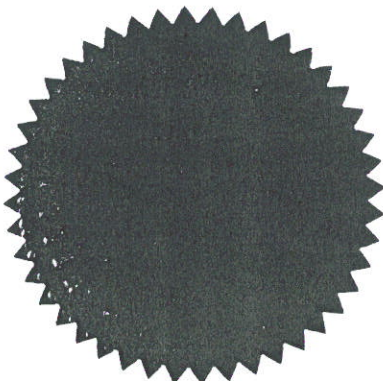


I, **Suzan L. Kramer**, hereby certify that I am the duly qualified Village Clerk of the **Village of Lombard**, DuPage County, Illinois, as authorized by Statute and provided by local Ordinance, and as such Village Clerk, I maintain and am safekeeper of the records and files of the President and Board of Trustees of said Village.

I further certify that attached hereto is a true and correct copy of RESOLUTION 77-02  
A RESOLUTION AUTHORIZING THE SIGNATURES OF  
THE VILLAGE PRESIDENT AND VILLAGE CLERK ON  
AN AGREEMENT BETWEEN RON POSTMA AUTO  
SALES AND THE VILLAGE OF LOMBARD  
REGARDING ECONOMIC INCENTIVES

of the said Village as it appears from the official records of said Village duly passed on November 15, 2001.

In **Witness Whereof**, I have hereunto affixed my official signature and the Corporate Seal of said **Village of Lombard**, Du Page County, Illinois this 31ST day of December, 2001.



*Suzan L. Kramer*  
Suzan L. Kramer *Barbara Johnson*  
Village Clerk *Deputy Village Clerk*  
Village of Lombard  
DuPage County, Illinois

# Lombard TOYOTA

*Excellence For Over 25 Years*

December 23, 2002

Mr. David A. Hulseberg  
Village of Lombard  
255 E. Wilson Ave.  
Lombard, IL 60148

COMMUNITY DEVELOPMENT

RECEIVED DEC 25 2002

Re: Lombard Toyota Expansion

Dear Mr. Hulseberg,

I want to bring the Village up to date regarding Lombard Toyota's development of the new Inventory Storage area on the east side of Lombard Toyota. First, allow me to apologize for missing some deadlines set up in our agreement. As you know, our original engineer Bob Dugan passed away on July 22, 2002 during the preliminary engineering approval process with the Planning Commission and Village Board.

After determining that R.A. Dugan and Associates would not be able to complete our project, we subsequently learned that we had to negotiate obtaining the CAD files with Stonelake Survey Company. At the Villages recommendation, we then hired Siebert Engineering Inc. in Lombard to redraw and further develop the site and retention engineering for submission to the Village of Lombard Engineering Department and the Illinois Department of Transportation.

This process has been completed and presented on December 12, 2002. Additionally, the project is out for bid at 3 contractors and the bids are expected back early in January 2003. The approval and selection of a contractor will be expedited to allow for a 2003 completion.

In light of the unforeseen events that occurred, I am requesting an extension of the deadlines to allow for a Spring 2003 project completion. Thank you for your attention to this matter.

Yours truly,



Ron Postma  
President