

**CONDITIONAL USE EXTENSION AGREEMENT FOR 500 EAST ROOSEVELT
ROAD, LOMBARD ILLINOIS**

THIS AGREEMENT (the “**Agreement**”) is entered into on the Effective Date, as hereinafter defined, by and between the **VILLAGE OF LOMBARD**, DuPage County, Illinois, an Illinois Municipal Corporation (the “**Village**”); and MORONI AUTO SALES INC + JOHN MORONI + JMS PARTNERS LLC (the “**Owner**”); (the Village and Owner sometimes referred to individually as a “**Party**” or collectively referred to as the “**Parties**”).

WITNESSETH:

WHEREAS, The Village is a municipality lawfully existing under the constitution and laws of the State of Illinois; and

WHEREAS, MORONI JMS PARTNERS LLC, is the fee owner of certain real estate, located within the Corporate limits of the Village at 500 East Roosevelt Road, Lombard, Illinois, legally described in EXHIBIT "A" which is attached hereto and made part hereof (the "**Subject Property**"), and improved with retail commercial buildings ; and

WHEREAS, Owner intends to operate a motor vehicle sales, service and repair facility on the Subject Property (“**Westgate Auto Sales**”); and

WHEREAS, pursuant to Ordinance 5163, adopted on July 18, 2002 , the Village granted zoning approvals for the use of the Subject Property in accordance with the Lombard Zoning Ordinance (the “**Zoning Ordinance**”), also known as Chapter 155 of the Lombard Village Code. Said approvals included a conditional use for a planned development with wall signage deviations, and conditional uses for a motor vehicle sales, service and repair facility and for multiple principal buildings on the Subject Property. Said approvals were conditioned upon adherence to the site plans submitted as part of the petition; and

WHEREAS, in addition to Roosevelt Road, the Subject Property abuts Fairfield Avenue and Edgewood Avenue, two (2) public rights of way owned and maintained by the Village. As part of a 2005 roadway reconstruction project for those rights of way, the Village adopted Resolution 135-05 on May 19, 2005 authorizing the Village to enter into an agreement with Westgate Lincoln Mercury, the then owner of the Subject Property, to reimburse Westgate Lincoln Mercury in the amount of \$38,652.00 for its purchase and installation of motorized gates (the “**Electronic Gates**”) for the Subject Property. Said Gates were intended to facilitate the unloading of motor vehicles on the Subject Property rather than within the adjacent Fairfield Avenue right of way, as had been the practice. The Electronic Gates were installed in 2005; and

WHEREAS, in the Fall of 2006, Westgate Lincoln Mercury ceased business operations on the Subject Property; and

WHEREAS, in May, 2007, Owner acquired fee title to the Subject Property. In addition, Owner represents that it purchased the Electronic Gates at the liquidation sale of Westgate Lincoln Mercury; and

WHEREAS, Section 155.103 (F)(12) of the Zoning Ordinance, states as follows:

Expiration and Transferability

A conditional use approval shall be deemed to authorize only a particular conditional use and shall expire if the conditional use shall cease for more than 12 months for any reason. However, the ownership of an authorized conditional use may be changed if the use remains unchanged.

; and

WHEREAS, pursuant to Section 155.103 (F)(12), the conditional use approvals for the Subject Property expired. However, on March 19, 2009, pursuant to a public hearing and approval of the Village's Board of Trustees, a new conditional use was granted for a motor vehicle sales, service and repair facility on the Subject Property pursuant to Ordinance 6312 (the "**Conditional Use**"), conditioned upon, among other things, adherence to the conditions set forth in Ordinance 5163; and

WHEREAS, Section 155.103 (F)(11) of the Zoning Ordinance, states, in pertinent part, as follows:

(11) Revocation

(a) In any case where the construction of an approved conditional use is not substantially underway within one year from the date of granting thereof, and completed within 18 months thereof, then, without further action by the Village Board, the conditional use or authorization thereof shall be null and void.

; and

WHEREAS, construction or operation of the activities granted by the Conditional Use approval of Ordinance 6312 was not substantially underway within twelve (12) months of its approval date. Therefore, pursuant to Section 155.103 (F)(11)(a) of the Zoning Ordinance, Ordinance 6312 is null and void, unless the Village Board grants a time extension to that Ordinance; and

WHEREAS, Owner is now requesting (the "**Petition for Time Extension**") for an extension of the time limits established in Section 155.103(F)(11)(a) of the Zoning Ordinance to permit the opening of Westgate Auto Sales (the "**Time Extension**"); and

WHEREAS, the Parties enter into this Agreement to memorialize the representations made by and between them, in consideration for the Village's approval of the Time Extension.

NOW THEREFORE, in consideration of the foregoing premises, which are incorporated into and made a part of this Agreement, and the mutual covenants and promises herein contained, the sufficiency of which is acknowledged to be adequate, the Parties agree as follows:

I. SCOPE OF AGREEMENT

- A. Approval of Time Extension. Upon the Village Board's approval of the Petition for Time Extension, the Time Extension shall be subject to the terms set forth in this Agreement.
- B. Edgewood Avenue Fencing. Instead of erecting Electronic Gates at the access driveway for the Subject Property along the Edgewood Avenue right of way, Owner shall, at its sole cost and expense, purchase and install a new solid fence along Edgewood Avenue that is not greater than eight (8) feet in height and matches the fence design and screening materials currently existing along the east property line of the Subject Property and the Edgewood Avenue right of way. A matching fence design shall include a chain link fence with exterior wood slats of equal width and height to the existing fence. Compatible barbed wire is optional. Owner shall also remove all asphalt within the parkway of the Edgewood Avenue right of way adjacent to the Subject Property and replace it with sod. Owner shall provide the specific designs and specification of the Gates as part of a fence permit submittal.
- C. Fairfield Avenue Gates. Instead of erecting Electronic Gates at the access driveway for the Subject Property along the Fairfield Avenue right of way, Owner may, at its sole cost and expense, purchase and install a new access gate that is similar in nature to the sliding gate that previously existed along the west property line. Alternatively, Owner may install a swinging gate of at least six (6) feet in height and of a chain link fence design, provided that such gate does not swing into the public right of way. Owner shall provide the specific designs and specification of the gate as part of a fence permit submittal. Owner shall also have the right, at its election, to install Electronic Gates.
- D. Vehicle Carrier Use. Vehicle-carrying transport trucks, trailers or combinations ("**Vehicle Carriers**") must safely access and navigate through the Subject Property. Owner shall provide a site plan depicting the turning templates for the largest Vehicle Carrier contemplated to assure such access and navigation. Owner shall keep all areas that are required for Vehicle Carrier circulation free of storage activity. Vehicle Carriers shall not stop or park on Edgewood Avenue, Fairfield Avenue or Roosevelt Road to load or unload vehicles.
- E. Fence Permit. Owner shall apply for a fence permit (the "**Fence Permit**") for the fence and gate improvements described in Sections I (B) and (C) above (collectively the "**Fence and Gate Improvements**"). Provided that the Permit application complies with the terms of this Agreement and the Zoning Ordinance, and that any fee, is paid, the Village shall issue the Permit.

- F. Cargo Container Removal. Owner shall remove the existing cargo container located on the Subject Property, pursuant to Section 155.603 (C) of the Zoning Ordinance.
- G. Zoning Certificates.
- (1) Upon the Village Board's approval of the Petition for Time Extension, Owner may apply for and the Village will issue a Conditional Zoning Certificate for stocking purposes only (the "**Conditional Stocking Zoning Certificate**"). The Conditional Stocking Zoning Certificate shall only permit Owner to occupy the buildings on the Subject Property for the purpose of installing office and business-related equipment. Motor vehicles shall not be stored within the buildings or on the Subject Property until such time as the Village issues a Final Zoning Certificate for the Subject Property
 - (2) Upon Owner's submission of a completed Zoning Certificate application, approval of a life/safety inspection by the Village, issuance of the Fence Permit and removal of the cargo container from the Subject Property, the Village shall issue a conditional Zoning Certificate to permit the Owner to use the Subject Property for the Conditional Use (the "**Conditional Zoning Certificate**"). The Conditional Zoning Certificate shall allow Owner to operate Westgate Auto Sales on the Subject Property open to the public.
 - (3) The Village will issue a Final Zoning Certificate upon compliance with the following: a) the Conditional Zoning Certificate has been issued, b) the Fence and Gate Improvements have been installed in accordance with the Fence Permit, d) no outstanding building, zoning or life/safety code issues are present, and e) all other provisions of the Village Code are met.
- H. Installation of Fence and Gate Improvements. Owner shall install the Fence and Gate Improvements no less than ninety (90) days after the Village Board's approval of the Petition for Time Extension.
- I. Term of Time Extension. The time limit set forth in Section 155.103(F)(11)(a) of the Zoning Ordinance, requiring that the conditional use be substantially underway within one (1) year, shall be extended for ninety (90) days from the date that the Village Board approves the Petition for Time Extension. The Parties agree that the Conditional Use will not be substantially underway for purposes of Section 155.103(F)(11)(a) unless the Final Zoning Certificate has been issued. Therefore, in the event that the Final Zoning Certificate has not been issued within that ninety (90) day period, the Conditional Use shall be null and void at the end of that time period pursuant to Section 155.103 (F)(11)(a) of the Lombard Zoning Code.

II. NOTICES

All notices and requests required pursuant to this Agreement shall be sent by personal delivery or certified mail, return receipt requested, and addressed as follows:

If to Owner: JMS PARTNERS LLC
605 MIDWEST CLUB
OAK BROOK IL. 60523

With copies to: MORONI AUTO SALES INC.
500 EAST ROOSEVELT RD
LOMBARD IL. 60148

If to the Village: Village Manager
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148

With copies to: 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. Notice shall be effective upon the date of service by personal delivery or on the date of receipt as evidenced by return receipt.

III. 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.

IV. ASSIGNMENT

Owner 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 Owner hereunder, and upon such assumption in writing, Owner shall be released from and no longer be responsible for any of its obligations and the performance thereof pursuant to this Agreement.

V. 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.

VI. BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the Village and Owner and their respective successors and assigns, subject however to the provisions of Articles VIII and IX hereof. No other party shall be deemed to be a third party beneficiary hereunder.

VII. 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 officials, officers, agents or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Owner 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 officials, officers, agents or employees in excess of such amounts and all and any such rights or claims of Owner against the Village, its officials, 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 Owner, 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 Owner, its officers, agents and employees in excess of their obligations hereunder.

VIII. CONTINUITY

Notwithstanding any provision of this Agreement to the contrary, including, but not limited to, the assignment by Owner of this Agreement, Owner 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 Owner from any or all of such obligations.

IX. 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.

X. 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.

XI. 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.

XII. AUTHORIZATION TO EXECUTE

The manager of Owner who has executed this Agreement warrants that he/she has lawful authority to execute this Agreement on behalf of the Owner. 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. Owner 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.

XIII. AMENDMENT

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Owner 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.

XIV. COUNTERPARTS

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

XV. 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.

XVI. SEVERABILITY

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement.

XVII. 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.

XVIII. EXECUTION OF AGREEMENT – EFFECTIVE DATE

This Agreement shall be signed last by the Village and the effective date of this Agreement (the “Effective Date”) shall be the date last signed by the Village President.

XIX. REPRESENTATION


All Parties hereto have been represented by counsel and have had full opportunity to discuss this Agreement prior to execution. No Party shall be deemed to have drafted this Agreement for purposes of construing any ambiguity.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

VILLAGE OF LOMBARD, an Illinois Municipal Corporation

By: 
Village President

ATTEST:

By: 
Village Clerk

Date: 4/15/2010

OWNER

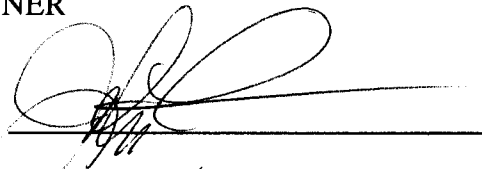
By: 
Date: 4-15-10

EXHIBIT A
Legal Description for Subject Property

LOT 1 OF THE LOMBARD LINCOLN MERCURY PLAT OF CONSOLIDATION, BEING A SUBDIVISION OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 15, 1988 AS DOCUMENT R88-130945, IN DU PAGE COUNTY, ILLINOIS.

Parcel Number: 06-17-404-044