**SECOND AMENDED AND RESTATED COMMUNITY REINVESTMENT**

**AREA AGREEMENT**

This Second Amended and Restated Community Reinvestment Area Agreement (“Agreement”) is made and entered into as of the latest date of execution below by and between the Village of Fairfax, Ohio (the “Village”), an Ohio municipal corporation located at 5903 Hawthorne Avenue, Fairfax, Ohio 45227, and FCA Realty LLC, (“FCAR”), a Delaware limited liability company located at 1000 Chrysler Drive, CIMS: 485-03-20, Auburn Hills, Michigan 48326-2766 (collectively, the “Parties”).

 **WHEREAS,** via Resolution No. 3-2008, the Village established Community Reinvestment Area #061-25942-01 (the “CRA”) within the boundaries of the Village; and

**WHEREAS**, the Village encourages the development and redevelopment of real property located in the CRA; and

 **WHEREAS**, FCAR submitted a Commercial Community Reinvestment Area Application (the “Application,” attached hereto as Exhibit A) for an agreement with the Village pursuant to the CRA; and

**WHEREAS**, the Application outlines a proposed project (the “Project”) that includes new construction of a car dealership located at portions of the address currently known as 3700 Red Bank Road in the Village (the “Site,” not located at 4550 Red Bank Road as stated in the Application), general Site improvements, and new furniture and fixtures, at the total Project cost of approximately thirteen million one hundred twenty five thousand dollars ($13,125,000.00), exclusive of future inventory, provided that appropriate development incentives are available to support the economic viability of the Project; and

 **WHEREAS,** approximately nine million nine hundred seventy five thousand dollars ($9,975,000.00) of the Project is attributable to real property additions and new construction eligible for incentives pursuant to the CRA (the “Project”); and

 **WHEREAS**, the Village, having the appropriate authority for the Project, believes it in the best interest of the Village to provide FCAR with incentives available for development of the Project in the CRA; and

 **WHEREAS**, the Village investigated the Application and recommends incentives in the form of a real property tax exemption for the Project because FCAR is qualified by financial responsibility and business experience to create and preserve employment opportunities in the CRA and to improve the economic climate of the Village; and

 **WHEREAS**, the Site is located in the Mariemont School District (the “School District”), which was notified in compliance with R.C. 3735.671 and 5709.83 and given a copy of the Application not later than forty five (45) days prior to the day the Village Council took formal action to enter into this Agreement, and which unanimously approved the subject request; and

 **WHEREAS**, the Village and FCAR previously entered into that certain Community Reinvestment Area Agreement last executed on July 10, 2019 (the “Original Agreement”), as amended and restated by the certain Amended and Restated Community Reinvestment Area Agreement as executed by the Village on April 21, 2020 which is collectively, with the Original Agreement, referred to herein as (the “Amended Agreement”); and

 **WHEREAS**, pursuant to R.C. 3735.67(A) and in conformance with the format required under R.C. 3735.671(B), the Parties wish to set forth their amended and restated agreement for a real property exemption as set forth below;

 **NOW, THEREFORE,** in consideration of the mutual covenants set forth herein, the adequacy of which is hereby acknowledged, the Village and FCAR agree as follows:

**Section 1. Location, Scope, and Timing of the Project**

The Project shall take place at the Site. FCAR’s investment in the Project is anticipated to be approximately thirteen million one hundred twenty five thousand dollars ($13,125,000.00), exclusive of future inventory, of which approximately nine million nine hundred seventy five thousand dollars ($9,975,000.00) shall be spent on real property additions and new construction that are eligible for tax incentives, and approximately seven hundred fifty thousand dollars ($750,000.00) shall be spent on furniture and fixtures that are not eligible for tax incentives. These costs are subject to a twenty percent (20%) variance in either direction. The Project shall begin no earlier than May 1, 2020, and all construction shall be complete by March 31, 2023.

**Section 2. Employment**

No one is employed currently at the Site, which is vacant (the “Current Employment”). Upon completion of the Project, the operator of the car dealership anticipates adding to the Current Employment approximately seventy four (74) new full-time permanent positions at the Site (the “Additional Employment”). The Additional Employment is anticipated to result in a total increased annual payroll of approximately four million three hundred sixteen thousand two hundred dollars ($4,316,200) within one (1) year of Project completion.

# Section 3. Tax Incentive

In reliance on the Project and the Additional Employment, the Village hereby grants to FCAR a total tax exemption (the “Exemption”) for real property improvements made to the Site pursuant to R.C. 3735.66, in the amount of a One Hundred Percent (100%) exemption on new real property taxes resulting from the portion of the Project consisting of real property additions and new construction, which is anticipated to be approximately nine million nine hundred seventy five thousand dollars ($9,975,000). The term of the Exemption shall be, and shall not exceed, fifteen (15) consecutive years. The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after January 1, 2024 nor extend beyond December 31, 2038. FCAR must notify the Village when the Project or any applicable portion thereof is complete so the Exemption can be applied.

# Section 4. Cooperation and Compliance

The proper Tax Incentive Review Council shall monitor this Agreement annually. FCAR shall provide to the proper Tax Incentive Review Council any information reasonably required by the council to evaluate FCAR’s compliance with the Agreement, including returns filed pursuant to R.C. 5711.02 if requested by the council. The proper Tax Incentive Review Council may also request tax forms related to the Exemption and payroll information. FCAR authorizes the proper Tax Incentive Review Council and the Village to release payroll information to the School District. The Application and this Agreement are public records, and may be disclosed as appropriate.

## Section 5. Annual Monitoring Fee

FCAR shall pay the Village an annual fee (“Annual Fee”) equal to the greater of one percent (1%) of the dollar value of the taxes exempted under this Agreement or five hundred dollars ($500), provided, however, that if the dollar value of the incentives exceeds two hundred fifty thousand dollars, the Annual Fee shall not exceed two thousand five hundred dollars ($2,500). The Annual Fee shall be in the form of a check payable to the Village for the full amount due and shall be due by December 31 of each year whether or not any exemptions have been claimed. Until such time as exemptions are claimed, the minimum annual fee of five hundred dollars ($500.00) applies. The Village shall deposit and use the fee as specified in R.C. 3735.671(D). For clarity, the Annual Fee shall commence in the calendar year that FCAR’s Senior Management Approval (defined below) is secured and shall terminate effective the calendar year after the expiration, or earlier termination, of the Exemption.

# Section 6. Tax Requirements

FCAR shall pay such real property taxes as are not exempted under this Agreement and are charged against the Site and shall file all tax reports and returns as required by law. If FCAR fails to pay such taxes or file such returns and reports, exemptions from taxation granted under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

FCAR hereby certifies that at the time this Agreement is executed, FCAR does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which FCAR is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or if such delinquent taxes are owed, FCAR currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101 *et seq.*, or such a petition has been filed against FCAR. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

# Section 7. Maintenance of Tax Incentives

The Village shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

# Section 8. Revocation

If, for any reason, the Village revokes designation of the CRA, entitlements granted under this Agreement shall continue for the number of years specified unless FCAR materially fails to fulfill its obligations under this Agreement and the Village terminates or modifies the exemptions from taxation granted under this Agreement.

If FCAR materially fails to fulfill its obligations under this Agreement, or if the Village determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the Village may terminate or modify the exemptions from taxation granted under this Agreement.

Exemptions from taxation granted under this Agreement shall be revoked if it is determined that FCAR, any successor to that person, or any related member (as defined in R.C. 3735.671(E)) violated the prohibition against entering into this Agreement under R.C. 3735.671(E), 5709.62, or 5709.63 prior to the time prescribed by that division or either of those sections.

# Section 9. Local Legislative Action

FCAR and the Village acknowledge that this Agreement must be approved by appropriate formal action of the Village Council as a condition for the Agreement to take effect.

# Section 10. Assignment, Transfer, and Modification

This Agreement is not transferable or assignable without the express written approval of the Village and all formal action necessary to provide such approval. This Agreement may only be modified by mutual consent set forth in writing and executed by the parties after appropriate formal action. Notwithstanding the foregoing, FCAR may assign this Agreement with notice to, but without the Village's consent, to: (a) a parent, subsidiary, affiliate, or successor (by merger, consolidation, transfer of assets, assumption or otherwise) of FCAR; (b) an entity which purchases substantially all of the interests in or assets of an operating division, group, or department of FCAR, or which purchases the majority of FCAR's business as conducted at the Site; (c) in connection with the transfer of a majority or controlling interest in FCAR; (d) an entity or entities created by the division of FCAR into one or more separate corporations, partnerships, or other entities; (e) in connection with the public offering of the stock of FCAR, any affiliated or successor entity of FCAR, or any entity created in connection with the "spin-off" of an operating division, group, or department of FCAR; (f) a franchised dealer of products manufactured, sold, or distributed by FCA US LLC or its successors, assigns or affiliates.

**Section 11. Falsification**

FCAR covenants that it has not knowingly made any false or fraudulent statements in the Application or, otherwise, to the Village, in the process of obtaining approval for the Exemption. If FCAR knowingly made a materially false or fraudulent statement to the Village to obtain the Exemption, FCAR shall be required to return immediately all benefits received under the Agreement and shall be ineligible for any future economic development assistance from the State of Ohio or any agency or political subdivision thereof.

**Section 12. FCAR Senior Management Approval**

FCAR and the Village agree that this Agreement is expressly conditioned upon and subject to its approval by FCAR’s senior management (“FCAR’s Senior Management Approval”). Should FCAR’s Senior Management Approval not be obtained on or before January 5, 2021 (the “Senior Management Approval Deadline”) (and notice of the same provided to the Village), this Agreement shall automatically be deemed to be null and void and the parties hereto shall have no further obligations to one another under this Agreement.

**Section 13. Project Site Acquisition**

FCAR and the Village agree that this Agreement is expressly conditioned upon and subject to FCAR’s acquisition of the Project Site on or before the Senior Management Approval Deadline.

**Section 14. Notices**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given (a) when personally delivered to the party to be given such notice or other communication, (b) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully prepaid, (c) on the business day following the day such notice or other communication is sent by reputable overnight courier or (d) on the same day such notice is sent by electronic/email delivery per the email address below without a return notice of delivery failure, provided that one of the other three (3) methods of delivery must also be utilized, to the following:

If to the Village: Village Administrator

 Fairfax Municipal Building

 5903 Hawthorne Avenue

 Fairfax, Ohio 45227

 Attn: Jennifer M. Kaminer

 Email Address: jkaminer@fairfaxoh.org

With a copy to: Alan H. Abes

 Dinsmore & Shohl LLP

 255 E. 5th St., Ste. 1900

 Cincinnati, Ohio 45202

 Email Address: alan.abes@dinsmore.com

If to Tenant: FCA Realty LLC

1000 Chrysler Drive, CIMS 485-03-20

Auburn Hills, Michigan  48326-2766

Attention: Head of FCA Realty LLC

Email Address:\_\_\_\_\_\_\_\_\_\_\_\_\_

With a copy to: FCA US LLC

1000 Chrysler Drive, CIMS 485-14-23

Auburn Hills, Michigan  48326-2766

Attention: Counsel, Real Estate

Office of the General Counsel

Email Address:\_\_\_\_\_\_\_\_\_\_\_\_\_

or to such other address as the parties may designate in writing.

**Section 15. Execution**

 This Agreement may be executed in counterparts. An electronic signature shall be treated as an original.

**Section 16. Amendment and Restatement**

 This Agreement amends and restates in its entirety the Amended Agreement, which Amended Agreement is null and void and of no force or effect.

ONLY SIGNATURES TO FOLLOW

AGREED:

VILLAGE OF FAIRFAX, OHIO, an

Ohio municipal corporation

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Jennifer M. Kaminer, Village Administrator Date

Approved as to Form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alan H. Abes, Village Solicitor Date

FCA REALTY LLC, a Delaware limited liability company

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

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_