

ORDINANCE NO.8-2021

AUTHORIZING THE VILLAGE ADMINISTRATOR TO EXECUTE A FIFTH AMENDED AND RESTATED COMMUNITY REINVESTMENT AREA AGREEMENT WITH FCA REALTY, LLC FOR A REAL PROPERTY TAX EXEMPTION PURSUANT TO THE COMMUNITY REINVESTMENT AREA PREVIOUSLY ESTABLISHED BY THE VILLAGE AND DECLARING AN EMERGENCY

WHEREAS, on May 19, 2008, the Council of the Village of Fairfax (“Village”) adopted Resolution No. 3-2008, establishing a Community Reinvestment Area (“CRA”) in the Village pursuant to R.C. 3735.66; and

WHEREAS, pursuant to Ordinance No. 18-2019, the Village executed a Community Reinvestment Area Agreement with FCA Realty, LLC (“FCAR”) for a real property tax exemption within the CRA as set forth in Chapter 3735 of the Revised Code; and

WHEREAS, pursuant to Ordinance No. 16-2020, the Village executed an Amended and Restated Community Reinvestment Area Agreement with FCAR to account for unavoidable changes to the construction schedule; and

WHEREAS, pursuant to Ordinance No. 22-2020, the Village executed a Second Amended and Restated Community Reinvestment Area Agreement with FCAR to account for unavoidable changes to the property acquisition and construction schedule due to the COVID-19 pandemic, and other matters necessary for the approval of FCAR’s management; and

WHEREAS, pursuant to Ordinance No. 1-2021, the Village executed a Third Amended and Restated Community Reinvestment Area Agreement with FCAR to account for unavoidable changes to the property acquisition and construction schedule due to the COVID-19 pandemic, and other matters necessary for the approval of FCAR’s management; and

WHEREAS, pursuant to Ordinance No. 4-2021, the Village executed a Fourth Amended and Restated Community Reinvestment Area Agreement with FCAR to account for unavoidable changes to the property acquisition and construction schedule due to the COVID-19 pandemic, and other matters necessary for the approval of FCAR’s management; and

WHEREAS, for the same reasons set forth in Ordinance No. 4-2021, it is necessary again to revise the Community Reinvestment Area Agreement, providing a brief extension of certain deadlines therein; and

WHEREAS, the parties agreed in principle to such revisions, as reflected in Exhibit A hereto; and

WHEREAS, the Fourth Amended and Restated Community Reinvestment Area Agreement would have expired as of March 8, 2021 absent prior consent to extend the date for the approval of FCAR's management, as requested by FCAR on March 4, 2021, and then first executed by the parties on March 4, 2021;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Fairfax, State of Ohio, that:

SECTION I: The Village Administrator is hereby authorized and directed to enter into a Fifth Amended and Restated Community Reinvestment Area Agreement with FCAR for a real property tax exemption in substantially the form attached hereto as Exhibit A, subject to such revisions as the Village Administrator deems necessary under Resolution No. 3-2008 and as necessary to comply with R.C. 3735.671.

SECTION II: The Village Administrator is hereby designated by this Council to forward a copy of the Fifth Amended and Restated Community Reinvestment Area Agreement to the Ohio Director of Development Services within fifteen days after such agreement is executed by all parties, as required by R.C. 3735.671(F).

SECTION III: To the extent necessary, Council hereby ratifies and approves the Consent attached hereto as Exhibit B.

SECTION IV: Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and its committees, if any, that resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code, as amended by the emergency provisions of Ohio HB 404.

SECTION V: This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately. The reason for said declaration of emergency is the immediate need to approve the subject agreement to meet the timeline set forth by FCAR and foster timely economic development in the Village.

Passed this 15th day of March, 2021.

Mayor

ATTEST:

Fiscal Officer

CERTIFICATE

I hereby certify this to be a true and correct copy of Ordinance No. 8-2021 adopted at a meeting of the Council of the Village of Fairfax on this 15th day of March, 2021.

Fiscal Officer

FIFTH AMENDED AND RESTATED COMMUNITY REINVESTMENT AREA AGREEMENT

This Fifth 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, that certain Second Amended and Restated Community Reinvestment Area Agreement as executed by the Village on September 21, 2020, that certain Third Amended and Restated Community Reinvestment Area Agreement as executed by the Village on January 20, 2021 and that certain Fourth Amended and Restated Community Reinvestment Area Agreement as executed by the Village on February 18, 2021 which are 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 acquires the Project Site 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 May 7, 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.

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

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: _____

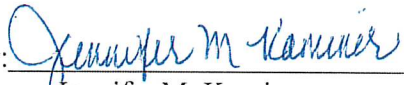
Date: _____

CONSENT

The Village of Fairfax, Ohio (the "Village") and FCA Realty LLC ("FCAR") are parties to that certain Third Amended and Restated Community Reinvestment Area Agreement as executed by the Village on February 18, 2021 (the "Agreement"). The Agreement is expressly conditioned upon and subject to its approval by FCAR's senior management on or before March 8, 2021 (the "FCAR's Senior Management Approval"). FCAR has requested and the Village hereby consents to the extension of the date the FCAR's Senior Management Approval must be secured from March 8, 2021 to May 7, 2021. FCAR and the Village shall subsequently enter into a Fifth Amended and Restated Community Reinvestment Area Agreement evidencing the extension of the FCAR's Senior Management Approval date and such other amendments or modifications as are agreed to by FCAR and the Village. Execution of this Consent may be done in any number of identical counterparts which, taken together, shall constitute collectively one agreement and the parties acknowledge and agree that such execution and transmission may be accomplished by online, electronic or digital signature.


Dated effective the 5th day of March, 2021.

Village of Fairfax, Ohio

By: 
Jennifer M. Kaminer
Village Administrator

Acknowledged and Agreed to By:

FCA REALTY LLC, a Delaware limited liability company

By: 
Print Name: Jeffery C. Conklin
Its: Vice President
Title: _____