

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
DECEMBER 6, 2011 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Resolution Authorizing Sales Tax Rebate Agreement with Bentley of Downers Grove	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

SYNOPSIS

A resolution has been prepared authorizing a Sales Tax Rebate Agreement between the Village of Downers Grove and Gold Coast Exotic Imports, LLC, doing business as Bentley of Downers Grove.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011 to 2018 include *Strong, Diverse Local Economy* and *Steward of Financial and Environmental Sustainability* and *Exceptional Municipal Services*.

FISCAL IMPACT

The improvements to the Bentley facility are expected to generate an additional \$400 million in taxable sales over the base amount during the proposed 10-year agreement. After the payment of the sales tax rebates per the terms of the proposed agreement, the Village is expected to receive an additional \$2 million in revenues during the 10-year period.

RECOMMENDATION

Approval on the December 13, 2011 active agenda.

BACKGROUND

Bentley of Downers Grove is proposing to make improvements to the site of its existing automobile dealership located at 310-330 Ogden Avenue including landscaping the space, repairing the parking lot and making improvements to conform to the Village’s sign ordinance. As an incentive to complete this redevelopment, the proposed sales tax rebate agreement will provide a rebate of 50% of the sales tax revenue received by the Village for a period of ten years, after the base amount of \$5 million in taxable sales is achieved each year.

The proposed sales tax rebate agreement includes the following key terms:

- No later than June 1, 2012 Bentley shall make improvements to the existing facility consistent with the Village’s Ogden Avenue Master Plan including:
 - Repairing the existing parking lot
 - Landscaping the site and enhancing the green space
 - Installing screening on the north lot line
 - Repairing the fence on the western boundary line
 - Bringing all signs into conformance with the sign ordinance
- Bentley shall operate the dealership for a period of not less than 15 years from the effective date of the agreement (January 1, 2012). If Bentley fails to continue to operate the dealership for 15 years, it shall reimburse the Village for all or a portion of the sales tax rebate payments according to a schedule in the agreement.

- Bentley shall comply with all Village Codes. Failure to comply will result in the agreement becoming null and void.
- The Village shall retain all sales tax paid on the first \$5 million of taxable retail sales each year.
- The Village shall rebate 50% of the annual sales tax paid to the Village in excess of the annual retail sales base of \$5 million.
- Rebate payments shall be made for a maximum period of ten years (January 1, 2011 to December 31, 2021)
- The Village shall withhold all payments for one quarter. If Bentley fails to operate the dealership per the terms of the agreement, the withheld payment shall be automatically forfeited to the Village.
- The Village shall not make any payments until the improvements have been completed. For every 90 days after June 1, 2012 that the improvements have not been completed, the incentive payment for that quarter is forfeited.

ATTACHMENTS

Resolution

Sales Tax Rebate Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
REDEVELOPMENT/SALES TAX REBATE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE, PERILLO MOTOR CARS,
330 OGDEN AVENUE AND GOLD COAST EXOTIC IMPORTS, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Redevelopment/Sales Tax Rebate Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Perillo Motor Cars, 330 Ogden Avenue and Gold Coast Exotic Imports, d/b/a Bentley of Downers Grove (Collectively referred to as “Bentley”), as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**REDEVELOPMENT/SALES TAX REBATE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE, PERILLO MOTOR CARS, 330 OGDEN
AVENUE AND GOLD COAST EXOTIC IMPORTS, LLC**

This Agreement made and entered into this ____ day of _____, 20____, by and between the Village of Downers Grove, Illinois, an Illinois Municipal Corporation situated in the County of DuPage, Illinois (the Village) and Perillo Motor Cars, 330 Ogden Avenue and Gold Coast Exotic Imports, LLC d/b/a Bentley of Downers Grove (Collectively referred to as "Bentley").

WITNESSETH:

WHEREAS, the Village is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution, and;

WHEREAS, the Village has the authority to prevent the spread of blight and to encourage private development to enhance the local tax base and to enter into contractual agreements for the purpose of achieving these purposes; and

WHEREAS, Bentley currently operates an automobile dealership on land within the Village of Downers Grove located at 310-330 Ogden Avenue, Downers Grove, Illinois, and legally described as follows (the "Property"):

Lots 5, 6, 7 and 8 in Block 2 in Arthur T. McIntosh and Company's Third Ogden Avenue Subdivision, being a subdivision in the Southwest Quarter of the Northwest Quarter of Section 4, Township 38 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded December 31, 1924 as Document 186703, in DuPage County, Illinois

Together with:

Lots 9, 10 and 11 (except that portion of the west 25 feet of Lot 11 which lies south of the northern 25 feet of Lot 11, which northern 25 feet is part of the property), and the Northern 25 feet of Lots 12, 13 and 14, all in Block 2 of Arthur T. McIntosh and Company's Ogden Avenue Subdivision, being a subdivision of the South 9 chains of the Southwest Quarter of the Northwest Quarter of Section 4, Township 38 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois

Together with:

The North Half and the South Half of Lot 4 in Block 2 in Arthur T. McIntosh and Company's Third Ogden Avenue Subdivision, being a Subdivision in the Southwest Quarter

of the Northwest Quarter of Section 4, Township 38 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded December 31, 1924 as Document 186703, in DuPage County, Illinois, commonly known as 310-330 Ogden Avenue, Downers Grove, Illinois (PIN Nos. 09-04-110-012, 09-04-110-023,-024, 09-04-110-026,-027, -028, -029, -030)

(Commonly known as 310-330 Ogden Avenue, Downers Grove, IL 60515)

WHEREAS, Bentley is endeavoring to make on-site improvements such as repairing its existing parking lot, landscaping the site, installing screening on the northern lot line, repairing the fence on the western boundary line, enhancing green space and altering all signs to conform to Village Ordinance in accordance with the Ogden Avenue Master Plan (the ~~A~~Redevelopment Project~~@~~); and,

WHEREAS, the Village, recognizing the economic and other benefits derived therefrom by the Village and its residents, seeks to assist Bentley in its endeavors to own and improve the Property; and

WHEREAS, the Village and Bentley agree to permit the Dealership to construct the Redevelopment Project, that it is necessary that the Village provide an incentive in the form of certain sales tax rebate assistance in accordance with law and the terms of this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. Incorporation of Recitals: The foregoing recitals are hereby incorporated and adopted as set forth herein.

2. General Terms:

a) Bentley, after receipt of the promises and inducements contained herein, agrees to redevelop its existing automobile sales dealership in substantial accordance with the Design Plan (Exhibit A). Specifically, Bentley agrees to repair its existing parking lot, landscape the site, install screening on the northern lot line, repair the fence on the western boundary line, enhance green space and bring all signs into

compliance with Village Ordinances. It is understood and agreed that there will be a specific plan to be submitted to and approved by the Village in relation to the Property as required by the Village Municipal Code at some time in the future. In addition, the architecture, building, zoning, sign requirements and landscape plans for the Property must be submitted to and approved by the Village. The Village agrees to expeditiously review the site plan and required permits after submission thereof. Bentley shall obtain all necessary permits prior to beginning any such improvements on the Property. The Redevelopment Project shall be constructed substantially in accordance with the plans and specifications approved by the Village. The Redevelopment Project described in this paragraph must be completed no later than June 1, 2012.

b) The parties hereto acknowledge, and Bentley represents and warrants, that it requires economic assistance from the Village in order to commence and complete the Redevelopment Project, and that, but for said economic assistance, the Redevelopment Project as contemplated would not be economically viable, nor would the funds necessary for its commencement and completion be available.

c) For 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 for distribution to the Village pursuant to the Retailers=Occupation Tax Act and the Service Occupation Tax Act (as said Acts may be amended from time to time) and which are collected by the State and distributed to the Village, and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body other than the Village enacts any law or statute which results or which may result in any material changes or amendments to the foregoing sales tax provisions, which changes or amendments prohibit the Village from complying with this Agreement or which adversely affect the Village's ability to comply herewith, then the Village and Bentley shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than sixty (60) days from the effective date of the law or statute

which has materially affected the Village's compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder. The use of the terms "sales tax" and "sales tax revenue" shall not be construed to mean any additional taxes imposed by the Village as a home rule municipality

d) For purposes of this Agreement, the incentives and inducements set forth herein shall apply only to Bentley and the Redevelopment Project. It is expressly understood that this Agreement shall not apply to any automobile sales that may occur on the Property prior to January 1, 2012.

e) Bentley agrees that in the event there is a change in the ownership (legal or beneficial) of the Dealership, or any portion thereof, except as provided in Section 8, the Village shall no longer be required to pay all or any portion of the incentive payments provided for in this Agreement.

In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Bentley, including the construction, development and operation of the Dealership on the Property, the Village hereby agrees to pay Bentley certain sales tax rebates ("Incentive Payments") by quarterly installments over a maximum period of ten (10) years (the "Incentive Period"), subject however to the following conditions and restrictions:

- i. It is understood that each Incentive Payment will be due and payable solely from the proceeds of sales tax revenue received by the Village from the Dealership on the Property.
- ii. It is acknowledged and understood by and between the parties hereto that the Village receives sales tax revenue monthly, and that the taxes generated by sales in any one month are distributed to the Village approximately three months later (e.g. taxes generated by sales in July are generally not received by the Village until October).
- iii. The initial payment year (hereinafter referred to as the **Initial Payment Year**) shall commence January 1, 2012.
- iv. The incentive base for the Initial Payment Year and for each Subsequent Incentive Year shall be taxable retail sales equal to **FIVE MILLION DOLLARS (\$5,000,000.00)** (hereinafter referred to as the **Incentive Base**). The Incentive Base

shall reset to zero on each January 1st that this Agreement is in effect. For the Initial Payment Year and each Subsequent Incentive Year, the Village shall be entitled to all the sales tax revenue received from the Dealership on retail sales up to the Incentive Base; once the Incentive Base has been reached, Bentley shall be entitled to Incentive Payments equal to fifty percent (50%) of the sales tax revenue, if any, received by the Village from the Dealership on retail sales that exceeds the Incentive Base.

- v. The Village shall not be required to make any Incentive Payments until the aforementioned improvements are completed and approved by the Village.
- vi. For each ninety (90) day period the improvements remain uncompleted after the commencement date of June 1, 2012, Bentley permanently forfeits that quarterly Incentive Payment.
- f) The Incentive Payments shall be computed at the close of each calendar quarter by the

Village as provided herein. The Village will make quarterly payments to the Dealership within thirty (30) days after it receives notification from the State of the sales tax revenue generated by the Dealership for each month in the respective calendar year. However, the Village shall withhold one quarter payment. If Bentley fails to continue to operate the Dealership in accordance with Section 5, the withheld Incentive Payment shall be automatically forfeited to the Village in accordance with Section 6. Upon expiration of the term of this Agreement, if Bentley is in compliance with Section 5, the withheld Incentive Payment shall be paid to Bentley.

g) It is understood that if Bentley has not completed all of the improvements described in Paragraph 2(a) by June 1, 2012, it shall forfeit the Incentive Payments for calendar year 2012. It is further understood that if Bentley is in violation of any Village of Downers Grove Ordinance, the Village reserves the right to withhold Incentive Payments until the violation no longer exists. If the violations are not corrected within ninety (90) days of notice of violation, the Village shall have the right to permanently withhold said Incentive Payments and they shall be deemed forfeited.

3. Disclosure: Bentley shall execute and provide the Village with a power of attorney letter (or other necessary document), in form and content reasonably acceptable to the Village Attorney, which letter shall be addressed to the Illinois Department of Revenue and shall authorize the Illinois Department of Revenue to release any and all gross revenue and sales tax information on a monthly basis with respect to the operation of the Dealership on the Property to the Village during the Incentive Period. In addition to said letter, Bentley shall prepare and submit such other or additional forms as may be required from time to time by the Illinois Department of Revenue in order to release such information to the Village. Finally, in the event that the sales tax revenue information is not released by the State due to the failure of Bentley to execute the necessary authorization and/or release, the Village shall not be required to make any of the Incentive Payments provided for in this Agreement.

4. Construction of Dealership: Bentley shall submit plans for the construction of the Redevelopment Project on or before December 31, 2011, and shall not cause or permit the existence of any violation of Village ordinances, including but not limited to the Village's building code, zoning ordinances, fire code and any and all rules and regulations thereunder. Bentley shall have completed construction of the Redevelopment Project and shall have begun operations and sales from Bentley on or before June 1, 2012. If the conditions of this Section are not met, this Agreement shall be declared null, void and of no legal effect.

5. Commitment to Continue Dealership: The parties agree that all Incentive Payments are based in part upon: 1) a commitment by Bentley to continue operation of the Dealership, or an equivalent dealership, on the Property for a period of not less than fifteen (15) years from the effective date of this Agreement (January 1, 2012), and; 2) a scheduled reimbursement of such Incentive Payments, if the terms of this commitment are not fulfilled. To that end, Bentley agrees to continue the operation of a new car

Dealership(s) on the Property and shall continue to offer automotive sales with the point of sale being in Downers Grove for fifteen (15) years from the effective date of this Agreement. If, at any time during this time period, Bentley, or a successor, fails to offer automotive sales of new automobiles as proposed by Bentley, then the Village shall be released and discharged from any further obligation to make payments under this Agreement, and Bentley or its successors shall reimburse the Village in accordance with Section 6. of this Agreement. The failure to meet this commitment is not a breach, but rather a foreseeable event for which the offsetting terms have been agreed to in Section 6 of this Agreement.

6. Reimbursement: In the event Bentley, or any approved successor, fails to continue the Dealership on the Property as provided in Section 5 of this Agreement, Bentley, or such approved successor, shall forfeit the withheld Incentive Payment and shall reimburse to the Village within sixty (60) days of receipt of a written demand from the Village specifying the amount of the reimbursement all or a portion of the Incentive Payments paid hereunder according to the following schedule:

If said event occurs during:

- * *Year one through year five - One hundred percent (100%) of the Incentive Payment*
- * *Year six through year ten - seventy-five percent (75%) of the Incentive Payment*
- * *Year eleven through year fifteen - fifty percent (50%) of the Incentive Payment*

After the expiration of a sixty (60) day written demand by the Village to Bentley or its successors, specifying the amount due, the Village may, in its sole discretion, pursue any and all available legal remedies to recover said monies, including, without limitation,

- * Proceed with an action in law or in equity to recover the amounts owed.

7. Limitation of Actions: 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 and employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Bentley 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 and employees in excess of such amounts, and all and any such rights or claims of Bentley against the Village, its officers, directors, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

8. Assignments: Bentley shall not assign this Agreement to any person or entity without the prior written consent of the Village, said consent not to be unreasonably withheld. No such assignment shall be effective, even if consented to by the Village, unless and until the Assignee acknowledges in writing to the Village that the obligations of the Village to Bentley or any Assignee hereunder are contingent upon certain obligations on the part of Bentley which such Assignee is willing to assume. Notwithstanding any such assignments and/or assumption of responsibility, Bentley shall remain liable for all of its agreements, covenants and obligations and the performance thereof pursuant to this Agreement.

9. Prevailing Wage. Bentley is hereby notified by the Village that work contemplated by this Agreement may be subject to the Prevailing Wage Act 820 ILCS 130/1 *et seq.* Bentley agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by the Illinois Department of Labor (IDOL). Bentley further agrees to contact IDOL for a determination of applicability of the Prevailing Wage Act to the projects contemplated by this Agreement. If required by IDOL, Bentley agrees to pay the prevailing wage rates and to require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform work on the projects contemplated by this Agreement. For applicable rates, go to the State of Illinois – Department of Labor website and use the most current DuPage County rate. Bentley recognizes and agrees that it is solely responsible for compliance with the Prevailing Wage Act and agrees to fully indemnify,

defend and hold harmless the Village pursuant to Section 10 below with regard to any actions or proceedings instituted regarding such compliance.

10. Indemnification: In the event that any third party or parties institutes any legal proceedings against the Village and/or Bentley, which relate to the terms of this Agreement, then, in that event, Bentley shall indemnify and hold harmless the Village from any and all such proceedings. Further, Bentley, upon receiving notice from the Village of such legal proceedings, shall assume, fully and vigorously, the entire defense of such lawsuit or proceedings and any and all costs and expenses of whatever nature relating thereto; provided, however, that Bentley may not at any time settle or compromise such proceedings without the Village's consent and even then only so long as such settlement or compromise does not involve an admission of wrongdoing on the part of the Village, nor any liability on the part of the Village, monetary or otherwise.

If the Village, in its sole discretion, determines that there is, or may probably be, a conflict of interest between the Village and Bentley on an issue of material importance to the Village, or which may reasonably have a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event that the Village exercises such option, then Bentley shall reimburse the Village from time to time on written demand from the Village and notice of the amount due for any and all reasonable out-of-pocket costs and expenses, including but not limited to court costs, reasonable attorney's fees, witnesses' fees and/or other litigation expenses incurred by the Village in connection therewith.

In the event that the Village institutes legal proceedings against Bentley for a breach of this Agreement, or any term or condition hereof, and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in any judgment against Bentley all costs and expenses of such legal proceedings incurred by the Village, including but not limited to court costs,

reasonable attorney's fees and witnesses' fees, incurred in connection therewith. Either party may, in its sole discretion, appeal any judgment rendered in relation thereto.

11. Breach: In the event of breach of any of the terms and conditions of the Agreement, the non-breaching party shall have the right to terminate this Agreement, which will not relieve the breaching party from performance. In addition, the non-breaching party shall have the right, by any action or proceeding at law or in equity, to secure the specific performance of the covenants and agreements herein contained, and may be awarded damages or specific performance, or both, except that the exclusive remedy for the failure to meet the Section 5 commitment is the payment of the scheduled reimbursements as set forth in Section 6. The foregoing rights and remedies shall be cumulative and exclusive. Nothing herein shall modify, limit or abrogate any right of the Village to a refund as provided under Section 6 of this Agreement.

12. Amendments: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings by and between the parties relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those expressly set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with the law and reduced in writing and signed by them.

13. Time: Time is of the essence under this Agreement and all time limits set forth herein are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

14. Notices: Any notices required in this Agreement shall be effective when in writing and upon mailing by certified mail return receipt requested, or by delivering the same in person or to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

All notices to Bentley of Downers Grove shall be sent to:

Gold Coast Exotic Imports, LLC
310-330 Ogden Avenue
Downers Grove, IL 60515

15. Exhibits: Exhibits attached herein are hereby incorporated in and made a part of this Agreement.

16. Jurisdiction: This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be the appropriate state or federal court located within the State of Illinois.

17. Waiver: A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

18. Authorization to Execute: The officers of Bentley who have executed this Agreement hereby warrant that he/she has been lawfully authorized by Bentley to execute this Agreement on behalf of Bentley.

WITNESS their hands and seals the day and year first above written.

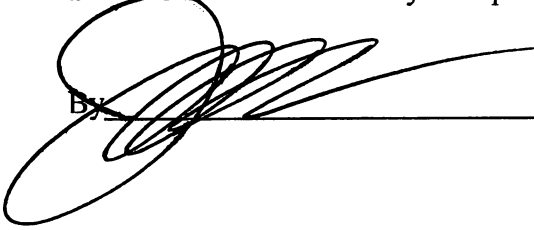
THE VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois Municipal Corporation

By _____
Mayor

Attest _____
Village Clerk

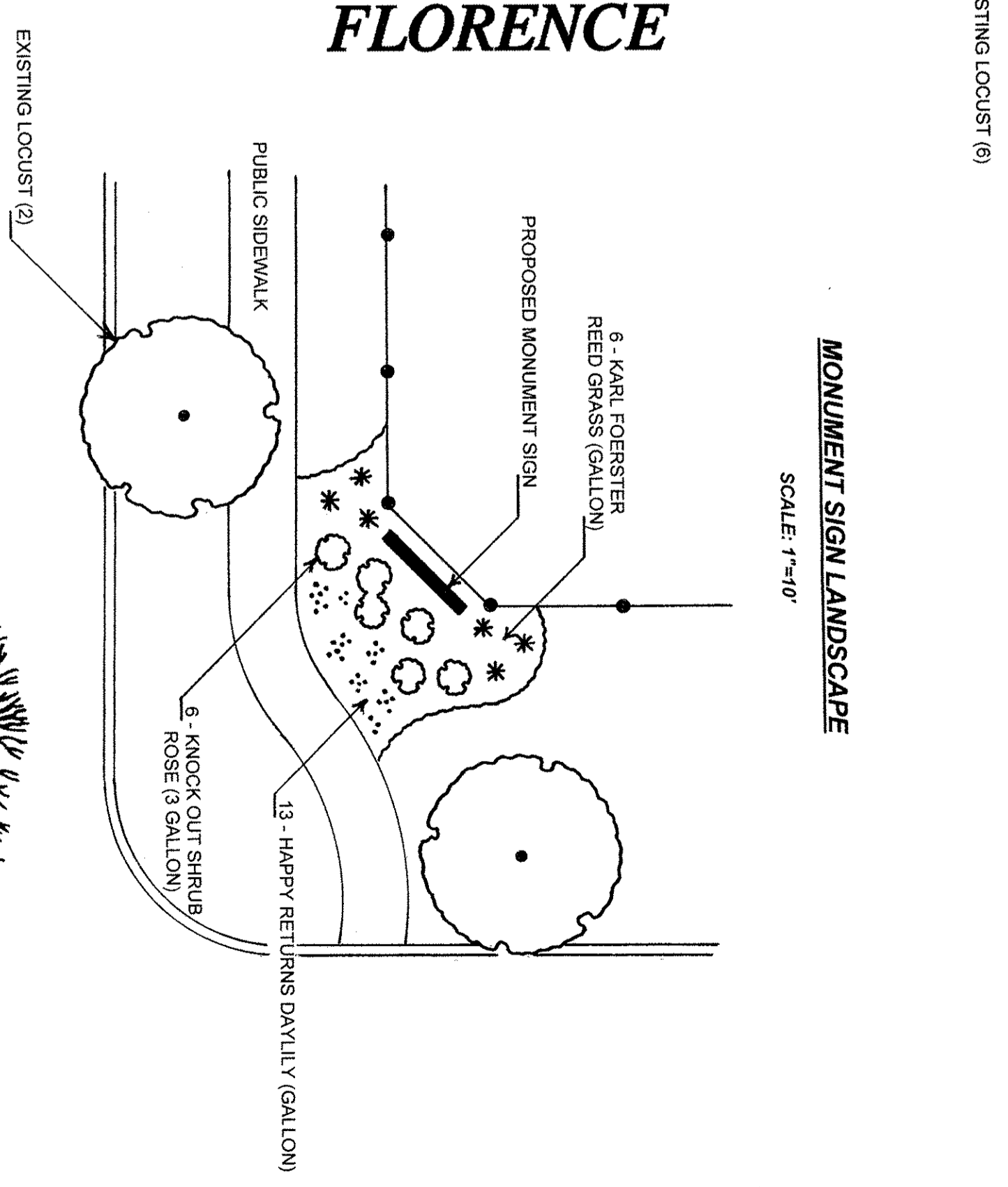
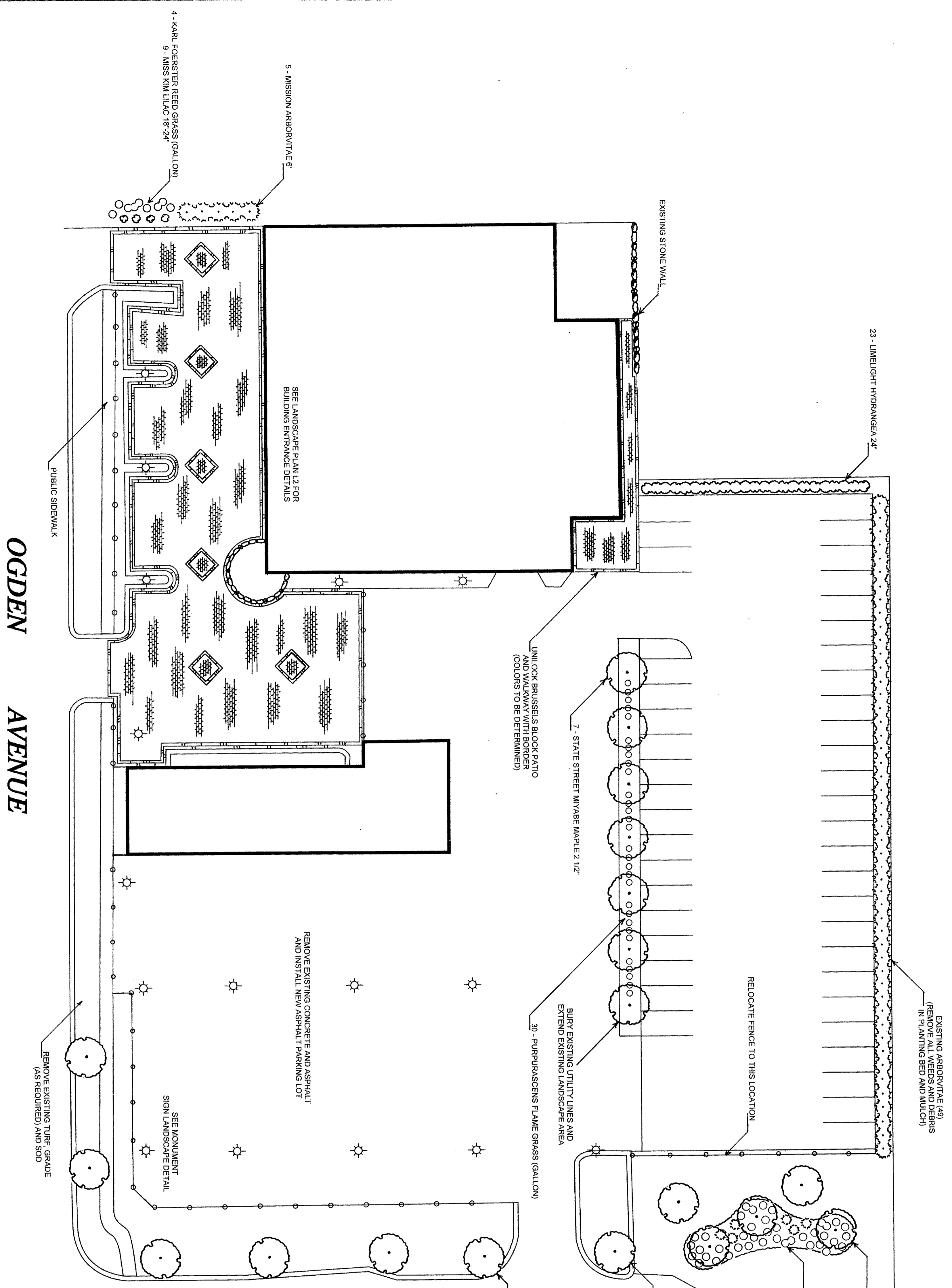
Date _____

PERILLO MOTOR CARS, 330 OGDEN AVENUE AND GOLD COAST EXOTIC IMPORTS,
LLC D/B/A BENTLEY OF DOWNERS GROVE,
an Illinois Limited Liability Company

By:  _____

Attest _____
Secretary

Date _____



PLANT LIST

Qty.	Common Name	Botanical Name	Size	Remarks
7	State Street Myabe Maple	Acer miyabei 'Morton'	2 1/2"	B&B
5	Swamp White Oak	Quercus bicolor	2 1/2"	B&B
1	Mission Arborvitae	Thuja occidentalis 'Tachy'	6'	B&B
1	Autumn Brilliance Serviceberry	Aamelanchier grandiflora	6' x 4w	B&B
23	LimeLight Hydrangea	Hydrangea paniculata 'LimeLight'	24"-30"	B&B
6	Dwarf Globe Blue Spruce	Picea purpurea 'Gauca Glabosa'	24"-30"	B&B
67	Knock Out Shrub Rose	Rosa Radrazz	18"	B&B
32	Miss Kim Lilac	Syringa patula 'Miss Kim'	18"	B&B
39	Karl Foerster Reed Grass	Phragmites 'Happy Returns'	18"	Pots
13	Miss Stella Daylily	Hemerocallis 'Miss Stella'	Gallon	Pots
30	Purpurascens Flame Grass	Miscanthus sinensis	Gallon	Pots



Landscape Plan

SCALE: 1"=20'

DATE: 08.22.11

APPROVED BY: [Signature]

DRAWN BY: CJD

BENTLEY DOWMERS GROVE

330 OGDEN AVENUE
DOWMERS GROVE, ILLINOIS

DRAWING NUMBER:
71.11.C (L1)