

3/5/2014

12-R-14

A RESOLUTION

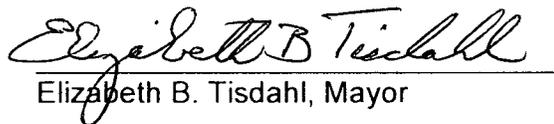
Authorizing the City Manager to Execute a Sales Tax Sharing Agreement with Autobarn Motors, Ltd.

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to execute the Sales Tax Sharing Agreement, attached hereto as Exhibit A, the terms are incorporated herein by reference, with Autobarn Motors, Ltd., an Illinois corporation.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Sales Tax Sharing Agreement as he may determine to be in the best interests of the City.

SECTION 3: That this Resolution 12-R-14 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: August 11, 2014

EXHIBIT A

Sales Tax Sharing Agreement

SALES TAX SHARING AGREEMENT

THIS SALES TAX SHARING AGREEMENT (“**Agreement**”) is entered into this”), by and between the CITY OF EVANSTON, Illinois, an Illinois home rule municipal corporation (the “**City**”), and AUTOBARN MOTORS, LTD. an Illinois corporation (the “**Proprietor**”) (individually, the City and Proprietor are referred to herein as a “**Party**” and collectively referred to as the “**Parties**”).

RECITALS:

WHEREAS, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or ordinance; and

WHEREAS, the City is a home rule municipality in accordance with Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970; and

WHEREAS, Proprietor operates car dealerships under the umbrella name of “Autobarn”, each located respectively at 1001, 1012, 1015, 1033 and 1034 Chicago Avenue, Evanston, Illinois and seeks to expand its operation to the property located at 222 Hartrey Avenue, which is located on real estate legally described in **Exhibit A** attached hereto and made part hereof (the “**Property**”); and

WHEREAS, Proprietor has acquired the Property and seeks to renovate the Property for use as a receiving and service facility for the aforementioned Autobarn franchises (the “**Project**”); and

WHEREAS, the Parties agree that extraordinary costs associated with the Project renovations require certain incentives from the City, and the incentives that will be offered to offset these extraordinary costs in the form of rebates from the City’s portion of the local sales taxes generated on the Property; and

WHEREAS, the City desires to retain existing businesses, diversify the tax base, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and its residents; and

WHEREAS, pursuant to City Council Resolution 48-R-05 adopted on August 15, 2005, the Parties previously entered into a Sales Tax Sharing Agreement (the “**2005 Agreement**”) which is nearing completion after a reconciliation by the Assistant City Manager and the Director of Administrative Services, Marty Lyons, (the “**Director**”) of the rebate payments disbursed and sales tax revenue reported by the Illinois Department of Revenue; and

WHEREAS, the City has determined that providing financial assistance in the form of a sales tax sharing agreement is a proper exercise of its home rule powers and the City Council has made the following findings with respect to the Property and the Project; and

- A. The Project is expected to create job opportunities within the City;
- B. The Project will relieve traffic congestion on Chicago Avenue;
- C. The Project will result in the creation of additional job training opportunities at Evanston Township High School;
- D. The Project will serve to further stabilize areas adjacent to the Property;
- E. Without this Agreement, the Project would not be possible;
- F. The Proprietor meets high standards of credit-worthiness and financial strength;
- G. The Project will maintain the neighborhood commercial base of the City;
- H. The Project will protect and enhance the sales tax base of the City; and
- I. This Agreement is made in the best interest of the City.

WHEREAS, the City has agreed, pursuant to the terms of this Agreement, to provide certain sales tax sharing provisions in order to insure the economic feasibility of the Project which will have the benefits described above,

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged, it is mutually agreed by the Parties hereto as follows:

SECTION 1: Recitals. The Parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

SECTION 2: Rebate.

A. Rebate: Based on the foregoing reasons described in the Recitals, the Parties agree to equally split all of the sales tax revenue received by the City from the Illinois Department of Revenue at each of Proprietors current Evanston dealerships (Autobarn Nissan of Evanston – 1001 Chicago Avenue; Autobarn Mazda of Evanston - 1015 Chicago Avenue; Autobarn Nissan of Evanston - 1012 Chicago Avenue; and Autobarn Volkswagen of Evanston – 1033 Chicago Avenue) (the “**Rebate**”).

B. Rebate Term:

1. The term of the rebate period (the “**Rebate Term**”) shall commence on the later of the Effective Date of this Agreement or after the Director confirms satisfaction of the 2005 Agreement terms (“**Rebate Term Commencement Date**”) and will expire on the 48th month (four years) after the Rebate Term Commencement Date. Attached as **Exhibit B** is a certification to be executed by the parties to document the Rebate Term Commencement Date. This Agreement is a new Sales Tax Sharing Agreement and not an extension of the 2005 Agreement. After the Director confirms that the terms of the 2005 Sales Tax Sharing Agreement have been confirmed, the 2005 Agreement is null and void and the terms of which are not incorporated into this agreement beyond the previously outlined in Section 2(B).

2. The Proprietor may not petition for any additional extensions or renewals of this Agreement for the referenced business franchises listed in Section 2(A) for the next fifty years (until 2064). New businesses or franchises brought to the City by the Proprietor are eligible for City consideration by the City Council for other City economic development agreements or subsidies.

C. Rebate Payments: After receipt of the sales tax revenue and tax data from the Illinois Department of Revenue, the City will issue the Rebate within 30 days of the request for Rebate payment on a semi-annual basis. In addition, following receipt of the sales tax revenue and tax data from the Illinois Department of Revenue for the third and fourth quarter, the City will issue the Rebate payment within 30 days. If the Illinois Department of Revenue distributes data in a regular quarterly basis, the City will process the rebates within 30 days, but in no event less frequent than a semi-annual basis. Any failure to transmit the sales tax revenue data and revenue by the Illinois Department of Revenue shall not be considered an Event of Default of the City and cannot be cured by the City.

D. Conditions Precedent to First Rebate Payment: The following shall be conditions precedent to the City's obligation to pay any monies to the Proprietor under the Rebate for the initial payment:

1. Proprietor shall submit to the Director or his designee the following information to commence the Rebate payments:

a. Completed Job Creation Certification Affidavit (as specified in Section 3(E) defined *supra*); and

b. Twelve (12) new service bays must be installed for use at the 222 Hartrey Property.

2. Conditioned on the City receiving information from the State of Illinois related to sales tax for the Proprietor, the City shall have thirty (30) days after receipt of these documents within which to verify the sufficiency of the information contained within the produced documents.

E. Conditions Precedent to Rebate Payments after First Rebate Payment: Prior to issuance of Rebate for the remainder of the Rebate Term:

1. The Proprietor must not be in default of any term of this Agreement or in default of any term of the TIF Forgivable Loan Agreement and Promissory Note dated _____, 2014, executed between the Parties (the "TIF Forgivable Loan"), the terms of which are incorporated herein by reference;

2. Proprietor must be in good standing on any and all City accounts, including but not limited to real estate tax payments to Cook County, wheel tax payments, parking tickets, water bills, and fines.

SECTION 3. Proprietor's Responsibilities.

The Sales Tax Sharing Agreement is conditioned on the completion and satisfaction of each part of this Section 3 and confirmed by the Director and/or his designee. If Proprietor fails to perform any condition fully set forth herein, it shall be considered an Event of Default, defined in Section 9. For the Term of this Agreement, Proprietor's responsibilities shall include the following:

A. Summary of Project: Proprietor shall renovate the Property in accordance with its representations to the City's Economic Development Committee, City Council, and City staff. Said conversion and improvement (the "**Project**") includes: demolition of portions of the Property building; environmental remediation efforts (asbestos abatement); update mechanicals; refurbishing the interior for office use, repair and detail work; sealcoating/stripping the parking lot for car storage; and other improvements as determined.

1. Proprietor shall maintain and operate the Autobarn business at the Property for the term of this Agreement. Proprietor is permitted, provided it obtains any necessary local approvals, to contract for a portion of the Property to be operated by a separate and unrelated business related to automotive and body shop work.

2. Proprietor shall construct and complete the Project in a good and workmanlike manner in accord with all Federal, State and local laws and regulations. The Proprietor, at its expense, shall secure or cause to be secured any and all permits, documents, zoning relief, or plats which may be required for the Project by City Code, and any other governmental agencies having jurisdiction over such construction, development or work, or such portion of the work being performed, including, without limitation, any applications and permits, documents or plats which may be required to be obtained from any local, federal or state environmental protection agency, or from any other agency which may have or exercise any jurisdiction of any type whatsoever in connection with the Project. Except as provided in this Agreement, the costs of the Project shall be borne and paid for by the Proprietor or its landlord.

3. Proprietor shall obtain at least three (3) bids for the Renovations, at least one (1) of the contractors providing an estimate shall be an Evanston-based company. In the event no Evanston-based contractor is identified, Proprietor must provide written notice attesting to this fact to City staff.

B. Job Creation: The Borrower shall create and must maintain at least 30 new equivalent positions ("**Minimum Job Creation Threshold**") as minimum employment levels at the Subject Property. The Borrower represents that it shall create the jobs in accordance with the following schedule:

Time Period for Compliance after the Effective Date of Agreement	Minimum Number of Jobs Created
18 months	10 jobs
30 months	10 jobs (20 total)
42 months	10 jobs (30 total)

The Borrower will receive credit to meet the Minimum Job Creation Threshold by reducing employment levels at the other Evanston facilities of Borrower and shifting the employees to work at the Subject Property; meaning the jobs transferred from the other Evanston Autobarn dealerships do not count as new jobs for purposes of this condition. The breakdown of full-time jobs versus part-time jobs is projected to be 60% FTE jobs and 40% PTE jobs, on average, after the Minimum Job Creation Threshold is reached after 42 month time period. The Proprietor must provide documentation to support the job creation for commencement of the rebate and for every subsequent benchmark thereafter, on or before the beginning of that benchmark point. Failure to provide adequate proof of job creation is considered a default under this Agreement. The Proprietor will provide an executed certification form that it has maintained the existing jobs (the "**Job Creation Certification Affidavit**"; form attached as **Exhibit C**).

C. Hire and Train Program: Proprietor shall coordinate with the City's Youth and Young Adult Program Manager and other workforce development professionals to employ Evanston residents with skills and abilities to work at the Subject Property and the Evanston listed in Section 2(A). Proprietor shall create and operate a *Richard Fisher Dealerships Hire and Train Program*, or a similar title, by the Job Creation Deadline for Evanston Township High School graduates not pursuing a post-secondary school education immediately after graduation.

D. Sale or Transfer prior to end of Term:

1. If Proprietor and/or Richard Fisher sells or transfers in whole or in part any of the businesses listed in Section 2(A) to any unrelated entity or individual, it shall be considered an Event of Default except if such sale occurs as a result of ill-health or resulting in the retirement of Proprietor.

2. If Proprietor and/or Richard Fisher sells or transfers in whole or in part any of the businesses listed in Section 2(A) to be occupied and operated by another business owner than Proprietor, this shall be an Event of Default. However, if Proprietor replaces it with another business entity to be operated by Proprietor, it shall not be considered an Event of Default (i.e. the Mazda dealership is sold and replaced with a Fiat, Mini Cooper, etc. dealership), provided that Proprietor's substitute business shall be open for business in less than 90 days after operations under the old franchise ceased AND the City provides its written consent to a comparable business that is being substituted by Proprietor.

E. Good Neighbor Policy:

1. Truck Routes to Hartrey Property: Proprietor recognizes that the Property is situated in between a commercial and industrial corridor and a R2 residential district and open space district. Proprietor must ensure that all trucks entering and leaving the Property follow the City's truck routes. At no time can a truck, employee of Autobarn, contractor, or service vehicle utilize roadways directly to the east of the property to access the Property. All access to Property must be gained through the entrance on

Howard Street via McCormick Boulevard (from the west). Autobarn is responsible for maintaining the entrance to the property from Hartrey in a manner that prohibits access to the property to all vehicles with the exception of emergency service vehicles. In furtherance of this requirement, Proprietor will educate employees, agents, contractors, delivery trucks and service trucks ("Service Vehicles") on the proper routes to access the Property with specific instructions. Proprietor must enforce these restrictions diligently. Proprietor is responsible for compliance with this directive. A map is attached as Exhibit D to indicate area of no access and proper access for truck vehicles.

2. Volkswagen - 1033 Chicago Avenue Dealership: Proprietor warrants that the north door to the Volkswagen dealership at 1033 Chicago Avenue which fronts the alley will remain closed at all times, no exceptions.

3. Penalty: Proprietor will be assessed a \$500 fine for each separate offense for any violations of Section III(E). Violations include issuance of a citation by a law enforcement officer or irrefutable evidence submitted to the Proprietor (i.e. pictures of the Volkswagen alley door open). Proprietor hereby waives its right to object at the hearing and shall not contest said citation, if the citation is written to the Proprietor's business. This fine is assessed against the Proprietor for violations of the Good Neighbor Policy, and is separate and apart from any fines assessed against the subject driver by a judge or administrative hearing officer.

F. Breach of Section III Responsibilities: Should Proprietor violate any of Proprietor's responsibilities, except for Subsection E, contained in any section of this Agreement before the expiration of the Term, said violation shall constitute a material breach of this Agreement.

G. Notwithstanding any other provision of this Agreement, in the event that Proprietor (i) declares insolvency or bankruptcy; (ii) makes an assignment for the benefit of creditors; or (iii) is unable to meet its financial obligations, causing it to cease doing business as an auto dealership and service facility, then this Agreement shall be deemed terminated and of no further force and effect, and the Parties are relieved of all covenants, conditions, obligations and liabilities hereunder.

H. Proprietor acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the City to Proprietor pursuant to this Agreement.

I. Proprietor shall throughout the Term and for a period of 2 years following the expiration of the Rebate Term, keep and make available for the inspection, examination and audit by City or City's authorized employees, agents or representatives, at all reasonable time, all records respecting the services and expenses incurred by Proprietor, relating to the Sales Tax Sharing Agreement and the Project, including without limitation, all book, accounts, memoranda, receipts, ledgers, canceled checks, and any other documents indicating, documenting, verifying or substantiating the cost and appropriateness of any and all expenses. If any invoice submitted by Proprietor is

found to have been overstated, Proprietor shall provide City an immediate refund of the overpayment together with interest at the highest rate permitted by applicable law, and shall reimburse all of City's expenses for and in connection with the audit respecting such invoice.

SECTION 4. City Responsibilities.

A. In consideration of Proprietor's work on the Project, the City agrees to issue the Rebate to Proprietor. The City shall disburse to Proprietor fifty percent (50%) of City's Sales Tax revenue collected from the aforementioned businesses listed in Section 2(A) until the expiration of the Term on a semi-annual basis and in compliance with Section 2(E).

B. Notwithstanding anything to the contrary herein contained, the City shall have no obligation to disburse to Proprietor any portion of the City's Tax Revenue Share accruing or arising after the expiration of the Rebate Term.

SECTION 5. Casualty / Extension of Term.

In the event of a casualty or destruction of substantially all of the improvements on the Property during the term of this Agreement, and Proprietor elects not to rebuild said improvements or fails to promptly commence and diligently pursue said reconstruction and recommence its retail operations on the Property within twelve (12) months after the date of said casualty, Proprietor shall be obligated, to refund the percentage of the Rebate per Section 3(F) received by the Proprietor to date.

SECTION 6. Indemnification.

Proprietor shall defend, indemnify and hold harmless City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including without limitation costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Proprietor or its subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement. Nothing contained herein shall be construed as prohibiting City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Proprietor shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to City and employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* At the City Corporation Counsel's option, Proprietor must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the

defense of any suit, without relieving Proprietor of any of its obligations under this Agreement. Any settlement of any claim or suit related to activities conducted under this Project by Proprietor must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City. No member, official, agent, legal counsel or employee of the City shall be personally liable to the Proprietor, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Proprietor or successor or on any obligation under the terms of this Agreement.

SECTION 7. Mutual Assistance. Proprietor and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

SECTION 8. Anti-Discrimination and Minority Business Participation.

A. Proprietor agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Proprietor agrees to make good faith, commercially reasonable efforts to have its general contractor and major subcontractors, to the extent they hire new employees and can include minorities, women and City residents to work on the Project. Nothing herein shall require Proprietor or its contractors or major subcontractors to displace any employees in its current work force to achieve the foregoing goal.

B. Notwithstanding the foregoing provisions, Proprietor shall be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

SECTION 9. Event of Default and Default Remedies.

A. **Notice of Default:** In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, including but not limited to conditions contained in Sections 2 and 3, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required by Section 14 hereof identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

B. **Cure of Default:** Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within a 15-day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion.

C. **City Remedies not Exclusive:** If an Event of Default occurs, which Proprietor has not cured within the timeframe set forth in subparagraph B above, the City, at its option, may terminate this Agreement and/or may institute legal action in law or in equity to

cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement.

D. Reimbursement of Rebate:

1. If a Default by Proprietor is not cured, the Proprietor may be responsible for reimbursement of the last Rebate issued depending on the date of Default (the "Date of Default"). If the Default is discovered after the City has paid the Rebate which encompasses the date of Default, then Proprietor must reimburse the City for the full Rebate. Meaning, if the Proprietor defaults in the fall quarter and the City issues a semi-annual payment for the fall and winter quarters in January the following year, and the City subsequently discovers or the Proprietor reports the Default in February, then the Proprietor shall reimburse the City for the last Rebate issued.

2. If a Default is discovered before the City has issued the Rebate for the period of time encompassing the Default, the City shall not issue a Rebate for said subject period. In addition, the City will not issue a partial or pro-rated Rebate to Proprietor to the date of Default.

3. The "Date of Default" shall mean the date on which the Proprietor violates any condition of the Agreement and it is not cured within the applicable time period. The Proprietor has an affirmative obligation to report any and all Defaults to the City.

E. Proprietor's Exclusive Remedies: The parties acknowledge that the City would not have entered into this Agreement if it were to be liable in damages under, or with respect to, this Agreement or any of the matters referred to herein, including the Project, except as provided in this Section. Accordingly, Proprietor shall not be entitled to damages or monetary relief for any breach of this Agreement by the City or arising out of or connected with any dispute, controversy, or issue between Proprietor and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief and specific performance shall be Proprietor sole and exclusive judicial remedies.

SECTION 10. Entire Agreement. This Agreement sets forth all the promises, inducements, Agreements, conditions and understandings between Proprietor and City 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 are herein set forth.

SECTION 11. Survival of Terms, Binding upon Successors. The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

SECTION 12. Governing Law and Attorney's Fees. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois. In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Proprietor, or arising out of a breach of this Agreement by Proprietor, the City shall recover from the

Proprietor as part of the judgment against Proprietor, its attorneys' fees and costs incurred in each and every such action, suit, or other proceeding.

SECTION 13. Force Majeure. Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, restrictive governmental laws and regulations, epidemics, quarantine restrictions, freight embargoes, lack of transportation or labor and material shortages. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than thirty (30) days after the commencement of the cause or not more than thirty (30) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

SECTION 14. Notices. Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given, served and received on the date of delivery, if delivered to the persons identified below in person, by courier service or by facsimile copy transmitted on a business day before 5:00 p.m., or the next business day thereafter if not so transmitted (with original copy mailed the same day in accordance with the provisions of this Paragraph), or five (5) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: City Manager

with a Copy to:

City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: W. Grant Farrar, Corporation Counsel

If to Proprietor:

Autobarn Motors, Ltd.
1015 Chicago Avenue
Evanston, IL 60202
Attn: Richard Fisher

SECTION 15. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence

of this Agreement so that the purposes of the Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

SECTION 16. **City Approval.** A copy of the ordinance (or other City action) approving of the terms and conditions of this Agreement and authorizing and directing the City Manager to execute this Agreement on the City's behalf, certified by the City Clerk, shall be provided to Proprietor.

SECTION 17. **Third Parties.** The City and Proprietor agree that this Agreement is for the benefit of the Parties hereto and not for the benefit of any third party beneficiary. Except as otherwise provided herein, no third party shall have any right(s) or claim(s) against the City that may arise from this Agreement.

SECTION 18. **Amendments.** This Agreement may be amended from time to time with the written consent of the Parties hereto.

SECTION 19. **Execution of this Agreement.** This Agreement shall be signed last by the City and the City Manager shall affix the date on which he/she signs and approves this Agreement on the first page hereof, which date shall be the effective date of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the effective date of this Agreement between the Parties shall be last date executed (the "Effective Date").

CITY OF EVANSTON, an Illinois municipal corporation

AUTOBARN MOTORS, LTD., an Illinois corporation

By _____
Name: Wally Bobkiewicz
Its: City Manager

By _____
Name: Richard Fisher
Its: President

Dated: _____, 2014

Dated: _____, 2014

ATTEST

By: _____
City Clerk

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION

All that contain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate lying and being in the City of Evanston, County of Cook, State of Illinois.

PARCEL 1

LOTS 1 AND 2 IN BRUMMEL PLACE SUBDIVISION OF THE SOUTH 315 FEET OF THE NORTH 465 FEET OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 25, TOWNSHIP 41 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THEREFROM THE EAST 33 FEET MEASURED PERPENDICULAR TO THE EAST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 25, ALSO EXCEPT THE WEST 66 FEET MEASURED PERPENDICULAR TO THE WEST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 25), ACCORDING TO THE PLAT THEREOF RECORDED JULY 26, 1956 AS DOCUMENT 16650663, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AGREEMENT RECORDED AS DOCUMENT 96138308 FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE AND REPAIR OF A STORM WATER DRAINAGE FACILITY AND IMPROVEMENTS OVER AND UPON THE EAST 30 FEET OF THE NORTH 30 FEET OF LOT 6 IN HOWARD-HARTREY SUBDIVISION.

PARCEL 3:

PERPECTUAL, NON EXCLUSIVE EASEMENT AS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT RECORDED AS DOCUMENT 0418818040, FOR ACCESS TO AND FROM HOWARD AVENUE, INGRESS AND EGRESSS OF TRUCKS, VANS PASSENGERS AUTOMOBILES AND OTHER VEHICLES AND PEDESTRIAN TRAFFIC OVER AND ACROSS A PORTION OF LOT 3 IN AFORESAID SUBDIVISION AND DEPICTED ON EXHIBIT "D" ATTACHED THERETO.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AND RESTRICTIONS AGREEMENT RECORDED AS DOCUMENT 93840922 FOR PASSENGER AND TRUCK VEHICLAR INGRESS AND EGRESS OVER AND ACROSS A PORTION OF LOT 9 IN HOWARD-HARTREY SUBDIVISION.

PARCEL 5:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS OVER AND ACROSS THE SOUTH 20 FEET OF LOT 3 IN AFORESAID SUBDIVISION AS CREATED BY THE AGREEMENT RECORDED JULY 5, 1955 AS DOCUMENT 16290044.

PINs: 10-25-104-014-0000 and 10-25-104-015-0000

Common Address, 222 Hartrey Avenue, Evanston, IL 60202

EXHIBIT B

REBATE TERM COMMENCEMENT DATE CERTIFICATION FORM

Pursuant to Section 2 of the Sales Tax Sharing Agreement, the "Rebate Term" shall commence on the later of the Effective Date of this Agreement or after the Director confirms satisfaction of the 2005 Agreement terms ("**Rebate Term Commencement Date**"). The Parties hereby acknowledge and agree to the following Rebate Term:

(a) The Rebate Term Commencement Date is: _____, 2014

(b) Expiration of Rebate Term (48 months/4 years): _____, 2018

THE CITY OF EVANSTON,
an Illinois home rule municipal corporation

By: _____

Its: City Manager, Wally Bobkiewicz

AUTOBARN MOTORS, LTD.,
an Illinois corporation

By: _____

Its: President, Richard Fisher

EXHIBIT C

CERTIFICATION FOR JOB CREATION AFFIDAVIT

The Proprietor is required to complete and sign this affidavit on the Effective Date, the Commencement of Rebate Term, first anniversary of the Commencement Date of the Rebate Term and the expiration of the Term. The Autobarn must certify annually that no less than 30 individuals are employed at 222 Hartrey for the duration of the Agreement.

Indicate below the number of jobs at the time of the Effective Date and Rebate Term Commencement Date, which will be used to determine the base employment of jobs currently held with Proprietor. There is no requirement or threshold for Proprietor to maintain a certain percentage of full-time equivalent v. part-time equivalent, but the parties anticipate that after 42 months the breakdown will be 60% FTE v. 40% PTE.

Time Period	Total Jobs Created/Retained
Effective Date of Agreement	0
18 months	
30 months	
42 months	

I, Richard Fisher of Autobarn Motors, LTD. d/b/a The Autobarn, affirm under penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true and accurate.

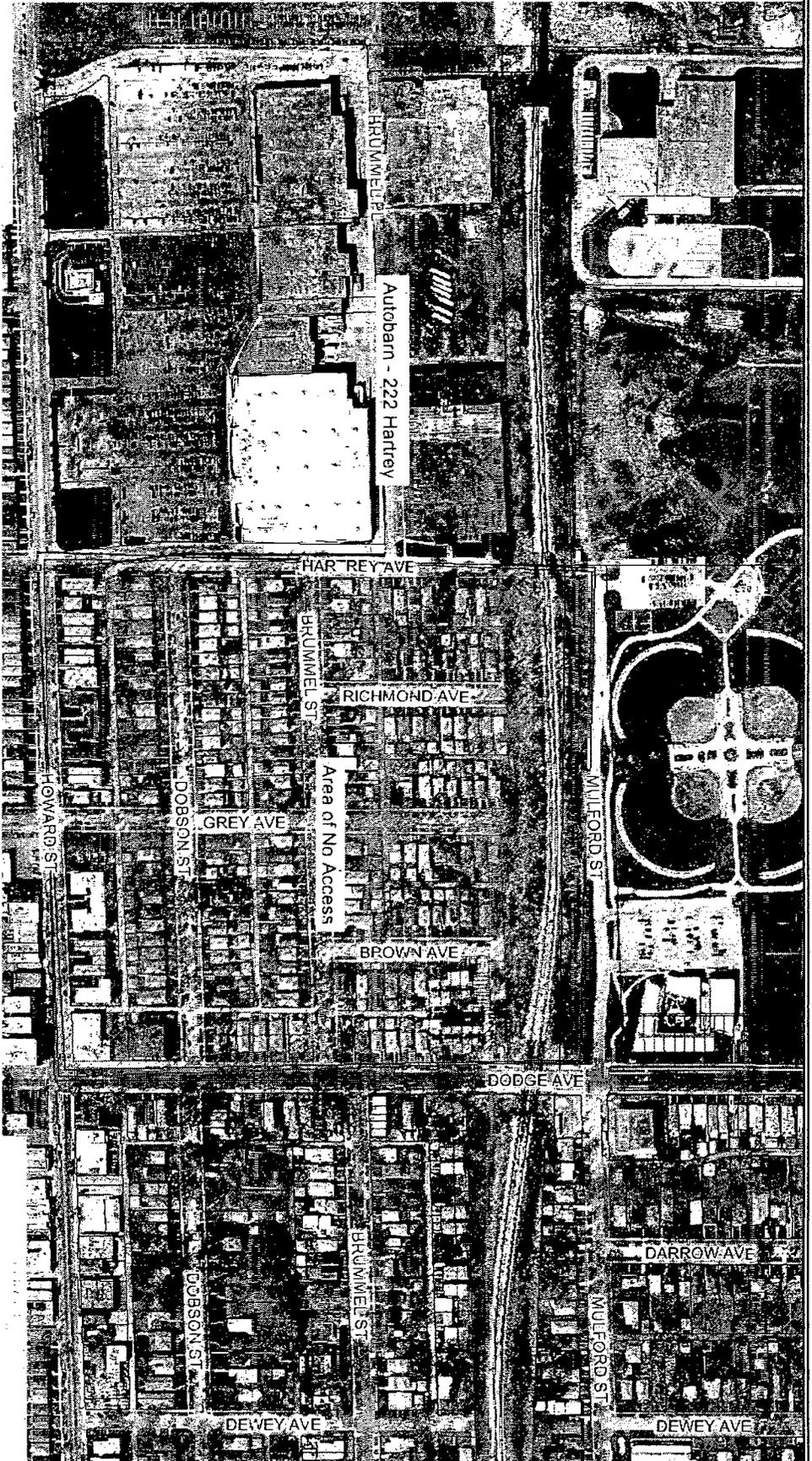
Name (Print)

Date

Name (Signature)



Exhibit D: 222 Hartley Access Area



Point of Access for 222 Hartley

Autobarn - 222 Hartley

Area of No Access

DISCLAIMER: This map and data are provided as-is without warranties of any kind. See www.cityofevanston.org/napdiscclaimers.html for more information

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Projections of Autobarn Sales Tax (City of Evanston Portion)

Assumptions:

2013 Sales Tax Collected by COE [1]	\$	574,984
Rate of Growth [2]		1.50%
Rate of Growth [3]		5.00%

Potential Sales Tax Totals (Assumes 1.5% Annual Growth)

Year	Total Projected Sales Tax	Autobarn Share	Evanston Share
2013 [4]	\$ 574,984		
2014	\$ 583,600	\$ 291,800	\$ 291,800
2015	\$ 592,400	\$ 296,200	\$ 296,200
2016	\$ 601,300	\$ 300,650	\$ 300,650
2017	\$ 610,300	\$ 305,150	\$ 305,150
TOTAL		\$ 1,193,800	\$ 1,193,800

Potential Sales Tax Totals (Assumes 5.0% Annual Growth)

Year	Total Projected Sales Tax	Autobarn Share	Evanston Share
2013 [4]	\$ 574,984		
2014	\$ 603,700	\$ 301,850	\$ 301,850
2015	\$ 633,900	\$ 316,950	\$ 316,950
2016	\$ 665,600	\$ 332,800	\$ 332,800
2017	\$ 698,900	\$ 349,450	\$ 349,450
TOTAL		\$ 1,301,050	\$ 1,301,050

[1] Source: Administrative Services Department, City of Evanston

[2] Moderate growth, assumes 1.5% annually

[3] Autobarn's proposed rate of growth, assumes 5.0% annually

[4] Actual Amount Collected by City of Evanston

8/15/2005

48-R-05

A RESOLUTION

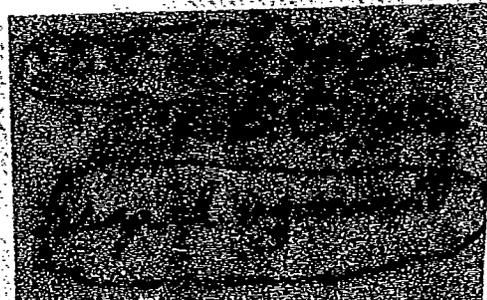
**Authorizing the City Manager to Sign
A Redevelopment Agreement for Sales Tax Sharing
with Autobarn Motors, Ltd.**

WHEREAS, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or ordinance; and

WHEREAS, 65 ILCS 5/8-11-20 (the "Statute") authorizes municipalities to enter into economic incentives agreements in order to encourage the development or redevelopment of land within their corporate limits; and

WHEREAS, Autobarn Motors, Ltd. (the "Developer") is the owner of an automobile sales center (the "Center") located at 1001, 1012 and 1034 Chicago Avenue in Evanston, which is located on real estate legally described and depicted in Exhibit A of the Agreement attached hereto and made part hereof; doing business as the Autobarn Mazda of Evanston and Autobarn Volkswagen of Evanston and has been in operation for approximately 12 years; and

WHEREAS, the Center has generated for calendar year 2003 \$291,500.00 in sales tax revenue to the City (the "Base Year Sales Tax"); and



WHEREAS, Developer has purchased approximately 5.3 acres of real estate located at 3450 West Oakton Street in Skokie, Illinois and has announced an intention to relocate a major portion of the automobile dealership including sales and service to said community; and

WHEREAS, said relocation will result in a substantial reduction in sales tax revenue to the City of Evanston; and

WHEREAS, Developer has expressed his willingness to remain in the City of Evanston if the City agrees to rebate a portion of any sales tax revenue received by the City that are generated by the redevelopment of certain property; and

WHEREAS, the property at 1015 and 1033 Chicago Avenue and 520 Greenleaf (the "Toyota Property") currently operated as an automobile dealership known as Evanston Toyota will be closed and will cease all operations as of November 1, 2005 and thereby will no longer contribute to the sales tax base of the City, which real estate is legally described and depicted in Exhibit B of the Agreement attached hereto and made part hereof; and

WHEREAS, Developer has expressed a desire to purchase and redevelop the Toyota Property for the purpose of relocating and expanding a portion of its existing automobile dealerships including the relocation of the Volkswagen and Mazda operations; and

WHEREAS, a portion of the existing Center located at 1034 Chicago Avenue will remain in operation as a used motor vehicle sales facility; and

WHEREAS, the Toyota Property and 1034 Chicago Avenue (the "Property") will be the location of the expanded and relocated Automobile Sales Center; and

WHEREAS, Developer desires to redevelop an automobile sales center area on the Toyota Property; and

WHEREAS, such automobile sales center will include a relocated Volkswagen and a relocated Mazda dealership; and

WHEREAS, the extraordinary costs associated with the acquisition and redevelopment of the Property, including the Toyota Property, require certain incentives from the City, and the incentives that will be offered to offset these extraordinary costs will be in the form of rebates from the City's portion of local sales taxes generated on the Property; and

WHEREAS, the City desires to increase sales tax revenues, property tax revenues, retain existing businesses, diversify the tax base, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and other governmental entities; and

WHEREAS, the City has determined that providing financial assistance in the form of such sales tax rebates is a proper exercise of its home rule powers; and

WHEREAS, the City, in reliance on historical growth data of the Developer, has prepared certain sales tax projections, copies of which are attached hereto and made a part hereof as Exhibit D of the Agreement, setting forth certain potential real estate and sales tax revenues to the City and Certain other governmental bodies; and

WHEREAS; pursuant to the Statute, the City Council of the City of Evanston have made the following findings with respect to the Property, including the Toyota Property, and the Project;

- A. The Project is expected to retain and to create job opportunities within the City;
- B. The Project will serve to further the development of areas adjacent to the Property;
- C. Without this Agreement, the Project would not be possible;
- D. The Developer meets high standards of credit worthiness and financial strength;
- E. The Project will maintain the neighborhood commercial base of the City;
- F. The Project will protect and enhance the sales tax base of the City; and
- G. This Agreement is made in the best interest of the City.

WHEREAS, the Developer represents and warrants that the Project requires economic assistance from the City and but for the undertakings of the City as set forth in this Agreement, Developer would not acquire the Toyota Property, or construct the Project on the Property and would relocate to Skokie, and

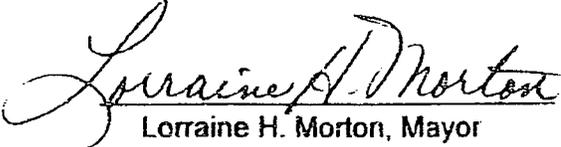
WHEREAS, the City has agreed, pursuant to the terms of this Agreement, to provide certain sales tax sharing provisions in order to insure the economic feasibility of the Project which will have the benefits described above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

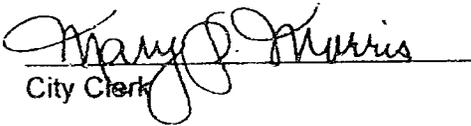
SECTION 1: That the City Manager is hereby authorized and directed to sign a Redevelopment Agreement with Autobarn Motors, Ltd., for sales tax sharing, attached hereto as Exhibit 1.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the application as may be determined to be in the best interests of the City.

SECTION 3: That the Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.


Lorraine H. Morton, Mayor

ATTEST:


City Clerk

Adopted: August 15, 2005

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this ___ day of _____, 2005, by and between the CITY OF EVANSTON, Illinois, an Illinois home rule municipal corporation (the "City"), and Autobarn Motors, Ltd. an Illinois corporation incorporated on July 15, 1992 ("Developer").

RECITALS:

WHEREAS, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or ordinance; and

WHEREAS, 65 ILCS 5/8-11-20 (the "Statute") authorizes municipalities to enter into economic incentives agreements in order to encourage the development or redevelopment of land within their corporate limits; and

WHEREAS, Developer is the owner of an automobile sales center (the "Center") located at 1001, 1012 and 1034 Chicago Avenue in Evanston, which is located on real estate legally described and depicted in **Exhibit A** attached hereto and made part hereof, doing business as the Autobarn Mazda of Evanston and Autobarn Volkswagen of Evanston and has been in operation for approximately 12 years; and

WHEREAS, the Center has generated for calendar year 2003 \$291,500.00 in sales tax revenue to the City (the "Base Year Sales Tax"); and

WHEREAS, Developer has purchased approximately 5.3 acres of real estate located at 3450 West Oakton Street in Skokie, Illinois and has announced an intention to relocate a major portion of the automobile dealership including sales and service to said community; and

WHEREAS, said relocation will result in a substantial reduction in sales tax revenue to the City of Evanston; and

WHEREAS, Developer has expressed his willingness to remain in the City of Evanston if the City agrees to rebate a portion of any sales tax revenue received by the City that are generated by the redevelopment of certain property; and

WHEREAS, the property at 1015 and 1033 Chicago Avenue and 520 Greenleaf (the "Toyota Property") currently operated as an automobile dealership known as Evanston Toyota will be closed and will cease all operations as of November 1, 2005 and thereby will no longer contribute to the sales tax base of the City, which real estate is legally described and depicted in **Exhibit B** attached hereto and made part hereof; and

WHEREAS, Developer has expressed a desire to purchase and redevelop the Toyota Property for the purpose of relocating and expanding a portion of its existing

automobile dealerships including the relocation of the Volkswagen and Mazda operations; and

WHEREAS. a portion of the existing Center located at 1034 Chicago Avenue will remain in operation as a used motor vehicle sales facility; and

WHEREAS. the Toyota Property and 1034 Chicago Avenue (the "Property") will be the location of the expanded and relocated Automobile Sales Center; and

WHEREAS. the City has adopted Resolution No. 48-R-05, a copy of which is attached hereto and made a part hereof as **Exhibit C**, authorizing the City Manager to execute a redevelopment agreement for the Automobile Sales Center; and

WHEREAS. Developer desires to redevelop an automobile sales center area on the Toyota Property; and

WHEREAS, such automobile sales center will include a relocated Volkswagen and a relocated Mazda dealership; and

WHEREAS. the parties agree that extraordinary costs associated with the acquisition and redevelopment of the Property, including the Toyota Property, require certain incentives from the City, and the incentives that will be offered to offset these extraordinary costs shall be in the form of rebates from the City's portion of local sales taxes generated on the Property; and

WHEREAS. the City desires to increase sales tax revenues, property tax revenues, retain existing businesses, diversify the tax base, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and other governmental entities; and

WHEREAS. the City has determined that providing financial assistance in the form of such rebates is a proper exercise of its home rule powers; and

WHEREAS, the City, in reliance on historical growth data of the Developer, has prepared certain sales tax projections, copies of which are attached hereto and made a part hereof as **Exhibit D**, setting forth certain potential real estate and sales tax revenues to the City and Certain other governmental bodies; and

WHEREAS; pursuant to the Statute, the City Council of the City of Evanston have made the following findings with respect to the Property, including the Toyota Property, and the Project;

- A. The Project is expected to retain and to create job opportunities within the City;
- B. The Project will serve to further the development of areas adjacent to the Property;

- C. Without this Agreement, the Project would not be possible;
- D. The Developer meets high standards of credit worthiness and financial strength;
- E. The Project will maintain the neighborhood commercial base of the City;
- F. The Project will protect and enhance the sales tax base of the City; and
- G. This Agreement is made in the best interest of the City.

WHEREAS, the Developer represents and warrants that the Project requires economic assistance from the City and but for the undertakings of the City as set forth in this Agreement, Developer would not acquire the Toyota Property, or construct the Project on the Property and would relocate to Skokie, and

WHEREAS, the City has agreed, pursuant to the terms of this Agreement, to provide certain sales tax sharing provisions in order to insure the economic feasibility of the Project which will have the benefits described above.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged, it is mutually agreed by the parties hereto as follows:

Section 1: Defined Terms

"Automobile Sales Center" means a new and used motor vehicle sales and service facility with ancillary services.

"Base Year" means the 12 month period beginning January 1- December 31, 2003.

"Base Year Sales Taxes" means \$291,500.00 which is equal to the sales tax revenue generated from the business located at the property described in **Exhibit A**.

"City's Tax Revenue Share" means any and all Retailers Occupation Taxes, Retailers Service Occupation Taxes, Retailers Use Tax, Retailers Service Use Tax, or any other **"sales tax"** or successor tax that may be enacted by the City, the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois which City is able to verify by reference to the documents described in **Section 11** hereinafter as being assessed, accruing or arising as a result of retail operations on or about the Property during the term hereof and received by the City from the State of Illinois or such other governmental agency or body created as aforesaid.

"Eligible Project Costs" means costs incurred by the Developer for the project, which include cost of site purchase, site improvements, base shop space work, exterior work, exterior lighting, roof improvements, HVAC, base tenant improvement work, demising walls, clean-up, parking lot, signage, utilities, environmental, façade, landscaping, streetscape improvements and associated soft costs including architectural, engineering and legal costs.

"Legal Requirements": means all applicable Federal, State or local statutes, codes and ordinances.

"Maximum Rebate" means the larger of \$1,350,000 or 15% of the Eligible Project Costs but not to exceed \$1,500,000.

"Maximum Reimbursement" means the revenue received by the City in sales tax dollars from the Project and Property after the rebate has been received by the Developer"

"Project Commencement" means the date on which the first permit for construction of the Project is issued by the City.

"Project Completion" has the meaning given it in Section 3A below.

"Revenue Year" means the twelve month period commencing on the first day of the calendar month immediately following Project Completion, and each twelve-month period thereafter.

Section 2. Recitals. The parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

Section 3. Developer Responsibilities (the "Project")

A. The Developer's responsibilities shall include the following:

Volkswagen & Mazda

Lot area for VW & Mazda 192,000 s.f.

The scope of the project will consist of 2 separate buildings:

1. The existing one story service & showroom building at 1015 Chicago Avenue.
2. The existing 2 story service & showroom building at 1033 Chicago Avenue , which has an attached piece extending to 520 Greenleaf.

Mazda 1015 Chicago Ave.

Ground floor area: 11,362 s.f.

Second floor area: 5,300 s.f.

Third floor area: 5,300 s.f.

Mazda total building area: 22,162 s.f.

Developer will remove the existing front showroom of the 1015 Chicago building and in its place erect a 3 story steel frame and masonry building. The first floor will consist of a new automobile showroom with a new 2 lane service write-up aisle for the public entering from Chicago Ave. Also on the first floor will be a canopy covered area which will house 3 to 4 demonstration cars for potential buyers to drive. The existing rear "Butler Building" will remain the service area with minor alterations to the room layouts at the south end of the building.

The second floor will consist of a customer lounge, a coffee and refreshment area, public toilets and finance and insurance offices. The public will have the use of a wide metal industrial style staircase or an open glass elevator to reach the second floor lounge area.

The third floor will be the general office for both the Mazda and the Volkswagen stores. It will consist of the dealer's office, a large conference room for training and general staff meetings, a general office cubicle area that will have desks for approximately 7 employees and 3 additional offices for management staff.

Volkswagen 1033 Chicago Ave.

Ground Floor area: 17,512 s.f.

Greenleaf Street ground floor: 9,633 s.f.

Second floor VW 15,016 s.f.

Total building area: 42,161 s.f.

Total footprint VW 27,145 s.f.

The existing 2 story automobile showroom and service building at 1033 Chicago avenue will remain structurally intact. Its only major change will consist of new Volkswagen standards added to the elevation and the reconfiguration of the interior showroom and sales offices. The building has service on both the first and second floors and has an internal automobile ramp for vertical access. The second floor consists of 100'-0" long bow shaped wood trusses spanning the entire width of the building for automobile maneuvering at that service area.

The new showroom design of the proposed Volkswagen building will consist of a slightly projecting multicolor wall projecting on the sidewalk area and an elliptical shaped rain canopy over the front entrance.

The existing stucco Toyota fascia will be removed and replaced with 2 story glass and stucco facade as depicted in the elevation drawings. It is our intention to preserve the architectural integrity of the surrounding brick facade by removing the white paint on the existing brick.

An extension to the ground floor (9,633 s.f.) of the building extends to Greenleaf street. This consists of additional service areas car storage and repaired cars waiting for pick-up.

Developer shall install glass block windows for the eastern elevation of all proposed construction or rehabilitation. In addition, Developer shall maintain all exterior building lighting in accordance with all City codes and ordinances. Developer shall not utilize any type of outdoor public address, audio paging, public address horns, loudspeakers or any other type of device for use in public address systems.

The Developer shall construct the Project in substantial conformity with that certain Site Plan dated _____ prepared by Design Synergies Ltd. (Andrew Lipowski, Architect) which is attached hereto as **Exhibit E (the "Site Plan")** and Developer's Project Budget attached hereto as **Exhibit F (the "Project Budget")**; and

A. Developer agrees to obtain all necessary City approvals and to commence construction of the Project within 15 days after its receipt of the permits described below but no later than November 30, 2005, and then diligently pursue the Project in substantial conformance with the Site Plan dated 2005 prepared byArchitects, Inc. and Developer's Project Budget. Developer will acquire property no later than November 1, 2005. Developer shall use best efforts to obtain a certificate of occupancy for the Automobile Sales Center on or before April 30, 2006.

B. In consideration for the City's assistance, which assistance is provided by this Agreement, and without which Developer could not acquire and construct the Project, Developer specifically agrees as follows:

1. For the term of the agreement as herein defined, the Property shall be maintained on the public real estate tax rolls and that the use thereof will not be changed so as to eliminate or reduce the sales tax revenue generated from the Property to an amount less than the sales tax generated for calendar year 2003 (\$291,500.00).

2. That any document of conveyance from the Developer its successors or assigns shall contain the following restrictive covenant or deed restriction which shall run with the land:

"For a period of the term of the agreement the Property shall not be removed from the public tax rolls and the use ("**Automobile Sales Center**") thereof shall not be changed so as to eliminate or reduce any sales tax revenue generated from the Property without the prior express written approval of the City (which approval shall be in the sole discretion of the City).

3.

A. The Developer or his successor shall be obligated to maintain an automobile sales center as described herein. Any violation of the foregoing covenant shall constitute a material breach and upon the occurrence of such, the then current owner

of the Property and the Developer shall (jointly and severally if more than one party) be obligated to refund to the City an amortized refund of the actual monies received. Such amortization shall be calculated as follows:

Rebate Received x Years of Operation
Term of Agreement

B. Notwithstanding any other provision of this Agreement, in the event that Developer (i) declares insolvency or bankruptcy; (ii) makes an assignment for the benefit of creditors; or (iii) is unable to meet its financial obligations, causing it to cease doing business as a new and used car sales and service facility, then this Agreement shall be deemed terminated and of no further force and effect, and the parties are relieved of all covenants, conditions, obligations and liabilities hereunder.

4. That during the period of time that the Developer is receiving a sales tax rebate the Developer agrees that if any action is undertaken to reduce the Real Estate Property taxes for said Property, such action shall not seek a reduction lower than assessed valuation as of January 1, 2007.

5. It is acknowledged by the parties hereto that the City has specifically relied upon the agreement by Developer contained in this Section 3 as an inducement both to providing assistance to the Developer in procuring financing for the Project and to executing this Agreement. It is, therefore, specifically agreed by the Developer as follows:

a.) That this section or a summary thereof shall be contained in the Memorandum of this Agreement which shall be recorded in the Office of Recorder of Deeds of Cook County.

b). Before commencement of construction of the Project as described herein, Developer, at its expense, shall secure or cause to be secured any and all permits, documents or plats which may be required for the construction of the Project by City Ordinances, and any other governmental agencies having jurisdiction over such construction, development or work, or such portion of the work being performed, including, without limitation, any applications and permits, documents or plats which may be required to be obtained from any local, federal or state environmental protection agency, the Metropolitan Water Reclamation District of Greater Chicago, or from any other agency which may have or exercise any jurisdiction of any type whatsoever in connection with the Project. Developer shall apply for a permit for the work on or before November 1, 2005. The City shall not oppose any such application pending for permit before another governmental body or agency, provided such application is consistent with all Legal Requirements. The City shall provide all proper assistance to Developer in securing such permits and shall promptly issue all permits required to be issued by the City, and agrees to sign other permits, documents or plats which require execution by the City, provided such permits, documents or plats comply with all Legal Requirements (as defined herein). Except as provided in this Agreement, the costs of the Project and all improvements on the Property shall be borne and paid for by the Developer or its tenants.

Notwithstanding anything to the contrary herein, Developer agrees that the Construction of the Project shall conform to any and all City ordinances, resolutions and regulations in effect at the time this document is executed ("**Legal Requirements**").

Developer further agrees to satisfy all applicable City ordinances and requirements, including but not limited to subdividing or re-subdividing the Property (to the extent applicable), in the event of sale of any portion of the Property.

Section 4. City Responsibilities.

A. In consideration of Developer's redevelopment of the Project as described in the Recitals hereof, the City agrees to reimburse Developer for a portion of its Eligible Project Costs (as defined in **Section 5A**) from a portion of the City's Tax Revenue Share (as defined in **Section 1**). Each Revenue Year (as defined below), the City's Tax Revenue Share will be allocated to the City and Developer based upon the allocation specified in Section 3C below.

B. As used herein, the following terms have the following meanings:

C. Distributions of the City's Tax Revenue Share to the City and Developer shall be in the order and priority set forth below and shall be paid at the time and in the manner set forth in **Section 5B**.

1. For each revenue year, the City and the Developer shall share equally the sales tax revenue received equal to the Base Revenue Year.

2. The Developer shall receive all incremental sales tax until such time as the Developer has received a minimum of the greater of \$1,350,000 or 15% of total Eligible Project Costs but in no event greater than the maximum of \$1,500,000.

The disbursements hereinabove set forth shall be prorated on a daily basis for any partial Revenue Years (as defined herein). Notwithstanding anything to the contrary herein contained, the City shall have no obligation to disburse to Developer any portion of the City's Tax Revenue Share accruing or arising after the Expiration Date (as defined in **Section 24** hereof). An example of the foregoing allocation provision is attached hereto as **Exhibit G**.

Section 5. Developer's Responsibilities and Use of City Sales Tax Reimbursement.

A. At the time of the execution of this Agreement, Developer shall provide the City the sum of \$75,000.00 (seventy five thousand dollars) towards the City's streetscape plan for Chicago Avenue as it fronts on the Toyota Property attached hereto as **Exhibit H** and the City shall be responsible for the construction of same.

1. Eligible Project Costs. All monies paid to Developer by the City pursuant to this Agreement shall be utilized by Developer for the payment of or reimbursement for the actual aggregate identified extraordinary costs (the "Eligible Project Costs"), which

include cost of site purchase, site improvements, base shop space work, exterior work, exterior lighting, roof improvements, HVAC, base tenant improvement work, demising walls, clean-up, parking lot, signage, utilities, environmental, façade, landscaping, and associated soft costs. In no event will the monies paid by the City to the Developer exceed the Maximum Reimbursement.

The following shall be conditions precedent to the City's obligation to pay any monies to the Developer:

(a) The Developer shall not, in the sole determination of the City (reasonably exercised), and without the prior consent of the City, have made any adverse material changes to either the scope of the Project or to the Project Budget or the Site Plan;

(b) A certificate of occupancy for the Automobile Sales Center shall have been issued (issuance of said certificates of occupancy shall hereinafter be referred to as "Project Completion"); and

(c) The Developer shall have provided the City with the following:

(1) a certified copy by the architect of the final Project Budget;

(2) lender or title company disbursement statement as of Project Completion including purchase and other eligible costs;

(3) certified copy of Developer's mortgage and construction loan agreement for the Project

The City shall have sixty (60) days after receipt of these documents within which to verify the sufficiency of the information contained therein as to Eligible Project Costs. The parties agree that no audit of the Eligible Project Costs shall be necessary if the total amount of such costs contained in the budget submitted pursuant to this section has not varied more than \$500,000.00 from that contained in Developer's Project Budget submitted pursuant to Section 3 hereof. If it is determined that an audit of said costs is necessary, an independent auditor, agreeable to both parties, shall conduct said audit within ninety (90) days of said determination. The expense of said audit shall be borne by Developer, who will cooperate in all reasonable ways with the conduct of the audit.

Within thirty (30) days after delivery of the aforesaid certificate and documentation, Developer agrees to deliver to City reasonably satisfactory evidence of payment of such Eligible Project Costs, such as a contractor's sworn statement, and evidence of lien free completion, such as waivers of lien or a clean title policy.

B. Manner of Funding Eligible Project Costs. City's payment or reimbursement of Eligible Project Costs shall be made on a semi-annual basis, within thirty (30) days after the last day of the first six (6) months and then the last six (6) months of each Revenue Year.

1) The City shall make all reasonable efforts to ascertain the City's Tax Revenue Share from the Illinois Department of Revenue for each Revenue Year. Developer agrees to obtain and provide the City with the ST-1 forms for the Property after the date of this Agreement. Developer further agrees to use all reasonable efforts to obtain and provide the City with the ST-1 forms. Provided the City obtains the City's Tax Revenue Share information from the Department of Revenue or, failing that, provided the Developer has caused the ST-1 forms or other similar information to be delivered, the City shall provide Developer with a report of all of the City's Tax Revenue Share for the Property received during the prior six (6) month period, together with a payment in the amount of Developer's pro rata share of any and all of the City's Tax Revenue Share received by the City and then due and owing Developer, pursuant to Section 4 hereof. Within sixty (60) days after each Revenue Year, the City shall notify Developer of the actual amount of the City's Tax Revenue Share received for such Revenue Year. C) The City shall take whatever action necessary and the Developer agrees to cooperate and provide any information necessary to determine the amount of Sales Taxes generated by the Project. The Developer shall take all reasonable actions necessary to provide the City with any and all documentation and shall provide the City with a power of attorney letter, if necessary, addressed to and in a form satisfactory to the Department of Revenue authorizing the Department to release all general sales tax information to the City.

2). The Sales Tax Reimbursement set forth herein shall be subject to the following additional terms and conditions:

a) Such sales tax shall be payable solely from Sales Taxes actually received by the City from the Department of Revenue and originating from the taxable activities of the Property, and the City shall not be obligated to pay any Sales Tax distributions identified herein from any other fund or source.

b) The parties acknowledge that the agreement to distribute Sales Taxes as herein provided is predicated on existing law. If the State of Illinois should reduce the City's share of sales tax generated from the private development, the parties hereto agree that the City may enact or adopt an ordinance under its Home Rule Powers providing for a replacement tax equal to the amount so eliminated or reduced by the State of Illinois. Said ordinance shall contain the same terms as to the amount and manner of receipt of said monies as were so eliminated or reduced. This Agreement shall be applicable to such replacement tax as if it were the sales tax. In the alternative, the Developer agrees to provide the City with a Payment In Lieu of Taxes as determined by the City so as to be comparable of sales tax.

c) The City shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing a source of funds for the Sales Tax Reimbursement herein.

d) The City to the fullest extent permitted by law, shall treat information received from the Developer pursuant to this section, as confidential proprietary business information under the Illinois Freedom of Information Act.

3) The City and Developer agree that this Agreement is for the benefit of the parties hereto and not for the benefit of any third party beneficiary. Except as otherwise provided herein, no third party shall have any rights or claims against the City arising from this Agreement.

C. Developer's Sales Tax Rebate The developer shall receive up to \$1.5 million in sales tax reimbursement for the **project** costs undertaken to remain in Evanston. The developer represents and warrants that an automobile sales center shall be in operation at said location for a period of time sufficient for the City to receive a full reimbursement of the sales tax rebate received by the Developer but no less than five (5) years after receipt of the last sales tax rebate. If the developer sells said dealership prior to the developer receiving the full sales tax rebate, sales tax reimbursement shall cease and the City shall have no obligation to continue the reimbursement. If the developer has received the full sales tax rebate, the Developer agrees to reimburse the City for an amortized refund of the monies received. Said amount shall be calculated in the formula set forth in **Section 3 B (3)**.

The developer agrees to maintain operation of an automobile sales center equal to or better to the existing for a period of five years after the developer has received the sales tax rebate.

Section 6. Permit Processing. The City shall diligently process all applications by Developer for all approvals, permits and inspections relating to the redevelopment of the Property in accordance with the provisions of this Agreement, including, but not limited to, demolition permits, grading permits, building permits, occupancy permits, site work improvements and all required engineering plans and specifications. A reasonable failure on the part of the City to grant any required approval or issue any required permit shall not be deemed a default, or the cause of a default, by the City under this Agreement provided the Developers plans do not conform to the City's ordinances and codes

Section 7. Signage. The signage for the Project shall be substantially as depicted and set forth on the Site Plan, and which shall be submitted for approval in accordance with the City's ordinances, resolutions and regulations in effect at the time this Agreement is executed.

Section 8. Access to Utilities. The City shall permit Developer to make the usual and customary connections to water and storm sewer facilities to serve the Project in accordance with the Site Plan and approved engineering plans and all applicable City ordinances and requirements.

Section 9. Certificate of Completion. After Project Completion, upon application of Developer, the City will make a determination as to Developer's satisfaction of its obligations under this Agreement, and upon such reasonable determination shall certify as to such satisfaction. The certification by the City shall be conclusive determination of the satisfaction and termination of such obligations of Developer under this Agreement, including the obligations set forth in this **Section 9** with

regard to the verification of Eligible Project Costs. The certification shall be in such form as will enable it to be recorded. Upon written request by the Developer for any such certificate of completion, the City shall within sixty (60) days after receipt of the same provide the Developer, as the case may be, either with a certificate of completion or a written statement indicating in adequate detail how Developer has failed to satisfy said obligations in accordance with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Developer to obtain the certification. If the City requires additional measures or acts of Developer to assure compliance, Developer shall resubmit a written request for a certificate of completion upon compliance with the City's response, and such certificate shall be issued by the City in accordance with the provisions hereof.

Section 10. Ownership of the Property; Restrictions on Transfer

A. Developer agrees that it will not sell, convey or transfer ownership of any portion of the Property prior to having received a certificate of occupancy.

B. Developer agrees that because of the consideration previously provided by the City as set forth in the Recitals hereof, any sale, conveyance or transfer of ownership of any portion of the Property by Developer and its successors and assigns after the completion of the redevelopment project and the dealership is opened for business shall be subject to the following restrictive covenant or deed restriction which shall run with the land:

For the term of the Agreement, the Property shall not be transferred in any way to a tax exempt entity and the Property shall not be removed from the real estate tax rolls and the use thereof shall not be changed so as to eliminate any sales tax revenue generated from the Property without the prior express written approval of the City (which approval shall be in the sole discretion of the City).

C. Notwithstanding the provisions of Section 24 of this Agreement, any violation of the provisions of Section 10B shall constitute a material breach of this Agreement and upon the occurrence of such, the then current owner of the Property (and Developer, if it was the transferor) shall (jointly and severally if more than one party) be obligated to refund to the City any and all monies as set forth in Section 3 B (3).

D. Notwithstanding any provision herein to the contrary, in the event of a foreclosure or deed-in-lieu of foreclosure or purchaser at foreclosure sale, and upon submittal of documents to the City evidencing same, the City will approve a transfer of Title to Developer's Mortgagee.

Section 11. Sales Tax Reports: Concurrent with the filing of any and all reports with the Illinois Department of Revenue or any successor agency, Developer shall furnish or cause to be furnished to the City (to the attention of the City's Finance Director) copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity. In the event the State of Illinois is unable or unwilling to

provide such information to the City. Developer shall, upon at least thirty (30) days prior written request therefore, provide the City with all documentation available to Developer that the City reasonably deems necessary to accurately determine the amount of the City's Tax Revenue Share. To the extent permitted by law, the City shall maintain the confidentiality of the information contained in such reports. Developer acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the City to Developer pursuant to this Agreement. Developer further covenants and agrees, that upon the request of City, Developer shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to Developer, in order to release the above-described sales tax information to the City. Developer and City agree and acknowledge that any disbursements of City's Tax Revenue Share due it for any Revenue Year can only be made from and to the extent of sales data submitted in accordance with this Section. Developer agrees to make the obligations contained in this Section a part of any contract to sell any portion of the Property.

Section 12. Reimbursement Mechanism. The City shall remit in full to Developer the portion of the City's Tax Revenue Share to which Developer is entitled in such amounts and at such times as determined in **Section 4, Section 5B** and **Section 11** above. The City shall be liable to Developer for disbursement of monies hereunder only to the extent of the City's Tax Revenue Share actually received from the Illinois Department of Revenue or other applicable governmental agency or body. Any payments determined to be due to Developer from the City based upon sales tax returns, and shall be reduced by the amount of any and all collection fees imposed upon City by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collection of the Sales Tax Revenue.

Section 13. Insurance

Any contractor chosen by the Developer or the Developer itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractor's general liability and completed operations. The Developer, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss and damage. The contractor or the Developer, as the case may be, shall name the City of Evanston as an Additional Insured and shall furnish the City with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the City prior written notice in the event of cancellation or material change in any of the policies.

Section 14. Casualty / Extension of Term.

In the event of a casualty or destruction of substantially all of the improvements on the property during the term of this Agreement, and Developer elects not to rebuild said improvements or fails to promptly commence and diligently pursue

said reconstruction and recommence its retail operations on the Property within twelve (12) months after the date of said casualty. Developer shall be obligated, after satisfying its mortgagee(s) if any, to refund to the City, from insurance casualty insurance proceeds received by Developer, and pari passu with Developer's equity, the portion of the City's Tax Revenue Share theretofore received by the Developer. The City shall be named as beneficiary and co-payee on any and all insurance proceeds. The City's interests shall be limited to the amount of Maximum Reimbursement.

Section 15. Indemnification.

Developer agrees to indemnify and hold harmless the City, its officials, whether appointed or elected, and whether or not serving at the time of commencement of this Agreement, its officers, employees, volunteers and agents (the "**City Indemnified Parties**"), from any and all claims, actions and suits (together with the City's reasonable attorneys' fees and costs) at law or in equity (collectively, "**Claims**") arising solely out of this Agreement or out of the operation of automobile sales centers or alleged to have arisen solely out of acts of Developer, provided, however, that said indemnification is hereby expressly limited to the extent of reimbursement payments actually made by the City to Developer hereunder; and further provided, however, that the foregoing obligation shall not extend to the extent any Claim arises out of the gross negligence or willful misconduct of any City Indemnified Party.

Section 16. Mutual Assistance. Developer and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

Section 17. Additional Agreements and Covenants of Developer. In accordance with the City's financial commitment to the redevelopment of the Project Area, Developer agrees and covenants with the City as follows:

A. That it will cause the Project to be constructed and completed in a good and workmanlike manner and in compliance with all applicable federal, state, county, and City laws, regulations, and ordinances covering same;

B. That the Maximum Rebate the greater of 15% of the Eligible Project Cost or \$1,350,000, but not greater than \$1,500,000.

C. Developer agrees that the general contractor hired by Developer to complete the Project shall use good faith, commercially reasonable efforts to hire, train and retain, or cause to be hired, trained or retained, during such construction contract at least three (3) laborers who reside in the City if the contractor has a need to increase the workforce for this project.

Section 18. Anti-Discrimination, Minority Business Enterprises, Etc.

A. Developer agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Developer agrees to make good faith,

commercially reasonable efforts to have its general contractor and major subcontractors, to the extent they hire new employees and can include minorities, women and City residents to work on the Initial Construction of Project, hire minorities, women or City residents, in any combination, at a cumulative rate of fifteen percent 15% of the total trade labor work force. Nothing herein shall require Developer or its contractors or major subcontractors to displace any employees in its current work force to achieve the foregoing goal. The foregoing requirement shall apply to the Project taken as a whole.

B. Notwithstanding the foregoing provisions, Developer shall be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

C. Developer's contracts with contractors and major subcontractors for construction of the Project shall contain provisions, which are consistent with the requirements of this Paragraph 18.

Section 19. NO DISCRIMINATION CONSTRUCTION - BUSINESS PARTICIPATION.

A. Developer, agrees to comply with all applicable laws prohibiting discrimination against, or segregation of, any person, or group of persons, on account of sex, race, color, creed, national origin, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

B. Developer shall exercise its good faith, commercially reasonable efforts to secure minority, women, and City business enterprises to **participate** in all construction and service contracts for the Project.

C. Developer agrees to actively participate in the City's Summer Youth Employment Program by hiring at least one youth each year during the term of this agreement.

Section 20. Employment Opportunities Marketing.

Developer agrees to cooperate with the City to seek to employ Evanston residents if the Developer increases his workforce.

Section 21. Default Remedies.

Except as otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any terms or conditions by any party hereto, such party shall, upon written notice from the non-defaulting party, proceed promptly to cure or remedy such default or breach within sixty (60) days after receipt of such notice. If any such default is incapable of being cured within said sixty (60) day period, and the defaulting party commences to cure the default within said sixty (60) day period and proceeds with due diligence, then such party shall not be deemed to be in default under this Agreement. Notwithstanding the foregoing, with respect to the City's obligations under Paragraph 3 hereof, the City shall have five (5) business days after receipt of notice to cure or remedy

a default. In case any action hereunder is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above periods, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, an action to restrain any such default or breach of its obligations, an action to compel specific performance by the party in default or breach of its obligations, an action to recover damages against any party liable pursuant to the provisions hereof, or any other action at law or in equity. However, notwithstanding the foregoing, the sole remedy of Developer in the event of a default by the City in any of the terms of this Agreement is to institute legal action for payment of amounts owed Developer. Under no circumstance will the City have any other monetary liability or damages, compensatory or punitive, under the provisions, terms and conditions of this Agreement, except for payment of Developer's reasonable attorneys fees in the event it obtains final non-appealable judgment against the City for breach of this Agreement. In addition, notwithstanding the foregoing, the sole remedy of City in the event of a default by the Developer in any of the terms of this Agreement is to institute legal action for payment of the reimbursement amounts owed the City. Under no circumstance will the Developer have any other monetary liability or damages, compensatory or punitive, under the provisions, terms and conditions of this Agreement, except for payment of the City's reasonable attorneys fees in the event it obtains final non-appealable judgment against the Developer for breach of this Agreement. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way; it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

It is further agreed by the parties hereto, that the City shall have the right to suspend and stop all payments to the Developer hereunder upon Developer's breach of this Agreement (after applicable notice and expiration of applicable cure period), even if said payments shall be due and owing to the Developer at the time of said breach.

Section 22. Entire Agreement. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and City 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 are herein set forth.

Section 23. Survival of Terms, Binding upon Successors. The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in

this Agreement (and specifically including, without limitation, those covenants, terms, conditions, representations, warranties, agreements and undertakings which survive the termination of this Agreement) shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives, and the covenants, provisions and agreements herein contained shall run with the Property and shall expire twelve (12) months after the Expiration Date (as defined herein).

Section 24. Term of Agreement and Redevelopment Plan. The term of this Agreement shall commence as of the date of execution hereof and shall expire upon the earlier of the following (the "Expiration Date").

Section 25. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois (without giving effect to Illinois choice of law principles).

Section 26. Supplemental Agreements. The parties agree to cooperate in order to execute such supplemental agreements, memoranda and similar documents as may be necessary to implement the terms of this Agreement.

Section 27. Force Majeure. Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, restrictive governmental laws and regulations, epidemics, quarantine restrictions, freight embargoes, lack of transportation or labor and material shortages. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than thirty (30) days after the commencement of the cause or not more than thirty (30) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

Section 28. Notices. Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given, served and received on the date of delivery, if delivered to the persons identified below in person, by courier service or by facsimile copy transmitted on a business day before 5:00 p.m., or the next business day thereafter if not so transmitted (with original copy mailed the same day in accordance with the provisions of this Paragraph), or five (5) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City of Evanston
Civic Center
2100 Ridge Avenue
Evanston, IL 60201

Attention: City Manager
Facsimile: 847-448-8083

Copy to:

Herbert D. Hill
1st Assistant Corporation Counsel
City of Evanston
Civic Center
2100 Ridge Avenue – Suite 4400
Evanston, IL 60201
Facsimile: 847-448-8093

If to Developer:

Autobarn Motors. Ltd.
1033 Chicago Avenue
Evanston, IL 60202
Attention: Richard Fisher
Facsimile: 847-501-2779

Copy to:

Statland & Valley
10 South LaSalle Street
Suite 900
Chicago, IL 60603
Attention: Jay L. Statland
Facsimile: 312-849-4910

Section 29. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purposes of the Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

Section 30. City Approval. A copy of the ordinance (or other City action) approving of the terms and conditions of this Agreement and authorizing and directing the City Manager to execute this Agreement on the City's behalf, certified by the City Clerk, shall be provided to Developer.

Section 31. Amendments; Recordation. This Agreement may be amended from time to time with the written consent of the parties hereto. The parties shall cause a

memorandum of this Agreement to be recorded in the Office of the Cook County Recorder of Deeds.

Section 32. Miscellaneous. The parties hereto acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the City are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

Section 33. Execution of this Agreement. This Agreement shall be signed last by the City and the City Manager shall affix the date on which he signs and approves this Agreement on the first page hereof, which date shall be the effective date of this Agreement.

* * * * *

{Signature Page Follows}

IN WITNESS WHEREOF this Agreement has been duly authorized and approved by the City Council of the City of Evanston, Cook County, Illinois, and duly authorized, approved and executed by _____ as of the date and year first above set forth.

CITY OF EVANSTON

BY _____

BY _____

ATTEST

CITY CLERK

EXHIBIT A

LEGAL DESCRIPTION 1001, 1012 and 1034 Chicago Avenue

**1001 Chicago Avenue
Evanston, IL**

Lots 10, 11 and 12 in Resubdivision of Blocks 1 and 2 in White's Addition to Evanston in the Northeast ¼ of Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**1012 Chicago Avenue
Evanston, IL**

LOT 1 IN PLAT OF CONSOLIDATION OF LOTS 2,3,4,5 AND 6 IN MERSCH HEIRS SUBDIVISION OF THAT PART BETWEEN CHICAGO AVENUE AND RAILROAD LANDS OF THE SOUTH 25 ACRES OF THE NORTH 50 ACRES OF 94-1/2 ACRES TRACT DESCRIBED AS THE SOUTH HALF OF THE EAST 32 RODS OF THE NORTH EAST FRACTIONAL QUARTER OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.

**1034 Chicago Avenue
Evanston, IL**

PARCEL 1: THAT PART OF LOT 4 LYING EAST OF THE EAST LINE OF THE RIGHT-OF-WAY OF CHICAGO, EVANSTON, AND LAKE SUPERIOR RAILROAD (EXCEPT THE SOUTH 35 ½ FEET THEREOF) IN J.M. MEYERS AND OTHERS DIVISION OF THAT PART OF LOT 6, LYING WEST OF THE GRAVEL ROAD, IN THE ASSESSOR'S DIVISION OF THE NORTHEAST FRACTIONAL ¼ AND THE EAST 32 RODS OF THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THAT PART OF LOT 3, EAST OF AND ADJOINING THE EASTERLY RIGHT-OF-WAY OF THE CHICAGO, EVANSTON AND LAKE SUPERIOR RAILROAD, IN J.M. MEYERS AND OTHERS DIVISION OF THAT PART OF LOT 6, LYING WEST OF THE GRAVEL ROAD, IN ASSESSOR'S DIVISION OF THE NORTHEAST FRACTIONAL ¼ AND THE EAST 32 RODS OF THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOT 1 (EXCEPT THE WEST 60 FEET) OF J.M. MEYERS AND OTHERS DIVISION TO EVANSTON, IN SECTION 19, TOWNSHIP 41

NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN
COOK COUNTY, ILLINOIS.

PARCEL 4: THE SOUTH 35 ½ FEET OF THAT PART OF LOT 4, LYING
EAST OF CHICAGO, EVANSTON AND LAKE SUPERIOR RAILROAD IN
J.M. MEYERS AND OTHERS DIVISION OF THE PART OF LOT 6, LYING
WEST OF THE GRAVEL ROAD IN ASSESSOR'S DIVISION OF SECTION
19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXHIBIT B

1015 Chicago Avenue, 1033 Chicago Avenue and 520 Greenleaf (collectively the TOYOTA PROPERTY)

Parcel 1:

Lots 3, 4, 5 and 6 in Block 1 in the Resubdivision of Block 1 and 2 of White's Addition to Evanston, being part of the Northeast 1/4 of Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

The North 28 feet of Lot 7 in Block 1 in the Resubdivision of Blocks 1 and 2 in White's Addition to Evanston, being a subdivision of part of the South 1/2 of the Northeast 1/4 of Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

The easterly 95 feet of Lot 1 and 2 in Block 1 in the resubdivision of Blocks 1 and 2 of White's Addition to Evanston in Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

Lot 1 in Levy Venture Management Consolidation, of Lot 7 (except the North 28 feet thereof) and all of Lots 8 and 9 in Block 1 in White's Addition to Evanston, being part of the Northwest 1/4 of Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

EXHIBIT C

8/15/2005

48-R-05

A RESOLUTION

**Authorizing the City Manager to Sign
A Redevelopment Agreement for Sales Tax Sharing
with Autobarn Motors, Ltd.**

WHEREAS, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or ordinance; and

WHEREAS, 65 ILCS 5/8-11-20 (the "Statute") authorizes municipalities to enter into economic incentives agreements in order to encourage the development or redevelopment of land within their corporate limits; and

WHEREAS, Autobarn Motors, Ltd. (the "Developer") is the owner of an automobile sales center (the "Center") located at 1001, 1012 and 1034 Chicago Avenue in Evanston, which is located on real estate legally described and depicted in **Exhibit A** of the Agreement attached hereto and made part hereof, doing business as the Autobarn Mazda of Evanston and Autobarn Volkswagen of Evanston and has been in operation for approximately 12 years; and

WHEREAS, the Center has generated for calendar year 2003 \$291,500.00 in sales tax revenue to the City (the "**Base Year Sales Tax**"); and

WHEREAS, Developer has purchased approximately 5.3 acres of real estate located at 3450 West Oakton Street in Skokie, Illinois and has announced an intention to relocate a major portion of the automobile dealership including sales and service to said community; and

WHEREAS, said relocation will result in a substantial reduction in sales tax revenue to the City of Evanston; and

WHEREAS, Developer has expressed his willingness to remain in the City of Evanston if the City agrees to rebate a portion of any sales tax revenue received by the City that are generated by the redevelopment of certain property; and

WHEREAS, the property at 1015 and 1033 Chicago Avenue and 520 Greenleaf (the "Toyota Property") currently operated as an automobile dealership known as Evanston Toyota will be closed and will cease all operations as of November 1, 2005 and thereby will no longer contribute to the sales tax base of the City, which real estate is legally described and depicted in **Exhibit B** of the Agreement attached hereto and made part hereof; and

WHEREAS, Developer has expressed a desire to purchase and redevelop the Toyota Property for the purpose of relocating and expanding a portion of its existing automobile dealerships including the relocation of the Volkswagen and Mazda operations; and

WHEREAS, a portion of the existing Center located at 1034 Chicago Avenue will remain in operation as a used motor vehicle sales facility; and

WHEREAS, the Toyota Property and 1034 Chicago Avenue (the "Property") will be the location of the expanded and relocated Automobile Sales Center; and

WHEREAS, Developer desires to redevelop an automobile sales center area on the Toyota Property; and

WHEREAS, such automobile sales center will include a relocated Volkswagen and a relocated Mazda dealership; and

WHEREAS, the extraordinary costs associated with the acquisition and redevelopment of the Property, including the Toyota Property, require certain incentives from the City, and the incentives that will be offered to offset these extraordinary costs will be in the form of rebates from the City's portion of local sales taxes generated on the Property; and

WHEREAS, the City desires to increase sales tax revenues, property tax revenues, retain existing businesses, diversify the tax base, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and other governmental entities; and

WHEREAS, the City has determined that providing financial assistance in the form of such sales tax rebates is a proper exercise of its home rule powers; and

WHEREAS, the City, in reliance on historical growth data of the Developer, has prepared certain sales tax projections, copies of which are attached hereto and made a part hereof as **Exhibit D** of the Agreement, setting forth certain potential real estate and sales tax revenues to the City and Certain other governmental bodies; and

WHEREAS; pursuant to the Statute, the City Council of the City of Evanston have made the following findings with respect to the Property, including the Toyota Property, and the Project;

- H. The Project is expected to retain and to create job opportunities within the City;
- I. The Project will serve to further the development of areas adjacent to the Property;
- J. Without this Agreement, the Project would not be possible;
- K. The Developer meets high standards of credit worthiness and financial strength;
- L. The Project will maintain the neighborhood commercial base of the City;
- M. The Project will protect and enhance the sales tax base of the City; and
- N. This Agreement is made in the best interest of the City.

WHEREAS, the Developer represents and warrants that the Project requires economic assistance from the City and but for the undertakings of the City as set forth in this Agreement, Developer would not acquire the Toyota Property, or construct the Project on the Property and would relocate to Skokie, and

WHEREAS, the City has agreed, pursuant to the terms of this Agreement, to provide certain sales tax sharing provisions in order to insure the economic feasibility of the Project which will have the benefits described above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign a Redevelopment Agreement with Autobarn Motors, Ltd., for sales tax sharing, attached hereto as Exhibit 1.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the application as may be determined to be in the best interests of the City.

SECTION 3: That the Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

Lorraine H. Morton, Mayor

ATTEST:

City Clerk

Adopted: _____, 2005

EXHIBIT D
SALES TAX PROJECTIONS

City of Evanston

Economic Development Committee Analysis

Sales Tax Sharing Payback Proforma - Autobarn

		<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009*</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
<u>II. Sales Tax</u>									
Estimated Sales		\$35,500,000	\$40,000,000	\$50,000,000	\$51,250,000	\$52,531,250	\$53,844,531	\$55,190,845	\$56,570,411
Estimated City Sales Tax Generated	A	\$355,000	\$400,000	\$500,000	\$512,500	\$525,313	\$538,445	\$551,906	\$565,704
LESS:									
2003 Autobarn Sales Tax Base	B	\$291,500	\$291,500	\$291,500	\$291,500	\$291,500	\$0	\$0	\$0
Base Sales Tax to City	C	\$145,750	\$145,750	\$145,750	\$145,750	\$145,750	\$291,500	\$291,500	\$291,500
Net Sales Tax to Developer (Row A - C)	D	\$209,250	\$254,250	\$354,250	\$366,750	\$315,500	\$0	\$0	\$0
Increase (decrease) over 2004 Base Sales Tax to City		(\$30,500)	(\$30,500)	(\$30,500)	(\$30,500)	\$33,563	\$216,445	\$229,906	\$243,704
Cumulative Sales Tax to Developer		\$209,250	\$463,500	\$817,750	\$1,184,500	\$1,500,000	\$0	\$0	\$0
<u>III. Property Tax</u>									
Additional City Property Tax from Improvements (a)		\$0	\$0	\$29,958	\$29,958	\$29,958	\$30,707	\$30,707	\$30,707
<u>III. Net City Payback</u>									
City Net Payback Period		(\$176,250)	(\$352,500)	(\$498,792)	(\$645,084)	(\$727,313)	(\$480,161)	(\$218,547)	\$54,864
<u>IV. Net Evanston Community Payback</u>									
Additional Property Taxes to Schools (a)		\$0	\$0	\$104,710	\$104,710	\$104,710	\$107,328	\$107,328	\$104,328
Evanston Community Payback Period		(\$176,250)	(\$352,500)	(\$394,082)	(\$425,684)	(\$477,248)	(\$309,015)	\$45,465	\$413,407

* Assume 2.5% sales increase per year for FY 2009 and beyond

Assume split 2003 tax base with 100% increment going to Autobarn to a limit of \$1.5 million

(a) \$2,598,699 added improvements, 2.5% increase in reassessment years

City of Evanston

Economic Development Committee Analysis

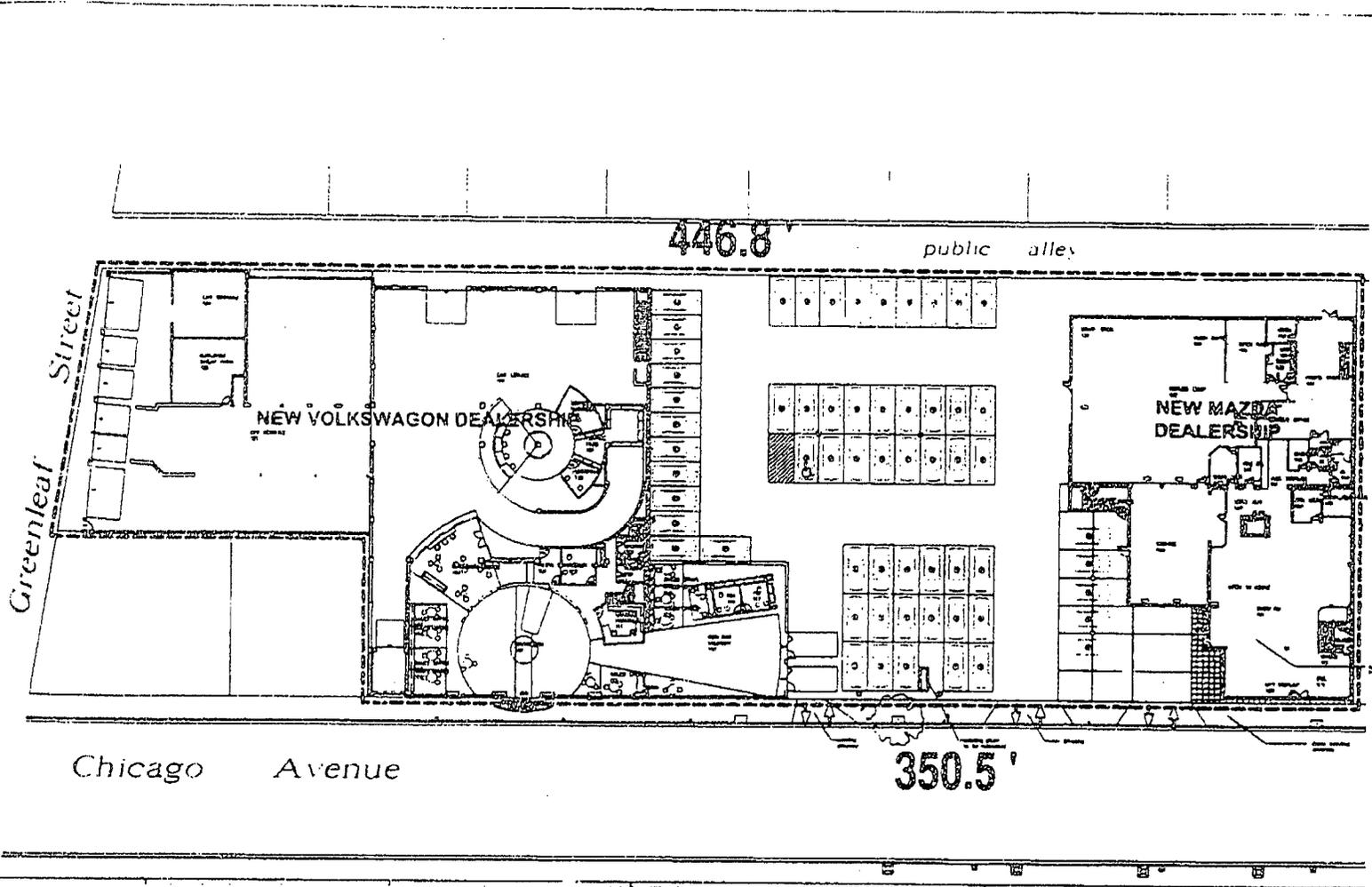
Lost Revenue if Autobarn Leaves

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>TOTALS</u>
Lost Base Sales Tax	\$322,000	\$322,000	\$322,000	\$322,000	\$322,000	\$322,000	\$322,000	\$322,000	\$2,576,000
Lost Added Sales Tax (a)	<u>\$33,000</u>	<u>\$78,000</u>	<u>\$178,000</u>	<u>\$190,500</u>	<u>\$203,313</u>	<u>\$216,445</u>	<u>\$229,906</u>	<u>\$243,704</u>	<u>\$1,372,868</u>
Total Lost Sales Taxes	\$355,000	\$400,000	\$500,000	\$512,500	\$525,313	\$538,445	\$551,906	\$565,704	\$3,948,868

(a) Based on proforma projections of Autobarn sales growth

EXHIBIT E

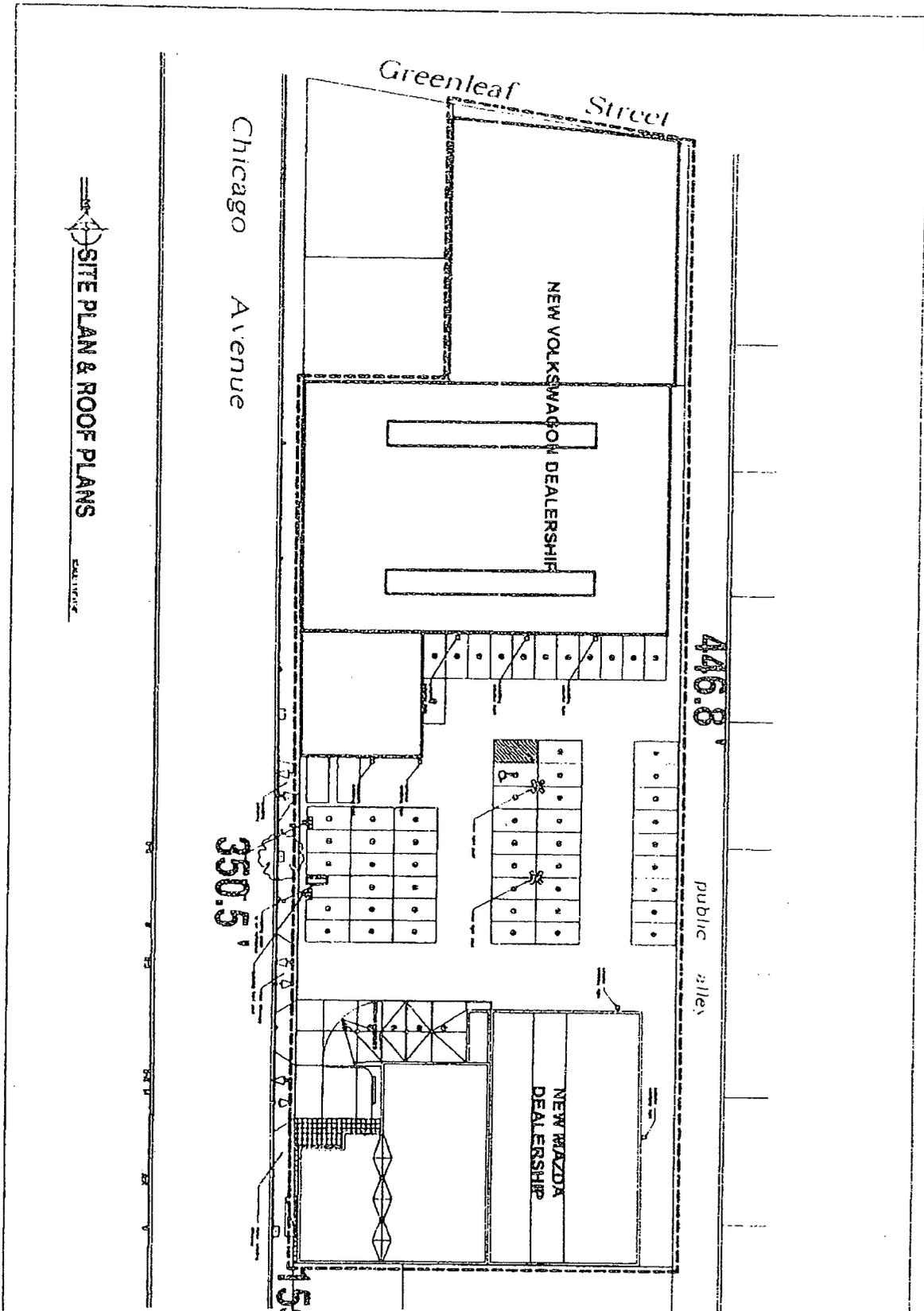
SITE PLAN




SITE PLAN & FIRST FLOOR PLANS

SCALE 1/8" = 1'-0"

	
the AUTOBARN limited VOLKSWAGEN MAZDA	
155'	
DESIGN SYNERGIES, LTD. 1111 CHICAGO AVE. CHICAGO, ILL. 60606	
SITE PLAN	
SD.1	
DRAWING NO. _____	




SITE PLAN & ROOF PLANS
 SALTER & ASSOCIATES

	the AUTOBARN Limited VOLKSWAGEN MAZDA	
	DESIGN SYNERGES LTD. <small>10000 Highway 101, Suite 101 Burnaby, B.C. V5A 4E9 Tel: 604-291-1111</small>	
	SITE PLAN	
	SD 2	

EXHIBIT F
PROJECT BUDGET

EXHIBIT F

City of Evanston

Economic Development Committee Analysis

Sales Tax Sharing Payback Proforma - Autobarn

		FY 2006	FY 2007	FY 2008	FY 2009*	FY2010	FY2011	FY2012	FY2013
<u>I. Sales Tax</u>									
Estimated Sales		\$35,500,000	\$40,000,000	\$50,000,000	\$51,250,000	\$52,531,250	\$53,844,531	\$55,190,645	\$56,570,411
Estimated City Sales Tax Generated	A	\$355,000	\$400,000	\$500,000	\$512,500	\$525,313	\$538,445	\$551,906	\$565,704
LESS									
2003 Autobarn Sales Tax Base	B	\$291,500	\$291,500	\$291,500	\$291,500	\$291,500	\$0	\$0	\$0
Base Sales Tax to City	C	\$145,750	\$145,750	\$145,750	\$145,750	\$145,750	\$291,500	\$291,500	\$291,500
Net Sales Tax to Developer (Row A - C)	D	\$209,250	\$254,250	\$354,250	\$366,750	\$315,500	\$0	\$0	\$0
Increase (decrease) over 2004 Base Sales Tax to City		(\$30,500)	(\$30,500)	(\$30,500)	(\$30,500)	\$33,563	\$216,445	\$229,906	\$243,704
Cumulative Sales Tax to Developer		\$209,250	\$463,500	\$817,750	\$1,184,500	\$1,500,000	\$0	\$0	\$0
<u>II. Property Tax</u>									
Additional City Property Tax from Improvements (a)		\$0	\$0	\$29,958	\$29,958	\$29,958	\$30,707	\$30,707	\$30,707
<u>III. Net City Payback</u>									
City Net Payback Period		(\$176,250)	(\$352,500)	(\$458,752)	(\$545,084)	(\$727,313)	(\$400,181)	(\$210,647)	\$64,354
<u>IV. Net Evanston Community Payback</u>									
Additional Property Taxes to Schools (a)		\$0	\$0	\$104,710	\$104,710	\$104,710	\$107,328	\$107,328	\$104,328
Evanston Community Payback Period		(\$176,250)	(\$352,500)	(\$394,082)	(\$435,664)	(\$477,246)	(\$309,015)	\$45,465	\$413,407

* Assume 2.5% sales increase per year for FY 2009 and beyond

Assume split 2003 tax base with 100% increment going to Autobarn to a limit of \$1.5 million

(a) \$2,558,699 added improvements, 2.5% increase in reassessment years

EXHIBIT G
EXAMPLE OF ALLOCATION

EXHIBIT G

City of Evanston

Economic Development Committee Analysis

Sales Tax Sharing Payback Proforma - Autobarn

		<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009*</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>
<u>I. Sales Tax</u>									
Estimated Sales		\$35,500,000	\$40,000,000	\$50,000,000	\$51,250,000	\$52,531,250	\$53,844,531	\$55,190,645	\$56,570,411
Estimated City Sales Tax Generated	A	\$355,000	\$400,000	\$500,000	\$512,500	\$525,313	\$538,445	\$551,906	\$566,704
LESS									
2003 Autobarn Sales Tax Base	B	\$291,500	\$291,500	\$291,500	\$291,500	\$291,500	\$0	\$0	\$0
Base Sales Tax to City	C	\$145,750	\$145,750	\$145,750	\$145,750	\$145,750	\$291,500	\$291,500	\$291,500
Net Sales Tax to Developer (Row A - C)	D	\$209,250	\$254,250	\$354,250	\$366,750	\$315,500	\$0	\$0	\$0
Increase (decrease) over 2004 Base Sales Tax to City		(\$30,500)	(\$30,500)	(\$30,500)	(\$30,500)	\$33,563	\$216,445	\$229,906	\$243,704
Cumulative Sales Tax to Developer		\$209,250	\$463,500	\$817,750	\$1,184,500	\$1,500,000	\$0	\$0	\$0
<u>II. Property Tax</u>									
Additional City Property Tax from Improvements (a)		\$0	\$0	\$29,958	\$29,958	\$29,958	\$30,707	\$30,707	\$30,707
<u>III. Net City Payback</u>									
City Net Payback Period		(\$176,250)	(\$352,500)	(\$450,792)	(\$545,004)	(\$727,313)	(\$480,161)	(\$218,547)	\$64,054
<u>IV. Mrs. Evanston Community Payback</u>									
Additional Property Taxes to Schools (a)		\$0	\$0	\$104,710	\$104,710	\$104,710	\$107,328	\$107,328	\$104,328
Evanston Community Payback Period		(\$176,250)	(\$352,500)	(\$394,082)	(\$435,664)	(\$477,246)	(\$309,015)	\$45,465	\$413,407

* Assume 2.5% sales increase per year for FY 2009 and beyond

Assume split 2003 tax base with 100% increment going to Autobarn to a limit of \$1.5 million

(a) \$2,598,659 added improvements, 2.5% increase in reassessment years