

AMENDED AND RESTATED SALES TAX REVENUE SHARING AGREEMENT

THIS AMENDED AND RESTATED SALES TAX REVENUE SHARING AGREEMENT (the “**Amended Agreement**”) is entered into on this ____ day of April, 2023, by and between the **City of St. Charles**, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (hereinafter referred to as the “**City**”) and **McGrath Motors, Inc.** an Illinois corporation doing business under the assumed name of McGrath Honda of St. Charles (hereinafter referred to as the “**Company**”). The Company and the City are hereinafter individually sometimes referred to as a “**Party**” and collectively as the “**Parties**”.

W I T N E S S E T H:

WHEREAS, the City and the Company entered into a certain Sales Tax Revenue Sharing Agreement dated September 21, 2020, pursuant to the City’s Resolution # 2020-79 (the “**Original Agreement**”); and

WHEREAS, as of the date of this Amended Agreement, no payments of any kind under the Original Agreement have been applied for by the Company or paid by the City to the Company; and

WHEREAS, the City has a population of more than 25,000 persons, and is a home rule unit of government pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois; and

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 by ordinance; and

WHEREAS, the City, pursuant to 65 ILCS 5/8-1-2.5 is authorized to appropriate and expend funds for economic development purposes, including, without limitation, the making of

grants to any other governmental entity or commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the municipality; and

WHEREAS, the City, pursuant to 65 ILCS 5/8-11-20 is authorized to enter into economic incentive agreements relating to the development or redevelopment of land within its corporate limits and may agree to share or rebate a portion of the retailer's occupation taxes received by the municipality that are generated by the development or redevelopment over a finite period of time; and

WHEREAS, subsequent to the execution of the Original Agreement, 4075 E Main, LLC, an Illinois limited liability company ("**Landlord**") (i) has acquired certain property in the City of St. Charles, currently legally described on **Exhibit "A"** attached hereto and made a part hereof, and now known as Lot 1 of the Subdivision (the "**Property**"), and (ii) has completed the construction required to (A) accommodate the relocation by Company of the Company's existing Honda Dealership (the "**Honda Dealership**") within the City to a portion of the approximate west half of the Property and (B) redevelop a portion of the Property by, among other things, repurposing the existing Mega Center Building on the Property into an approximately 52,500 square foot new and used car sale Honda Dealership and service facility to accommodate the relocation by the Company of the Honda, with such construction and renovation by the Landlord (the "**Project**") being depicted in more detail on **Exhibit "B"** attached hereto and incorporated herein; and

WHEREAS, subsequent to the execution of the Original Agreement, and through the date of this Amended Agreement, neither the Company nor any of its affiliates has requested, nor has the City made, and payments or disbursements to the Company or any of its affiliates under the Original Agreement; and

WHEREAS, on or about November 14, 2022, the Company did open the Honda Dealership for business and did commence taxable sales on the Property; and

WHEREAS, pursuant to the 65 ILCS 5/8-11-20, the City Council of the City has made the following findings with respect to the Project:

- A. The Project will result in the Company electing to remain and expand its operations within the corporate limits of the City, which is expected to create or retain job opportunities within the City.
- B. The Project will serve to further the development of adjacent areas.
- C. Without this Amended Agreement, the Company would likely have relocated its operations outside the corporate limits of the City, and the Project would not be possible.
- D. The Company meets high standards of creditworthiness and financial strength, as demonstrated by a letter from a financial institution having assets of \$10,000,000 or more which attests to the financial strength of the Company.
- E. The Company's relocation to, and expanded operations on the Project will strengthen the commercial sector of the City.
- F. The Company's relocation to, and expanded operations on the Project will enhance the tax base of the City.
- G. This Amended Agreement is made in the best interest of the City.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate, the City and the Company agree that the Original Agreement is hereby amended and restated in its entirety, as so amended, as follows:

Section 1. Incorporation of Recitals. The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Amended Agreement.

Section 2. Definitions.

For purposes of this Amended Agreement, the capitalized terms shall have the following meanings:

“City’s Expense Reimbursement” means the first Ten Thousand Dollars (\$10,000.00) of the City’s Share of Sales Taxes as defined below.

“City’s Share of Sales Taxes”- means the amount of Sales Taxes remitted by the State of Illinois to the City from the State’s collection of Sales Taxes.

"Department" - means the Illinois Department of Revenue.

“Lot 1” means the approximate 12 acre lot at the eastern-most end of the Plat of Subdivision, as hereinafter identified, to be purchased and developed by the Company or its affiliate. Lot 1, when platted, will be synonymous with the Property.

“Maximum Sales Tax Payment” - means notwithstanding anything contained in this Amended Agreement to the contrary, the amount of Five Million One Hundred Fifty-Six Thousand Dollars (\$5,156,000.00), without interest.

“Sales Tax(es)” - means any and all of those taxes imposed by the State of Illinois pursuant to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act and the Retailer's Occupation Tax Act, each as supplemented and amended from time to time, or any substitute taxes therefor as provided by the State of Illinois in the future. The term “Sales Tax(es)” shall also include (i) any future tax that may be imposed by the State of Illinois on services (labor) rendered by the Company at the Property and (ii) the Home Rule Municipal Retailers' Occupation Tax and the Home Rule Municipal Service Occupation Tax imposed by the City pursuant to Chapter 3.36 of the City Code, for the sale of any item of tangible personal property not titled or registered with an agency of the State of Illinois or any other municipal use, retail or service occupation tax imposed by the City, except as provided by Section 7(e) hereof.

“Sales Tax Commencement Date” - means the first day of January, 2023.

“Sales Tax Rebate(s)” - means the rebate to the Company (being the entity that generated such Sales Tax revenue for the City) of Sales Taxes pursuant to the terms of this Amended Agreement.

“Sales Tax Participation Period” - means the period of fifteen (15) Sales Tax Years beginning on the Sales Tax Commencement Date unless extended pursuant to the Sales Tax Participation Period Extension.

“Sales Tax Participation Period Extension” shall be defined as follows: In the event that the Illinois General Assembly terminates, suspends or reduces the percentage of Sales Tax distributed to the City or reduces the amount applicable to the sale of titled vehicles during the Sales Tax Participation Period (currently 1%), the Sales Tax Participation Period shall be extended an additional five (5) years. In the event that the termination, suspension or reduction of the percentage of Sales Tax is temporary and is in effect for less than five (5) years, the Sales Tax Participation Period shall be extended only for the corresponding number of years that the Sales Tax is terminated, suspended or reduced.

“Sales Tax Year(s)” - means the twelve (12) consecutive month period starting on the Sales Tax Commencement Date and ending twelve (12) months later, and each consecutive succeeding twelve (12) month period thereafter.

“Seller” means St. Charles Resort, LLC, a Delaware limited liability company.

“Subdivision” shall have the meaning as set forth in Section 3(A) below.

Section 3. Acknowledgement of Satisfaction of Conditions Precedent. The City acknowledges that prior to the execution of this Amended Agreement, the Company did satisfy each of the following preconditions as were contained in Section 3 of the Original Agreement:

(A) Prior to or at the closing pursuant to which the Landlord acquired title to the Property, a plat of the subdivision for the Pheasant Run Resort Subdivision Plat of Subdivision, attached hereto as **Exhibit “C”** and made a part hereof (“**Plat of Subdivision**”), was prepared and signed by the Seller and approved by the City, in accordance with its standard subdivision requirements, and recorded with the DuPage County Recorder of Deeds. The plat of said Pheasant Run Resort Subdivision (the “**Subdivision**”) was recorded in the office of the Recorder of Deeds of DuPage County, Illinois on November 5, 2020 as document number R2020-131136. It is hereby acknowledged that the Company is not charged with any performance obligations as to the satisfaction of the contingency in this Section 3A.

(B) The Landlord did close on the purchase of the Property (the “**Closing**”) within thirty (30) days following the recording of the Plat of Subdivision.

(C) Within one hundred twenty (120) days after the Closing of the Property (the “**120 Day Post-Closing Period**”), and prior to commencement of construction of the Project, the Landlord (i) did submit building plans, utility engineering plans and construction documents consistent with the required building permit submittals to the City for review and approval in such form and detail as the City customarily requires; (ii) took all steps required to secure, and did secure,

building permits from the City, IEPA permits for on-site sanitary sewer construction and for sanitary sewer connection to the Off-Site Public Sanitary System (here after defined), and any other required regulatory permits for the Project; and (iii) diligently commenced and completed the redevelopment of that portion of the Property to construct the Project pursuant to and in substantial accordance with the Project Schedule, attached hereto as **Exhibit “D”** and made a part hereof.

Section 4. Off-Site Sanitary Sewer Project. Prior to the date of this Amended Agreement, the construction of a certain public sanitary sewer system leading from a point near the southwest corner of the Property and running in a westerly direction to the City’s existing sanitary sewer main in the Kautz Road right of way (the “**Off-Site Public Sanitary System**”) was commenced by the Seller with respect to the Subdivision, and a party not affiliated with the Company) pursuant to a certain Land Improvement Agreement dated October 5, 2020 between the Seller and the City. The Company has been permitted by the IEPA and the City to connect the Project to said Off-Site Public Sanitary System. It is hereby acknowledged by the Company that the City has not yet accepted the Off-Site Public Sanitary System as a code-compliant public improvement, and that such completion is the responsibility of the Seller under the terms of the Land Improvement Agreement.

Section 5. Sales Tax Rebates. Provided the Company shall comply with and continue to be in compliance with the provisions of this Amended Agreement, and subject to the expiration of any cure period as provided in Section 14 hereof, the City shall make Sales Tax Rebates to the Company (being the generator of City’s Share of Sales Taxes) as follows:

Subject to and conditioned upon receipt by the City of the City Expense Reimbursement, the Sales Tax Rebates from the Project shall be paid to the Company as follows:

- i. Seventy-five percent (75%) of the City’s Share of Sales Tax from the Project shall be distributed to the Company (“**Company’s Share**”); and

- ii. The remainder of the City's Share of Sales Tax (25%) shall be retained by the City and paid into the City's General Fund ("**City's Retained Share**").

Notwithstanding the foregoing, the total amount of Company's Share of Sales Tax Rebates to the Company from the Project shall not exceed the Maximum Sales Tax Payment.

For each Sales Tax Year during the Sales Tax Participation Period, the City shall make quarterly Sales Tax Rebates. The City shall not make any Sales Tax Rebate until the City shall actually receive payment of Sales Tax revenue from the Department. The City shall compute each of the City's Retained Share and Company's Share, respectively, of Sales Taxes originating from taxable sales activities of the Company on the Project for each quarterly period, on a calendar year basis (March 31, June 30, September 30 and December 31), and make the Sales Tax Rebate in accordance with the formula set forth above. The City shall make the Sales Tax Rebates within thirty (30) days of receipt of the City's Share of Sales Tax payment from the Department for the applicable quarterly period, and each Sales Tax Rebate shall be accompanied by an affidavit from the City's Director of Finance setting forth the determination of such Sales Tax Rebate.

If the payment due date does not fall on a business day, payment shall be made on the next following business day. If, for any reason, the Department fails to distribute all of the Sales Taxes due to the City that are attributable to the Project for an applicable period, then the City shall make the Sales Tax Rebate (calculated pursuant to the formula set forth above) based upon the amount actually received by the City from the Department attributable to the Project. Upon receipt of any additional City's Share of Sales Taxes attributable to the Project for such period, the City shall make an additional rebate within fifteen (15) days of receipt of such additional City's Share of Sales Taxes from the Department.

Section 6. Limitations on Rebates. The Sales Tax Rebates set forth herein shall be subject to the following additional terms and conditions:

- (a) Such Sales Tax Rebates shall be payable to the Company solely from the City's Share of Sales Taxes actually received (whether by check or electronic transfer) by the City from the Department and originating from the taxable sales activities from the Project, and the City shall not be obligated to pay any Sales Tax Rebates identified herein from any other fund or source.
- (b) The City shall not be required to affect any Sales Tax Rebates from any of the City's Share of Sales Taxes, or otherwise, generated after expiration of the Sales Tax Participation Period unless the Sales Tax Participation Period is extended pursuant to the Sales Tax Participation Period Extension. The foregoing, however, shall not relieve the City from its obligation to make Sales Tax Rebates from the City's Share of Sales Taxes received by the City after expiration of the Sales Tax Participation Period, subject to the limitations of this Amended Agreement, to the extent that such City's Share of sales taxes receipts were generated from Project sales during the Sales Tax Participation Period.
- (c) If at any time during the term of this Amended Agreement, the Company (i) relocates or otherwise transfers its operations occurring on the Property to a site located outside the corporate limits of the City (a "**Company Prohibited Relocation**"), or (ii) should the Honda Dealership be closed or vacated and not re-established within the corporate limits of the City within thirty (30) days of such closure / vacation (a "**Honda Dealership Closure**"), then in either case this Amended Agreement shall terminate and the Company shall not be entitled to any further Sales Tax Rebates with respect to retail sales made thereafter.

Section 7. Changes in Law. The parties acknowledge that the agreement to distribute Sales Taxes as herein provided is predicated on existing law in the State of Illinois providing for the payment to Illinois municipalities of one percent (1%) of the taxable sales within each such municipality, including titled vehicles. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of sales tax revenues to Illinois municipalities. The parties desire to make express provision for the effect of such change upon the operation of this Amended Agreement. Accordingly, the parties agree as follows:

- (a) 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 Rebates herein contemplated.

- (b) Should the Illinois General Assembly hereafter eliminate the distribution of sales tax revenues to Illinois municipalities, or otherwise alter the distribution formula in a manner which prevents the City from being able to ascertain with specificity the amount of Sales Taxes being received by the City as a direct result of the taxable sales activities generated by the Project, the City shall have no obligation to make Sales Tax Rebates to the Company based upon the taxable sales activities generated by the Project, except to the extent provided otherwise in subparagraph (e) below. However, in the event the City can ascertain with specificity the amount of Sales Taxes being received by the City from the Company's records (certified copies of which the Company shall provide to the City), the City shall make the Sales Tax Rebates.
- (c) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period increase the percentage of sales tax revenues distributed to Illinois municipalities, the Sales Tax Rebates provided for herein shall continue but shall apply solely to the amount of Sales Taxes equal to one percent (1%) of taxable sales activities, with such distribution continuing to be made in accordance with the rebate formula contained in Section 5.
- (d) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period reduce the percentage of sales tax revenues distributed to Illinois municipalities, Sales Tax Rebates provided for herein shall continue to be made in accordance with the rebate formula contained in Section 5.
- (e) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period eliminate, reduce or alter the formula for the distribution of sales tax revenues, as contemplated in subparagraphs (b) or (d) hereof, and should the City, in response to and during any such period of elimination, reduction or alteration occurring within the Sales Tax Participation Period, if authorized by law, impose or increase its municipal sales tax on retail sales activities occurring within the City's boundaries, and provided the amount of sales tax revenues generated by the Project can thereafter be determined with specificity, then the sales tax revenues generated thereby, up to an amount equal to one (1%) of the eligible retail sales activities by the Project, shall be rebated to the Company in accordance with the rebate formula contained in Section 5 (subject to the various limitations contained herein).

Section 8. Obtaining Sales Tax Information. The City shall provide such authorization and/or take such additional actions as may reasonably be required to obtain necessary information from the Department to enable the City to determine the amount of Sales Taxes during any portion of the Sales Tax Participation Period. The Company shall take all reasonable actions necessary to provide the Department with any and all documentation, to the extent reasonably available, that may be required by the Department and shall provide the City with a power of attorney letter addressed to, and in a form satisfactory to, the Department authorizing the Department to release all general

gross revenue and sales tax information relating to the Project to the City, which letter shall authorize disclosing such information to the City during the Sales Tax Participation Period. Such letter shall be in a form attached hereto as **Exhibit "E"** and made a part hereof, or such other or additional forms as required from time to time by the Department in order to release such information to the City.

In the event the Department refuses or otherwise fails to make the necessary sales tax information available to the City, the Company shall furnish to the City copies of the ST-1 and ST-2 or equivalent monthly statements filed with the Department relating to the Project, certified by the Company, showing the amount of Sales Taxes paid during such month by the Company, together with evidence of the payment of such revenues, and the City agrees to rely upon such certified monthly statements and evidence of payment in calculating the amount of Sales Tax Rebates available for disbursement to the Company hereunder.

If the Department stops using either the ST-1 or ST-2 or equivalent monthly statement forms for the reporting of gross sales receipts and the determination of gross sales tax obligations, the Company shall furnish to the City, and the City, in fulfilling its obligations under this Amended Agreement, shall rely upon, such equivalent or replacement forms as the Department may then employ for determining and receiving such information, provided the City receives certified copies of such equivalent or replacement forms and evidence of payment of the sums referred to in such forms.

The Company acknowledges that the City shall have no obligation to make Sales Tax Rebates to the Company that reflect the taxable sales activities on the Project unless and until the City receives from the Company the documentation and evidence of payment referred to in this

Section; provided, however, that the City shall request all such documentation from the Company in writing.

Section 9. Confidentiality of Information. The Company hereby claims that the information received, or to be received, by the City pursuant to this Amended Agreement is proprietary and confidential and that the disclosure of such information would cause competitive harm to the Company; therefore, to the fullest extent permitted by law, the City shall treat information received by it as confidential financial information under the Illinois Freedom of Information Act. To the extent the City is required to disclose such information, it shall limit such disclosure, to the extent possible, to the release of general "gross" revenue and sales tax information so that proprietary information of individual businesses and purchasers is protected and kept confidential, including, but not limited to, the specifics of the Company's tax returns.

Section 10. Amended Returns and Audits. In the event the Company amends any sales and use tax return upon which Sales Tax Rebates were made to the Company pursuant to this Amended Agreement, the Company will notify the City of such amendment within ten (10) days of filing such amended return and the City shall use its reasonable best efforts to obtain such information from the Department. If, as a result of an amended return, the City owes an additional rebate to the Company, such rebate shall be made promptly upon receipt by the City of such additional Sales Taxes. If, as a result of an amended return, the City is entitled to receive a portion of a Sales Tax Rebate back, the Company shall repay such amount to the City within thirty (30) days of written notice from the City.

In the event that the Company is audited by the Department, the Company shall notify the City of such audit within ten (10) days of completion of said audit. If such audit results in adjustment to sales and use tax returns previously submitted upon which Sales Tax Rebates were

made, upon final disposition of any changes made as a result of such audit, any amount due and owing to a party shall be made in the manner described in the preceding paragraph.

Section 11. Compliance with Laws. Subsequent to the Commencement Date, and for the duration of the Sales Tax Participation Period, the Company shall:

a. To the best of its knowledge, continue to be in compliance with the terms and conditions of this Amended Agreement and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Property and this Amended Agreement as the same may, from time to time, be in force and effect. The Company specifically represents and warrants, but not by way of limitation of the foregoing, that it shall not knowingly take any actions that would cause this Amended Agreement to be in violation of the provisions of 65 ILCS 5/8-11-21, as amended from time to time. The Company hereby agrees to indemnify and hold the City harmless from all liability, loss, cost, fine, penalty, interest or other expense, including court costs and attorneys' fees relating to any such judgments, awards, litigation, suits, demands or proceedings that may result from any violation of this provision.

b. The City has advised the Company that a person constructing or demolishing public works where such work is paid for wholly or in part out of public funds, must comply with the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.*, as amended (the “**Act**”). The Company has determined and advised the City (the “**Company Determination**”) that (i) the Project (including the Project components of both demolition and construction) is being funded entirely by the Landlord using Landlord’s private funds, including funds borrowed by the Landlord from a commercial bank, and not with any of the Sales Tax Rebates to be paid by the City to the Company hereunder, and (ii) to the best of the Company’s knowledge and belief after consulting with counsel, regardless of the identity of the payee of such Sales Tax Rebates, under current Illinois statutory and case law,

and on the currently published advice of the Illinois Department of Labor, the Sales Tax Rebates to be paid by the City hereunder are not “public funds” and therefore do not cause the Act to become applicable to the Project. The Company and Landlord, jointly and severally, agree to indemnify, hold harmless, and defend the City, its governing body members, officers, and agents, including independent contractors, consultants and legal counsel, servants and employees thereof (collectively, the “**Indemnified Parties**”) from and against all loss, cost, damage, judgments, awards, fines, penalties, interest, liabilities, liens, judgments, and reasonable attorney’s fees sustained by any of the Indemnified Parties (collectively, “**Damages**”) (i) after the exercise of the Company’s Right to Defend, or (ii) as a result of the Company’s failure to do so, and in any event which results from or arises in connection with the assertion (the “**Legal Challenge**”) made against any of the Indemnified Parties of any regulatory action, complaint, claim, or suit (A) challenging the Company Determination and (B) in any way related to or result from noncompliance with the Act under the Agreement and/or Amended Agreement with respect to the Project, including, but not limited to any complaint by the Illinois Department of Labor under Section 4(a-3) of the Act. The Company and/or Landlord, jointly and severally, shall reimburse the City within fifteen (15) days after receipt of written notice by the City to the Company of Damages incurred by the City.

The Company shall have the right (“**Right to Defend**”), at its own expense, to defend any such Legal Challenge with competent counsel of its choosing, and, in that event, the Company shall assume, fully and vigorously, the entire defense of such Legal Challenge and shall be responsible for all expenses of whatever nature relating thereto. The Company’s Right to Defend is subject to the following:

(i) Without the prior approval of the City, the Company shall not make any settlement or compromise of the Legal Challenge, nor fail to pursue any available avenue of appeal of any adverse judgment, which would impose any liability on the City.

(ii) If, in connection with the defense of any Legal Challenge, the City, in its sole and absolute discretion, determines there is, or may probably be, a conflict of interest between the Company and the City on a material issue related to a potentially substantial adverse economic effect on the City, then the City shall have the option of being represented by its own legal counsel, at the Company's expense.

If any such Legal Challenge results in any Damages not otherwise promptly reimbursed to the City by the Company pursuant to this Amended Agreement, the Company and/or Landlord, jointly and severally, agree to promptly reimburse the City and/or pay and discharge same within fifteen (15) days of notice by the City to the Company, and failing to do so, the City shall have the right (in addition to all other rights hereunder or under Illinois law, but specifically excluding the right to terminate this Agreement and the right to impose Rebate Suspension as provided in Section 11(c) below)to set off its Damages against the future Sales Tax Rebates that thereafter become payable to the Company hereunder (such remedy being herein referred to as **"City Set-Off"**). The indemnification obligations of this Section on the part of the Company and/or Landlord shall survive the termination or expiration of this Amended Agreement.

c. Should the Company, for any reason, fail to remain in continual compliance with the standards set forth herein, the City's duty to make the Sales Tax Rebates during such period of non-compliance shall be suspended (with such remedy being herein referred to as a **"Rebate Suspension"**). If, at any time during the balance of the term of the Sales Tax Participation Period, the Company shall re-establish compliance with all of the standards set forth herein and the City

shall acknowledge that such compliance exists, the City's duty to make Sales Tax Rebates as herein provided for shall resume; provided, however, that a Sales Tax Rebate for a month during which the Company was out of compliance shall not be made except as provided in connection with a City Set-Off as provided in Section 11(b) above). Months during which the Company was out of compliance with the standards set forth herein and for which the Company was properly noticed shall be counted in the maximum 15-year term of the Sales Tax Participation Period. Notwithstanding the foregoing, however, for purposes of this Amended Agreement, the Company shall not be deemed to be out of compliance with the standards set forth herein if, following the Company's receipt of written notice from the City of non-compliance, the Company cures such non-compliance to the reasonable satisfaction of the City within the provisions and time constraints set forth in Section 14 herein.

Section 12. Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the City created by or arising out of this Amended Agreement shall not be a general debt of the City on or a charge against its general credit or taxing powers, but shall be payable solely out of the City's Share of Sales Taxes as set forth in this Amended Agreement. No recourse shall be had for any payment pursuant to this Amended Agreement against any officer, employee, attorney, elected or appointed official, past, present or future of the City.

Section 13. Appropriation. The City shall provide for payments required under this Amended Agreement in its annual appropriation ordinance for the fiscal year in which such payment may be due.

Section 14. Default. In the event of any default under or violation of this Amended Agreement, the party not in default or violation shall serve written notice upon the party or parties in

default or violation, which notice shall be in writing and shall specify the particular violation or default. All parties hereto reserve the right to cure any violation of this Amended Agreement or default by any of them hereunder within thirty (30) days after receipt of written notice of such default; provided, however, that said thirty (30) day period shall be extended (i) if the alleged violation or default is not reasonably susceptible to being cured within said thirty (30) day period and (ii) if the party in default has promptly initiated a cure of the violation or default and (iii) if the party in default diligently and continuously pursues a cure of the violation or default until its completion.

Section 15. Law Governing/Venue. This Amended Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Any dispute arising under or in connection with this Amended Agreement or related to any matter which is the subject of this Amended Agreement shall be subject to the exclusive jurisdiction of the Illinois state courts and venue shall be exclusively in the Sixteenth Judicial Circuit, Kane County, Illinois.

Section 16. Time. Time is of the essence under this Amended Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

Section 17. No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this Amended Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

Section 18. Notices. All notices and requests required pursuant to this Amended Agreement shall be sent by personal delivery, overnight courier or certified mail, return receipt requested, as follows:

To the Company: McGrath Honda of St. Charles
Attn: Gary McGrath
2020 N Randall Road
Elgin, Illinois 60123
Attn: Gary McGrath

with copies to: Bazos, Freeman, Schuster & Pope, LLC
1250 Larkin Avenue, Suite 100,
Elgin, Illinois 60123
Attn: Peter C. Bazos
Phone: 847/742-8800 ext. 2030
Email: pbazos@bazosfreeman.com

To the City: City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
Attn: City Administrator
Phone: 630/377-4422
Email: CAO@stcharlesil.gov

with copies to: Storino, Ramello & Durkin
9501 W Devon Avenue, Suite 800
Rosemont, Illinois 60018
Attn: Nicholas S. Peppers
Phone: 847/318-9500
Email: npeppers@srd-law.com

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, overnight courier or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notices shall be deemed delivered to the address set forth above (i) when delivered in person on a business day, (ii) on the same business day received if delivered by overnight courier or (iii) on the third (3rd) business day after being deposited in any main or branch United States Post Office when sent by registered mail, return receipt requested.

Section 19. Assignments. This Amended Agreement may not be assigned without the City's consent, such consent not to be unreasonably withheld, and in any event, such consent shall be granted in the event such assignment does not result in a violation of 65 ILCS 5/8-11-21 or other applicable law, and said assignment is to a vehicle dealer (i) maintaining the then existing Honda Dealership on the Property in substantially the same manner, or (ii) having as a principal activity on the Property the sale of new and used vehicles and which Honda Dealership is not already located within the City. The Company hereby agrees to indemnify and hold the City harmless from all liability, loss, cost or expense, including court costs and attorneys' fees relating to any such judgments, awards, litigation, suits, demands or proceedings with regard to any assignment that violates this Section.

Upon any such assignment, any reference to the Company hereunder shall from and after the effective date of the assignment, be deemed such assignee and the Company shall thereupon have no further rights or obligations hereunder, except for the indemnification provisions set forth herein or as specifically provided for in the document governing such assignment.

Notwithstanding the foregoing, the Company may collaterally assign its rights hereunder to any Company lenders as security for loans to the Company and/or the title holder of the Property.

The parties acknowledge that this Amended Agreement is an obligation which is for the benefit of the Company, or permitted assignee, and is not a covenant running with the land.

Section 20. Force Majeure. Performance by either Party hereunder shall not be deemed to be in default as a result of unavoidable delays or defaults due to war, insurrection, strikes, lockouts, riots, extreme adverse weather conditions (such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, tornadoes or cyclones), earth-quakes, fires,

casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, or any other like event or condition beyond the reasonable control of the Party affected thereby which in fact interferes with the ability of such Party to discharge their respective obligations hereunder and which by the exercise of reasonable diligence the party affected was unable to prevent or mitigate (collectively, “**Force Majeure Events**”); provided, however, that unavoidable delays shall not include (i) economic hardship or impracticability of performance, (ii) commercial or economic frustration of purpose, or (iii) a failure of performance by a contractor (unless caused by Force Majeure Events), and the party claiming a Force Majeure Event shall notify the other party in writing within twenty-one (21) days of the claimed Force Majeure Event, specifying, in sufficient detail, the Force Majeure Event and the reasons preventing performance of its obligations under this Amended Agreement and then the performance time for such act or action shall be extended for a period equivalent to the period of such delay approved by the other party of the Force Majeure Event. Upon cessation of the Force Majeure Event, the party affected must as soon as reasonably practicable recommence its delayed performance under this Amended Agreement.

Section 21. Third Party Beneficiaries. The City and the Company agree that this Amended 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 Amended Agreement.

Section 22. Binding Effect. This Amended Agreement shall inure to the benefit of and shall be binding upon the City, the Company and the Company's permitted assigns.

Section 23. City Approval or Direction. Where City approval or direction is required by this Amended Agreement, such approval or direction means the approval or direction of the City

Council of the City unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met.

Section 24. Section Headings and Subheadings. All section headings or other headings in this Amended Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

Section 25. Authority to Execute. The Company hereby represents and warrants that it has the requisite authority to enter into this Amended Agreement and the individual signing this Amended Agreement on behalf of the Company is a duly authorized agent of the Company and is authorized to sign this Amended Agreement. The Mayor and City Clerk of the City hereby warrant that they have been lawfully authorized by the City Council of the City to execute this Amended Agreement, all requisite action by the City having been taken.

Section 26. Integration/Amendment. This Amended Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Company and the City relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth.

No subsequent alteration, amendment, change or addition to this Amended Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by both parties hereto. However, whenever under the provisions of this Amended Agreement any notice or consent of the City or the Company is required, or the City or the Company is required to agree or to take some action at the request of the other, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the

Mayor or his designee and for the Company by any officer or employee as the Company so authorizes.

Section 27. Severability. If any provision of this Amended Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

Section 28. Term. Unless sooner terminated by agreement of the parties or otherwise pursuant to the provisions of this Amended Agreement, including but not limited to Sections 6(b) and 6(c), but subject to Section 5, this Amended Agreement shall be effective upon the execution by both parties thereto and shall continue in effect until the Sales Tax Rebates to the Company have reached the Maximum Sales Tax Payment or the expiration of the Sales Tax Participation Period, whichever occurs first. At such time, this Amended Agreement shall become null and void and be of no further force or effect.

Section 29. Counterparts. This Amended Agreement may be executed in two (2) or more counterparts each of which taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date and year first written above so as to amend and restated in its entirety, as so amended, the Original Agreement.

CITY OF ST. CHARLES, an Illinois
Municipal Corporation

By: _____
Mayor Lora A. Vitek

ATTEST:

Nancy Garrison, City Clerk

McGrath Motors, Inc.
an Illinois corporation

By: _____
Gary McGrath
Its: President

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lora A. Vitek, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said City, for the uses and purposes therein set forth; and said City Clerk then and there acknowledged that she, as custodian of the corporate seal of the City of St. Charles, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____,
2023.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gary D. McGrath, President of McGrath Motors, Inc., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2023.

Notary Public

EXHIBIT "A"

**PROPERTY
LEGAL DESCRIPTION**

Lot 1 of the Pheasant Run Resort Subdivision, recorded on November 5, 2020 as Document No. R2020-131136.

EXHIBIT “B”

PROJECT DESCRIPTION

This Amended Agreement is to facilitate the development of the Property pursuant to the plans attached collectively as part of this Exhibit and in the following manner:

- Redevelopment of the approximate western-most six (6) acres of the Property that contains the 40,000 square foot Mega Center.
- Demo approximate Front 26' x 170' Lobby area and selected building utilities
- Remodel and refurbish existing steel building structure
- Add approximate 50' x 170' wide new Honda Image Showroom
- Refurbish parking lot and site lighting
- Redevelop and install new landscape and screening features, as required by City Code.

EXHIBIT "C"

PLAT OF SUBDIVISION

PHEASANT RUN RESORT SUBDIVISION

THAT PART OF THE SOUTH HALF OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS

11/09/2020 02:22 PM
FRED RICHOLDS RECORDER

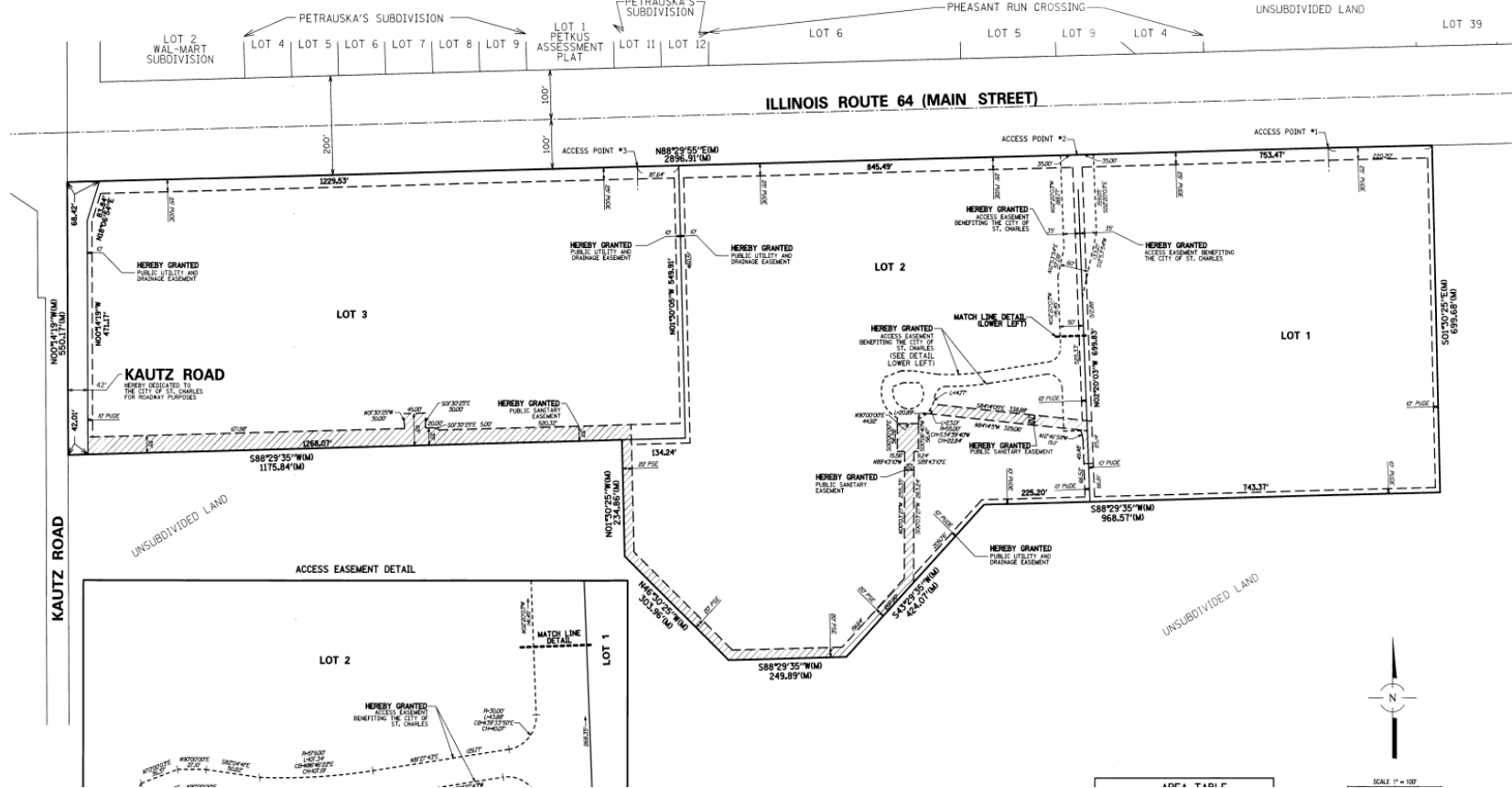


EXHIBIT "D"
PROJECT SCHEDULE

As of the date of this Amended Agreement, the Landlord has obtained the permits required for, and has completed, the construction of the Project as required by this Amended Agreement.

EXHIBIT "E"

AUTHORIZATION TO RELEASE SALES TAX INFORMATION

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("IDOR") to disclose to the designated city, town, village or county the amount of the local government's share of sales tax received on behalf of the taxpayer. Reporting for a period beginning with tax collected by the department during _____, _____ and
(Beginning Month/Year)

ending with tax collected by the department in _____, _____ .
(Ending Month/Year)

This information is to be released to the village, city, town or county of _____, Attn: Clerk, Treasurer, Finance Officer, Comptroller, etc.

BUSINESS INFORMATION:

(Illinois Business Tax Number)

(Taxpayer/Business Name)

(Address)

(City, Town, Village or County)

TAXPAYER: The undersigned is an owner/authorized officer of this business.

By: _____
(Signature)

(Print Name)

(Title)

(Telephone Number)

Note: All requests must have a beginning and ending date. Incomplete request will be returned to the local government.