

**City of St. Charles, Illinois
Resolution No. _____**

**A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to
Execute a Certain Agreement Between the City of St. Charles and Fox Valley
Volkswagen, LLC.**

**Presented & Passed by the
City Council on _____**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A", by and on behalf of the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 15th day of June, 2015.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, this 15th day of June, 2015.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois, this 15th day of June, 2015.

Raymond P. Rogina

Attest:

City Clerk/Recording Secretary

Voice Vote:

Ayes:

Nays:

Absent:

Abstain:

Exhibit A

Sales Tax Revenue Sharing Agreement Between the City of St. Charles and Fox Valley
Volkswagen, LLC.

SALES TAX REVENUE SHARING AGREEMENT

THIS SALES TAX REVENUE SHARING AGREEMENT (the “**Agreement**”) is entered into on this ____ day of _____, 2015, by and between the **City of St. Charles**, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (hereinafter referred to as the “**City**”) and **FOX VALLEY VOLKSWAGEN, LLC** an Illinois limited liability company (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**”.

WITNESSETH:

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, the Company owns an auto dealership which will be located at 4050 East Main Street in the City of St. Charles, such property is legally described on Exhibit “A” attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, the Company intends to construct a new dealership on the property and redevelop the property by, among other things, demolishing a building on the property and redeveloping the existing Expo Building into an approximately 39,000 square foot dealership and service facility in which to operate its business of automobile sales and servicing as described in more detail on Exhibit “B” attached hereto and incorporated herein (the “**Project**”); 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 buildings on the property have remained less than significantly occupied and underutilized for a period of greater than one year.
- B. The Project is expected to create or retain job opportunities within the City.
- C. The Project will serve to further the development of adjacent areas.
- D. Without this Agreement, the Project would not be possible.
- E. 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.
- F. The Project will strengthen the commercial sector of the City.
- G. The Project will enhance the tax base of the City.
- H. This 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 as follows:

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

Section 2. Conditions Precedent. All undertakings on the part of the City pursuant to this Agreement are subject to satisfaction of the following preconditions:

(A) The Company, or an entity controlled by the Company or its principal, shall have entered into a binding purchase agreement to purchase the Property.

(B) The Company and the City shall have entered into closing escrow and construction escrow agreements setting forth a timetable for distribution of the loan funds to be provided by the City as described herein.

If the above-described conditions are not met prior to December 31, 2015, this Agreement shall terminate and be of no further force or effect.

Section 3. Approval of Plans and Construction of Improvements. Upon acquisition of the 6.88 acre Property site, the Company shall redevelop the existing Expo Building and construct an approximately 39,000 square foot auto dealership and auto service facility, thereon, as described in more detail on Exhibit "B" attached hereto and incorporated herein. Prior to commencement of construction of the Project, and no later than December 31, 2015, the Company shall submit complete building plans, 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.

If the conditions set forth in this Section 3 are not met, the City shall have the option to terminate this Agreement and the Company agrees to repay to the City any and all amounts previously paid by the City to the Company pursuant to this Agreement upon notice of such termination.

Section 4. Definitions.

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

“City Loan” – The City’s obligation to pay the Company the sum of \$800,000, for the purpose of acquiring the Property and construction of the Project as set forth in Section 3.

“Closing Escrow” – Means a contractual agreement between the City and the Company kept in the custody of Chicago Title Insurance Company, taking effect to facilitate the purchase of the Property as described in Exhibit “A” by the Company.

“Construction Escrow” - Means a contractual agreement between the City and the Company kept in the custody of an agreed upon title company, taking effect to facilitate the construction of the project as described in Exhibit “B” by the Company.

"Escrow Funding Date(s)" - means the first day of the month immediately following the date upon which all of the conditions precedent set forth in Section 2 have been met, unless such date occurs on the first day of a month, in which case, that date is the Commencement Date.

"Department" - means the Illinois Department of Revenue.

“Maximum Payment” - means the amount of \$1,500,000.

“Property” – means the project and new dealership site as legally described in Exhibit “A”.

“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 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 8(e) hereof The amount of Sales Taxes distributed to the City by the Department is hereinafter referred to as the “City's Share”.

“Sales Tax Commencement Date” – means the first day of the next calendar month after the Company opens for business on the Property, but no later than January 1, 2017. If the Company opens on the first day of the month, said month shall be considered the first month of the Sales Tax Participation Period.

“Sales Tax Distribution(s)” - means the distribution of Sales Taxes pursuant to the terms of this 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 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 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.

Section 5. City Loan. Provided the Company shall comply with and continue to be in compliance with the provisions of this Agreement, subject to the expiration of any cure period as provided in Section 15 hereof, the City shall loan to the Company the sum of Eight Hundred Thousand Dollars (\$800,000.00) on the Escrow Funding Date(s) subject to the following conditions:

- (a) The Company shall execute a Promissory Note , included herein as Exhibit “C”, payable to the City for the repayment of the loan. The Note shall bear interest at a rate of six percent (6%) per annum and shall be retired by payments of the sales tax distributions as hereinafter set forth;
- (b) The City and the Company shall, at the expense of the Company, establish closing and construction escrows at Chicago Title Insurance Company, 1795 West State Street, Geneva, Illinois;
- (c) The City shall deposit the sum of Eight Hundred Thousand Dollars (\$800,000.00) into the closing and construction escrows in installments in such amounts as it determines at its discretion which shall be paid to the Company at the City’s direction pursuant to the City’s review of the status and the funding of the Project. The City’s payments into the Escrow shall coincide with the following events:
 - i. Closing Escrow – Funds in the amount of 10% of the land purchase cost, but not to exceed Three Hundred Fifty Thousand Dollars (\$350,000.00), shall be deposited upon the creation of a Closing Escrow for the purchase of the property described in Exhibit “A” by the Company. The Company shall submit a written request to the City, attention to the Director of Community & Economic Development or designee. This written request shall be accompanied by all required supporting documents including but not limited to: the amount of funds requested, the account information of the escrow, and a copy of the draft closing statement detailing the purchase price of the Property. The final HUD after closing shall be submitted to the City no later

than seven (7) days after closing to the Director of Community & Economic Development or designee.

- ii. Construction Escrow – Funds in the amount of 10% of the construction costs, but not to exceed an amount equal to Eight Hundred Thousand Dollars (\$800,000.00) less the sum total paid to the Closing Escrow as per the condition set forth in Section 5 (c) i, shall be placed in the Construction Escrow at the time of building permit issuance for the project described in Exhibit B. The Company shall submit a written request to the City, attention to the Director of Community & Economic Development or designee. This written request shall be accompanied by all required supporting documents including but not limited to: the amount of funds requested and Contractors §5 Sworn Statement for Contractor and Subcontractor to Owner or such other documents as the City shall reasonably require to verify the sums to be paid for the construction of the Project.

- (d) Interest on the loan shall accrue beginning on the date of the first payment from the Escrow to the Company.
- (e) Prior to the release of any funds from the Construction Escrow, the Company shall provide all documentation required by the City to verify the amount of Project Costs incurred by the Company to the Director of Community & Economic Development or designee. These documents shall include but not be limited to: Application and Certificate for Payment and Sworn Owner's Statement to Title Company and the City shall be made a signatory for approval of same, which approval shall be made and not unreasonably withheld, within a 48 hour period from receipt of same by the Director of Community & Economic Development or designee. In the event that the Application and Certificate for Payment and Sworn Owner's Statement to Title Company is not signed within 48 hours of receipt and there has been no written objection to same, the City shall be considered to have approved same and the Title Company may disburse payment in accordance with the terms of the Application and Certificate for Payment and Sworn Owner's Statement to Title Company.

Section 6. Sales Tax Distributions. Provided the Company shall comply with and continue to be in compliance with the provisions of this Agreement, subject to the expiration of any cure period as provided in Section 15 hereof, the City shall make Sales Tax Distributions as follows:

- (a) One Hundred percent (100%) of the Sales Taxes shall be retained by the City until the Company has repaid the City for the City Loan as set forth in Sections 4 and 5 above as follows:
 - i. Seventy-five percent (75%) of the Sales Tax received by the City shall be applied to the principal and interest on the City Loan and shall be applied in the following order and manner;

- a. Interest shall be calculated beginning on the date of each payment to the Company from the Escrow. Interest shall accrue at a rate of 6% per annum based on 30 days per month and 360 days per year.
- b. After receipt of the sales tax information from the Illinois Department of Revenue, City staff will apply the Sales Tax Distributions to the City Loan based on 75% of the monthly amount as reported by the Department of Revenue in the following order:
 - i. Any accrued but unpaid interest from prior periods.
 - ii. Interest expense for the applicable month of the reporting period shall be calculated as the principal balance from the end of the prior month times the interest rate of 6% per annum divided by 360 days in the sales tax year times 30 days for the current month. The resulting interest expense shall then be paid in to the City's General Fund if the Sales Tax Distribution for that month is sufficient to do so.
 - iii. Any remaining sales tax distribution for that month of the reporting period shall then be applied to reduce the principal balance remaining on the loan.
 - iv. Monthly interest payments shall be transferrable to the City's General Fund to be utilized for any lawful corporate purpose of the City.
 - v. The process and application of Sales Tax Distributions as reflected in steps a through c above and below are then repeated for all remaining months of the reporting period.
- c. If in any month, the Sales Tax Distribution amount is not sufficient to pay any accrued but unpaid interest and/or the monthly interest expense as calculated in step b above, the unpaid amount shall roll forward as accrued but unpaid interest until such time as the Sales Tax Distribution(s) are sufficient to pay the amount of accrued but unpaid interest in their entirety. In such event, no principal on the loan shall be amortized until all such accrued but unpaid interest and any current monthly interest expense are paid in full.

ii. The remaining twenty-five percent (25%) of the sales tax received by the City shall be paid to the City's General Fund.

(b) After repayment to the City of the City Loan and interest thereon, the sales tax distribution shall be paid as follows:

- i. Sixty percent (60%) of the City's share of the sales tax shall be distributed to the Company; and
- ii. The remainder of the sales tax (40%) shall be retained by the City and paid into the City's General Fund;

Notwithstanding the foregoing, the total amount of Sales Tax Distributions to the Company shall not exceed the Maximum Payment.

For each Sales Tax Year during the Sales Tax Participation Period, the City shall make three (3) Sales Tax Distributions. The City shall compute the City's Share of Sales Taxes originating from taxable sales activities on the Property for each four-month period and make the Sales Tax Distribution in accordance with the formula set forth above. The City shall make the Sales Tax Distribution within thirty days of receipt of the Sales Tax Information from the Illinois Department of Revenue for the applicable period, and each Sales Tax Distribution shall be accompanied by an affidavit from the City's Director of Finance setting forth the determination of such Sales Tax Distribution. The affidavit from the City shall include the gross amount of sales taxes received by month for the reporting period as well as a breakdown of the gross amount itemizing the 25% distribution allocated to the City's General Fund (as detailed in Section 6 (a) ii. above) and the principal and interest amounts allocated to the City Loan by month. The affidavit shall also include the beginning principal balance as well as an itemization detailing the amounts allocated monthly to the retirement of principal balance of the City Loan and the new ending principal balance of the City Loan.

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 Property for an applicable period, then the City shall make the Sales Tax Distribution (calculated pursuant to the formula set forth above) based upon the

amount actually received by the City from the Department attributable to the Property. Upon receipt of any additional Sales Taxes attributable to the Property for such period, the City shall make an additional distribution within fifteen (15) days of receipt of such additional Sales Taxes from the Department.

Section 7. Limitations on Distributions. The Sales Tax Distributions set forth herein shall be subject to the following additional terms and conditions:

- (a) Such Sales Tax Distributions shall be payable solely from Sales Taxes actually received (whether by check or electronic transfer) by the City from the Department and originating from the taxable sales activities on 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 City shall not be required to affect any Sales Tax Distributions from any Sales Taxes 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 effecting Sales Tax Distributions from Sales Taxes paid after expiration of the Sales Tax Participation Period, subject to the limitations of this Agreement, to the extent that such Sales Taxes were generated during the Sales Tax Participation Period.

If at any time during the term of this Agreement, the Company relocates or otherwise transfers its operations occurring on the Property to a site located outside the corporate limits of the City, this Agreement shall terminate and the Company shall not be entitled to any further Sales Tax Distributions not previously accrued. Additionally, the Company shall repay the City the outstanding principal remaining and any interest accrued on the City Loan at the time of relocation.

Section 8. 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. 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 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 Distributions 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 on the Property, the City shall have no obligation to make Sales Tax Distributions to the Company based upon the taxable sales activities generated on the Property, 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 Distributions.
- (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 Distributions 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 distribution 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 Distributions provided for herein shall continue to be made in accordance with the distribution 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 Property 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 of the Property, shall be distributed in accordance with the distribution formula contained in Section 5 (subject to the various limitations contained herein).

Section 9. 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 Property 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 "D" 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 Property, 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 Distributions 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 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 Distributions to the Company that reflect the taxable sales activities on the Property 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 10. Confidentiality of Information. The Company hereby claims that the information received, or to be received, by the City pursuant to this 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 11. Amended Returns and Audits. In the event the Company amends any sales and use tax return upon which Sales Tax Distributions were made to the Company pursuant to this 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 distribution to the Company, such distribution 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 Distribution 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 Distributions 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 12. Compliance with Laws. Subsequent to the Commencement Date, and for the duration of the Sales Tax Participation Period, the Company shall, to the best of its knowledge, continue to be in compliance with the terms and conditions of this Agreement and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Property and this 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 Agreement to be in violation of the provisions of 65 ILCS 5/8-11-21, as amended from time to time.

This Agreement calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 *et seq.* (the “Prevailing Wage Act”). The Prevailing Wage Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, reference made be made to the Illinois Department of Labor’s website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All contractors and subcontractors rendering services in connection with the Project must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. The Company shall notify its contractors and subcontractors of the Prevailing Wage Act requirements.

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 Section.

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 Distributions during such period of non-compliance shall be suspended. 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 Distributions as herein provided for shall resume; provided, however, that a Sales Tax Distribution for a Sales Tax Year during which the Company was out of compliance shall be made only if the Company re-establishes compliance within one hundred twenty (120) days of the end of such Sales Tax Year. Notwithstanding the foregoing, however, for purposes of this 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 15 herein.

Section 13. 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 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 Agreement. No recourse shall be had for any payment pursuant to this Agreement against any officer, employee, attorney, elected or appointed official, past, present or future of the City.

Section 14. Appropriation. The City shall provide for payments required under this Agreement in its annual appropriation ordinance for the fiscal year in which such payment may be due.

Section 15. Default. In the event of any default under or violation of this 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 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 16. Law Governing/Venue. This 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 Agreement or related to any matter which is the subject of this 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 17. Time. Time is of the essence under this 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 18. No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this 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 19. Notices. All notices and requests required pursuant to this Agreement shall be sent by personal delivery, overnight courier or certified mail, return receipt requested, as follows:

To the Company: Fox Valley Volkswagen, LLC
1421 E. Main Street
St. Charles, IL 06174
Attn: Emir Abinion

with copies to: Ariano Hardy Ritt Nyuli Richmond
Lytle & Goettel, P.C.
2000 McDonald Road, Suite 200
South Elgin, IL 60177
Attn: Scott Richmond
Phone: 847/695-2400
Email: sgr@attorneys-illinois.com

To the City: City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
Attn: City Administrator

with copies to: Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street, Suite G
St. Charles, IL 60174
Attn: John M. McGuirk
Phone: 630/513-8700
Email: jmc@hmcpc.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 20. Assignments. This 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 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 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 the Property.

The parties acknowledge that this 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 21. 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 (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).

Section 22. Third Party Beneficiaries. The City and the Company 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.

Section 23. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, the Company and the Company's permitted assigns.

Section 24. City Approval or Direction. Where City approval or direction is required by this 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 25. Section Headings and Subheadings. All section headings or other headings in this 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 26. Authority to Execute. The Company hereby represents and warrants that it has the requisite authority to enter into this Agreement and the individual signing this Agreement on behalf of the Company is a duly authorized agent of the Company and is authorized to sign this 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 Agreement, all requisite action by the City having been taken.

Section 27. Integration/Amendment. This 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 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 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 28. Severability. If any provision of this 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 29. Term. Unless sooner terminated by agreement of the parties or otherwise pursuant to the provisions of this Agreement, but subject to Section 6(b), this Agreement shall be effective upon the execution by both parties thereto and shall continue in effect until the Sales Tax Distributions to the Company have reached the Maximum Payment or the expiration of the Sales Tax Participation Period, whichever occurs first. At such time, this Agreement shall become null and void and be of no further force or effect.

In addition, should the Dealership be closed or vacated and not re-established within thirty (30) days, this Agreement shall terminate and be of no further force or effect, unless the Dealership is sold or otherwise transferred to another party, and the Agreement assigned pursuant to Sections 7(c) 19.

Section 30. Counterparts. This 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.

CITY OF ST. CHARLES, an Illinois
Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

FOX VALLEY VOLKSWAGEN, LLC,
an Illinois limited liability company

By: _____
Emir Abinion

Its: Manager

ATTEST:

Secretary

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 Raymond Rogina, 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 _____, 2015.

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 _____, _____ of Fox Valley Volkswagen, LLC and _____, _____ of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, 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 company, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the seal of said company, did affix the seal of said company to said instrument, as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2015.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

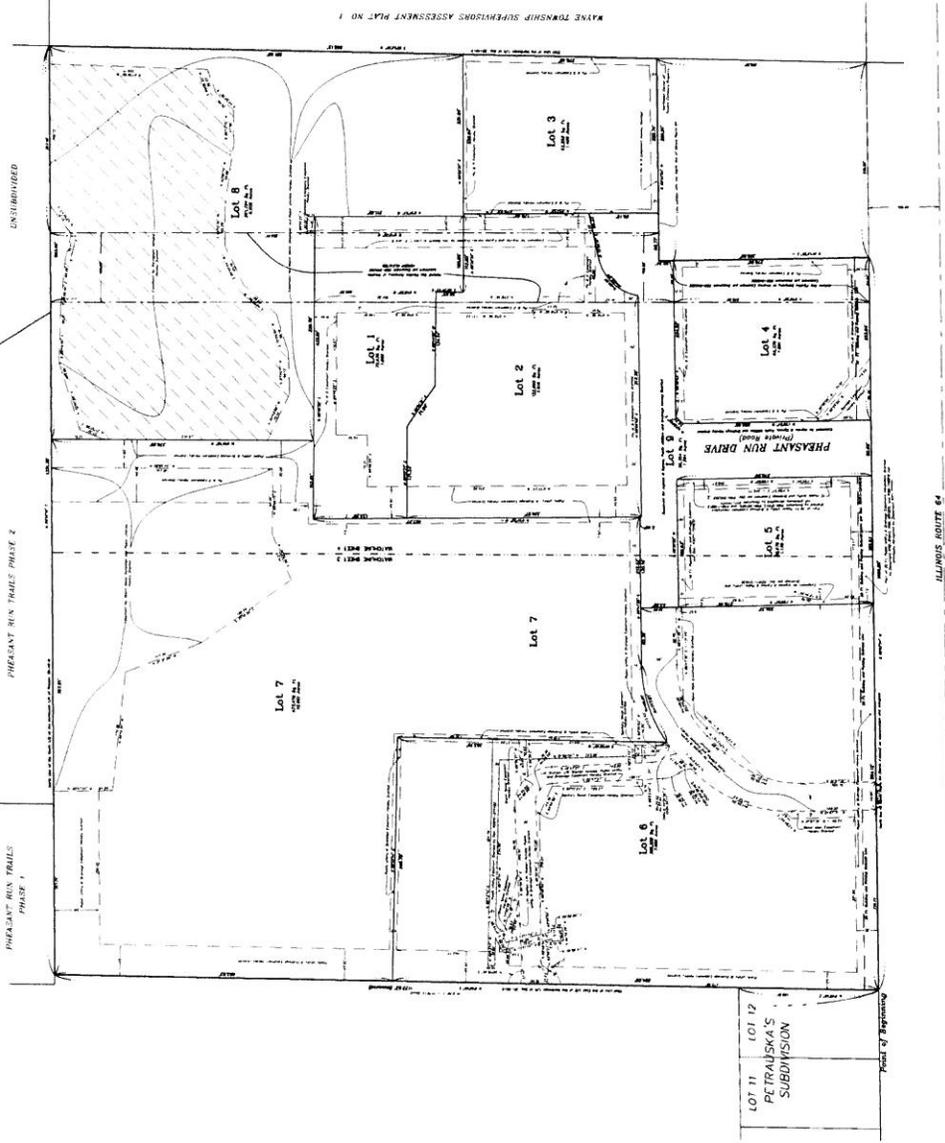
The Proposed LOT 6 IN PHEASANT RUN CROSSING BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH ½ OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAYNE TOWNSHIP, DUPAGE COUNTY, ILLINOIS.

AS DEPICTED IN THE ATTACHED PROPOSED FINAL PLAT OF SUBDIVISION

PHEASANT RUN CROSSING

BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH 1/2 OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAYNE TOWNSHIP, DU PAGE COUNTY, ILLINOIS.

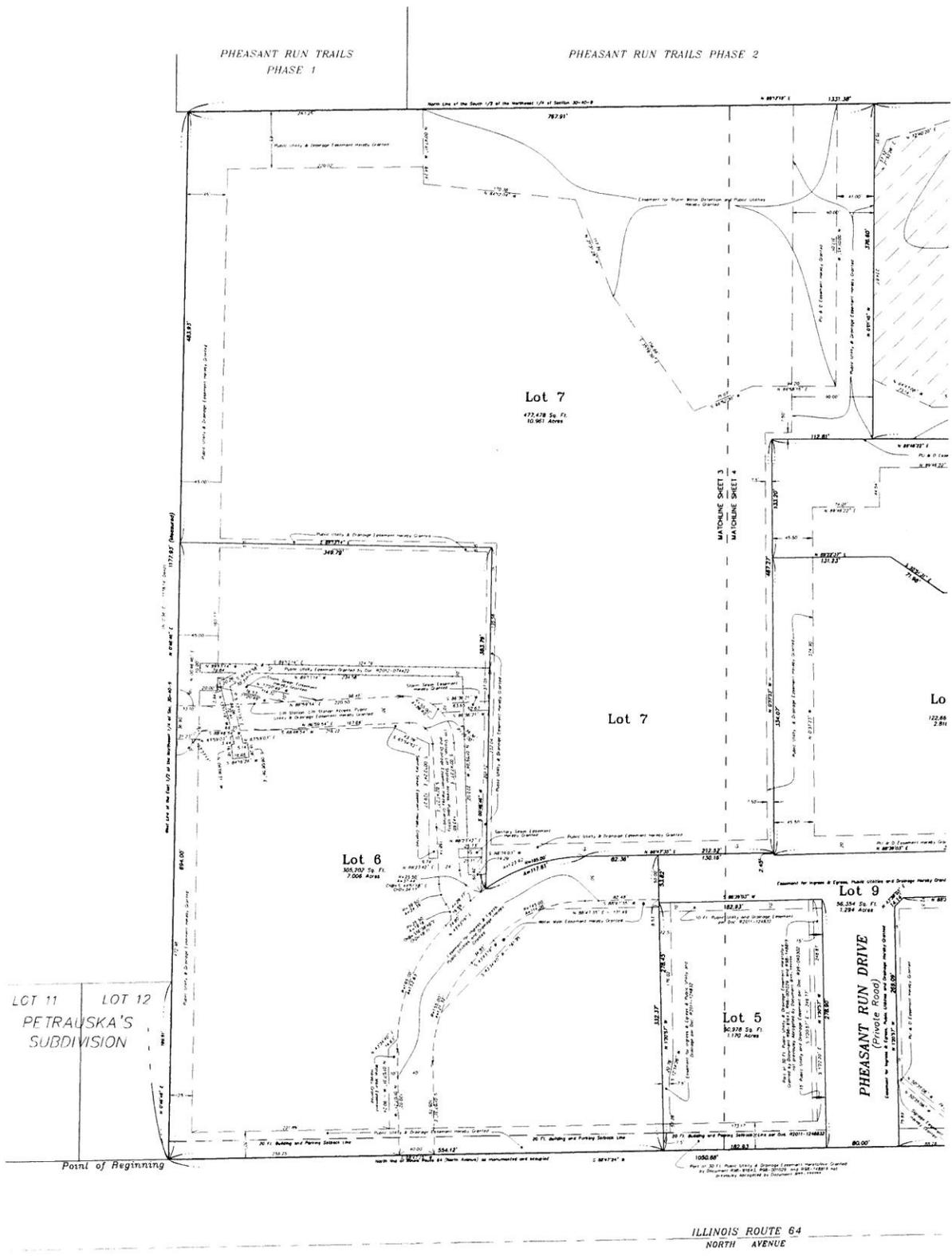
See Sheet 2 for Legal Description



Surveyed by:
SURVEY SYSTEMS OF AMERICA, INC.
 PROFESSIONAL LAND SURVEYORS
 Eng. Illinois 60921-6174
 Phone: (617) 428-5775
 www.ssa-1485c.ps

PHEASANT RUN CROSSING

BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH 1/2 OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAYNE TOWNSHIP, DU PAGE COUNTY, ILLINOIS.



LOT 11 LOT 12
PETRAUSKA'S
SUBDIVISION

Note!
Chicago Title and Trust is recording the plat hereon drawn.

FOR REVIEW ONLY 02/05/2015

PREPARED BY:
SURVEY SYSTEMS OF AMERICA, INC.
PROFESSIONAL LAND SURVEYORS
P.O. BOX 6174
Ligon, Illinois 60131-6174
PHONE: (847) 428-5775
ORDER NO. 153-1483C PS

SHEET 3 OF 6

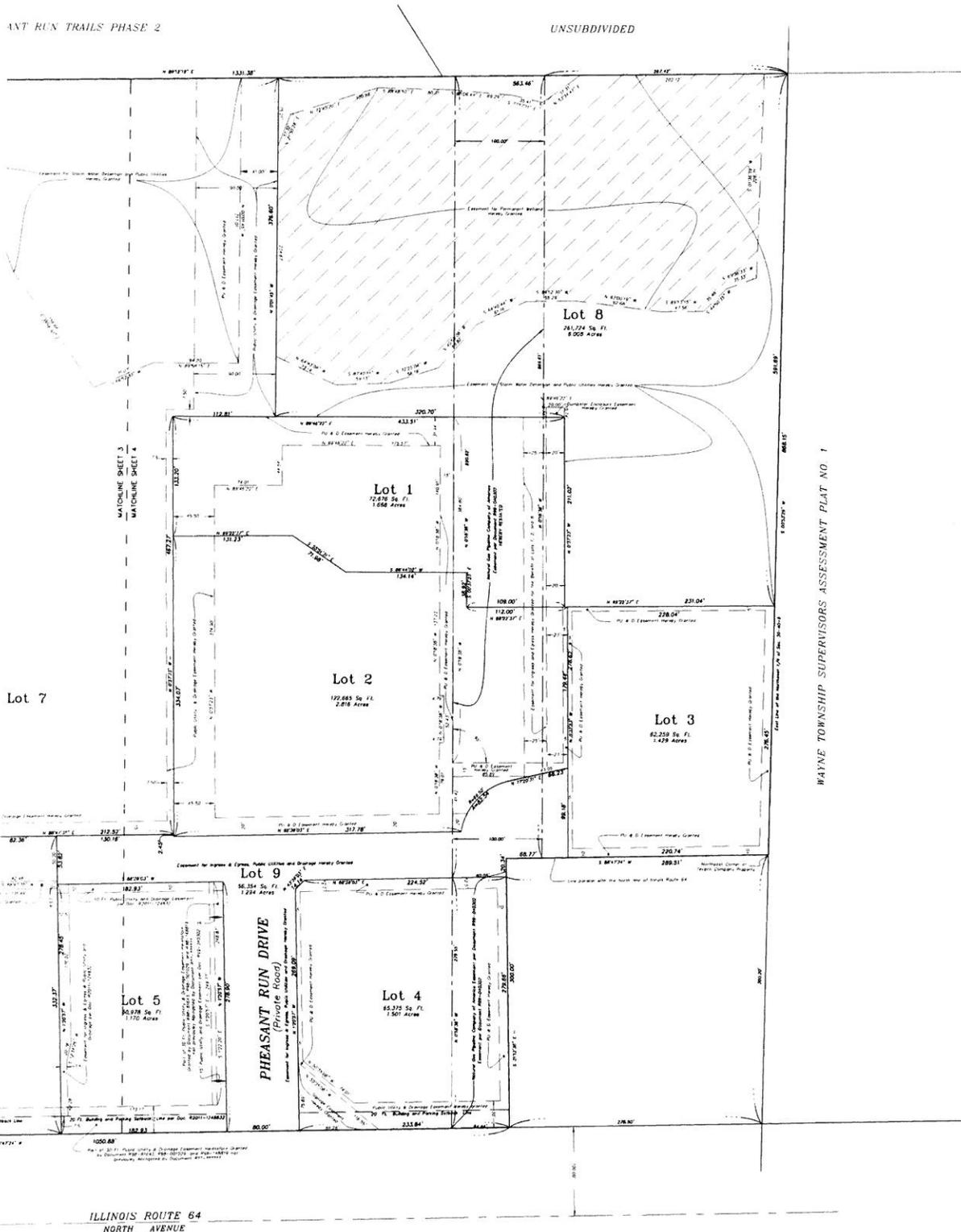
PHEASANT RUN CROSSING

BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH 1/2 OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAYNE TOWNSHIP, DU PAGE COUNTY, ILLINOIS.



PHEASANT RUN TRAILS PHASE 2

UNSUBDIVIDED



WAYNE TOWNSHIP SUPERVISORS ASSESSMENT PLAT NO. 1

ILLINOIS ROUTE 64
NORTH AVENUE

PREPARED BY:
SURVEY SYSTEMS OF AMERICA, INC.
PROFESSIONAL LAND SURVEYORS
P.O. BOX 2174
Elgin, Illinois 60121-8174
Phone (847) 426-5275
ORDER NO. 143-1483C PS

Note:
Chicago Title and Trust is recording the plat herein shown.

FOR REVIEW ONLY 02/05/2015

PHEASANT RUN CROSSING

BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH 1/2 OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST 1/4 OF SECTION 50, TOWNSHIP NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAINE TOWNSHIP, DU PAGE COUNTY, ILLINOIS.

See Sheet 2 for Parcel Legal Descriptions.

State of Illinois } ss
County of Kane } ss
Chicago Title Land Trust Company Trust Number 215, Successor Trustee as owner and
the holder
of Parcel 1, hereby certifies that it is the owner and the holder of
said parcel and that it has caused the said parcel to be divided into
lots as shown hereon for the uses and purposes set forth in attached and provided by statute
and that as such owner and the holder it hereby adopts the same under title and
file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
Chicago Title Land Trust Company Trust Number 215, Successor Trustee as owner and
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of Parcel 1, hereby certifies that it is the owner and the holder of
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Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
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and that as such owner and the holder it hereby adopts the same under title and
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Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
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Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

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County of Kane } ss
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Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
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and that as such owner and the holder it hereby adopts the same under title and
file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
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and that as such owner and the holder it hereby adopts the same under title and
file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
Chicago Title Land Trust Company Trust Number 215, Successor Trustee as owner and
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Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
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and that as such owner and the holder it hereby adopts the same under title and
file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

PHEASANT RUN CROSSING

BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH 1/2 OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST 1/4 OF SECTION 50, TOWNSHIP NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAINE TOWNSHIP, DU PAGE COUNTY, ILLINOIS.

See Sheet 2 for Parcel Legal Descriptions.

State of Illinois } ss
County of Kane } ss
Chicago Title Land Trust Company Trust Number 215, Successor Trustee as owner and
the holder
of Parcel 1, hereby certifies that it is the owner and the holder of
said parcel and that it has caused the said parcel to be divided into
lots as shown hereon for the uses and purposes set forth in attached and provided by statute
and that as such owner and the holder it hereby adopts the same under title and
file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
Chicago Title Land Trust Company Trust Number 215, Successor Trustee as owner and
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file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

State of Illinois } ss
County of Kane } ss
Chicago Title Land Trust Company Trust Number 215, Successor Trustee as owner and
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said parcel and that it has caused the said parcel to be divided into
lots as shown hereon for the uses and purposes set forth in attached and provided by statute
and that as such owner and the holder it hereby adopts the same under title and
file of "PHEASANT RUN CROSSING".
Dated this _____ day of _____, A.D. 2015

By: _____, President
_____ Secretary

Collector of School Assessments
SURVEY SYSTEMS OF AMERICA, INC.
PROFESSIONAL LAND SURVEYORS
DuPage, Illinois 60131-6174
Phone: (847) 428-5775
Fax: 153-14836 PS

PHEASANT RUN CROSSING

BEING A CONSOLIDATION, RESUBDIVISION AND SUBDIVISION OF PART OF THE SOUTH 1/2 OF LOT 1 (ACCORDING TO THE GOVERNMENT SURVEY) OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WAJNE TOWNSHIP, DU PAGE COUNTY, ILLINOIS.

ACCESS EASEMENT

A PERMANENT NON-EXCLUSIVE EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF ST. CHARLES, ILLINOIS, THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "ACCESS EASEMENT" ON THE PLAT SUBDIVISION HEREON DRAWN FOR THE PURPOSE OF ACCESS TO CITY OWNED UTILITIES AND ASSOCIATED WITH SAID UTILITIES. SAID EASEMENT SHALL BE IN FULL FORCE AND EFFECT FROM THE DATE OF RECORDATION OF SAID PLAT TO THE DATE OF THE OPERATION OF SAID EASEMENT BUT SHALL NOT BE USED FOR SHORES, LANDSCAPING AND OTHER PURPOSES THAT DO NOT RELATE TO UTILITIES. THE ABOVE LAND USES AND RIGHTS.

PUBLIC UTILITY AND DRAINAGE EASEMENT PROVISIONS

A PERMANENT NON-EXCLUSIVE EASEMENT IS HEREBY GRANTED TO THE CITY OF ST. CHARLES, ILLINOIS, AND TO ALL PUBLIC UTILITY COMPANIES OF ANY KIND OPERATING UNDER CHARTER AND LICENSE FROM THE STATE OF ILLINOIS, THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "ACCESS EASEMENT" ON THE PLAT SUBDIVISION HEREON DRAWN FOR THE PURPOSE OF ACCESS TO CITY OWNED UTILITIES AND ASSOCIATED WITH SAID UTILITIES. SAID EASEMENT SHALL BE IN FULL FORCE AND EFFECT FROM THE DATE OF RECORDATION OF SAID PLAT TO THE DATE OF THE OPERATION OF SAID EASEMENT BUT SHALL NOT BE USED FOR SHORES, LANDSCAPING AND OTHER PURPOSES THAT DO NOT RELATE TO UTILITIES. THE ABOVE LAND USES AND RIGHTS.

STORM WATER DETENTION AND RETENTION EASEMENT PROVISIONS

A PERMANENT NON-EXCLUSIVE EASEMENT IS HEREBY GRANTED TO THE CITY OF ST. CHARLES, ILLINOIS, THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "ACCESS EASEMENT" ON THE PLAT SUBDIVISION HEREON DRAWN FOR THE PURPOSE OF ACCESS TO CITY OWNED UTILITIES AND ASSOCIATED WITH SAID UTILITIES. SAID EASEMENT SHALL BE IN FULL FORCE AND EFFECT FROM THE DATE OF RECORDATION OF SAID PLAT TO THE DATE OF THE OPERATION OF SAID EASEMENT BUT SHALL NOT BE USED FOR SHORES, LANDSCAPING AND OTHER PURPOSES THAT DO NOT RELATE TO UTILITIES. THE ABOVE LAND USES AND RIGHTS.

Prepared by: SURVEY SYSTEMS OF AMERICA, INC.

PROFESSIONAL LAND SURVEYORS
 1100 N. WASHINGTON ST.
 CHICAGO, ILLINOIS 60611-6174
 Phone: (847) 428-5775

Sheet No. 153-1483C PS

State of Illinois }
 County of DuPage }
 I, _____, on hereby certify that the required
 measurements have been installed, or the required guarantee bond has been posted for the
 completion of all required and improvements.
 Dated this _____ day of _____, A.D. 2015

Director of Public Works - City of St. Charles

State of Illinois }
 County of DuPage }
 Approved this _____ day of _____, A.D. 2015.
 CITY COUNCIL OF CITY OF ST. CHARLES, ILLINOIS

Mayor _____
 City Clerk _____

State of Illinois }
 County of DuPage }
 I, _____, County Clerk of _____ County, Illinois
 do hereby certify that there are no delinquent general taxes, no unpaid finalized taxes
 and no reasonable tax fees against any of the land included in the annexed plat.
 I further certify that I have received an statutory fee in connection with
 the annexed plat.
 Given under my hand and the Seal of the County Clerk,
 Dated this _____ day of _____, A.D. 2015.

COUNTY CLERK

State of Illinois }
 County of DuPage }
 I, _____, do hereby certify that there are no delinquent or unpaid current or finalized special
 assessments or any delinquent or unpaid current or finalized special
 the tract of land included in the plat.
 Dated this _____ day of _____, A.D. 2015.

Collector of Special Assessments

SCHOOL DISTRICT CERTIFICATE

This is to certify that to the best of our knowledge, Ombra Properties, LLC, as the developer of
 the property herein described in the Surveyor's Certificate, which will be annexed as "TRUCKS & RISK
 SOLUTIONS", is located within the boundaries of Unit School District Number 304, in DuPage County,
 Illinois.

Dated this _____ day of _____, A.D. 2015

By _____, President
 _____, Secretary

State of Illinois }
 County of DuPage }
 Approved this _____ day of _____, A.D. 2015.

CITY OF ST. CHARLES PLANNING COMMISSION

Chairman

EXHIBIT “B”

PROJECT DESCRIPTION

This agreement is to facilitate the development of the Property in the following manner:

- Redevelopment of the existing 2.97 Acre property that contains the 37,400 square foot DuPage Expo & Convention Center.
- Redevelop the entire 6.88 acre property as described in Exhibit “A”.
- Demolition of the existing small office structure on the eastern portion of the Property.
- Construction of a new approximately 39,000 square foot dealership and service facility including:
 - New Vehicle Display Areas
 - Offices
 - Service and supporting facilities
- Construction/redevelopment of approximately 532 parking spaces and supporting facilities.
- Redevelopment and installation of new landscape and screening features.

EXHIBIT "C"

PROMISSORY NOTE

PROMISSORY NOTE
\$800,000.00 INTEREST BEARING NOTE

Date of Note: _____

Stated principal Balance: \$800,000.00

FOR VALUE RECEIVED, FOX VALLEY VOLKSWAGEN, LLC, an Illinois Limited Liability Company, (the “**Company**”) **CITY OF ST. CHARLES, ILLINOIS** (the “**City**”), promises to pay to the order of **THE CITY OF ST. CHARLES, ILLINOIS** (the “**City**”), an Illinois municipal corporation, the total principal sum of **EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS** (\$800,000.00) pursuant to the Sales Tax Revenue Sharing Agreement (as herein defined), together with simple interest on the principal balance outstanding, which interest shall accrue beginning on the Escrow Funding Date (as defined in the Sale Tax Revenue Sharing Agreement), at the rate of which is set forth below.

This Promissory Note (“**Note**”) is made pursuant to that certain Sales Tax Revenue Sharing Agreement dated as of _____, 2015, by and between the Company and the City (the “**Sales Tax Agreement**”). All terms not defined herein shall have the same meanings given them in the Sales Tax Agreement. In the event of any conflict between the terms of this Note and the terms of the Sales Tax Agreement, the Sales Tax Agreement shall control. The terms and conditions of the Sales Tax Agreement are hereby incorporated into this Note by this reference thereto as if fully set forth herein. Amounts payable pursuant to this Note shall be paid in accordance with the provisions hereof.

1. **Authority.** This Note is issued by the City pursuant to: (i) the exercise of the City’s powers and authorizes as a home rule unit of local government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois (the “**State Constitution**”); (ii) the authority to contract or otherwise associate with individuals in any manner not prohibited by Law under Section 10 of the State Constitution; (iii) Ordinance No. _____, adopted _____, 2015, approving and authorizing the City to enter into the Sales Tax Agreement with the Company; and (iv) the Sales Tax Agreement.

2. **Payments.** Payments on account of the indebtedness represented by this Note shall be made to the City by the Company through sales tax payments received by the City from the State of Illinois for sales taxes generated by the Company as more fully set forth in the Sales Tax Agreement, for each year during which any amounts due on this Note remain outstanding. Notwithstanding the foregoing, pursuant to the Sales Tax Agreement, the City shall service this Note exclusively through the sales tax revenue sharing agreement set forth in the Sales Tax Agreement and the Company shall have no obligation to make payments directly to the City.

3. **Stated and outstanding Principal Balances.** The stated principal balance set forth above (the “**Stated Principal Balance**”) represents the total principal amount of this Note that may be outstanding at any time during the term of this Note.

4. **Interest.** The Outstanding Principal Balance shall bear simple interest at the rate of 6% per annum.

5. **Term.** The obligation under this Note to apply Sales Taxes to the payment of amounts due on this Note shall terminate and be of no further force and effect on the later to occur of (i) the fifteenth (15th) anniversary of the Sales Commencement Date, and (ii) the date to which the Sales Tax Participation Period is extended pursuant to the Sales Tax Agreement.

6. **Governing Law, Waiver and Notices.** This Note shall be governed by the laws of the State of Illinois. A waiver of any part of this Note shall be limited to that specific event and shall not be a waiver of the entire Note. No delay on the part of the holder of this Note in exercising any option to demand payment shall operate as a waiver thereof or preclude the exercise thereof at any time during the continuance of a default. Any notices required in this Note shall be deemed effective when given as provided in the Sales Tax Agreement.

7. **Miscellaneous.**

(a) Time is of the essence of this Note.

(b) If any term or provision of this Note is finally adjudicated to be unenforceable by a court of competent jurisdiction and such adjudication is affirmed at all levels of appeal, the remaining provisions of this Note shall continue in full force and effect, to the fullest extent possible, as if such unenforceable term or provision had not been included in this Note.

IN WITNESS WHEREOF, the Fox Valley Volkswagen, LLC has caused this Note to be executed in its name and on its behalf by its Manager.

Dated: _____

Fox Valley Volkswagen, LLC
An Illinois Limited Liability Company

By: _____
Its: Manager

EXHIBIT "D"

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.



AGENDA ITEM EXECUTIVE SUMMARY

Title:	Motion to Approve a Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Certain Agreement Between the City of St. Charles and Fox Valley Volkswagen, LLC.
Presenters:	Rita Tungare, Director of Community & Economic Development Matthew O'Rourke, Economic Development Division Manager

Please check appropriate box:

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input checked="" type="checkbox"/>	City Council (6/15/2015)

Estimated Cost:	\$1,500,000 Total Incentive Proposal	Budgeted:	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>	X
-----------------	--------------------------------------	-----------	--------------------------	-----	--------------------------	----	-------------------------------------	---

If NO, please explain how item shall be funded:

(See below)

Executive Summary:

Background:

The City has received an Economic Incentive Application from Fox Valley Volkswagen, LLC. They are the owners of the Volkswagen dealership at 560 W. North Ave. in West Chicago. The applicant has approached staff about relocating this existing dealership to St. Charles. The applicant and owner of the Fox Valley Volkswagen dealership is Emir Abinion. Emir owns and operates successful dealerships in the Chicagoland area, including the Buick- GMC dealership in St. Charles. The Planning & Development Committee reviewed the Phase I Economic Incentive Application at the May 11, 2015 meeting and recommended that staff draft formal documents for approval of the proposed incentive with a vote of 9-Aye and 0-Nay.

The details of this new dealership are as follows:

- Redevelop 6.8 acres and DuPage Expo building into a 39,000 SQ FT dealership and service facility including: surrounding parking lots, landscaping, and lighting features.
- Immediate relocation of 53 full time jobs with an average salary of \$62,868.16.
 - The applicant anticipates this to increase to 65 employees within 24 months of the dealership opening.

Proposed Incentive:

The details of the requested sharing agreement are as follows:

- The total incentive requested is \$1,500,000 for a term of 15 years.
 - a) The initial \$800,000 of the agreement shall be structured as a loan.
 - This money shall be lent to the applicant with an interest rate to be determined by the City.
 - During this initial period, the City shall collect 100% of the new sales tax generated by the dealership. 25% of the sales tax shall go to the City's general fund. The remaining 75% shall repay the loan principal and interest. This equates to repayment of the initial \$800,000 loan and, assuming an interest rate of 6% (which represents the current market conditions) \$192,866 in interest for a total of \$992,866.
 - Should the applicant decide to relocate this dealership before the principal loan balance has been paid off, the applicant shall repay the remaining balance of the principal loan back to the City.
 - b) The remaining \$700,000 of the requested incentive shall be paid through shared sales tax. The dealership shall receive 60% of future sales tax and the remaining 40% shall be retained by the City. The applicant shall receive this share of annual sales tax until the applicant receives the total requested funds (\$1,500,000) **OR** the agreement reaches the 15 year term limit.
 - c) In the event that the State of Illinois would modify the amount of sales taxes shared with local municipalities, the term of the agreement will automatically extend. The agreement would extend for the amount time that the shared sales taxes are altered, or a maximum of 5 years whichever is less.

Attachments: *(please list)*

- Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Certain Agreement Between the City of St. Charles and Fox Valley Volkswagen, LLC.
- Sales Tax Revenue Sharing Agreement Between the City of St. Charles and Fox Valley Volkswagen, LLC.

Recommendation / Suggested Action *(briefly explain):*

Approve a Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Certain Agreement Between the City of St. Charles and Fox Valley Volkswagen, LLC.

<i>For office use only:</i>	<i>Agenda Item Number:</i>
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