

RESOLUTION 2016-023

PASSED: MARCH 14, 2016

AUTHORIZING THE EXECUTION OF AN INCENTIVE AGREEMENT PERTAINING TO BRIAN BEMIS TOYOTA.

WHEREAS, the City of DeKalb is a Home-Rule Municipal Corporation governed by the applicable provisions of the Illinois Constitution and Illinois Municipal Code; and,

WHEREAS, Blue Marlin Imports, Inc., is the owner/operator of the Brian Bemis Toyota dealership located at 1890 Sycamore Road, DeKalb, Illinois, and is contemplating certain renovations to its facility in order to maintain its functionality and avoid obsolescence; and,

WHEREAS, the City is desirous of retaining this important contributor of jobs, property tax and sales tax for the City's economic vitality; and,

WHEREAS, the City is authorized to enter into incentive agreements pertaining to sales tax sharing and tax increment financing-based incentives, for the purposes included in the agreement; and,

WHEREAS, the City Council expressly finds that the renovation costs contemplated by the dealership are anticipated to be tax-increment financing eligible costs, intended to restore the dealership facility from obsolescence, and to maintain, stabilize and expand the tax base of the City and other affected taxing districts;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

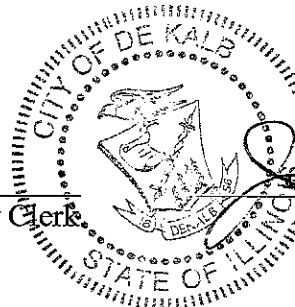
Section 1: The Mayor of the City of DeKalb is authorized and directed to negotiate an Incentive Agreement, subject to such amendments as shall be acceptable to him with the advice and recommendation of the City Manager, provided that no such amendments shall extend the term of the sales tax incentive nor change the gross amount of the incentive payable to the dealership. Following execution, the City's staff are authorized and directed to adhere to the provisions of the Agreement. Attached hereto as Exhibit A and Exhibit B, both of which represent sample incentive structures which are expressly approved of by the City Council.

Section 2: That this Resolution shall become effective immediately upon its passage and recording by the City Clerk.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 14th day of March, 2016 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey.

ATTEST:


JENNIFER JEEP JOHNSON, City Clerk




JOHN A. REY, Mayor

Economic Development Agreement
Between the City of DeKalb and
Blue Marlin Imports, Inc.

This Economic Development Agreement ("Agreement") is entered into this ___ day of _____, 2016 by and between the City of DeKalb ("City") an Illinois Home Rule Municipal Corporation, and the Blue Marlin Imports, Inc. dba. Brian Bemis Toyota. (hereinafter the "Retailer").

PREAMBLE

WHEREAS, the City of DeKalb is an Illinois Home Rule municipality under the Constitution and laws of the State of Illinois; and

WHEREAS, the Retailer wishes to maintain its existing place of business within the corporate limits of the City; and

WHEREAS, the Retailer wishes to construct certain improvements to its existing automobile sales facility in order to comply with manufacturers' requirements relating to the continuing sales of existing product lines, and the City and Retailer agree and acknowledge that based upon changes in manufacturer specifications for dealership facilities, the existing facilities are obsolete and no longer suitable for continuing usage as presently designed and configured; and,

WHEREAS, the substantial renovation of the automobile sales facility will serve the public purposes of creating job opportunities, creating additional sales tax and property tax revenues, and encouraging economic activity and commerce in the City; and

WHEREAS, the development of the property will require substantial reinvestment in on-site public infrastructure improvements which will yield a broader public benefit for retail customers of the property and adjacent properties; and

WHEREAS, the City wishes to enjoy a substantial increase in the amount of monthly distributions for the State's Local Government Tax Fund (or replacement fund) as well as associated increases in the amount of distributions from the Home Rule Retailer's Occupation Tax Fund (or replacement fund), collectively referenced hereafter as the "Distribution"; and

WHEREAS, the Retailer will incur a substantial amount of property renovation costs which are eligible for reimbursement through the City's existing Tax Increment Financing District ("TIF District"), and the City wishes to utilize such TIF District to aide in the redevelopment and improvement of the property to eliminate its obsolescence; and,

WHEREAS, the increase in the Distribution received by the City as a result of this Agreement is expected to enhance the City's ability to finance its essential services for the betterment of the welfare of the residents of the City, including but not limited to fire and police services, public works, engineering, building inspection, financial and administrative services; and

WHEREAS, as an economic incentive for the Retailer to retain its automobile sales facility and related activities inside the corporate limits of the City, the Retailer and the City have agreed to share the benefits realized by the City as a result of the Retailer's sales and other business activities within the City; and

WHEREAS, the City is entering into this Agreement as an exercise of its authority under the Constitution and laws of the State of Illinois, specifically including the City's home rule authority and the statutory authority to rebate sales taxes on certain business operations;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

Section 1:

1. Incorporation of Preamble. The preamble to this Agreement is hereby declared to set forth the findings of the parties and is incorporated herein as if fully set forth in this Section 1.
2. Commencement of Revenue Sharing. The Retailer agrees to invest not less than Two Million Two Hundred Forty Five Thousand dollars (\$2,245,000) in the renovation of its existing Toyota dealership at 1890 Sycamore Road, DeKalb, IL 60115 ("the Dealership"), within twelve (12) months of entering into this Agreement. The first day of the month which the Retailer begins to conduct business from its renovated facility after issuance of a final Certificate of Occupancy (following completion of the renovations) will represent the commencement of sharing for purposes of paragraph 3, below; said date will be referred to hereafter as the "Start Date".
3. Distribution Disbursement: The City and Retailer agree as follows:
 - a) The City and Retailer shall share in the portion of the Distribution of the Illinois Retailer's Occupation Tax received by the City that is attributable to the sale of new and used vehicles and parts at the Dealership. The City and Retailer shall share in the Distribution as follows:
 - aa. The base amount of sales tax generated by the Dealership on an annual basis is agreed to be approximately \$150,000.00 per year ("Base Amount"), and said sales tax revenues are anticipated to increase by virtue of

the renovation of the Dealership. Sales tax generated by the Dealership on an annual basis in excess of the Base Amount shall be referred to as New Sales Tax. The City shall remit to the Retailer fifty percent (50%) of the New Sales Tax, as outlined in paragraph 3(a) above.

bb. The City: 1) shall retain the Base Amount of sales tax generated; and, 2) shall also retain fifty percent (50%) of the New Sales Tax as outlined in paragraph 3(a) above.

cc. The cumulative amount of all such disbursements to the Retailer shall not be limited over the duration of this Agreement.

b) The Retailer shall verify taxable gross receipts as defined in paragraph 3(a), sections of (aa) and (bb) by furnishing to the City Manager or designee copies of the ST-1 and ST-556, Sales Tax Transaction Returns filed by the Retailer with the State of Illinois Department of Revenue, by providing the City with verification of the Retailer's applicable Illinois Business Tax identification number or other similar identification numbers applicable to the Dealership, and by providing the City with such documentation as shall enable the City to obtain access to the Dealership's sales tax returns paid to the State of Illinois.

c) The City and Retailer acknowledge that the City receives sales tax distributions from the State three times per year. The City shall, within twenty-one (21) business days after the City's receipt of its distribution from the Illinois Department of Revenue, disburse to the Retailer the amount calculated under this paragraph 3.

4. Revenue-Sharing Fund. The City hereby agrees that it shall, during the term of this Agreement, separately account for the distribution due to the Retailer.

5. Amended Tax Returns. In the event the Retailer amends any tax returns previously submitted to the City pursuant to this Agreement, the Retailer agrees to forward a photocopy of any such amended tax returns to the City promptly upon filing such amended returns with the Illinois Department of Revenue. The City shall adjust the amount of the payment due to the Retailer on the next payment due under this Agreement, based upon any changes in the Distribution to the City (based upon the filing of the amended return).

a) In the event that the amended tax return results in an additional payment being due to Retailer following the termination of this Agreement (based upon a payment of additional taxes accruing during the term of this Agreement), the City shall process the payment due to Retailer within 21 business days of the City's receipt of the additional sales tax Distribution. In the event that the amended tax return results in the determination that the Retailer was overpaid a distribution under this Agreement (based upon a reduction in taxes accruing during the term of this Agreement), the Retailer shall process a refund to the City within 21 business days of the City's request for such refund. The provisions of this subsection 5(a) shall survive the termination of this Agreement.

6. Effect of a Change in the Overall Retailer's Occupation Tax Rate Imposed on the Gross Effects of a Retailer or Enactment of a New Tax that Impacts the Retailer. If any present or future unit of government that has the authority to impose a Retailer's Occupation Tax on the gross receipts of a retailer within the corporate limits of the City creates a new tax that impacts the Retailer, imposes a new Retailers' Occupation Tax, or changes an existing tax rate, the revenue-sharing mechanism described in paragraph 3, (a), (b), and (c) shall apply to the City's portion of such new taxes.

7. Audit Reconciliations. Each disbursement from the City to the Retailer shall be accomplished by a statement, executed by the City Manager's designee, setting forth the calculations made to determine the amount of such disbursement. The City shall also issue to the retailer a statement setting forth all disbursements made to date to the Retailer. Each party shall have the right to contest any of the calculations or information contained in said statements of the retailer's disbursement upon written notice to the other party within sixty (60) days following any disbursement. If the challenging party can show, to the reasonable satisfaction of the other party within sixty (60) days of such written notice, that the amount disbursed to the Retailer was incorrect, either the City shall disburse to the Retailer the correct amount due, or the Retailer shall reimburse the City for any disbursement received in excess of the correct amount, as contemplated in paragraph 5 of this Agreement, which amended return is approved by the Illinois Department of Revenue, then any disbursement to the Retailer for the period(s) affected by the amended return(s) shall be adjusted accordingly. In the event the parties cannot agree upon the proper disbursement amount, the parties will submit to binding arbitration pursuant to paragraph 8 of this Agreement.

8. Dispute Resolution. Disputes regarding monthly disbursement requests arising under the Agreement shall be settled using binding arbitration under the commercial arbitration rules of the American Arbitration Association. All costs of such arbitration shall be borne equally by the City and the Retailer. All other disputes arising under this Agreement shall be governed under and construed in accordance with the laws of the State of Illinois.

9. Audit Adjustment. In the event that the Retailer is audited by the Illinois Department of Revenue, and such audit results in adjustments to the tax returns previously submitted to the City by the retailer pursuant to this Agreement, upon final disposition of any changes made as a result of such audit the City shall deem such adjustments to be an amended return, and the Retailer shall submit to the City a notice of amended return pursuant to paragraph 5 of this Agreement.

10. Confidentiality. The parties acknowledge that the information contained in any tax return, financial statements, sales reports, or price lists shall be considered commercial or financial information obtained from a business where the information is proprietary, privileged or confidential and exempt from disclosure under 5 ILCS 140/7(1)(g). The parties further agree that, to the fullest extent

permitted by law, no such documents or other commercial or financial information provided by the Retailer to the City with regard to provisions of this Agreement shall be released to or otherwise made available to any third person, corporation, organization or association unless disclosure is required pursuant to the order of the Illinois Attorney General or a written order of a court of competent jurisdiction. Additionally, the City shall offer the Retailer the opportunity to defend or resist any claim made by any third party against the City for release of such confidential documents or information. In the event a non-party to this Agreement seeks disclosure of any information concerning the terms of this Agreement from the City, the City shall promptly, but in any event, no later than two (2) business days after the City receives such request, notify the Retailer in writing of such request, identifying the party making the request and the information sought by such party. In the event that the Retailer contests such disclosure request, the Retailer shall pay and hold the City harmless from all costs and expenses, including the City's reasonable expert witness and attorney's fees, the parties hereto may incur solely as a result of the Retailer's contest or direction to the City to contest such disclosure request.

11. Conditions Precedent.

a) The Retailer represents that its projected permanent investment in the new automobile sales facility will total approximately Two Million Two Hundred Forty Five Thousand dollars (\$2,245,000) including the costs of site preparation, architectural plans, engineering and other studies and construction costs. Final investment costs will be verified by the City Manager or designee.

b) The Retailer hereby represents and warrants that the automobile sales facility shall be renovated and fully completed in a good and workmanlike manner and maintained in accordance with the construction plans approved by the City and other relevant jurisdictions and with all applicable statutes, ordinances, rules and regulations.

c) The Retailer hereby represents that it is authorized to do business in the State of Illinois.

d) The retailer hereby covenants and agrees to promptly pay or cause to be paid any and all taxes and governmental charges of any kind that may be lawfully imposed upon the Retailer and all property and sales taxes imposed on the Retailer.

12. TIF Incentive. In addition to the payment of the sales tax rebate outlined above, the City shall reimburse the Retailer for a portion of the eligible renovation costs associated with its improvement of the Dealership, through utilization of funds from the City's existing TIF District. Said reimbursement shall be in the amount of Six Hundred and Fifty Thousand Dollars (\$650,000.00), subject to the following limitations:

a) In no event shall the City's reimbursement exceed the amount of TIF-eligible costs incurred in the renovation of the Dealership; in the event that eligible

costs are less than Six Hundred and Fifty Thousand Dollars (\$650,000.00), the reimbursement shall be reduced to not exceed the eligible costs.

b) The Retailer shall document all eligible costs incurred in a fashion acceptable to the City Manager or designee (inclusive of receipts and lien waivers for costs incurred), and shall submit such documentation of costs to the City within ninety (90) days of the Start Date. The City shall review and either approve of such documentation or require additional detail within sixty days of the date of receipt of such request, and the City and Retailer shall cooperate in good faith to resolve any questions regarding the documentation. The City shall process the payment of the TIF Reimbursement to Retailer within sixty (60) days of the date of approval of the documented costs.

c) The Retailer agrees that, upon its receipt of the TIF Reimbursement, it shall maintain continuous operations of the new car (Toyota) and used car sales at the Dealership for a period of ten (10) years following the payment of the TIF reimbursement. Should the Retailer fail to maintain such continuous operations for ten years, the Retailer shall be responsible for a pro-rata repayment to the City of the TIF Reimbursement. Each year on the anniversary date of the TIF Reimbursement, this repayment obligation shall be reduced by ten percent (10%). Accordingly, if the Retailer closes after the third anniversary of the TIF Reimbursement, the Retailer shall be responsible for repayment of seventy percent (70%) of the TIF Reimbursement.

d) The Retailer shall provide a recorded lien against the Dealership, subordinate only to the first mortgage (but superior to all other mortgages, liens, notes or pledges whatsoever, other than property taxes or governmental liens that are superior by operation of law). Said lien may be reduced in value or subordinated further upon the approval of the City Manager. Said lien shall be recorded prior to the payment of any monies from the City to the Retailer under this Section 12. The Retailer shall also provide a corporate undertaking, in form and content acceptable to the City, where the Retailer provides an unconditional pledge of all Retailer assets to secure the full amount of the monies forwarded by the City. Said undertaking shall be in a form and content acceptable to the City and the Retailer, and shall be provided prior to the payment of any monies from the City to the Retailer under this paragraph 12.

e) The Parties acknowledge that the funding contemplated under this Section 12 is provided exclusively through a Tax Increment Financing District, and is provided exclusively for the purpose of funding private improvements. Accordingly, while the Retailer is solely responsible for complying with the applicable provisions of the Illinois Prevailing Wage Act, pursuant to the guidance issued by the Illinois Department of Labor, the City shall not require the Retailer to provide certified payroll records unless the Retailer determines that such records are required under the Prevailing Wage Act. The Retailer shall indemnify, defend and hold harmless the City from any claims arising out of the Prevailing Wage Act with respect to this Agreement or the Dealership.

f) The provisions of this paragraph 12 shall survive the termination of this Agreement.

13. Term. This Agreement shall be for a term of ten (10) years, effective the first day of the first full month following the Start Date. The rights, responsibilities and liabilities of the parties under the Agreement shall not survive the termination of this Agreement, except with respect to: 1) the confidentiality provisions in paragraph 10 of this Agreement; 2) reconciliation of payments based upon amended tax returns or audits of the Retailer; and, 3) the obligations of paragraph 12. Upon termination of this Agreement, the City and Retailer may agree to extend this Agreement for an additional ten (10) years, or for such alternate period as the Parties may agree upon, if any.

14. Litigation. The City and Retailer hereby agree that they shall not, and shall use their reasonable efforts to ensure that their respective successors and assigns shall not, challenge the legality, constitutionality, or enforceability of any recital or provision of this Agreement. The City and Retailer acknowledge that this Agreement is duly authorized and is a binding obligation, enforceable in accordance with its terms and provisions. In the event any person or entity, other than the parties hereto, attempts to enjoin or otherwise challenge the validity of any recital or provision of this Agreement, the City agrees that it will not take a position adverse to the enforcement of this Agreement. The City will support any petition by the Retailer to intervene in any such action or proceeding at the Retailer's sole expense.

15. Amendment. This Agreement shall not be amended except by a written instrument signed by the parties hereto or their respective successors and assigns.

16. Assignment. The Retailer may not assign the rights and obligations arising hereunder without the express written consent of the City prior to such assignment, unless to another Brian Bemis Entity, Brian Bemis Family Entity or Renee I. Bemis Irrevocable Trust. The City hereby agrees that it will not unreasonably withhold its consent. The City may withhold its consent to an assignment by the Retailer if such assignment would, in the City's reasonable belief materially alter the terms of this Agreement.

17. Notices. All notices and other communications between the parties shall be in writing and shall be sent by (a) a standard overnight carrier; (b) certified U.S. mail return receipt requested; or (c) delivered personally to the parties at the following addresses, or at such addresses specified by the parties by like written notice:

If to the City: City of DeKalb
 City Manager
 200 S. Fourth Street
 DeKalb, IL 60115

If to the Retailer: Brian Bemis Toyota
 Amy Bemis
 1890 Sycamore Road
 DeKalb, IL 60115

18. Mutual Assistance and Consents. The parties agree to use their reasonable efforts to do all things necessary or appropriate to execute this Agreement and to aid and assist each other in carrying out the terms of this Agreement including, without limitation, the enactment by the City of such ordinances and/or resolutions and the taking of other actions as may be necessary to enable the parties to comply with the terms and conditions of this Agreement. In the event any party to this Agreement is required to grant its consent or approval to the other party in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

18. Severability. If any provision of this Agreement or the application thereof to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to any other person or entity shall not be affected thereby, and to such end the provisions of this Agreement are agreed to be severable.

19. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties and supersedes all prior agreements, negotiations, drafts, and exhibits thereto and understandings, both written and oral, between the parties.

20. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

21. Waiver. Any agreement between the parties to waive any rights or obligations under this Agreement shall be valid only if set forth in writing and signed by both parties. Such waiver shall be effective only for the purposes set forth in such writing and shall not affect the rights of the parties regarding any subsequent acts or omissions by the other party which may result in a breach under this Agreement.

22. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which shall constitute but one (1) instrument.

IN WITNESS THEREOF, the parties have executed this Agreement this ____ day of _____, 2016.

City of DeKalb, an Illinois Home Rule Corporation

John Rey, Mayor

Jennifer Jeep Johnson, Clerk

Blue Marlin Imports / Brian Bemis Toyota

Authorized Officer

Secretary

Economic Development Agreement
Between the City of DeKalb and
Blue Marlin Imports, Inc.

This Economic Development Agreement ("Agreement") is entered into this ___ day of _____, 2016 by and between the City of DeKalb ("City") an Illinois Home Rule Municipal Corporation, and the Blue Marlin Imports, Inc. dba. Brian Bemis Toyota. (hereinafter the "Retailer").

PREAMBLE

WHEREAS, the City of DeKalb is an Illinois Home Rule municipality under the Constitution and laws of the State of Illinois; and

WHEREAS, the Retailer wishes to maintain its existing place of business within the corporate limits of the City; and

WHEREAS, the Retailer wishes to construct certain improvements to its existing automobile sales facility in order to comply with manufacturers' requirements relating to the continuing sales of existing product lines, and the City and Retailer agree and acknowledge that based upon changes in manufacturer specifications for dealership facilities, the existing facilities are obsolete and no longer suitable for continuing usage as presently designed and configured; and,

WHEREAS, the substantial renovation of the automobile sales facility will serve the public purposes of creating job opportunities, creating additional sales tax and property tax revenues, and encouraging economic activity and commerce in the City; and

WHEREAS, the development of the property will require substantial reinvestment in on-site public infrastructure improvements which will yield a broader public benefit for retail customers of the property and adjacent properties; and

WHEREAS, the Retailer will incur a substantial amount of property renovation costs which are eligible for reimbursement through the City's existing Tax Increment Financing District ("TIF District"), and the City wishes to utilize such TIF District to aide in the redevelopment and improvement of the property to eliminate its obsolescence; and,

WHEREAS, the increase in the Distribution received by the City as a result of this Agreement is expected to enhance the City's ability to finance its essential services for the betterment of the welfare of the residents of the City, including but not limited to fire and police services, public works, engineering, building inspection, financial and administrative services; and

WHEREAS, as an economic incentive for the Retailer to retain its automobile sales facility and related activities inside the corporate limits of the City, the Retailer and the City have agreed to share the benefits realized by the City as a result of the Retailer's sales and other business activities within the City; and

WHEREAS, the City is entering into this Agreement as an exercise of its authority under the Constitution and laws of the State of Illinois, specifically including the City's home rule authority;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

Section 1:

1. Incorporation of Preamble. The preamble to this Agreement is hereby declared to set forth the findings of the parties and is incorporated herein as if fully set forth in this Section 1.

2. Commencement of Operations. The Retailer agrees to invest not less than Two Million Two Hundred Forty Five Thousand dollars (\$2,245,000) in the renovation of its existing Toyota dealership at 1890 Sycamore Road, DeKalb, IL 60115 ("the Dealership"), within twelve (12) months of entering into this Agreement. The first day of the month which the Retailer begins to conduct business from its renovated facility after issuance of a final Certificate of Occupancy (following completion of the renovations) will represent the "Start Date".

3. Dispute Resolution. Disputes regarding the Agreement shall be settled using binding arbitration under the commercial arbitration rules of the American Arbitration Association. All costs of such arbitration shall be borne equally by the City and the Retailer. All other disputes arising under this Agreement shall be governed under and construed in accordance with the laws of the State of Illinois.

4. Conditions Precedent.

a) The Retailer represents that its projected permanent investment in the new automobile sales facility will total approximately Two Million Two Hundred Forty Five Thousand dollars (\$2,245,000) including the costs of site preparation, architectural plans, engineering and other studies and construction costs. Final investment costs will be verified by the City Manager or designee.

b) The Retailer hereby represents and warrants that the automobile sales facility shall be renovated and fully completed in a good and workmanlike manner and maintained in accordance with the construction plans approved by the City and other relevant jurisdictions and with all applicable statutes, ordinances, rules and regulations.

c) The Retailer hereby represents that it is authorized to do business in the State of Illinois.

d) The retailer hereby covenants and agrees to promptly pay or cause to be paid any and all taxes and governmental charges of any kind that may be lawfully imposed upon the Retailer and all property and sales taxes imposed on the Retailer.

5. TIF Incentive. In addition to the payment of the sales tax rebate outlined above, the City shall reimburse the Retailer for a portion of the eligible renovation costs associated with its improvement of the Dealership, through utilization of funds from the City's existing TIF District. Said reimbursement shall be in the amount of One Million Dollars (\$1,000,000.00), subject to the following limitations:

a) In no event shall the City's reimbursement exceed the amount of TIF-eligible costs incurred in the renovation of the Dealership; in the event that eligible costs are less than One Million Dollars (\$1,000,000.00), the reimbursement shall be reduced to not exceed the eligible costs.

b) The Retailer shall document all eligible costs incurred in a fashion acceptable to the City Manager or designee (inclusive of receipts and lien waivers for costs incurred), and shall submit such documentation of costs to the City within ninety (90) days of the Start Date. The City shall review and either approve of such documentation or require additional detail within sixty days of the date of receipt of such request, and the City and Retailer shall cooperate in good faith to resolve any questions regarding the documentation. The City shall process the payment of the TIF Reimbursement to Retailer within sixty (60) days of the date of approval of the documented costs.

c) The Retailer agrees that, upon its receipt of the TIF Reimbursement, it shall maintain continuous operations of the new car (Toyota) and used car sales at the Dealership for a period of ten (10) years following the payment of the TIF reimbursement. Should the Retailer fail to maintain such continuous operations for ten years, the Retailer shall be responsible for a pro-rata repayment to the City of the TIF Reimbursement. Each year on the anniversary date of the TIF Reimbursement, this repayment obligation shall be reduced by ten percent (10%). Accordingly, if the Retailer closes after the third anniversary of the TIF Reimbursement, the Retailer shall be responsible for repayment of seventy percent (70%) of the TIF Reimbursement.

d) The Retailer shall provide a recorded lien against the Dealership, subordinate only to the first mortgage (but superior to all other mortgages, liens, notes or pledges whatsoever, other than property taxes or governmental liens that are superior by operation of law). Said lien may be reduced in value or subordinated further upon the approval of the City Manager. Said lien shall be recorded prior to the payment of any monies from the City to the Retailer under this paragraph 5. The Retailer shall also provide a corporate undertaking, in form and content acceptable to the City, where the Retailer provides an unconditional pledge of all Retailer assets to secure the full amount of the monies forwarded by the City. Said undertaking shall be in a form and content acceptable to the City and the

Retailer, and shall be provided prior to the payment of any monies from the City to the Retailer under this paragraph 5.

e) The Parties acknowledge that the funding contemplated under this Section 7 is provided exclusively through a Tax Increment Financing District, and is provided exclusively for the purpose of funding private improvements. Accordingly, while the Retailer is solely responsible for complying with the applicable provisions of the Illinois Prevailing Wage Act, pursuant to the guidance issued by the Illinois Department of Labor, the City shall not require the Retailer to provide certified payroll records unless the Retailer determines that such records are required under the Prevailing Wage Act. The Retailer shall indemnify, defend and hold harmless the City from any claims arising out of the Prevailing Wage Act with respect to this Agreement or the Dealership.

f) The provisions of this paragraph 5 shall survive the termination of this Agreement.

6. Term. This Agreement shall be for a term of ten (10) years, effective the first day of the first full month following the Start Date. The rights, responsibilities and liabilities of the parties under the Agreement shall not survive the termination of this Agreement, except with respect to the obligations of paragraph 5.

7. Litigation. The City and Retailer hereby agree that they shall not, and shall use their reasonable efforts to ensure that their respective successors and assigns shall not, challenge the legality, constitutionality, or enforceability of any recital or provision of this Agreement. The City and Retailer acknowledge that this Agreement is duly authorized and is a binding obligation, enforceable in accordance with its terms and provisions. In the event any person or entity, other than the parties hereto, attempts to enjoin or otherwise challenge the validity of any recital or provision of this Agreement, the City agrees that it will not take a position adverse to the enforcement of this Agreement. The City will support any petition by the Retailer to intervene in any such action or proceeding at the Retailer's sole expense.

8. Amendment. This Agreement shall not be amended except by a written instrument signed by the parties hereto or their respective successors and assigns.

9. Assignment. The Retailer may not assign the rights and obligations arising hereunder without the express written consent of the City prior to such assignment, unless to another Brian Bemis Entity, Brian Bemis Family Entity or Renee I. Bemis Irrevocable Trust. The City hereby agrees that it will not unreasonably withhold its consent. The City may withhold its consent to an assignment by the Retailer if such assignment would, in the City's reasonable belief materially alter the terms of this Agreement.

10. Notices. All notices and other communications between the parties shall be in writing and shall be sent by (a) a standard overnight carrier; (b) certified U.S. mail return receipt requested; or (c) delivered personally to the parties at the following addresses, or at such addresses specified by the parties by like written notice:

If to the City: City of DeKalb
 City Manager
 200 S. Fourth Street
 DeKalb, IL 60115

If to the Retailer: Brian Bemis Toyota
 Amy Bemis
 1890 Sycamore Road
 DeKalb, IL 60115

11. Mutual Assistance and Consents. The parties agree to use their reasonable efforts to do all things necessary or appropriate to execute this Agreement and to aid and assist each other in carrying out the terms of this Agreement including, without limitation, the enactment by the City of such ordinances and/or resolutions and the taking of other actions as may be necessary to enable the parties to comply with the terms and conditions of this Agreement. In the event any party to this Agreement is required to grant its consent or approval to the other party in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.
12. Severability. If any provision of this Agreement or the application thereof to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to any other person or entity shall not be affected thereby, and to such end the provisions of this Agreement are agreed to be severable.
13. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties and supersedes all prior agreements, negotiations, drafts, and exhibits thereto and understandings, both written and oral, between the parties.
14. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
15. Waiver. Any agreement between the parties to waive any rights or obligations under this Agreement shall be valid only if set forth in writing and signed by both parties. Such waiver shall be effective only for the purposes set forth in such writing and shall not affect the rights of the parties regarding any subsequent acts or omissions by the other party which may result in a breach under this Agreement.
16. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which shall constitute but one (1) instrument.

IN WITNESS THEREOF, the parties have executed this Agreement this ____ day of _____, 2016.

City of DeKalb, an Illinois Home Rule Corporation

John Rey, Mayor

Jennifer Jeep Johnson, Clerk

Blue Marlin Imports / Brian Bemis Toyota

Authorized Officer

Secretary