

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 requiring certain renovations and improvements to its facility mandated by the national corporate offices of the Toyota Motor Company in order to maintain its functionality and avoid obsolescence to their existing auto dealership and the real estate located at 1890 Sycamore Road in the City of DeKalb, IL;

WHEREAS, the Renee I Bemis Irrevocable Trust, dated December 5, 2011, holds legal and equitable title to 1890 Sycamore Road and will be the party responsible for expending and incurring all renovation and improvement costs upon the property.

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

WHEREAS, the City is authorized to enter into assignable 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 for 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:

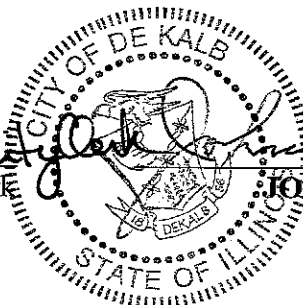
Section 1: The Mayor of the City of DeKalb is authorized and directed to execute the Incentive Agreement in the form attached hereto as Exhibit A, subject to such amendments as shall be acceptable to him with the advice and recommendation of the City Manager, provided that no such amendments shall extend 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.

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 17th day of March, 2016 and approved by me as Mayor on the same day. Passed by a roll call vote of 6-1-1. Aye: Jacobson, Finucane, Marquardt, Noreiko, Baker, Rey. Nay: Snow. Absent: Faivre.

ATTEST:

Jennifer Jeep Johnson
JENNIFER JEEP JOHNSON, City Clerk



John A. Rey
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 ~~18~~¹⁹ day of March, 2016 by and between the City of DeKalb ("City") an Illinois Home Rule Municipal Corporation, Renee I Bemis Irrevocable Trust, dated December 5, 2011 ("Landlord"), and the Blue Marlin Imports, Inc. d/b/a. 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 Renee I Bemis Irrevocable Trust, dated December 5, 2011, ("Landlord") holds legal and equitable title to 1890 Sycamore Road, DeKalb, Illinois, 60115; and

WHEREAS, the Retailer requires its Landlord 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, Landlord, 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 Landlord 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 and Landlord hereby represent and warrant 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. The City shall compensate the Retailer or Landlord 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 funding shall be in the amount of One Million Five Hundred Dollars (\$1,500,000.00), subject to the following limitations:

a) In the event that eligible costs are less than One Million Five Hundred Thousand Dollars (\$1,500,000.00), the reimbursement shall be reduced to not exceed the eligible costs because the City's funding shall not exceed the actual amount of Landlord's TIF-eligible costs incurred in the renovation of the Dealership;

b) The Retailer shall provide the City with written notice of its intent to proceed with the construction of its improvements contemplated herein at the Property, and the City shall tender to the Retailer the payment contemplated herein within thirty days of such written notice. The Retailer or Landlord shall thereafter promptly commence construction of the improvements (and shall incur the eligible costs), and shall complete the improvements to the Property in an orderly and workmanlike fashion. At the time of providing written notice of intent to proceed, Retailer shall specify whether such payment is to be made to Landlord or Retailer.

c) The Retailer and Landlord 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 evidencing payment of the same), 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 Retailer and Landlord shall, upon written request from the City, promptly return to the City any of the funding contemplated above which is in excess of the eligible costs incurred. The Parties agree and acknowledge that the Start Date shall be within twelve months of the notice contemplated by subsection (b) above (which deadline may be amended by mutual agreement of the Retailer and the City Manager of the City).

d) Unless otherwise provided herein, the Retailer agrees that, upon the occurrence of the Start Date, it shall maintain continuous operations of the Toyota new car and used car sales at the Dealership for a period of fifteen (15) years

following the payment of the TIF reimbursement. Should the Retailer fail to maintain such continuous operations for fifteen years, the Retailer and/or Landlord 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 Six and Two Thirds Percent (6.667%). Accordingly, if the Retailer closes after the tenth anniversary of the TIF Reimbursement, the Retailer shall be responsible for repayment of thirty-three and a third percent (33.33%) of the TIF Reimbursement.

e) The Retailer and Landlord 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. Said pledge and mortgage shall be completed at such time that the City approves the documented costs as contemplated in 5(c) above.

f) 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.

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

h) The Parties acknowledge that the Retailer shall specify the party to whom payment is to be made. The 'clawback' provisions under subsection 5(c) and 5(d) above shall be interpreted to apply as follows:

i) In the event that payment is made to Landlord and Landlord either fails to complete the renovation contemplated herein or fails to incur One and One Half Million Dollars (\$1,500,000) of TIF eligible expenses, then Landlord and Retailer shall be jointly and severally liable for the repayment to the City as contemplated in 5(c).

ii) In the event that the renovation is completed and adequate eligible costs are incurred, but the Retailer fails to maintain the Toyota new and used car dealership at the Property for the fifteen year term contemplated in 5(d), then the Retailer shall be liable for the pro-rata

reimbursement to the City. It is the intention of the Parties that the obligation for this pro-rata reimbursement be a liability of the Retailer (and of successor assignees thereof).

6. Term. This Agreement shall be for a term of fifteen (15) 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 and Landlord may assign and transfer the rights and obligations arising hereunder without the express written consent of the City as part of a sale of its business or the property, asset purchase agreement, or any other buy/sell agreement between Retailer, Landlord and purchasing third-parties regardless of its form if for sale of the Toyota franchise and corresponding business operations. The rights and obligations arising hereunder may be assigned and transferred to any entity, individual, or Trust that is related to the Brian Bemis Family, with notice to the City. The Retailer and Landlord may transfer the rights and obligations arising hereunder to any third parties seeking to replace rather than complement the Toyota franchise operations with a different franchise or business purpose, but such non-Toyota dealership/franchise transfer shall require the consent of the City, which consent shall not be unreasonably withheld or conditioned. In the event that the proposed assignment consists of assignment that would not maintain an operational Toyota new and used car dealership at the Property, then the assignment shall be subject to approval by the City in its sole and absolute discretion.

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.

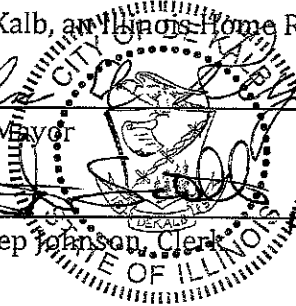
14. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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.

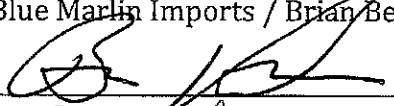
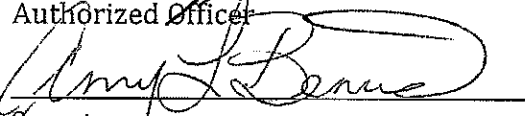
16. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which shall constitute but one (1) instrument.

IN WITNESS THEREOF, the parties have executed this Agreement this 18th day of march, 2016.

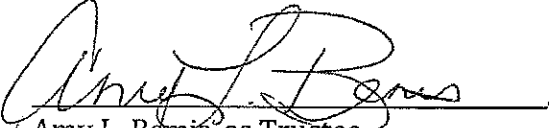
City of DeKalb, an Illinois Home Rule Corporation

A circular seal for the City of DeKalb, Illinois, featuring a central figure and the text "CITY OF DEKALB" and "STATE OF ILLINOIS".
John Rey, Mayor
Jennifer Jeep Johnson, Clerk
Deputy Clerk

Blue Marlin Imports / Brian Bemis Toyota


Authorized Officer

Secretary

Renee I Bemis Irrevocable Trust, dated December 5, 2011


Amy L. Bemis, as Trustee