

AGENDA
SPECIAL PLANNING, BUILDING AND ZONING COMMITTEE
Village of Hoffman Estates
September 19, 2011

7:00 p.m. - Board Room

Members: Karen Mills, Chairperson
Ray Kincaid, Vice Chairperson
Gary Pilafas, Trustee
Jacquelyn Green, Trustee
Anna Newell, Trustee
Gary Stanton, Trustee
William McLeod, Mayor

I. Roll Call

NEW BUSINESS

1. Request approval of:
 - a. á resolution to authorize the Village President to execute a Land Purchase Agreement for the sale of the former Police Station site at 1200 Gannon Drive to 1200 Gannon LLC.
 - b. a resolution to approve a Cost Recovery Agreement with Hall Enterprises, Inc. for a proposed auto dealership at the corner of Golf Road and Gannon Drive.

2. Request authorization to award a contract for the demolition of the existing building and structures on the 1200 Gannon Drive site to Albrecht Enterprises, Inc., Des Plaines, IL, in an amount not to exceed \$150,265.

II. Adjournment

COMMITTEE AGENDA ITEM VILLAGE OF HOFFMAN ESTATES

SUBJECT: Request approval of:

- a) resolution to authorize the Village President to execute a Purchase and Sale Agreement for the sale of the former Police Station site at 1200 Gannon Drive to 1200 Gannon, LLC;
- b) resolution authorizing approval of a Cost Recovery Agreement between Hall Enterprises, Inc. and the Village of Hoffman Estates for a proposed auto dealership at the corner of Golf Road and Gannon Drive.

MEETING DATE: September 19, 2011

COMMITTEE: Special Planning, Building & Zoning

FROM: James Norris, Arthur Janura, Mark Koplín,
Michael DuCharme

REQUEST: Request approval of a resolution to authorize the Village President to execute a Purchase and Sale Agreement for the sale of the former Police Station site at 1200 Gannon Drive, and approval of a resolution authorizing approval of a Cost Recovery Agreement between Hall Enterprises, Inc. and the Village of Hoffman Estates for a proposed auto dealership at the corner of Golf Road and Gannon Drive.

BACKGROUND: In August 2010, the Village Board approved two (2) resolutions; one authorizing the sale of the former Police Department site to Hall Racing LLC; and the other approving a Cost Recovery Agreement with Hall Enterprises, Inc. for the construction of a new Audi dealership on that site. Since those approvals, Hall Enterprises, Inc. had been attempting to secure the financing to execute the purchase of the site and construct the new dealership. In July 2011, the Village rescinded both resolutions which allowed the Village to market the property to other interested parties since Hall Enterprises was unable to execute the agreements.

1200 Gannon, LLC (formerly Hall Racing LLC) has now obtained the necessary financing to purchase the site and construct the dealership as originally agreed. Attached is the signed Purchase and Sale Agreement and the Cost Recovery Agreement.

DISCUSSION:

Purchase and Sale Agreement:

At the Village Board meeting on April 19, 2010, the Village Board authorized staff to issue a Request for Proposals to any parties interested in purchasing Village property at 1200 Gannon, currently the site of the former Police Station. One proposal was received and staff began working with the proposing entity on the potential contract for sale.

When property owned by a municipality or any taxing district is no longer necessary for the operations of that municipality, there is a public policy obligation to return that property to the tax rolls to benefit the residents and businesses of the community. The property becomes taxable and incremental taxes from the business (such as sales tax) are also generated. The Village Manager and Corporation Counsel negotiated with representatives for what will become Audi Hoffman Estates resulting in a purchase price of \$2,650,000 which is within the 80% of appraised value as required by State Statute. The Village will be responsible for normal proration considered as part of a real estate sales contract and site preparation. The Village would be obligated to demolish the old police department building and provide a grade site ready for development. This process is underway as bids have been previously submitted.

In this instance, an automotive sale dealership, Audi Hoffman Estates, would generate an estimated \$400,000 per year in sales tax and \$45,000 per year in property tax. Assuming continued operations, during a 10 year period the Village anticipates receiving approximately \$4,000,000. Property taxes would also be generated to all taxing districts.

Cost Recovery Agreement:

In past years, the Village has approved incentive agreements with several auto dealers to offset site development costs and/or in consideration of their ability to generate extraordinary sales taxes for the Village. The Village Board has approved incentives with Kia, Daewoo, Land Rover, Mercedes Benz, and most recently in 2004, Infiniti.

The sales contract for the Police Station site proposed with Audi Hoffman Estates is contingent upon a \$250,000 incentive agreement. Audi Hoffman Estates projects sales of \$40 million in the first full year, which equates to \$400,000 to the Village (1% municipal sales tax). Audi Hoffman Estates also projects a 3% annual increase in those sales figures, which include primarily new cars, but also used cars and parts used in the service department. Over a 10 year period, if the projections are accurate, Audi Hoffman Estates would generate a total of nearly \$4.6 million to the Village in cumulative sales taxes. The Village would also receive a portion of the property tax, and this would be new revenue as the current Police Station site is property tax exempt. This would be an additional \$45,000 per year, \$450,000 over the ten-year period.

As proposed by Audi Hoffman Estates, the sales tax incentive would provide Audi Hoffman Estates with 75% in the 2013 "partial" year. This would occur if Audi Hoffman Estates is able to design, obtain approval, and complete construction before the end of 2013. As the Village would not be budgeting any revenue in 2013, providing 75% of 2-3 months of sales should Audi Hoffman Estates be able to open that quickly is not a burden. Audi Hoffman Estates would receive 25% in the first through fifth full years (2014 - 2018) and then 10% in 2019 and 2020 until the total is paid to Audi Hoffman Estates. The total term is seven full years, plus the partial year, if applicable, but it is anticipated that Audi Hoffman Estates would receive their full payment within 2-3 years based upon the revenue estimates.

Section 4b of the Agreement stipulates that Audi Hoffman Estates must generate at least \$350,000 in sales taxes to the Village in order to qualify for their incentive in any particular year (except in the partial year). This provides motivation for Audi Hoffman Estates to generate sales near or in excess of their projections. While the overall incentive is capped at \$250,000, they are not capped (beyond the percentage) in any particular year and would receive the benefits of sales exceeding their projections.

It should also be noted that if Audi Hoffman Estates ceases operation in Hoffman Estates within three (3) years of their receipt of the last amount of the incentive, they would need to return all incentive monies received (Sections 4d and 12).

Finally, if Audi Hoffman Estates should be delayed in their opening, the terms of the agreement continue to run. If Audi Hoffman Estates opens in 2014, they would miss the benefit of the 75% split in the partial year of 2013.

The Cost Recovery Agreement, a resolution, and a spreadsheet projecting ten years of revenue, are attached.

FINANCIAL IMPACT:

a) Purchase and Sale Agreement – The Village anticipates receiving proceeds from the sale of the property, sales tax and property tax generated from the development of an automobile dealership on the property;

b) Cost Recovery Agreement – The overall impact to the Village is very positive as Audi Hoffman Estates would be bringing new revenue into the Village. No monies are provided up front and Audi Hoffman Estates would receive a portion of the revenue they generate to the Village. If projections are achieved, Audi Hoffman Estates would receive \$250,000, while the Village would receive over \$4.5 million over ten years.

RECOMMENDATION:

Recommend approval of two (2) resolutions to authorize the Purchase and Sale Agreement of the 1200 Gannon Drive site to 1200 Gannon, LLC and to approve a Cost Recovery Agreement with Hall Enterprises, Inc. in an amount not to exceed \$250,000 over the term of the Agreement.

Attachments

cc: Anne Dempsey

Audi Dealership - Old Police Station site
9/6/2011

c:Auto sales tax analysis R1

Year	Estimated Sales **	Estimated Muni. Sales Tax Revenue to VHE	Village portion of property tax ***	TOTAL REVENUE PER YEAR	% of Sales Tax to be rebated to dealer	REBATE Annual rebate to dealer *	NET REVENUE PER YEAR TO VHE
2013	\$40,000,000	\$66,667	\$0	\$66,667	75%	\$50,000	\$16,667
2014	\$40,000,000	\$400,000	\$45,000	\$445,000	25%	\$100,000	\$345,000
2015	\$41,200,000	\$412,000	\$45,000	\$457,000	25%	\$100,000 *	\$357,000
2016	\$42,436,000	\$424,360	\$45,000	\$469,360	25%	\$0 *	\$469,360
2017	\$43,709,080	\$437,091	\$45,000	\$482,091	25%	\$0 *	\$482,091
2018	\$45,020,352	\$450,204	\$45,000	\$495,204	25%	\$0 *	\$495,204
2019	\$46,370,963	\$463,710	\$45,000	\$508,710	10%	\$0 *	\$508,710
2020	\$47,762,092	\$477,621	\$45,000	\$522,621	10%	\$0 *	\$522,621
7 year incentive expires							
2021	\$49,194,955	\$491,950	\$45,000	\$536,950	0%	\$0	\$536,950
2022	\$50,670,803	\$506,708	\$45,000	\$551,708	0%	\$0	\$551,708
2023	\$52,190,927	\$521,909	\$45,000	\$566,909	0%	\$0	\$566,909
10 years ROI analysis		\$4,652,218	\$450,000	\$5,102,218		\$250,000	\$4,852,218

ratio: \$19.41 : \$1.00 over 10 years
(total revenues) VHE : Dealer

incentive is: 4.9% of Total Revenue over 10 years

Term is 1 partial year plus 7 full years

- * Rebate ceases after cap of \$250,000 is attained.
- ** Sales estimates of new cars, used cars and parts provided by Audi
3.0% annual increase increase thereafter
Sales in 2013 assumed for 2 months only, and calculated as 2/12ths of the annual sales projection.
- *** Property tax estimated by comparing MotorWerks' Infiniti and Mercedes Benz properties (\$260,000 and \$510,000 respectively).

VILLAGE OF HOFFMAN ESTATES

**A RESOLUTION TO AUTHORIZE THE VILLAGE PRESIDENT
TO EXECUTE A PURCHASE AND SALE AGREEMENT FOR THE SALE
OF THE FORMER POLICE STATION SITE AT
1200 GANNON DRIVE, HOFFMAN ESTATES, TO 1200 GANNON, LLC.**

WHEREAS, the Village of Hoffman Estates (the "Village") is the owner of a certain parcel of real estate consisting of approximately 5.85 acres of property located at the northwest corner of Golf Road and Gannon Drive in the B-2 Community Business District (the "Parcel"); and

WHEREAS, said real estate is legally described as attached hereto as Exhibit "A"; and

WHEREAS, the Village has declared said Parcel surplus real estate and desires to sell said Parcel; and

WHEREAS, an MAI appraisal for the Parcel (the "Appraisal") was conducted by Thomas E. Holcer, Holcer & Company Inc., an MAI appraiser, and the Appraisal has been submitted to the Village, and said Appraisal is available for public inspection at the Village Hall; and

WHEREAS, the Corporate Authorities have reviewed the Appraisal which concluded that the fair market value of the Parcel was \$3,000,000.00 as of March 9, 2010; and

WHEREAS, the Corporate Authorities have received an offer to purchase the Parcel for \$2,650,000 from 1200 Gannon, LLC; and

WHEREAS, the offer to purchase the parcel for \$2,650,000 is more than 80% of the fair market value of \$3,000,000; and

WHEREAS, the Village is a Home Rule Municipality as defined in the Illinois Constitution and hereby exercises the powers granted therein.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Hoffman Estates, Cook and Kane Counties, Illinois, as follows:

Section 1: The Corporate Authorities find that the statements in the foregoing preamble are correct and the same are incorporated herein as if fully set forth.

Section 2: The Corporate Authorities hereby accept the offer to purchase the Parcel submitted by 1200 Gannon, LLC in the amount of \$2,650,000.00 subject to the conditions and restrictions set forth in the Purchase and Sale Agreement attached hereto as Exhibit "B".

Section 3: The Village Manager and Corporation Counsel are directed to prepare a deed and related conveyance documents and proceed to finalize the sale of the Parcel by the Village to 1200 Gannon, LLC.

Section 4: That the Village President and Village Clerk are duly authorized to execute a Purchase and Sale Agreement for the sale of 1200 Gannon Drive between 1200 Gannon, LLC and the Village of Hoffman Estates.

Section 5: This Resolution shall be in full force and effect immediately from and after its passage and approval.

PASSED THIS _____ day of _____, 2011

VOTE	AYE	NAY	ABSENT	ABSTAIN
Trustee Karen V. Mills	_____	_____	_____	_____
Trustee Raymond M. Kincaid	_____	_____	_____	_____
Trustee Jacquelyn Green	_____	_____	_____	_____
Trustee Anna Newell	_____	_____	_____	_____
Trustee Gary J. Pilafas	_____	_____	_____	_____
Trustee Gary G. Stanton	_____	_____	_____	_____
Mayor William D. McLeod	_____	_____	_____	_____

APPROVED THIS _____ DAY OF _____, 2011

Village President

ATTEST:

Village Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 9; THENCE NORTHWARD ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 10 MINUTES 00 SECONDS EAST, A DISTANCE OF 9.68 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF GOLF ROAD (100 FEET WIDE) AND BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTHWARD ALONG THE SAID WEST LINE OF SECTION 9, NORTH 00 DEGREES 10 MINUTES 00 SECONDS EAST, A DISTANCE OF 650 FEET; THENCE SOUTH 89 DEGREES 50 MINUTES 00 SECONDS EAST, A DISTANCE OF 400 FEET TO A POINT ON THE EAST LINE OF THE WEST 400 FEET, AS MEASURED PERPENDICULAR TO THE WEST LINE OF THE SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9; THENCE NORTHWARD ALONG THE SAID EAST LINE NORTH 00 DEGREES 10 MINUTES 00 SECONDS EAST, A DISTANCE OF 496.71 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF HIGGINS ROAD (240 FEET WIDE); THENCE EASTERLY ALONG THE SAID SOUTHERLY LINE, BEING A CURVED LINE, CONVEXED TO THE NORTH, OF 21,339.94 FEET IN RADIUS HAVING A CHORD LENGTH OF 34.37 FEET ON A BEARING OF SOUTH 73 DEGREES 36 MINUTES 49.4 SECONDS EAST, FOR AN ARC LENGTH OF 34.37 FEET TO A POINT ON THE EAST LINE OF THE WEST 433 FEET, AS MEASURED PERPENDICULAR TO THE WEST LINE OF THE SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9; THENCE SOUTHWARD ALONG THE SAID EAST LINE, SOUTH 00 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 1110.09 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF GOLF ROAD; THENCE WESTWARD ALONG THE SAID NORTH RIGHT OF WAY LINE, SOUTH 86 DEGREES 35 MINUTES 45 SECONDS WEST, A DISTANCE OF 433.84 FEET TO THE POINT OF BEGINNING, (EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF ILLINOIS BY DEED RECORDED AS DOCUMENT 21603293 DESCRIBED AS FOLLOWS: THAT PART OF THE WEST 433 FEET OF THE SOUTHWEST OF THE SOUTHWEST 1/4 OF SECTION 9, LYING NORTH OF THE NORTH LINE OF GOLF ROAD AS PER DOCUMENT NO. 10550564 AND SOUTH OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF THE WEST 433 FEET OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9 LYING NORMALLY DISTANCE 6.427 FEET NORTH OF THE NORTH LINE OF GOLF ROAD; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF INTERSECTION OF THE WEST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9 AND SAID NORTH LINE OF GOLF ROAD) IN COOK COUNTY, ILLINOIS.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made by and between 1200 Gannon, LLC, an Illinois limited liability company (or any assignee permitted pursuant to Paragraph 20 hereof) ("Purchaser"), and the Village of Hoffman Estates, and Illinois municipal corporation ("Seller"), and is entered into as of the "Effective Date", as defined in Paragraph 3A of this Agreement.

RECITALS

WHEREAS, Seller is the owner of a parcel of land consisting of approximately 6.7 acres legally described on Exhibit A attached hereto and made a part hereof, located in the Village of Hoffman Estates, County of Cook, State of Illinois, and commonly known as 1200 Gannon Drive, Hoffman Estates, Illinois 60169 (Permanent Index Nos. 07-09-300-014-0000 and 07-09-300-011-0000) (the "Property").

WHEREAS, Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser the Property, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. RECITALS. The Recitals are contractual and are hereby incorporated into the body of this Agreement.

2. SALE. Purchaser hereby agrees to purchase and Seller hereby agrees to sell, convey or cause to be conveyed, the Property, as set forth herein.

3. PURCHASE PRICE. The Purchase Price shall be *TWO MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS* (\$2,650,000.00). The Purchase Price shall be due and payable as follows:

A. Within three (3) business days after the "Effective Date" (being the date the latter of the Purchaser and Seller execute this Agreement), the Purchaser shall deposit the sum of *FIFTY THOUSAND AND NO/100 DOLLARS* (\$50,000.00) (the "Initial Earnest Money") with the "Title Insurer" (hereinafter defined) for the mutual benefit of the parties into a strict joint order escrow account with Title Insurer ("Escrow Account") and further addressed as set forth herein. Within three (3) business days after the expiration of the "Inspection Period", as defined herein, provided Purchaser has not terminated this Agreement prior to the expiration of said "Inspection Period", the Purchaser shall deposit the additional sum of *FIFTY THOUSAND AND NO/100 DOLLARS* (\$50,000.00) (the "Additional Earnest Money") with the "Title Insurer" (hereinafter defined) for the mutual benefit of the parties into the Escrow Account. The Initial Earnest Money and the Additional Earnest Money, taken together, shall total *ONE HUNDRED THOUSAND AND NO/100 DOLLARS* (\$100,000.00) and shall sometimes be referred to herein collectively as the "Earnest Money". The Initial Earnest Money and the Additional Earnest (collectively, the Earnest Money) shall be deemed to include any interest accrued thereon. The Earnest Money shall be paid in the form of a wire transfer, held in the Escrow Account and shall be payable to Seller at Closing, or refundable to Purchaser as herein provided, with all expenses of holding said funds being borne by Seller and Purchaser equally.

B. The balance of the Purchase Price, plus or minus net prorations, and less the Earnest Money, shall be paid by wire transfer at the time of Closing as hereinafter provided.

4. **CONDITIONS PRECEDENT.** This Agreement, Purchaser's performance hereunder and payment of the Purchase Price are expressly made subject to and pre-conditioned upon the following:

A. **SURVEY.** Within twenty-one (21) days from the demolition of the Building located on the Property but in no event later than fifteen (15) days prior to the expiration of the Inspection Period, as defined herein, Seller shall cause to be delivered to Purchaser, at Seller's expense, a survey prepared not more than ninety (90) days prior to the Effective Date, certified as having been made in compliance with 2011 ALTA/ACSM Land Title Surveys Standards, or currently promulgated version thereof, including Table A Optional Survey Responsibilities and Specifications 1, 3, 4, 6, 7(a), 8, 9, 10 and 11(a) (the "Survey"). The Survey shall be certified to Purchaser, its lender, if any, and the Title Insurer. As a condition precedent to Purchaser's obligation to close this transaction, the Survey shall show no encroachments; no boundary line disputes; and no easements other than those reflected in the Permitted Exceptions (as defined in Paragraph 4B below) of this Agreement; and be reasonably acceptable to the Title Insurer (defined below) for the purpose of issuance of an ALTA form survey endorsement, contiguity (PIN) endorsement, legal access endorsement and extended title insurance coverage over the five general ALTA exceptions to coverage (collectively, "Survey Defects"). Seller shall provide six (6) copies of the required Survey. Purchaser shall advise Seller in writing of any Survey Defects within five (5) business days after receipt of the last of the Commitment (together with legible copies of all documents evidencing title exceptions referenced therein) and Survey. Purchaser's failure to timely notify Seller of such claimed defects shall be a waiver of same, and any items which are not so objected to shall be deemed Permitted Exceptions, as defined herein. Seller, at Seller's sole expense, shall have five (5) business days from receipt of Purchaser's objections to remove, cure or correct such matters and give notice and evidence thereof to Purchaser. If Seller needs more time to cure such defects and so requests the same from Purchaser in writing pursuant to the notice provisions hereof, the Seller may be granted a period of up to thirty (30) days from receipt of Purchaser's objections to allow such time for Seller to correct such defects. In the event of the foregoing, all dates for performance under this Agreement that are affected by such extended period shall be adjusted accordingly in order to effectuate the intent of the parties hereunder. If Seller is able to cure such matters within such time period, then Purchaser shall proceed in accordance with the provisions of this Agreement, subject to Purchaser's inspection rights under Paragraph 4(C). If Seller fails to have the Survey Defects cured within such time period, Purchaser may elect by written notice to Seller, given within five (5) business days after Seller's failure to correct such defects, to terminate this Agreement, in which event the Earnest Money shall be forthwith returned to Purchaser and this Agreement shall become null and void without further action of either party and neither party shall have any further rights or duties hereunder. If Purchaser does not timely elect to terminate this Agreement in accordance with the preceding sentence, then this Agreement shall remain in full force and effect and Purchaser shall accept the Survey Defects as Permitted Exceptions.

B. **TITLE COMMITMENT AND POLICY.** Within twenty-one (21) days from the Effective Date, Seller shall cause to be delivered to Purchaser, at Seller's expense, a preliminary title commitment for a 2006 ALTA Owner's title insurance policy, prepared by Chicago Title Insurance Company (the "Title Insurer") with legible copies of all Schedule "B" exception documents, showing title not more than sixty (60) days prior to the Effective Date ("Title Commitment") with a commitment for extended coverage over the five general exceptions to coverage in an amount equal to the Purchase Price showing title to the Property in Seller subject only to those exceptions to title set forth on Exhibit B (which shall be completed and/or modified by the parties during the Inspection Period) attached hereto and incorporated herein, any exceptions that may arise through acts of Purchaser, an easement in favor of

the Village of Hoffman Estates (as set forth in the Special Warranty Deed attached hereto as Exhibit D) and title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount that may be removed by the payment of money at Closing and which the Seller shall so remove at that time by using, without limitation, the funds paid by Purchaser at Closing (collectively, the "Permitted Exceptions"). If the Title Commitment discloses exceptions to title other than the Permitted Exceptions ("Unpermitted Exceptions"), Seller at Seller's sole expense shall have until three (3) business days prior to the expiration of the Inspection Period to have the Unpermitted Exceptions removed from the Title Commitment (or to have the Title Insurer commit to insure (either by "insuring over" or providing an endorsement) for the full amount of the Purchase Price against any loss or damage that may be occasioned by such Unpermitted Exceptions) and give notice and evidence thereof to Purchaser. If Seller is able to remedy such Unpermitted Exceptions in the manner provided in the preceding sentence within such time period, then Purchaser shall proceed in accordance with the provisions of this Agreement, subject to Purchaser's inspection rights under Paragraph 4(C). If Seller fails to remedy such Unpermitted Exceptions within such time period, Purchaser may elect by written notice to Seller given prior to the expiration of the Inspection Period to terminate this Agreement, in which event the Earnest Money shall be forthwith returned to Purchaser and this Agreement shall become null and void without further action of either party and neither party shall have any further rights or duties hereunder. If Purchaser does not elect to terminate this Agreement in accordance with the preceding sentence, then this Agreement shall remain in full force and effect and Purchaser shall accept title subject to such Unpermitted Exceptions.

C. INSPECTION OF THE PROPERTY. Commencing with the Effective Date, and continuing through 6:00 p.m. on the day that is forty (40) days after the Effective Date (the "Inspection Period"), Purchaser or any of Purchaser's agents, employees, consultants or independent contractors shall have the right to inspect the Property, with or without entering upon the same, and, in connection therewith and at Purchaser's sole expense and discretion, perform any due diligence inspections, investigations, reviews, audits and tests, including but not limited to soil test borings, compaction tests and other geotechnical investigations, environmental phase I or phase II audits, review of environmental matters, feasibility studies, financial review, review of zoning matters, review of building code matters, review of business licensing and franchising matters, review of ability to procure financing, review of occupancy permit matters, review of survey, review of intended use, review of title matters, review of ability to obtain title endorsements, review of the condition, drainage, ingress, egress, access, components, circumstances and any other characteristics or components of the Property, review of construction/improvement plans including without limitation negotiations with the municipality with jurisdiction over the Property for approval thereof, review of property tax related matters including without limitation the ability to procure a Class 7b Property Tax Incentive or any other matters deemed by Purchaser in its sole discretion to relate to the feasibility and desirability of completing the purchase contemplated by this Agreement (collectively, "Inspections"). If any of such Inspections as described herein indicate to Purchaser that the Property is not acceptable to the Purchaser in Purchaser's sole and absolute discretion, then Purchaser may elect by written notice to Seller given prior to the expiration of the Inspection Period to terminate this Agreement, in which event the Initial Earnest Money shall be forthwith returned to Purchaser and this Agreement shall become null and void without further action of either party and neither party shall have any further rights or duties hereunder. If Purchaser does not elect to terminate this Agreement in accordance with the preceding sentence, then this Agreement shall remain in full force and effect and Purchaser shall waive any right to terminate this Agreement pursuant to this Paragraph 4C. Purchaser's reviews and interpretations of its inspections of the Property as set forth herein shall control. If any damage to the Property or other property occurs as a result of, or arising out of, the Inspections or other actions of Purchaser or its agents or contractors in connection therewith, Purchaser shall immediately repair any such damage and restore the damaged portion of the Property to its condition immediately prior to such damage. Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, liabilities and costs (including attorney's fees and costs incurred in the defense of the same, or otherwise in connection therewith) for damage, injury or death caused by, or arising out of,

Purchaser, its employees, agents or contractors conducting any Inspections; provided, however the foregoing indemnification shall not apply to, and Purchaser shall not be responsible for, any pre-existing conditions (environmental or otherwise) uncovered by Purchaser in the course of any the Inspections. Purchaser's obligations under this paragraph shall survive the Closing (and the delivery of the deed hereunder and shall not be deemed merged thereby) or earlier termination of this Agreement. Prior to the commencement of any Inspections, Purchaser shall (i) obtain policies of general liability insurance which insure Purchaser or its representatives with liability insurance limits of not less than \$1,000,000 combined single limit for personal injury and property damage and name Seller as an additional insured and which are with such insurance companies reasonably acceptable to Seller; and (ii) provide Seller with certificates of insurance evidencing that Purchaser has obtained the aforementioned policies of insurance.

OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY SHALL BE TRANSFERRED TO AND ACCEPTED BY PURCHASER IN AS IS CONDITION WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHATSOEVER. PURCHASER ACKNOWLEDGES THAT PURCHASER IS NOT RELYING UPON ANY REPRESENTATION OR WARRANTY BY SELLER, EITHER EXPRESS OR IMPLIED, IN ORDER TO ENTER INTO THIS AGREEMENT OR TO CARRY OUT THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT.

PURCHASER DOES HEREBY ACKNOWLEDGE, REPRESENT, WARRANT AND AGREE TO AND WITH SELLER THAT: (I) SELLER HAS SPECIFICALLY BARGAINED FOR THE ASSUMPTION BY PURCHASER OF ALL RESPONSIBILITY TO INSPECT AND INVESTIGATE THE PROPERTY AND OF ALL RISK OF ADVERSE CONDITIONS AND HAS STRUCTURED THE PURCHASE PRICE AND OTHER TERMS OF THIS AGREEMENT IN CONSIDERATION THEREOF; (II) PURCHASER SHALL UNDERTAKE ALL SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS PURCHASER DEEMS NECESSARY OR APPROPRIATE UNDER THE CIRCUMSTANCES AS TO THE CONDITION OF THE PROPERTY AND THE SUITABILITY OF THE PROPERTY FOR PURCHASER'S INTENDED USE, AND BASED UPON SAME, PURCHASER IS AND WILL BE RELYING STRICTLY AND SOLELY UPON SUCH INSPECTIONS AND EXAMINATIONS AND THE ADVICE AND COUNSEL OF ITS OWN AGENTS, LEGAL COUNSEL AND OFFICERS AND PURCHASER IS AND WILL BE FULLY SATISFIED THAT THE PURCHASE PRICE IS FAIR AND ADEQUATE CONSIDERATION FOR THE PROPERTY; AND (III) OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS NOT MAKING AND HAS NOT MADE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO ANY MATERIALS OR OTHER DATA PROVIDED BY SELLER TO PURCHASER OR THE EDUCATION, SKILLS, COMPETENCE OR DILIGENCE OF THE PREPARERS THEREOF OR THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF ALL OR ANY PART OF THE PROPERTY AS AN INDUCEMENT TO PURCHASER TO ENTER INTO THIS AGREEMENT AND THEREAFTER TO PURCHASE THE PROPERTY OR FOR ANY OTHER PURPOSE.

D. **PHYSICAL CONDITION OF THE PROPERTY.** At Closing, Seller shall deliver possession of the Property to Purchaser (in the condition required under this Agreement), subject only to the Permitted Exceptions. It is understood and agreed by the parties that, prior to Closing, the Seller, at the Seller's sole cost and expense, shall have completely demolished the building located on the Property (including without limitation all footings and foundations thereof), completely cleared all debris

resulting from such demolition without harm to the Property and in such manner so as to provide for a level grade to coincide with that grade surrounding the area where said building was theretofore located, capped and valved all utilities at the Property boundary lines (all utilities shall be paid by Seller through the Closing Date, as defined herein), completely removed certain portions of the improvements located on the Property (including without limitation all footings and foundations thereof) as set forth on Exhibit C hereof (which will be completed and/or modified by the Purchaser during the Inspection Period), completely cleared all debris resulting from such removal without harm to the Property and in such manner so as to provide for a level grade to coincide with that grade surrounding the area where such improvements were theretofore located and removed all personal property located in said building from the Property without harm to the Property. In performing the foregoing work, the Seller, and its agents, contractors, consultants, employees and invitees shall comply with all applicable laws, regulations, codes and ordinances including without limitation those relating to environmental matters. The parties understand and agree that any additional costs attendant to the foregoing work that arise as a result of any environmental issues or requirements shall be borne by the Seller, including without limitation those relating to the proper removal of any asbestos or asbestos containing materials located in or on the Building.

Purchaser shall have the right to inspect the Property prior to Closing to verify the foregoing. If Seller is unable to deliver the Property in the required condition at Closing, then such failure shall be deemed a Seller default in which event the provisions of Paragraph 11 of this Agreement with respect to Seller's default shall apply.

E. DOCUMENTATION PERTAINING TO PURCHASER'S INSPECTIONS. Within three (3) business days of the Effective Date, upon Purchaser's request Seller shall provide purchaser with legible copies of any and all documentation in Seller's possession, without representation or warranties, especially as to the conclusions set forth therein, that is pertinent to the Purchaser's Inspections hereunder, including without limitation any title reports any surveys not described in Paragraphs 4A and 4B of this Agreement, all physical reports pertaining to the Property, environmental reports and studies, service agreements, warranties, and all studies and other similar documents and agreements pertaining to the Property. If Seller is unable to timely deliver the aforesaid documentation to Purchaser, then such failure shall be deemed a Seller default in which event the provisions of Paragraph 11 of this Agreement with respect to Seller's default shall apply.

F. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. As of the Closing, there exists no material breach of or default in any of the Seller's representations, warranties or covenants contained in this Agreement, including without limitation those contained in Paragraph 22 hereof. Purchaser shall have the right to inspect the Property prior to Closing to verify the foregoing. In the event there is a material breach of or default in any of the Seller's representations, warranties or covenants contained in this Agreement, including without limitation those contained within Paragraph 22 hereof, as of the Closing, then such failure shall be deemed a Seller default in which event the provisions of Paragraph 11 of this Agreement with respect to Seller's default shall apply..

G. PERFORMANCE OF SELLER'S OBLIGATIONS. As of the Closing Date, the full and timely performance of all of Seller's obligations hereunder. Purchaser shall have the right to inspect the Property prior to Closing to verify the foregoing. If Seller does not fully and timely perform all of its obligations hereunder as of the Closing Date, then such failure shall be deemed a Seller default in which event the provisions of Paragraph 11 of this Agreement with respect to Seller's default shall apply..

H. ADDRESS CHANGE. At or prior to Closing, the Seller shall have completed the process of amending or changing the United States Postal Service address of the Property to indicate "Golf Road" as the street thereof. If Seller does not fully and timely perform all of its obligations

hereunder as of the Closing Date, then such failure shall be deemed a Seller default in which event the provisions of Paragraph 11 of this Agreement with respect to Seller's default shall apply..

5. ESCROW.

A. The purchase and sale of the Property shall be closed through an escrow established at the offices of the Title Insurer at a location to be agreed to by Seller and Purchaser, with the Title Insurer acting as escrowee in accordance with the general provisions of the customary Deed and Money Escrow Agreement then used by the Title Insurer with such special provisions inserted therein as may be required to conform with this Agreement ("Escrow"). In the event of any conflict between the Escrow Agreement and this Agreement, this Agreement shall prevail, unless the Escrow Agreement specifically recites that it is intended to amend or modify this Agreement.

B. The cost of the Escrow shall be divided equally between Purchaser and Seller. Upon creation of the Escrow, anything herein to the contrary notwithstanding, payment of the Purchase Price, delivery of the deed and delivery of any and all other documents required hereunder shall be made through the Escrow. All fees of any money lender's escrow shall be paid solely by Purchaser.

C. The Closing shall be "New York Style" and at Closing, Purchaser shall receive from the Title Insurer an ALTA 2006 policy for title insurance insuring Purchaser's title as of the date and time of Closing or a marked up commitment of the Title Insurer to issue such policy of title insurance in a form and subject only to the Permitted Exceptions, with extended coverage and the title endorsements as provided for in this Agreement, with gap coverage to the date and time of recording of the deed. The cost of the "New York Style" Closing shall be shared equally.

6. CLOSING.

A. The Closing or Closing Date of this transaction shall occur on the day that is ten (10) days after the end of the Inspection Period, or on an earlier date which is otherwise agreed to by Seller and Purchaser.

B. On or before the Closing Date, Seller shall deposit or cause to be deposited in the Escrow, the following closing documents:

(1) A Special Warranty Deed in the form attached hereto as Exhibit D ("Deed") to convey the Property to Purchaser, or its permitted assignee pursuant to the provisions of Paragraph 20 hereof, free and clear of any liens or encumbrances and subject only to the Permitted Exceptions and the reservation of easement in favor of Seller (as set forth in the Special Warranty Deed attached hereto as Exhibit D).

(2) An Affidavit executed by Seller in form and substance acceptable under Section 1445 of the Internal Revenue Code, as amended, (FIRPTA Certificate) setting forth under penalty of perjury, Seller's United States taxpayer identification number and certifying that Seller is not a "foreign person" as that term is used under Section 1445(b)(2) of the Internal Revenue Code, as amended.

(3) An executed ALTA Statement sufficient to provide for extended coverage over the five general exceptions to coverage.

(4) An executed GAP Affidavit.

(5) An Affidavit of Title.

(6) Municipal, if any, county and state real estate transfer tax declarations (exemptions with respect to the same are described in Paragraph 7D hereof), with the Seller procuring any and all required inspections, certifications and utility readings and satisfactory documentation evidencing clearance to close based thereon, at Seller's cost and expense.

(7) Municipal resolution / ordinance or other similar and/or additional documentation evidencing the authority of Seller to convey the property as herein provided.

(8) Documentation evidencing the termination and full payment (at Seller's expense) of any service, property management, leasing or maintenance agreements, contracts or options affecting the Property, as of the Closing Date, including without limitation applicable lien waivers and releases, or an affirmation of the non-existence of the same.

(9) A certification of the Seller's representations, warranties and covenants contained in this Agreement, including without limitation those contained in Paragraph 22 hereof, indicating compliance with Seller's obligations under Paragraph 4F of this Agreement.

(10) Such other documents, instruments, certifications and confirmations as may reasonably be required by the Title Insurer to fully effect and consummate the transaction contemplated hereby.

C. On or before the Closing Date, Purchaser shall deposit or cause to be deposited into the Escrow the following:

(1) Executed ALTA Statements.

(2) Certificates as may be required by the Title Insurer evidencing Purchaser's authorization to complete the purchase of the Property which will consist of a corporate resolution, member or partnership action as applicable and a certificate of good standing from the state in which Purchaser is incorporated or organized evidencing the good standing of the Seller to transact business in the state of Illinois or appropriate trust documentation.

(3) The balance of the Purchase Price, in immediately available funds (wire transfer).

(4) A certification of the Purchaser's representations, warranties and covenants contained in this Agreement.

(5) Such other documents, instruments, certifications and confirmations as may reasonably be required by Seller or the Title Insurer to fully effect and consummate the transaction contemplated hereby.

D. On or before the Closing Date, Seller and Purchaser shall jointly deposit or cause to be deposited into the Escrow the following:

(1) Executed Closing Statements.

(2) Municipal, if any, county and state real estate transfer tax declarations, subject to the provisions of Paragraph 6B(7) of this Agreement.

[E. Intentionally Deleted]

7. COSTS.

A. Intentionally Deleted.

B. Intentionally Deleted.

C. Seller shall pay the recording charges for release of liens of record, the required basic premium for the 2006 ALTA Owner's title insurance policy, and any premiums charged by the Title Insurer for insuring over any Unpermitted Exceptions and Survey Defects pursuant to Paragraphs 4A and 4B of this Agreement. Purchaser shall pay the recording charges for the Deed and any premiums for extended coverage and any endorsements requested by Purchaser. Any premiums charged for the Purchaser's requested endorsements and for any lender's policy of title insurance shall be paid by the Purchaser. The parties shall each be solely responsible for the fees and disbursements of their respective legal counsel.

D. It is understood by the parties that the transfer of the Property contemplate herein is exempt from Municipal, County and State real estate transfer taxes. If the foregoing is inaccurate, Seller shall pay documentary, stamp or transfer fees imposed by the State and the County and any local documentary, stamp or transfer taxes shall be paid by the party upon whom the ordinance places that responsibility.

E. The provisions of this Paragraph 7 of this Agreement shall survive the Closing (and the delivery of the deed hereunder and shall not be deemed merged thereby).

8. [INTENTIONALLY DELETED].

9. [INTENTIONALLY DELETED].

10. CONDEMNATION.

A. Seller shall give Purchaser immediate written notice of any action or proceeding threatened, contemplated, instituted, or pending in eminent domain or for condemnation, or with respect to a sale in lieu thereof, affecting all or any part of the Property. If, prior to Closing, any part of the Property is taken, or threatened to be taken, by condemnation or eminent domain, or sale in lieu thereof, Purchaser may, at Purchaser's sole option, within thirty (30) days of Purchaser's receipt of notice of such condemnation or taking, elect by notice in writing to Seller within such period to (i) terminate this Agreement, in which event the Earnest Money and all accrued interest thereon shall be forthwith returned to Purchaser and neither party shall have any further liability to the other, or (ii) proceed to close the transaction contemplated by this Agreement pursuant to the terms hereof.

B. If Purchaser shall elect to close the transaction contemplated by this Agreement pursuant to this Paragraph, then this Agreement shall remain in full force and effect, and Seller shall assign to Purchaser, in a writing satisfactory to Purchaser, all of its rights to any condemnation and/or relocation proceeds, and its rights to pursue the same, in which case no reduction in the Purchase Price shall occur.

11. DEFAULT. In the event of a default in the performance of any obligation hereunder by: (i) Purchaser, then so much of the Earnest Money as has been deposited at the time of such default shall be retained by Seller as liquidated damages, not as a penalty, but as Seller's sole and exclusive remedy, the parties agreeing that at this time, the Seller's actual damages upon Purchaser's default are unable to be ascertained and that such damage amount is reasonable; (ii) Seller, then the Purchaser shall have the right to terminate this Agreement in which case the Earnest Money shall be forthwith returned and refunded to the Purchaser and this Agreement shall become null and void without further action of either party and neither party shall have any further duties or obligations hereunder and Purchaser shall also be entitled, as liquidated damages and as Purchaser's sole and exclusive remedy, to reimbursement for all actually incurred, out of pocket expenses related to the transaction contemplated hereunder, which reimbursement shall in no event exceed *ten thousand and No/100 dollars* (\$10,000.00). Neither party may exercise any remedy herein provided unless five (5) business days have passed after delivery of written notice to cure from the non-defaulting party and the defaulting party has failed to cure said default.

12. NOTICE/CALCULATION OF TIME PERIODS.

A. For all purposes of this Agreement, a "business day" shall refer to all Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, with the exception of United States and State of Illinois legal holidays and "business hours" shall mean up to 6:00 p.m. CST on business days.

B. All notices, demands, requests or other communications required or permitted hereunder shall be in writing and shall be:

(1) Personally delivered to the party to whom it is sent, effective on the date of such delivery; or

(2) Sent via facsimile transmission sent on business days during business hours (between 9:00 a.m. and 6:00 p.m. central time), effective on the date of such delivery otherwise the effective date shall be the next business day, provided that a copy of such notice along with a copy of the confirmation of such delivery is also mailed by first class mail concurrently with such facsimile transmission; or

(3) Sent via email transmission sent on business days during business hours (between 9:00 a.m. and 6:00 p.m. central time), effective on the date of such delivery otherwise the effective date shall be the next business day, provided that a copy of such notice along with a copy of the confirmation of such delivery is also mailed by first class mail concurrently with such email transmission; or

(4) Sent via overnight delivery through a nationally recognized courier service to the party to whom it is sent, effective on the date of the delivery of such notice to said courier for such delivery, all as follows:

To Seller: Village of Hoffman Estates
Attn: James Norris
1900 Hassell Road 370

Hoffman Estates, IL 60169
Telephone: (847) 781-2601
Facsimile: (847) 781-2624
Email: Jim.Norris@Hoffmanestates.org

With a copy to: Arthur L. Janura
Arnstein & Lehr LLP
2800 W. Higgins Road, Suite 425
Hoffman Estates, IL 60169
Tel: (847) 843-2900
Fax: (847) 843-3355
Email: aljanura@arnstein.com

Purchaser: 1200 Gannon, LLC
c/o Schaumburg Audi
Attn: Michael Hall
320 W. Golf Road
Schaumburg, IL 60195
Phone - 847-843-9900
Fax - 847-843-9982

With a copy to: Peter Tsantilis, Esq.
Liston & Tsantilis, P.C.
33 N. LaSalle St., Suite 2500
Chicago, Illinois 60602
Ph: (312) 604-3808
Fax: (312) 580-1592
Email: PTsantilis@LTLawChicago.com

C. Any notice, demand, request or other communication required or permitted hereunder may be made only upon a party's attorney, which shall be effective for all purposes.

13. **BROKER'S COMMISSION.** The parties agree that the only broker utilized in the transaction contemplated by this Agreement was Anne R. Dempsey of Colliers, Bennett & Kahnweiler LLC (the "Purchaser's Broker"), that no other broker is, or has been, involved in this transaction, and that the Seller is solely responsible for all commissions to be paid to the Purchaser's Broker in the amount of *FIVE PERCENT* (5%) of the Purchase Price, which commission shall be paid by Seller to Purchaser's Broker at Closing. In the event that any company, firm, broker, agent, commission salesperson or finder perfects a claim for a commission or finder's fee based upon a contract, dealings or communication with one of the parties, the party against whom the company, firm, broker, agent, commission salesperson or bases his claim shall be responsible for said commission or fee and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same. The provisions of this Paragraph 13 shall survive Closing (and the delivery of the deed hereunder and shall not be deemed merged thereby) or any earlier termination of this Agreement.

14. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be defined as set forth herein.

15. **ENTIRE AGREEMENT.** This Agreement and all exhibits hereto contains the entire agreement between the parties with respect to the purchase and sale of the Property, and all prior statements, letters of intent, representations and offers, if any, are hereby terminated. This Agreement

may not be amended, modified or discharged nor may any of its terms be waived, except by an instrument in writing signed by the party to be bound thereby.

16. **PERSONS BOUND.** This Agreement and all covenants and provisions herein contained, shall bind and inure to the benefit of the parties hereto and their respective agents, heirs, personal representatives, administrators, executors, successors and assigns.

17. Intentionally Deleted.

18. **NO THIRD PARTY BENEFITS.** This Agreement is for the sole and exclusive benefit of the parties hereto and their respective heirs and successors, and no third party is intended to or shall have any rights hereunder.

19. **NO PARTNERSHIP OR JOINT VENTURE.** Nothing contained in this Agreement is intended or shall be construed in a manner to create any relationship between Seller and Purchaser other than the relationship of purchaser and seller, and Seller and Purchaser shall not be considered agents of the other, joint venturers or partners for any purpose.

20. **ASSIGNMENT.** Purchaser's interest under this Agreement may not be assigned by the Purchaser without the prior written consent of the Seller, which consent may be withheld by the Seller in its sole and unfettered discretion. Any attempted assignment by the Purchaser which is made without the Seller's consent shall be of no force and effect whatsoever. No assignment shall, however, relieve the Purchaser from the performance of its obligations hereunder.

21. **TAX FREE EXCHANGE.** Either party may exchange the Property for like kind property under terms and conditions which qualify for non-recognition pursuant to Section 1031 of the Internal Revenue Code (the "Code"). Each party agrees to cooperate with the other party who chooses to effectuate such exchange and to execute and deliver any and all documents that may be reasonably required to effectuate the exchange, provided that neither party shall be obligated to incur any additional cost or liability in connection with the exchange and provided further that, in no event, shall such exchange delay the Closing. Each party shall indemnify, defend and hold the other party harmless from any and all closing costs, expenses, liabilities or losses arising by reason of such exchange.

22. **SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

A. The Seller represents and warrants the following are true and correct on the Effective Date and the Seller shall perform its obligations under the following covenants as of the Effective Date and during all such times indicated thereafter, including without limitation after the Closing, if and to the extent performance beyond the Closing is contemplated and required herein:

(1) Seller is the owner of the Property and has the full power and authority to sell, transfer, convey and deliver the Property to be sold and purchased hereunder and to perform all of its obligations hereunder including without limitation those relating to the condition of the Property at Closing as set forth in Paragraph 4D of this Agreement. Seller is duly organized, validly existing and in good standing under the laws of the state of its formation; has or at the Closing shall have the entity power and authority to sell and convey the Property as required herein and to execute the documents to be executed by Seller and prior to the Closing will have taken as applicable, all corporate, partnership, limited liability company, municipal or equivalent entity actions required for the execution and delivery of this Agreement, and the consummation of the transactions contemplated by this Agreement. The compliance with or fulfillment of the terms and

conditions hereof will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any contract to which Seller is a party or by which Seller is otherwise bound, which conflict, breach or default would have a material adverse affect on Seller's ability to consummate the transaction contemplated by this Agreement or on the Property. This Agreement is a valid, binding and enforceable agreement against Seller in accordance with its terms.

(2) Seller has not granted any leases, tenancies, licenses or other rights of occupancy, possession or use relating to all or any portion of the Property except for the Permitted Exceptions.

(3) Seller has not entered into any agreements, contracts, options, rights of first refusal or first opportunity to acquire affecting all or any portion of the Property that will not be terminated by Seller prior to closing or that will affect Seller's ability to transfer the Property as required herein.

(4) There are no services, property management, leasing or maintenance agreement, contracts or options affecting the Property that will not be terminated by Seller prior to the Closing.

(5) Seller has received no written notices from any government agency or employee, nor has Seller received any written notice from any other party with knowledge respecting environmental conditions at the Property nor does the Village Manager of the Village of Hoffman Estates (Seller) have any knowledge that: (i) the Property does not comply with any applicable governmental laws, regulations and requirements relating to environmental matters; and (ii) any underground storage tanks are located on the Property or that the Property has ever been used as a landfill.

(6) Seller has received no written notices from any government agency or employee, nor has Seller received any written notice from any other party with knowledge respecting the conditions at the Property nor does the Village Manager of the Village of Hoffman Estates (Seller) have any knowledge that the Property is not in compliance with all laws, ordinances and regulations affecting the Property, including, without limitation, all building, zoning and public safety codes and ordinances applicable to the Property;

(7) Seller has received no notice of nor does the Village Manager of the Village of Hoffman Estates (Seller) have any knowledge of any pending or proposed action of condemnation or eminent domain, sale in lieu thereof, or any negotiations or discussions related thereto.

(8) Seller has received no notice of and there are no actions, suits, investigations or proceedings pending or, to the knowledge of Seller, threatened against or affecting all or any portion of the Property, or any lease of any portion of the Property, or relating to or arising out of the ownership, management or operation of the Property, or Seller's ability to transfer the same as required herein, in any court or before or by any federal, state, county or municipal department.

(9) Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, suffered the appointment of a receiver to take possession of

all, or substantially all, of such Seller's assets, suffered the attachment or other judicial seizure of all, or substantially all, of such Seller's assets, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally.

(10) Seller has not received notice, nor does the Village Manager of the Village of Hoffman Estates (Seller) have any knowledge that the Property is subject to or is affected by any special assessment or special taxing district with respect to which any sums will be due and payable after Closing. At or prior to the Closing, Seller shall pay any special assessments of real estate taxes and any special taxing district taxes or charges for the Property which are confirmed prior to the Closing.

(11) Intentionally deleted.

(12) Seller is not a "foreign person," as that term is used and defined in the Internal Revenue Code, Section 1445, as amended.

(13) Intentionally deleted.

(14) To the actual knowledge of Seller, Seller represents and warrants that Seller (i) is not currently identified on the Specially Designated Nationals and Blocked Persons List (the "List") maintained by the office of Foreign Assets Control Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation; (ii) is not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (iii) none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and (iv) Seller has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. Seller also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Seller is or shall be listed on any of the Lists or is or shall be an Embargoed Person. This Section shall not apply to any person to the extent that such person's interest in Seller is through a U.S. Publicly-Traded Entity.

(15) Intentionally deleted.

(16) Intentionally deleted.

(17) Intentionally deleted.

(18) Seller represents and warrants that the Property is exempt from real estate taxation and that there are no outstanding or accrued real estate taxes, fines, interest or penalties with respect to the same. To the extent the foregoing exist, Seller shall pay the same at or prior to the Closing.

B. Except with respect to fraud or intentional or grossly negligent misrepresentations, the representations, warranties and covenants contained within this Agreement, including without limitation those contained within this Paragraph 22, shall not survive the Closing.

23. PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.

Purchaser has the full power and authority to purchase the Property and to execute the documents to be executed by Purchaser and prior to the Closing, will have taken as applicable, all corporate, partnership, limited liability company or equivalent entity actions required for the execution and delivery of this Agreement, and the consummation of the transactions contemplated by this Agreement. The compliance with or fulfillment of the terms and conditions hereof will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any contract to which Purchaser is a party or by which Purchaser is otherwise bound, which conflict, breach or default would have a material adverse affect on Purchaser's ability to consummate the transaction contemplated by this Agreement or on the Property. No consent, waiver, approval or authorization is required from any person or entity in connection with the execution and delivery of this Agreement by Purchaser or the performance by Purchaser of the transactions contemplated hereby that has not already been obtained. This Agreement is a valid, binding and enforceable agreement against Purchaser in accordance with its terms. Except with respect to fraud or intentional or grossly negligent misrepresentations, the representations, warranties and covenants contained within this Agreement, including without limitation those contained within this Paragraph 23, shall not survive the Closing.

24. Intentionally Deleted.

25. INTERPRETATION.

A. The headings and captions herein are inserted for reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

B. The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Effective Date of this Agreement.

C. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa where the context so requires.

D. Words importing persons shall include firms, associations, partnerships, limited partnerships, trusts, corporations and other legal entities, including public bodies and natural persons.

E. The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

F. If, under the terms of this Agreement, any period of time is to be calculated as a certain number of days "after", "upon", "of", "from" or "within" the receipt of a document or item by a party, the occurrence of an event or the expiration of a particular time period, the date of a party's receipt of said document or item, the date of the occurrence of said event or the expiration of said particular time period shall not be included in the calculation of said period of time.

26. MISCELLANEOUS.

A. This Agreement shall be governed and interpreted in accordance with the laws of the State of Illinois.

B. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Purchaser and Seller have contributed substantially and materially to the preparation of this Agreement and have had the opportunity to seek legal counsel with regard to the same.

C. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, and transmitted by facsimile or electronic means, each of which shall be deemed an original, but all of these together shall constitute one and the same instrument.

D. Whenever under the terms of this Agreement the time for performance of any act falls upon a Saturday, Sunday or holiday, such time for performance shall be extended to the next business day.

E. Seller and Purchaser agree that TIME IS OF THE ESSENCE of this Agreement and that failure of either party to strictly comply with the time limitations contained herein shall be considered as a default unless provided otherwise herein or unless expressly waived in writing by agreement of the non-defaulting party.

F. The terms, conditions, obligations, representations, covenants, warranties and provisions of this Agreement intended to survive the Closing shall survive the Closing and delivery of the deed hereunder and shall thereafter (unless expressly limited herein and then only to the extent of such limit) remain in force and effect and shall not be deemed merged thereby.

G. In the event any terms or provisions of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect. Further, with respect to any such provision(s) determined to be invalid or unenforceable, such provision(s) shall be deemed reformed to the extent necessary to be valid and enforceable, and to accomplish the intention of the parties as is most nearly possible. It is the intent and belief of the parties that each and every provision of applicable law required to be inserted in this Agreement should be and is hereby deemed to be inserted and that this Agreement in all respects comports with applicable law. If any provision(s) required to be inserted in this Agreement by law is/are not inserted, or not inserted in correct form, then this Agreement shall forthwith, upon the request of either party be deemed amended so that such provision(s) required by law is/are deemed inserted herein in correct form without prejudice to the rights of either party.

H. Purchaser and Seller covenant to cooperate with each other in effecting the intent of this Agreement, including executing such documents as the other party may reasonably require.

I. Except to the extent contrary to any applicable law, ordinance, code or regulation, either Purchaser or Seller may waive the performance of or default of the other party with respect to any provision of this Agreement, except that: (i) no waiver shall be deemed or shall constitute a waiver of the performance of or default of the other party with respect to any other provision of this Agreement, whether or not similar; (ii) no waiver shall constitute a continuing waiver; and (iii) no waiver shall be binding unless executed in writing by the party making the waiver.

J. The parties acknowledge that the Village of Hoffman Estates has entered into a Cost Recovery Agreement of even date herewith with Hall Enterprises, Inc., an Illinois corporation, d/b/a Audi Hoffman Estates and that said Cost Recovery Agreement relates to the Property and the Seller's obligations and rights under this Agreement. Except as aforesaid, this instrument and the exhibits hereto

contain the entire agreement between Purchaser and Seller respecting the Property. Except as aforesaid, any agreements or representations covering the Property or the duties of either Purchaser or Seller not set forth in this Agreement or its exhibits are of no effect. This Agreement can be amended, modified and/or revised only by a writing signed by the parties hereto expressly referring to this Agreement. Except as aforesaid, nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assigns, if any, nor shall any provision give any third parties any right of subrogation or action against any party to this Agreement. The parties hereto agree that nothing contained herein shall be construed as creating the relationship of principal and agent or of partnership or of joint venture or of any other form of legal association which would impose liability upon one party for the act or failure to act of another party.

K. This Agreement, notwithstanding anything to the contrary herein or otherwise, shall not be binding unless and until it is fully executed by both Purchaser and Seller.

(signature pages to follow)

IN WITNESS WHEREOF, the parties have hereto set their hands and seals on the dates written below, the latter of which is known as the "Effective Date" hereunder.

SELLER:

The Village of Hoffman Estates,
an Illinois municipal corporation

By: _____

Name: _____

Title: _____

Dated: _____

PURCHASER:

1200 Gannon, LLC,
an Illinois limited liability company

By: Michael F. Hall

Name: MICHAEL F. HALL

Title: PRESIDENT

Dated: 9-15-11

9134637.3

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"

PERMITTED EXCEPTIONS

(TO BE COMPLETED AND/OR MODIFIED BY THE PARTIES DURING THE INSPECTION PERIOD)

EXHIBIT "C"

**DIAGRAM OF THOSE IMPROVEMENTS LOCATED ON THE PROPERTY
THAT ARE TO BE REMOVED PRIOR TO CLOSING**

(TO BE COMPLETED AND/OR MODIFIED BY PURCHASER DURING THE INSPECTION PERIOD)

EXHIBIT "D"

SPECIAL WARRANTY DEED

9134637.3

THIS DOCUMENT HAS BEEN
PREPARED BY:

Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606
Attn: Stephanie J. Kim, Esq.
33376.0001

SPECIAL WARRANTY DEED

VILLAGE OF HOFFMAN ESTATES, an Illinois municipal corporation ("**Grantor**"), for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid to **1200 GANNON, LLC**, an Illinois limited liability company ("**Grantee**"), whose mailing address is c/o Schaumburg Audi, 320 W. Golf Road, Schaumburg, IL 60195 and for other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, by these presents does GRANT, SELL, and CONVEY, unto Grantee that certain tract of real property located in the County of Cook, Illinois, as more particularly described on **Exhibit A** attached hereto, incorporated herein, and made a part hereof for all purposes, together with any and all rights appertaining thereto, and any and all of the improvements located thereon (said real property, together with any and all of the related improvements, rights, and appurtenances belonging or appertaining thereto, being herein collectively referred to as the "Property").

TO HAVE AND TO HOLD the Property unto Grantee, its heirs, executors, administrators, legal representatives, successors and assigns forever, subject to the matters herein stated; and Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its heirs, executors, administrators, legal representatives, successors and assigns, against every person lawfully claiming by, through, or under Grantor, but not otherwise; provided, that this conveyance and the warranty of Grantor herein contained are subject to those matters set forth in **Exhibit B** attached hereto and made a part hereof and the easement described in this Deed.

Grantor hereby reserves and excepts from the foregoing conveyance, a permanent easement, which easement area shall encompass the west fifteen (15) feet of the Property described in **Exhibit A** and is legally described on **Exhibit C** attached hereto and made a part hereof ("**Easement Area**"), to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, relocate, inspect and remove at any time and from time to time fiber optic communications cables including but not limited to above ground enclosures, markers and concrete pads or other appurtenant fixtures and equipment necessary or useful for distributing fiber optic communication services and other like communications, in, on, over, under, across and along the Easement Area, together with the right of ingress and egress in, on, over, under, across and along the Property as may be necessary to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, relocate, inspect and remove such cables in accordance with the terms herein.

No structure shall be erected over the Easement Area but the same may be used for landscaping, fencing, parking and other purposes provided that such use does not unreasonably interfere with the purposes for which the foregoing easement was granted.

The foregoing easement, including the benefits and burdens thereof, are appurtenant to and shall run with the land described herein, and are and shall be binding on and inure to the heirs, assigns, successors, tenants and personal representatives of the parties.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Special Warranty Deed this _____, 20__.

GRANTOR:

VILLAGE OF HOFFMAN ESTATES, an Illinois
municipal corporation

By: _____

Printed Name: _____

Its: _____

Date: _____, 20__

PLEASE MAIL SUBSEQUENT TAX
BILLS TO:

AFTER RECORDING, PLEASE RETURN TO:

Liston & Tsantilis, P.C.
33 N. LaSalle St., Suite 2500
Chicago, Illinois 60602
Attn: Peter Tsantilis

State of Illinois)
)SS:
County of _____)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, _____ of VILLAGE OF HOFFMAN ESTATES, an Illinois municipal corporation personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary acts and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____, 20____.

Notary Public

My Commission Expires:

EXHIBIT A

Permanent Index Number:

Commonly known as:

EXHIBIT B

EXHIBIT C

VILLAGE OF HOFFMAN ESTATES

A RESOLUTION AUTHORIZING APPROVAL OF A
COST RECOVERY AGREEMENT BETWEEN
HALL ENTERPRISES, INC. AND THE VILLAGE OF HOFFMAN ESTATES

WHEREAS, it is in the best interests of the Village of Hoffman Estates to enter into a Cost Recovery Agreement with Hall Enterprises, Inc. for a proposed Audi car dealership at 1200 Gannon Drive.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Hoffman Estates, Cook and Kane Counties, Illinois, as follows:

Section 1: That the Village President and Village Clerk are duly authorized to execute a Cost Recovery Agreement, attached as Exhibit "A", between Hall Enterprise, Inc. and the Village of Hoffman Estates for a proposed Audi car dealership at 1200 Gannon Drive.

Section 2: That this Resolution shall be in full force and effect immediately from and after its passage and approval.

PASSED THIS _____ day of _____, 2011

VOTE	AYE	NAY	ABSENT	ABSTAIN
Trustee Karen V. Mills	_____	_____	_____	_____
Trustee Raymond M. Kincaid	_____	_____	_____	_____
Trustee Jacquelyn Green	_____	_____	_____	_____
Trustee Anna Newell	_____	_____	_____	_____
Trustee Gary J. Pilafas	_____	_____	_____	_____
Trustee Gary G. Stanton	_____	_____	_____	_____
Mayor William D. McLeod	_____	_____	_____	_____

APPROVED THIS _____ DAY OF _____, 2011

Village President

ATTEST:

Village Clerk

**COST RECOVERY AGREEMENT BETWEEN THE
VILLAGE OF HOFFMAN ESTATES AND HALL ENTERPRISES, INC., AN ILLINOIS
CORPORATION, D/B/A AUDI HOFFMAN ESTATES**

This Agreement is entered into this ____ day of _____, 2011, by and between the Village of Hoffman Estates, an Illinois municipal corporation ("Village") and Hall Enterprises, Inc., an Illinois corporation, d/b/a Audi Hoffman Estates ("Hall").

W I T N E S S E T H:

WHEREAS, Hall Enterprises, Inc., an Illinois corporation, d/b/a Audi Hoffman Estates (currently d/b/a Schaumburg Audi) plans to move its operations from the Village of Schaumburg to the Village of Hoffman Estates, change its d/b/a name from Schaumburg Audi to Audi Hoffman Estates, and sell and service new and used Audi vehicles and Audi and certain other used cars from the property commonly known as 1200 Gannon Drive, Hoffman Estates, Illinois 60169 and bearing PINS 07-09-300-014-0000 and 07-09-300-011-0000 (the "Property"); and

WHEREAS, Hall has projected sales at the Property to be approximately \$40 million in 2012 with increases in subsequent years; and

WHEREAS, there will be substantial extraordinary expenses that are necessary for the development of this Property, including but not limited to, construction of a new first class auto sales and service building, site improvements, reconstruction of vehicle entrances, and landscape buffering and screening from adjacent residential properties, including attendant permitting, site plan, zoning and construction approvals through the Village.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, agreements, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Preambles. The parties hereby incorporate the recitals contained in the preambles as provisions of this Agreement and find the same to be true and correct.

2. Definitions.

a. Sales Tax or Sales Tax Revenue. For the purposes of this Agreement, the use of terms "Sales Tax" or "Sales Tax Revenue" shall mean any and all Retailers Occupation Taxes, Retailers Service Occupation Taxes, Retailers Use Tax, Retailers Service Use Tax, or any other "sales tax" (including, without limitations, a vehicle lease tax that is substituted for a portion of all of the foregoing) or successor tax that may be enacted by the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois which Village is able to verify by reference to the documents described in Section 5, *infra*, hereinafter being assessed, accruing or arising as a result of and received by the Village from the State of Illinois or such other governmental agency or body created as aforesaid.

b. Revenue Year. For the purposes of this Agreement, "Revenue Year" shall mean each twelve month period during the term hereof, commencing January 1, and ending December 31 of said calendar year.

c. Partial Revenue Year. The year in which Hall receives a certificate of occupancy to operate its business as aforesaid on the Property, if the balance of such calendar year is less than six months.

d. Non-Shareholder Contribution to Capital. A "Non-Shareholder Contribution to Capital" means the contributions by the Village to Hall in the form of Economic Incentives (as defined herein) based upon Municipal Sales Taxes (as defined herein) generated by Hall but which contributions to capital do not give the Village any equity or other interest in Hall.

e. Economic Incentive. "Economic Incentive" shall be the Non-Shareholder Contribution to Capital payable to Hall pursuant to Section 4.c. of this Agreement.

f. Municipal Sales Tax and Municipal Sales Tax Revenue. "Municipal Sales Tax" and "Municipal Sales Tax Revenue" refers to the Village's share of the Sales Tax Revenue generated from the Property that is actually received by the Village from the State of Illinois.

3. Name. In accordance with Section 7-7-3 of the Hoffman Estates Municipal Code, Hall shall not include the name of a municipality other than Hoffman Estates in the name of the business operated on the Property or in any advertising thereof, except that Hall is permitted to advertise its move to the Property and indicate the change in its d/b/a from Schaumburg Audi to Audi Hoffman Estates.

4. Economic Incentives.

a. New Dealership. It is understood by the parties and declared by the Village that the opening of a newly constructed dealership selling new and used automobiles will generate a substantial level of Sales Tax Revenue not ordinarily realized by a business use. Hall represents, warrants and covenants that it will comply in all respects with the Retailers Occupation Tax Act, as amended [35 ILCS 115/1 *et. seq.*] and the Service Occupation Tax Act, as amended [35 ILCS 120/1 *et. seq.*].

b. Commencement of Construction. Hall agrees to break ground on construction of the new dealership within thirty (30) months of the date of this Agreement.

c. Economic Incentive. Commencing upon the issuance of an occupancy permit for Hall's operations at the Property as set forth herein, the Village agrees to pay the Economic Incentive to Hall. Provided, however, no Economic Incentive shall be paid to Hall until such time as Hall is operating an automobile dealership on the Property and new automobiles are being sold. The Economic

Incentive shall be based upon the Municipal Sales Tax Revenue generated by Hall from the sale or lease of new motor vehicles, sales of used vehicles, any other vehicles sold or leased from any related motor vehicle franchise that may be granted to Hall and motor vehicle parts sold from the Property. The amount of the Economic Incentive payable to Hall is set forth on Exhibit "B", attached hereto and made a part hereof. Hall shall be eligible to receive the Economic Incentive until the earlier of (i) the time when the total Economic Incentive paid to Hall by the Village shall be equal to Two Hundred Fifty Thousand Dollars (\$250,000.00), or (ii) the end of the seventh (7th) Revenue Year after the Partial Revenue Year, subject to the limitations of Section 11 hereof, and further subject to extension pursuant to Section 7 hereof.

Each Non-Shareholder Contribution to Capital will be due and payable solely from proceeds of Municipal Sales Tax Revenues actually received by the Village from the State of Illinois.

Economic Incentives shall be paid annually as further set forth herein only when annual sales at the Property generate a minimum of \$350,000 of Municipal Sales Tax Revenue to the Village (the Threshold"), except that the Threshold shall not apply to the Partial Revenue Year. The Threshold shall increase by three percent (3%) annually starting with Revenue Year 4 as follows:

Revenue Year	3% Increase
1st Year*	No Threshold
Year 2	\$350,000
Year 3	\$350,000
Year 4	\$360,500
Year 5	\$371,315
Year 6	\$382,454
Year 7	\$393,928
Year 8	\$405,745
Year 9	\$417,918
Year 10	\$430,456
Year 11	\$443,369

***Partial Revenue Year**

If Hall receives a change in the Property's classification for real estate tax purposes to a Class 7B property tax classification under the Cook County Real Property Classification Ordinance, the Economic Incentive shall cease and any Economic Incentive received shall be returned to the Village. The Village will assist and cooperate with Hall in its pursuit of a Class 7B property tax incentive based on new construction for the Property with the appropriate Cook County governmental bodies and shall timely approve and pass a certified municipal resolution or ordinance consenting to and supporting Hall's Class 7B property tax incentive application for the Property based on new construction and including all

the prerequisites and eligibility findings required to be made by the Village in connection with such Class 7B application.

d. Payment. Within one hundred twenty (120) days after the end of December of each Revenue Year (or within one hundred twenty (120) days after the end of the Partial Revenue Year), the Village shall pay upon the receipt of records from the Illinois Department of Revenue, the applicable Economic Incentive to Hall pursuant to Exhibit "B" for the previous twelve (12) month period (January 1 through December 31) or for the Partial Revenue Year. Hall agrees to provide for the release of information from the State of Illinois Department of Revenue, as reasonably required by the Village, relating to the Municipal Sales Tax for the life of this Agreement. Hall agrees to also provide for the release of such information from any franchise or other parties operating at the Property.

e. Termination of New Car Sales. Hall agrees that if at any time within three (3) years of the final payment to Hall, Hall shall permanently cease new car sales of Audi vehicles on the Property for any reason other than condemnation, casualty or force majeure, or relocation to another site within the Village of Hoffman Estates and not thereafter replace sales of Audi vehicles with sales of new automobiles that generate a similar amount of sales tax at the time of such cessation (within 10%) (except for Audi new car sales relocation within the Village of Hoffman Estates in which case such 10% sales requirement shall not apply), then Hall shall be liable for and shall refund to the Village any and all monies theretofore received pursuant to this Agreement.

Nothing herein shall prevent Hall from selling or otherwise transferring its dealership at the Property to a third party so long as such purchaser or transferee shall operate a similar facility that generates retail sales in an amount similar to the Hall retail operation and provided that such purchaser or transferee shall have expressly assumed the obligations of Hall hereunder.

f. Right to Collect Funds Due. If any money due from Hall to the Village pursuant to this Agreement is not received or paid to the Village by Hall within thirty (30) days after a demand for such payment, then such money, together with interest and costs of collection, including legal fees and administrative expenses, shall become a lien upon all portions of the Property, and the Village shall have the right to collect such amount, with interest and costs, including legal fees and administrative expenses and the amount shall be a lien on the Property. Such lien shall be subordinate to any first mortgage now or hereafter placed upon the Property; provided, however, that such subordination shall apply only to charges that have become due and payable prior to a sale or transfer of the Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Property from liability for any charges thereafter becoming due, nor from the lien of any subsequent charge.

g. Site Plan. It is agreed that the zoning district for the Property permits the intended use described in this Agreement for a new and used motor vehicle and

parts sales and service dealership/facility and that Hall shall submit for approval, a site plan for the Hall franchise on the Property that is in substantial conformance with the Village's Municipal Code. The Parties recognize that the right-in/right-out access to Golf Road may or may not be approved by the Illinois Department of Transportation, that the Village shall expeditiously review any such site plan that is in such substantial conformance with the Village's Municipal Code and shall reasonably consider any site plan, subdivision, zoning or platting variations and/or waivers or any other such relief reasonably requested by Hall in connection with its construction and use of such dealership/facility.

h. During development of the property, Hall shall comply with the provisions of the Illinois Prevailing Hourly Wage Rate Act.

5. Sales Tax Reports. Concurrent with the filing of any and all reports with the Illinois Department of Revenue or any successor agency, Hall shall furnish to the Village, upon request, copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity. Such documents shall be sent to the attention of the Director of Finance for the Village. To the extent permitted by law, the Village shall maintain the confidentiality of the information contained in such reports. In addition, prior to any payments to Hall pursuant to this Agreement, Hall shall provide the State of Illinois with properly executed authorizations granting the Village the right to access the sales tax records of Hall. Hall acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the Village to Hall pursuant to this Agreement. Hall further covenants and agrees, that upon the request of the Village, Hall shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and Hall in order to release the above-described sales tax information to the Village. Hall agrees and acknowledges that any disbursements of the Village made pursuant to this Agreement can only be made from and to the extent of the data submitted to the State in accordance with this Section. Hall agrees to make the obligations contained in this Section a part of any contract to sell any portion of the Property.

6. Reimbursement Mechanism. The Village shall remit in full to Hall the pro rata share of the Economic Incentive to which Hall is entitled as determined in Section 4, *supra*. The Village shall be liable to Hall for disbursement of monies hereunder only to the extent of the Sales Tax Revenue generated by Hall and actually received by the Village from the Illinois Department of Revenue or other applicable governmental agency or body; provided, however, the Village reserves the right to make such earlier and/or additional payments in such amounts and at such times as the Village, in its sole discretion, deems appropriate. Any Municipal Sales Tax Revenue due the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collection of Sales Tax Revenue generated by the Property, from which such reduced amount shall be calculated the amounts due Hall hereunder.

7. Casualty/Extension of Term. If the operations of Hall at the Property shall cease due to casualty, condemnation or force majeure, then, in each case, provided the conditions set forth in Section 15 hereof have not been satisfied, the term of this Agreement shall be automatically extended

for a period equal to the period commencing on the date of said casualty or taking or on the date said force majeure commences (as applicable), through the date of final completion of the reconstruction of the damage thereby caused (by casualty or taking) to the Property, the date of cessation of any temporary taking, or the date of cessation of said force majeure (if applicable), and the payment obligations of the Village hereunder shall, with respect to the Sales Tax Revenue generated by Hall during said extended term, continue for said period.

Provided Hall is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction, temporary taking or force majeure referred to hereinabove to which Hall would otherwise be entitled hereunder for said period. Additionally, the Threshold for a particular Revenue Year in which such casualty, taking or force majeure occurs will be recalculated and reduced in an equitable manner proportionate to the number of days of such Revenue Year Hall is unable to operate at the Property as a result thereof.

8. Mutual Assistance. Hall and the Village agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

9. Default Remedies. Except as otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any terms or conditions by any party hereto, such party shall, upon written notice from the non-defaulting party, proceed promptly to cure or remedy such default or breach within sixty (60) days after receipt of such notice. If any such default is incapable of being cured within said sixty (60) day period, and the defaulting party commences to cure the default within said sixty (60) day period and proceed with due diligence, then such party shall not be deemed to be in default under this Agreement. Notwithstanding the foregoing, with respect to the obligations of the Village pursuant to Section 4, *supra*, the Village shall have five (5) business days after receipt of notice to cure or remedy a default. In case any action hereunder is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above periods, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, an action to restrain any such default or breach of its obligations, an action to compel specific performance by the party in default or breach of its obligations, an action to recover damages against any party liable pursuant to the provisions hereof, or any action at law or in equity and shall have the right to receive all costs and expenses including, but not limited to, reasonable attorneys' fees. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

10. Entire Agreement. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Hall and the Village relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those herein set forth.

11. Term of Agreement. The term of this Agreement shall take effect upon the issuance of an occupancy permit to Hall for its operations at the Property as set forth herein (such year being known as a Partial Revenue Year) and shall continue thereafter for a period of seven (7) Revenue Years or until the full amount of the economic incentive (as described in Section 4.c.) is paid to Hall, whichever occurs first. If an occupancy permit is not issued until 2014 or later, the term will not extend beyond December 31, 2021, subject to extension of such limit pursuant to Section 7 hereof.

12. Expiration Date. This Agreement shall expire upon the earlier of the following (the "Expiration Date"): (i) three (3) years (the length of time referenced in Section 4.d. of this Agreement) after the date of December 31, 2021, subject to extension as provided in Section 7, *supra*; or (ii) three (3) years (the length of time referenced in Section 4.d. of this Agreement) after the date on which the amount of all payments received by Hall from the Village pursuant to the Agreement equals Two Hundred Fifty Thousand Dollars (\$250,000.00).

13. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

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

15. Force Majeure. Performance by any party hereunder shall not be deemed to be in default where delay or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, freight embargos or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or more than twenty (20) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

16. Notices. Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered to the persons identified below in person, or on the day of delivery to an overnight courier service for overnight delivery, or on the day of deposit with the US Postal Service if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Village:

Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, IL 60169

Attn: Village Manager
Phone: (847) 781-2601
Fax: (847) 781-2624

If to Hall (prior to the purchase of the Property by 1200 Gannon, LLC):

Schaumburg Audi
Attn: Michael Hall
320 W. Golf Road
Schaumburg, IL 60195
Phone: (847) 843-9900
Fax: (847) 843-9982

If to Hall (after the purchase of the Property by 1200 Gannon, LLC):

Audi Hoffman Estates
1200 Gannon
Hoffman Estates, IL 60169
Phone: (847) 843-9900
Fax: (847) 843-9982

With a copy to:

Peter Tsantilis, Esq.
The Law Offices of Liston & Tsantilis, P.C.
33 North LaSalle Street, 25th Floor
Chicago, Illinois 60602
Direct: (312) 604-3808
Mobile: (630) 863-4799
Fax: (312) 580-1592
Email: PTsantilis@LTLawChicago.com
www.LTLawChicago.com

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

18. Village Approval. A certified copy of the ordinance adopting this Agreement and authorizing and directing the Village to execute this Agreement, shall be provided to Hall.

19. Amendments; Recordation. This Agreement may be amended from time to time with the written consent of the parties hereto. The parties shall cause a memorandum of this Agreement to be recorded with the Cook County Recorder.

20. Representations, Warranties and Covenants.

a. Hall represents, warrants and covenants, as of the date of his Agreement, and throughout the term of this Agreement, as follows:

(i) Hall is, or will be at the time of the performance of this Agreement with respect to its new d/b/a Audi Hoffman Estates, duly organized, validly existing, qualified to do business in Illinois;

(ii) Except as set forth above, Hall has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(iii) Except as set forth above, the execution, delivery and performance by Hall of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its by-laws as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any third party consent under any agreement, instrument or documents to which Hall are a party or by which Hall are now or may become bound.

b. The Village of Hoffman Estates, an Illinois municipal corporation, represents, warrants and covenants, as of the date of this Agreement as follows:

(i) It is a "home rule unit" pursuant to Article VII, Section 6 of the Illinois Constitution of 1970;

(ii) It has the right, power and authority to enter into, execute, deliver and perform this Agreement.

21. Joint and Several Liability. The obligations of those parties collectively defined as Hall shall be and are joint and several.

22. Change in the Law.

a. The Village and Hall acknowledge and agree that the Village's obligation to pay the Economic Incentive to Hall is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act, the Retailer's Occupation Use Tax Act and the Retailer's Service Occupation Tax Act. The Village and Hall further acknowledge that the General Assembly of the State of Illinois has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois municipalities. The Village and Hall desire in paragraph 2 of this Section to make express provision for the effect of any such change upon the operation of this Agreement.

b. In the event that the State of Illinois amends or repeals the Retailer's Occupation Tax Act or makes any other promulgation, enactment or change in law ("Change in Law") that eliminates the distribution of Sales Taxes to the Village, or otherwise alters the distribution formula in a manner that prevents the Village and Hall from determining with a reasonable degree of certainty the precise amount of the Municipal Sales Tax, the provisions of this Agreement with

regard to Municipal Sales Tax generated from the Property on or after the effective date of the Change in Law shall be modified, including the provision of 4c. If the Change in Law results in replacement taxes for the Sales Taxes, directly or indirectly resulting from the gross receipts of Hall as contemplated hereunder, then, for purposes of this Agreement, such replacement taxes shall be defined as Sales Taxes, subject in all respects to the Village's authority under state law to provide for economic incentives based upon such replacement taxes, as contemplated herein.

23. Limited Liability of Corporate Authorities. The parties hereto acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date first above written.

VILLAGE OF HOFFMAN ESTATES
an Illinois Municipal Corporation

By: _____
Village President

Date

ATTEST:

By: _____
Village Clerk

Date

Hall Enterprises, Inc., an Illinois corporation,
d/b/a Audi Hoffman Estates

By: Michael F. Hacc
Its: PRESIDENT

9-15-11
Date

ATTEST:

Date

Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William D. McLeod, personally known to me to be the President of the Village of Hoffman Estates, Cook County, Illinois, and Bev Romanoff, personally known to me to be the Clerk of the Village of Hoffman Estates, Cook County, Illinois, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Clerk of said Village of Hoffman Estates, caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this ____ day of _____, 2011.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of _____ and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ of _____ caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this ____ day of _____, 2011.

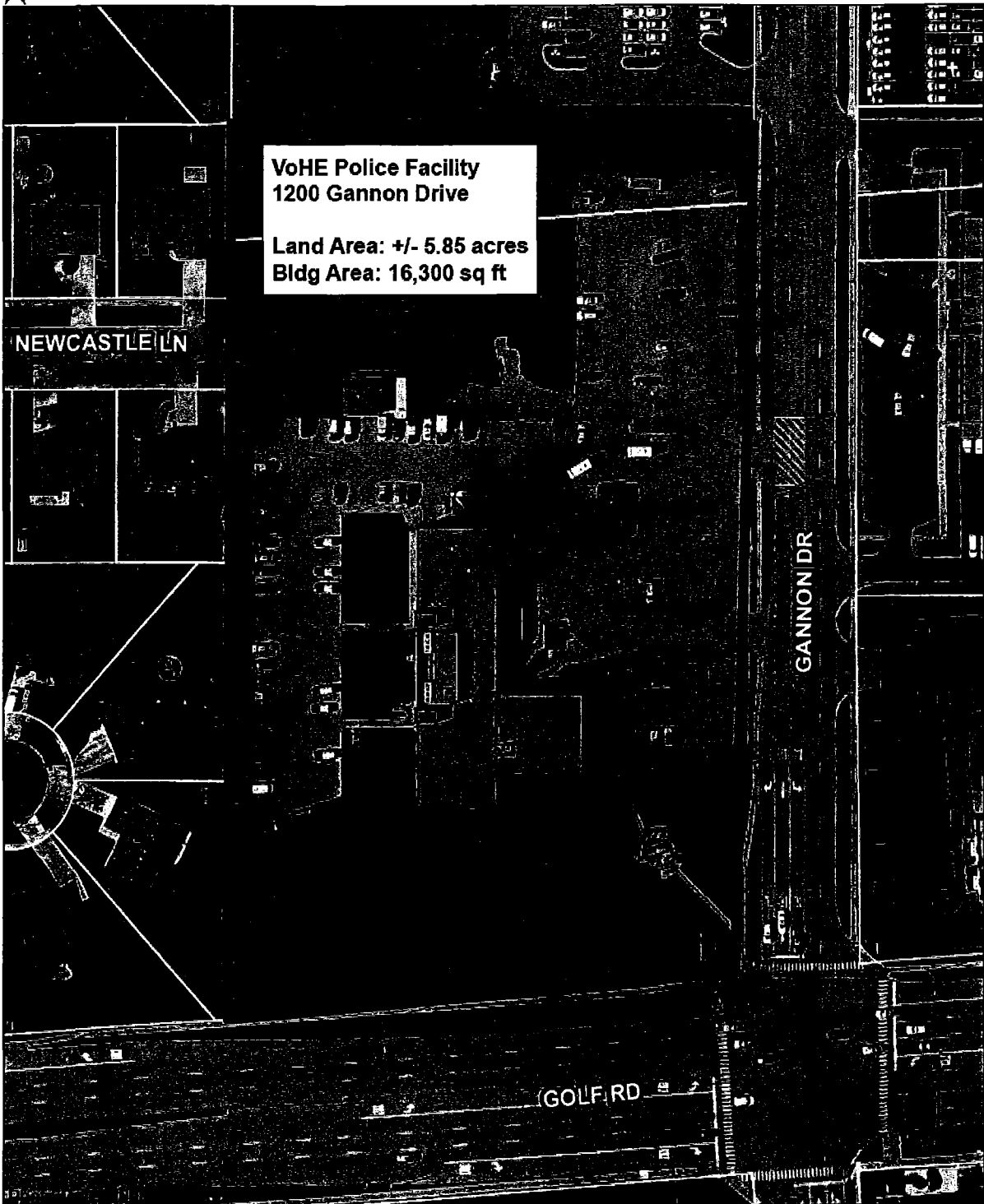
Notary Public

STATE OF ILLINOIS)
) SS

COUNTY OF _____)

EXHIBIT "A"

SITE MAP



**VoHE Police Facility
1200 Gannon Drive**

**Land Area: +/- 5.85 acres
Bldg Area: 16,300 sq ft**

NEWCASTLE LN

GANNON DR

GOLF RD

1 inch = 100 feet

Planning Division
Village of Hoffman Estates
July 2010

EXHIBIT "B"

<u>Revenue Year</u>	<u>Percent of Municipal Sales Tax Revenue to be Rebated to Hall*</u>
1**	75%
2	25%
3	25%
4	25%
5	25%
6	25%
7	10%
8	10%

* Until a total of \$250,000 has been paid to Hall.

** Partial Revenue Year due to mid-year occupancy. Threshold does not apply.

COMMITTEE AGENDA ITEM

VILLAGE OF HOFFMAN ESTATES

SUBJECT: Request authorization to award a contract to Albrecht Enterprises, Inc., Des Plaines, IL (low bid) for the demolition of the existing building and structure on the 1200 Gannon Drive site in an amount not to exceed \$150,265.

MEETING DATE: September 19, 2011

COMMITTEE: Special Planning, Building & Zoning Committee

FROM: Daniel P. O'Malley, Deputy Village Manager
Don Plass, Director of Code Enforcement Division

PURPOSE: Request authorization to award a contract to Albrecht Enterprises, Inc., Des Plaines, IL (low bid) for the demolition of the former police building in an amount not to exceed \$150,265.

BACKGROUND: In April 2010, the Village issued a Request for Proposals (RFP) for the purchase and development of the vacated site at 1200 Gannon Drive (former police facility). Since that time, the Village has worked with Hall Enterprises, Inc. on the development of the property. In August 2010, the property was declared surplus and a Purchase and Sales Agreement and Cost Recovery Agreement with Hall Enterprises, Inc. were approved. In July 2011, those agreements with Hall Enterprises Inc. were rescinded as they could not secure financing to complete the transaction.

DISCUSSION: Hall Enterprises, Inc. has recently contacted the Village seeking to renew those agreements in order to purchase the land and construct the Audi dealership as originally proposed last year. A provision of the Purchase and Sales Agreement provides that the existing building will be demolished by the Village. In anticipation of these agreements moving forward, the Village issued a request for bids to demolish the building. The Village should proceed with the project regardless of Audi progressing due to the safety issues related to the vacant building and to assist with general marketing of the site.

On September 12, 2011, six (6) bids were received for the demolition project. Albrecht Enterprises of Des Plaines, IL submitted the low bid of \$150,265 for the project. The bid summary is below:

<u>Contractor</u>	<u>Total Bid</u>
Albrecht Enterprises, Inc.	\$150,265
T&W Edmier Corp.	\$162,340
American Demolition Corp.	\$170,500
Alpine Demolition Services	\$176,400
Langos Corp.	\$254,000
Omega Demolition Corp.	\$307,900

References were checked for Albrecht Enterprises and were found to be very favorable. They have performed similar and/or larger projects in the past.

FINANCIAL IMPACT: The funding for this expenditure can be accounted for with bond fund monies from the public building projects.

RECOMMENDATION: Staff recommends authorization to award the contract for the demolition project to Albrecht Enterprises, Inc., Des Plaines, IL, in an amount not to exceed \$150,265.



Village of Hoffman Estates
CODE ENFORCEMENT

Tabulation of Bids

Tabulation of Bids for: **DEMOLITION OF FORMER POLICE DEPARTMENT BUILDING**

County: <u>Cook</u>		Name of Bidder: <u>Albrecht Enterprises, Inc.</u>		<u>Omega Demolition Corp.</u>		<u>Langos Corp.</u>		<u>Alpine Demolition Services</u>		<u>American Demolition Corp.</u>		<u>T&W Edmier Corp.</u>	
Local Agency: <u>Hoffman Estates</u>		Address of Bidder: <u>1684 E. Oakton St.</u>		<u>31W566 Spaulding Rd</u>		<u>Barrington Hills, IL 60010</u>		<u>520 South River Street</u>		<u>305 Ramona Avenue</u>		<u>249 West Lake Street</u>	
Date: <u>9/9/2011</u>		<u>Des Plaines, IL 60018</u>		<u>Elgin, IL 60120</u>				<u>Batavia, IL 60510</u>		<u>Elgin, IL 60120</u>		<u>Elmhurst, IL 60126</u>	
Time: <u>10:00 AM</u>													
Attended By: <u>Bev Romanoff, Don Plass (VOHE)</u>													
Item No.	Item	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total
1	Demolition	\$ 111,950.00	\$ 180,000.00	\$ 189,000.00	\$ 161,200.00	\$ 164,500.00	\$ 152,500.00						
2	Alternate- 6" Topsoil and Hydroseed	\$ -	\$ 127,900.00	\$ -	\$ 15,200.00	\$ -	\$ -						
3	Alternate- 4" Topsoil and Hydroseed	\$ 38,315.00	\$ -	\$ 65,000.00	\$ -	\$ -	\$ -						
4	Seeding							\$ 6,000.00	\$ 9,840.00				
Total Bid:		As Read: \$ 150,265.00	\$ 307,900.00	\$ 254,000.00	\$ 176,400.00	\$ 170,500.00	\$ 162,340.00						
		As Calculated: \$ -	\$ -	\$ -	\$ -	\$ -	\$ -						