



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title: A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to Execute a Certain Agreement – Sears Authorized Hometown Stores LLC

Presenter: Chris Aiston

Please check appropriate box:

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input checked="" type="checkbox"/>	City Council (7/5/11)

Estimated Cost:	N/A	Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

Executive Summary:

During the City Council’s June 20th, 2011 meeting, Council unanimously approved, through the consent agenda, a Sales Tax Reimbursement Agreement with Sears Authorized Hometown Stores, LLC. Securing this sales tax reimbursement was a condition its lease with the owners of Foxfield Commons in establishing a Sears Home Appliance Showroom store at this East Main Street shopping center.

The text of the aforesaid Agreement references, and at Exhibit C includes in its entirety, the subject resolution. However, the resolution itself was omitted in the packet that was before the Council when it approved the Agreement on June 20th. As such, technically, it was not approved and therefore the Mayor was not fully authorized to execute the Agreement.

Essentially then, this is a housekeeping measure. Staff regrets the omission and requests the Council move and approve the attached Resolution authorizing the Mayor to execute same on behalf of the City, retroactively to June 20, 2011.

Sears Home Appliance Store is anticipating a late July opening.

Attachments: (please list)

Resolution and Agreement

Recommendation / Suggested Action (briefly explain):

Recommend for approval the aforesaid Resolution.

For office use only

Agenda Item Number: IIC1

**City of St. Charles, Illinois
Resolution No. 2011-**

**A Resolution Authorizing the Mayor and City Clerk of the
City of St. Charles to Execute a Certain Agreement
Sears Authorized Hometown Stores, LLC**

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

NOW THEREFORE, be it resolved by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A," by and on behalf of the City of St. Charles retroactive to June 20, 2011.

PRESENTED to the City Council of the City of St. Charles, Illinois this ___ day of May 2011.

PASSED by the City Council of the City of St. Charles, Illinois, this ___ day of May 2011.

APPROVED by the Mayor of the City of St. Charles, Illinois, this ___ day of May 2011.

Donald P. DeWitte, Mayor

ATEST:

Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

AGREEMENT

THIS AGREEMENT is entered into on this 20th day of June, 2011, by and between the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (hereinafter referred to as the "CITY") and Sears Authorized Hometown Stores, LLC, a Delaware limited liability company (hereinafter referred to as the "COMPANY");

WITNESSETH:

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

WHEREAS, the CITY, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or by ordinance; and

WHEREAS, the COMPANY is desirous of leasing retail space for a home appliance showroom and such space is available at 2716 East Main Street in the City of St. Charles, such property legally described on Exhibit "A" attached hereto and made a part hereof (the "PROPERTY"); and

WHEREAS, the COMPANY has indicated its willingness to locate its showroom on the PROPERTY (the "PROJECT") if the CITY agrees to rebate a portion of any SALES TAXES (as hereinafter defined) received by the CITY with respect to the PROPERTY for a certain period of time, pursuant to the terms of this AGREEMENT; and

WHEREAS, the City Council of the CITY finds that the PROJECT will create job opportunities within the CITY, strengthen the commercial sector of the CITY and will enhance the tax base of the CITY and, therefore, this AGREEMENT is in the best interests of the CITY.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate, the CITY and the COMPANY agree as follows:

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

Section 2. Conditions Precedent. All undertakings on the part of the CITY pursuant to this AGREEMENT are subject to satisfaction of the following conditions:

(A) Retail activities shall commence on the PROPERTY no later than August 1, 2011. In the event that retail activities have not commenced by such date, the CITY'S obligation to make the SALES TAX DISTRIBUTIONS herein specified shall thereupon cease and this AGREEMENT shall terminate and be of no further force and effect.

(B) The COMPANY shall be in full compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the PROJECT as the same may, from time to time, be in force and effect.

(C) The COMPANY shall have completed each of the requirements contained in this AGREEMENT which by its terms preconditions the CITY'S obligation to disburse any SALES TAX revenues to the COMPANY.

Section 3. Definitions.

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

"COMMENCEMENT DATE" - means August 1, 2011.

"DEPARTMENT" - means the Illinois Department of Revenue.

“MAXIMUM PAYMENT” - means the amount of \$10,000 in each SALES TAX YEAR.

"SALES TAX(ES)" - means any and all of those taxes imposed by the State of Illinois pursuant to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act and the Retailer's Occupation Tax Act, each as supplemented and amended from time to time, or any substitute taxes therefor as provided by the State of Illinois in the future. The term SALES TAX(ES) does not include the Home Rule Municipal Retailers' Occupation Tax and the Home Rule Municipal Service Occupation Tax imposed by the CITY pursuant to Chapter 3.36 of the City Code, or any other municipal use, retail or service occupation tax imposed by the CITY, except as provided by Section 6(e) hereof. The amount of SALES TAXES distributed to the CITY by the DEPARTMENT is hereinafter referred to as the "CITY'S SHARE".

"SALES TAX BASE" - means the CITY'S SHARE of SALES TAXES originating from the taxable sales activities on the PROPERTY in the amount of \$16,000.

"SALES TAX DISTRIBUTION(S)" - means the distribution of SALES TAXES pursuant to the terms of this AGREEMENT.

"SALES TAX PARTICIPATION PERIOD" - means the period of five (5) SALES TAX YEARS.

"SALES TAX YEAR(S)" - means the twelve (12) consecutive month period starting on the COMMENCEMENT DATE and ending twelve (12) months later, and each consecutive succeeding twelve (12) month period thereafter.

Section 4. Sales Tax Distributions. Provided the COMPANY shall comply with and continue to be in compliance with the provisions of this AGREEMENT, subject to the expiration of any cure period as provided in Section 13 hereof, and further provided that the CITY'S SHARE of SALES TAXES originating from taxable sales activities on the PROPERTY in any given SALES TAX YEAR exceeds the SALES TAX BASE, the CITY shall make SALES TAX DISTRIBUTIONS as follows:

- (a) Fifty percent (50%) of the CITY'S SHARE of SALES TAXES shall be distributed to the COMPANY; and
- (b) The remainder of such SALES TAXES shall be retained by the CITY.

Notwithstanding the foregoing, no distribution to the COMPANY in excess of the MAXIMUM PAYMENT shall be made in any SALES TAX YEAR. If the CITY'S SHARE of SALES TAXES in any SALES TAX YEAR does not meet or exceed the SALES TAX BASE for such year, no SALES TAX DISTRIBUTION shall be made for that year, nor shall the COMPANY have any future claim for any SALES TAX DISTRIBUTION for that year.

For each SALES TAX YEAR during the SALES TAX PARTICIPATION PERIOD, the CITY shall make one (1) annual SALES TAX DISTRIBUTION. The CITY shall compute the CITY'S SHARE of SALES TAXES originating from taxable sales activities on the PROPERTY for each annual period and make the SALES TAX DISTRIBUTION in accordance with the formula set forth above. The CITY shall make the SALES TAX DISTRIBUTION within one hundred twenty (120) days after the end of each annual period, provided the CITY shall have first actually received from the DEPARTMENT the distribution of SALES TAXES applicable to the period in question, and each SALES TAX DISTRIBUTION shall be accompanied by an affidavit from the CITY'S Director of Finance setting forth the determination of such SALES TAX DISTRIBUTION.

If the payment due date does not fall on a business day, payment shall be made on the next following business day. If, for any reason, the DEPARTMENT fails to distribute all of the SALES TAXES due to the CITY that are attributable to the PROPERTY for an applicable period, then the CITY shall make the SALES TAX DISTRIBUTION (calculated pursuant to the formula set forth above) based upon the amount actually received by the CITY from the DEPARTMENT attributable to the PROPERTY. Upon receipt of any additional SALES TAXES attributable to the PROPERTY for such period, the CITY shall use its best efforts to make an additional distribution immediately upon receipt of such additional SALES TAXES from the DEPARTMENT.

Section 5. Limitations on Distributions. The SALES TAX DISTRIBUTIONS set

forth herein shall be subject to the following additional terms and conditions:

- (a) Such SALES TAX DISTRIBUTIONS shall be payable solely from SALES TAXES actually received (whether by check or electronic transfer) by the CITY from the DEPARTMENT and originating from the taxable sales activities on the PROPERTY, and the CITY shall not be obligated to pay any SALES TAX DISTRIBUTIONS identified herein from any other fund or source.
- (b) The CITY shall not be required to effect any SALES TAX DISTRIBUTIONS from any SALES TAXES generated after expiration of the SALES TAX PARTICIPATION PERIOD. The foregoing, however, shall not relieve the CITY from effecting SALES TAX DISTRIBUTIONS from SALES TAXES paid after expiration of the SALES TAX PARTICIPATION PERIOD, subject to the limitations of this AGREEMENT, to the extent that such SALES TAXES were generated during the SALES TAX PARTICIPATION PERIOD.
- (c) If at any time during the term of this AGREEMENT, the COMPANY relocates or otherwise transfer its operations occurring on the PROPERTY to a site located outside the corporate limits of the CITY, the COMPANY agrees to repay to the CITY all amounts previously paid by the CITY pursuant to this AGREEMENT and, thereupon, this AGREEMENT shall terminate and the COMPANY shall not be entitled to any further SALES TAX DISTRIBUTIONS. Any payment required by the preceding sentence shall be made within ninety (90) days of said relocation or transfer.

Section 6. Changes in Law. The parties acknowledge that the agreement to distribute SALES TAXES as herein provided is predicated on existing law in the State of Illinois providing for the payment to Illinois municipalities of one percent (1%) of the taxable sales within each such municipality. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of sales tax revenues to Illinois municipalities. The parties desire to make express provision for the effect of such change upon the operation of this AGREEMENT. Accordingly, the parties agree as follows:

- (a) The CITY shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing a source of funds for the SALES TAX DISTRIBUTIONS herein contemplated.
- (b) Should the Illinois General Assembly hereafter eliminate the distribution of sales tax revenues to Illinois municipalities, or otherwise alter the distribution formula in a manner which prevents the CITY from being able to ascertain with specificity the amount of SALES TAXES being received by the CITY as a direct result of the taxable sales activities generated on the PROPERTY, the CITY shall have no obligation to make SALES TAX DISTRIBUTIONS to the COMPANY based upon the taxable sales activities generated on the PROPERTY, except to the extent provided otherwise in subparagraph (e) below. However, in the event the CITY can ascertain with specificity the amount of SALES TAXES being received by the CITY from the COMPANY'S records (certified copies of which the COMPANY shall provide to the CITY), the CITY shall make the SALES TAX DISTRIBUTIONS.
- (c) Should the Illinois General Assembly hereafter and during the SALES TAX PARTICIPATION PERIOD increase the percentage of sales tax revenues distributed to Illinois municipalities, the SALES TAX DISTRIBUTIONS provided for herein shall continue but shall apply solely to the amount of SALES TAXES equal to one percent (1%) of taxable sales activities, with such distribution continuing to be made in accordance with the distribution formula contained in Section 4. In such a case, the SALES TAX BASE shall be increased by the same percentage increase in sales tax revenues distributed by the DEPARTMENT to the CITY (e.g., should the current one percent (1%) of taxable sales distributed to the CITY be increased by 25%, the SALES TAX BASE shall increase by 25%). If such an increase occurs in the middle of a SALES TAX YEAR, the increase in SALES TAX BASE shall be prorated upon the basis of a 360-day year of twelve 30-day months.
- (d) Should the Illinois General Assembly hereafter and during the SALES TAX PARTICIPATION PERIOD reduce the percentage of sales tax revenues distributed to Illinois municipalities, SALES TAX DISTRIBUTIONS provided for herein shall continue to be made in accordance with the distribution formula contained in Section 4. In such a case, the SALES TAX BASE shall be decreased by the same percentage decrease in sales tax revenues distributed by the DEPARTMENT to the CITY (e.g. should the current one percent (1%) of taxable sales distributed to the CITY be decreased by 25%, the SALES TAX BASE shall decrease by 25%). If such a decrease occurs in the middle of a SALES TAX YEAR, the decrease in SALES TAX BASE shall be prorated upon the basis of a 360-day year of twelve 30-day months.
- (e) Should the Illinois General Assembly hereafter and during the SALES TAX PARTICIPATION PERIOD eliminate, reduce or alter the formula for the distribution of sales tax revenues, as contemplated in subparagraphs (b) or (d) hereof, and should the CITY, in response to and during any such period of elimination, reduction or alteration occurring

within the SALES TAX PARTICIPATION PERIOD, if authorized by law, impose or increase its municipal sales tax on retail sales activities occurring within the CITY'S boundaries, and provided the amount of sales tax revenues generated by the PROJECT can thereafter be determined with specificity, then the sales tax revenues generated thereby, up to an amount equal to one (1%) of the eligible retail sales activities of the PROJECT, shall be distributed in accordance with the distribution formula contained in Section 4 (subject to the various limitations contained herein).

Section 7. Obtaining Sales Tax Information. The CITY shall provide such authorization and/or take such additional actions as may reasonably be required to obtain necessary information from the DEPARTMENT to enable the CITY to determine the amount of SALES TAXES during any portion of the SALES TAX PARTICIPATION PERIOD. The COMPANY shall take all reasonable actions necessary to provide the DEPARTMENT with any and all documentation, to the extent reasonably available, that may be required by the DEPARTMENT and shall provide the CITY with a power of attorney letter addressed to, and in a form satisfactory to, the DEPARTMENT authorizing the DEPARTMENT to release all general gross revenue and sales tax information relating to the PROPERTY to the CITY, which letter shall authorize disclosing such information to the CITY during the SALES TAX PARTICIPATION PERIOD. Such letter shall be in a form attached hereto as Exhibit "B" or such other or additional forms as required from time to time by the DEPARTMENT in order to release such information to the CITY.

In the event the DEPARTMENT refuses or otherwise fails to make the necessary sales tax information available to the CITY, the COMPANY shall furnish to the CITY copies of the ST-1 and ST-2 monthly statements filed with the DEPARTMENT relating to the PROPERTY, certified by the COMPANY, showing the amount of SALES TAXES paid during such month by the COMPANY, together with evidence of the payment of such revenues, and the CITY agrees to rely

upon such certified monthly statements and evidence of payment in calculating the amount of SALES TAX DISTRIBUTIONS available for disbursement to the COMPANY hereunder.

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

The COMPANY acknowledges that the CITY shall have no obligation to make SALES TAX DISTRIBUTIONS to the COMPANY that reflect the taxable sales activities on the PROPERTY unless and until the CITY receives from the COMPANY the documentation and evidence of payment referred to in this Section; provided, however, that the CITY shall request all such documentation from the COMPANY in writing.

Section 8. Confidentiality of Information. The COMPANY hereby claims that the information received by the CITY pursuant to this AGREEMENT is proprietary and confidential and that the disclosure of such information would cause competitive harm to the COMPANY; therefore, to the fullest extent permitted by law, the CITY shall treat information received by it as confidential financial information under the Illinois Freedom of Information Act. To the extent the CITY is required to disclose such information, it shall limit such disclosure, to the extent possible, to the release of general "gross" revenue and sales tax information so that proprietary information of

individual businesses and purchasers is protected and kept confidential, including, but not limited to, the specifics of the COMPANY'S tax returns.

Section 9. Amended Returns and Audits. In the event the COMPANY amends any sales and use tax return upon which SALES TAX DISTRIBUTIONS were made to the COMPANY pursuant to this AGREEMENT, the COMPANY will notify the CITY of such amendment within ten (10) days of filing such amended return and the CITY shall use its reasonable best efforts to obtain such information from the DEPARTMENT. If, as a result of an amended return, the CITY owes an additional distribution to the COMPANY, such distribution shall be made promptly upon receipt by the CITY of such additional SALES TAXES. If, as a result of an amended return, the CITY is entitled to receive a portion of a SALES TAX DISTRIBUTION back, the COMPANY shall repay such amount to the CITY within thirty (30) days of written notice from the CITY.

In the event that the COMPANY is audited by the DEPARTMENT, the COMPANY shall notify the CITY of such audit within ten (10) days of completion of said audit. If such audit results in adjustment to sales and use tax returns previously submitted upon which SALES TAX DISTRIBUTIONS were made, upon final disposition of any changes made as a result of such audit, any amount due and owing to a party shall be made in the manner described in the preceding paragraph.

Section 10. Compliance with Laws. Subsequent to the COMMENCEMENT DATE, and for the duration of the SALES TAX PARTICIPATION PERIOD, the COMPANY shall continue to be in compliance with the terms and conditions of this AGREEMENT and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the PROJECT as the same may, from time to time, be in force and effect.

Should the COMPANY, for any reason, fail to remain in continual compliance with the standards set forth herein, the CITY'S duty to make the SALES TAX DISTRIBUTIONS during such period of non-compliance shall be suspended. If, at any time during the balance of the term of the SALES TAX PARTICIPATION PERIOD, the COMPANY shall re-establish compliance with all of the standards set forth herein and the CITY shall acknowledge that such compliance exists, the CITY'S duty to make SALES TAX DISTRIBUTIONS as herein provided for shall resume; provided, however, that a SALES TAX DISTRIBUTION for a SALES TAX YEAR during which the COMPANY was out of compliance shall be made only if the COMPANY re-establishes compliance within one hundred twenty (120) days of the end of such SALES TAX YEAR. Notwithstanding the foregoing, however, for purposes of this AGREEMENT, the COMPANY shall not be deemed to be out of compliance with the standards set forth herein if, following the COMPANY'S receipt of written notice from the CITY of non-compliance, the COMPANY cures such non-compliance to the reasonable satisfaction of the CITY within the provisions and time constraints set forth in Section 13 herein.

Section 11. Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the CITY created by or arising out of this AGREEMENT shall not be a general debt of the CITY on or a charge against its general credit or taxing powers, but shall be payable solely out of the CITY'S SHARE of SALES TAXES as set forth in this AGREEMENT. No recourse shall be had for any payment pursuant to this AGREEMENT against any officer, employee, attorney, elected or appointed official, past, present or future of the CITY.

Section 12. Appropriation. The CITY shall provide for payments required under this AGREEMENT in its annual appropriation ordinance for the fiscal year in which such payment may be due.

Section 13. Default. In the event of any default under or violation of this AGREEMENT, the party not in default or violation shall serve written notice upon the party or parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. All parties hereto reserve the right to cure any violation of this AGREEMENT or default by any of them hereunder within thirty (30) days after receipt of written notice of such default; provided, however, that said thirty (30) day period shall be extended (i) if the alleged violation or default is not reasonably susceptible to being cured within said thirty (30) day period and (ii) if the party in default has promptly initiated a cure of the violation or default and (iii) if the party in default diligently and continuously pursues a cure of the violation or default until its completion.

Section 14. Law Governing/Venue. This AGREEMENT shall be construed and enforced in accordance with the laws of the State of Illinois. Any dispute arising under or in connection with this AGREEMENT or related to any matter which is the subject of this AGREEMENT shall be subject to the exclusive jurisdiction of the Illinois state courts and venue shall be exclusively in the Sixteenth Judicial Circuit, Kane County, Illinois.

Section 15. Time. Time is of the essence under this AGREEMENT and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

Section 16. No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this AGREEMENT to insist upon the strict and prompt performance of the terms,

covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

Section 17. Notices. All notices and requests required pursuant to this AGREEMENT shall be sent by personal delivery, overnight courier or certified mail as follows:

To the COMPANY: Sears Authorized Hometown Stores, LLC
3333 Beverly Road
Department 824RE
Hoffman Estates, Illinois 60179
Attn: Vice President
Real Estate

with copies to: Sears Authorized Hometown Stores, LLC
3333 Beverly Road
Department 824RE
Hoffman Estates, Illinois 60179
Attn: Vice President
Real Estate and Real Estate Law

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

with copies to: Gorski & Good, LLP
211 South Wheaton Avenue
Wheaton, Illinois 60187
Attn: Robin N. Jones

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, overnight courier or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notices shall be deemed delivered to the address set forth above (i) when

delivered in person on a business day, (ii) on the same business day received if delivered by overnight courier or (iii) on the third (3rd) business day after being deposited in any main or branch United States Post Office when sent by registered mail, return receipt requested.

Section 18. Assignments. This AGREEMENT may not be assigned without the CITY'S consent. The parties acknowledge that this AGREEMENT is an obligation which is for the benefit of the COMPANY and is not a covenant running with the land.

Section 19. Third Party Beneficiaries. The CITY and the COMPANY agree that this AGREEMENT is for the benefit of the parties hereto and not for the benefit of any third party beneficiary. Except as otherwise provided herein, no third party shall have any rights or claims against the CITY arising from this AGREEMENT.

Section 20. Binding Effect. This AGREEMENT shall inure to the benefit of and shall be binding upon the CITY, the COMPANY and the COMPANY'S permitted assigns.

Section 21. City Approval or Direction. Where CITY approval or direction is required by this AGREEMENT, such approval or direction means the approval or direction of the City Council of the CITY unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met.

Section 22. Section Headings and Subheadings. All section headings or other headings in this AGREEMENT are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

Section 23. Authority to Execute. The COMPANY hereby represents and warrants that it has the requisite authority to enter into this AGREEMENT and the individual signing this AGREEMENT on behalf of the COMPANY is a duly authorized agent of the COMPANY and is

authorized to sign this AGREEMENT. The Mayor and City Clerk of the CITY hereby warrant that they have been lawfully authorized by the City Council of the CITY to execute this AGREEMENT and a duly executed and certified copy of the Resolution or Ordinance of the City Council approving this AGREEMENT is attached hereto and incorporated herein by reference as Exhibit "C", all requisite action by the CITY having been taken.

Section 24. Integration/Amendment. This AGREEMENT sets forth all the promises, inducements, agreements, conditions and understandings between the COMPANY and the CITY relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth.

No subsequent alteration, amendment, change or addition to this AGREEMENT shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by both parties hereto. However, whenever under the provisions of this AGREEMENT any notice or consent of the CITY or the COMPANY is required, or the CITY or the COMPANY is required to agree or to take some action at the request of the other, such approval or such consent or such request shall be given for the CITY, unless otherwise provided herein, by the Mayor or his designee and for the COMPANY by any officer or employee as the COMPANY so authorizes.

Section 25. Severability. If any provision of this AGREEMENT is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

Section 26. Term. Unless sooner terminated by agreement of the parties or otherwise pursuant the provisions of this AGREEMENT, but subject to Section 6(b), this AGREEMENT shall

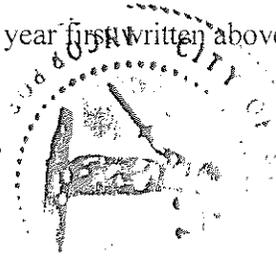
be effective upon the execution by both parties thereto and shall continue in effect until the expiration of the SALES TAX PARTICIPATION PERIOD. At such time, this AGREEMENT shall become null and void and be of no further force or effect.

Section 27. Counterparts. This AGREEMENT may be executed in two (2) or more counterparts each of which taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date

and year first written above. -



CITY OF ST. CHARLES, an Illinois
municipal corporation

By: James E. Martin
Mayor - PRO TEM

ATTEST:

Nancy Garrison
City Clerk

SEARS AUTHORIZED HOMETOWN STORES,
LLC, a Delaware limited liability company

By: Sears, Roebuck and Co., a New York
corporation, its sole member

By: James B. Terrell
Name: James B. Terrell
Title: Vice President Real Estate

ATTEST:

J. Kal Gibron
J. Kal Gibron, Secretary
Assistant



STATE OF ILLINOIS)

) SS.

COUNTY OF KANE)

James E. Martin, Mayor Pro-Tem

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

Given under my hand and Notarial Seal this 20 day of June,
2011.

Christine Nilles

Notary Public



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 James B. Terrell, Vice President Real Estate of Sears, Roebuck and Co., the sole member of Sears Authorized Hometown Stores, LLC and J. Kal Gibron, Assistant Secretary of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President Real Estate and Assistant Secretary, respectively appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 9th day of June, 2011.

Mary J Cox
Notary Public



EXHIBIT "A"

LEGAL DESCRIPTION

LOT 1, FOXFIELD COMMONS, UNIT NO. 1, ST. CHARLES, KANE COUNTY, ILLINOIS

EXHIBIT "B"

SAMPLE

AUTHORIZATION TO RELEASE SALES TAX INFORMATION

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("IDOR") to disclose to the designated city, town, village or county the amount of the local government's share of sales tax received on behalf of the taxpayer at the premises located at 2716 East Main Street, St. Charles, Illinois. Reporting for a period beginning with tax collected by the department during _____, _____ and _____ (Beginning Month/Year)

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

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

BUSINESS INFORMATION:

(Illinois Business Tax Number)

(Taxpayer/Business Name)

(Address)

(City, Town, Village or County)

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

By: _____

(Signature)

(Print Name)

(Title)

(Telephone Number)

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

EXHIBIT "C"

ORDINANCE OR RESOLUTION

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK OF THE CITY OF ST.
CHARLES TO EXECUTE A CERTAIN AGREEMENT – SEARS AUTHORIZED
HOMETOWN STORES, LLC

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage
Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to
execute that certain Agreement, in substantially the form attached hereto and incorporated herein
as Exhibit “A”, by and on behalf of the City of St. Charles, retroactive to June 20, 2011.

Presented to the City Council of the City of St. Charles, Illinois this ____ day of
_____, 2011.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of
_____ 2011.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of
_____, 2011.

Mayor Donald P. DeWitte

Attest:

City Clerk

Council Vote:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____