

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 6, 2024 Consent Regular
 Ordinance Public Hearing

Department: Housing and Economic Development

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: A Purchase Agreement for State Tax Credits for the sale of Voluntary Cleanup Tax Credits (VCTC) to Ozark Automotive Distributors, Inc.

Summary: Under the Purchase Agreement for State Tax Credits, Ozark Automotive Distributors, Inc. purchased the tax credit certificate worth \$85,317.50 under the VCTC Program. The purchase price of the certificate was \$80,198.45. After payment of the brokerage commission, the County will receive \$75,079.40 which will be used to replenish the County's Brownfields Revolving Loan Fund. The document has been executed on behalf of the Board of County Commissioners (BCC) by the Director of the Department of Housing and Economic Development (DHED), per signatory authority of April 30, 2018, in accordance with Agenda item 31-3, and Resolution R2015-1793 as approved by the BCC on December 15, 2015 and April 10, 2018, respectively. **The VCTC Program does not require a local match.** Countywide (DB)

Background and Justification: On December 11, 2023, the County entered into a Purchase Agreement for State Tax Credits with Ozark Automotive Distributors, Inc. under the VCTC Program. The VCTC Program was established in 1998 by the Florida Legislature to incentivize the cleanup of certain Brownfield areas, which would return the sites to the tax rolls, create jobs and generate a positive economic impact once the sites are remediated. On December 15, 2015, the BCC authorized participation in the VCTC Program to actively support the cleanup and redevelopment of designated Brownfield sites within the County. As local governments do not have Florida corporate income tax liability, the State Tax Credits must be sold through a brokerage service provided by Clocktower Tax Credits, LLC. On June 2, 2022, the County received notice from the Florida Department of Environmental Protection (FDEP) that the County was eligible for State Tax Credits from site rehabilitation cleanup costs incurred from cleaning up the Former South Bay Service Station site in South Bay. The cost integral to site rehabilitation was \$170,635.00 and the County received a 50% tax credit (\$85,317.50).

Attachment:

- 1. Purchase Agreement for State Tax Credits with Ozark Automotive Distributors, Inc.

Recommended By: Jonathan Brown 1/10/2024
 Department Director Date

Approved By: [Signature] 1/24/24
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Program Expenditures	\$5,119.05				
Operating Costs					
External Revenues	(\$80,198.45)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	(\$75,079.40)				
# ADDITIONAL FTE POSITIONS (Cumulative)					


Is Item Included In Current Budget? Yes _____ No X
 Does this item include the use of Federal funds? Yes X No _____
 Does this item include the use of State funds? Yes X No _____

Budget Account No.:

Fund 1539 Dept. 143 Unit 2104 RSC 4138 Program Code/Period _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:


C. Departmental Fiscal Review:



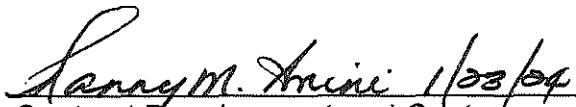
 Valerie Alleyne, Division Director II
 Finance and Administrative Services, DHED

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:



 ASD
 OFMB
 1/16/24
 GA 1110 DA 1/16



 Larry M. Arini
 Contract Development and Control
 1/23/24

B. Legal Sufficiency:



 Assistant County Attorney
 1/23/24

C. Other Department Review:

 Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Purchase Agreement for State Tax Credits

This **Purchase Agreement for State Tax Credits** ("Agreement") made and entered into December 11, 2023 by and between Palm Beach County, a political subdivision of the State of Florida ("County") and Ozark Automotive Distributors, Inc., a Missouri corporation, with its principal place of business at 233 South Patterson Avenue, Springfield, MO 65802 ("Investor").

In consideration of the mutual promises of the parties hereto and other valuable consideration, the receipt of which is mutually acknowledged, the parties agree as follows:

WITNESSETH:

WHEREAS, County, by and through its Department of Housing and Economic Development, is authorized to participate in the State of Florida's Voluntary Cleanup Tax Credit ("VCTC") program as provided by a resolution dated December 15, 2015 ("R2015-1793"), incorporated herein by reference; and

WHEREAS, County is willing to sell certain tax credits as issued by the Florida Department of Environmental Protection, Division of Waste Management ("FDEP") through the VCTC program.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and various other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County agrees to sell, transfer, and convey to Investor and Investor agrees to purchase from County, on the terms, covenants, and conditions hereinafter set forth, the Tax Credit Certificate (as hereinafter defined) and all right, title and interest therein, upon the following terms and conditions:

Article 1 – Description

VCTC Project: (the "Project") Former Service Station – South Bay, Florida
 Voluntary cleanup of a brownfield site which qualifies for Tax Credits as described below.

Tax Credits: One Florida Voluntary Cleanup Tax Credit Certificate in the amount of \$85,317.50 ("Tax Credit Certificate") as described below:

<u>VCTC Appl. #</u>	<u>Certificate #</u>	<u>Tax Credit Amount</u>	<u>Issue Date</u>
1559	1645	\$85,317.50	July 11, 2023

Statutory Authority: Section 376.30781 of the Florida Statutes (the "Statute")

Seller: Palm Beach County, Florida

Administering Agency: Florida Department of Environmental Protection, Division of Waste Management ("FDEP")

Article 2 – Purchase Price

County has expended costs integral to the rehabilitation of the Project site. Such costs, as certified by an independent CPA ("CPA Certification"), have qualified for Tax Credits under the Statute, and the FDEP has issued Florida Voluntary Cleanup Tax Credits as described above. County agrees to sell such Tax Credit Certificate, and Investor will purchase the Tax Credit Certificate, in the amount and in the manner described herein. Investor will have no interest in or liability arising from the Project, other than the right to use the Tax Credits so transferred.

Purchase Price: \$80,198.45 or \$0.94 for each dollar of tax credit shown on the Tax Credit Certificate. Such Purchase Price shall be adjusted to reflect \$0.94 for each dollar of tax credit shown on the New Certificate (as defined below).

Article 3 – Due Diligence

Investor is entitled to, and County agrees to provide, certain due diligence materials for the Tax Credit Certificate including but not limited to a copy of the Applicant's Affidavit certifying all information in the tax credit application, the CPA Certification, and the Technical Professional Certification from the Voluntary Cleanup Tax Credit application to the FDEP (collectively, the "Due Diligence Materials"). Such Due Diligence Materials shall be provided by County to Investor upon execution of this Agreement.

Investor represents that it will proceed diligently with its due diligence review and will act in good faith to complete this transaction in a timely manner, and will either accept or reject the terms of this Agreement within ten (10) calendar days after Investor's receipt of all the Due Diligence Materials (the "Inspection Period").

Article 4 – Transaction Expenses

Each party will pay for its own legal and other expenses incurred in this transaction, if any.

Both parties acknowledge that Clocktower Tax Credits, LLC (the "Broker") acted as broker in bringing the parties together in this transaction. Broker was engaged by County and County shall pay Broker a fee for brokering this transaction pursuant to that certain Contract dated January 12, 2018 (contract #200392R/LL) as amended May 30, 2019; August 19, 2020; October 6, 2021 and December 20, 2022 (all incorporated herein by reference). Such fee shall be the sole responsibility of County, and shall be made payable to and delivered to Broker by County.

Article 5 – Transaction Process

If Investor agrees to proceed with the purchase after review of the Due Diligence Materials as described above, then Investor shall give notice of its acceptance in writing to County, with a copy to Broker.

County shall then authorize FDEP in writing ("Transfer Request") to issue a new Tax Credit Certificate ("New Certificate") in accordance with the provisions of the Statute or other applicable law as it may be amended from time to time. A copy of the Tax Credit Certificate shall also be included with the Transfer Request. Other information required for the Transfer Request is specified in the FL VCTC Certificate Transfer Information Summary ("Transfer Information Summary") attached hereto as Exhibit A, and made a part hereof.

County shall use email to submit the Transfer Request and the Tax Credit Certificate to the FDEP. County shall send a copy of the submitted Transfer Request to Broker.

The FDEP is expected to deliver the New Certificate to Investor within thirty (30) days of its receipt of the Transfer Request. Upon receipt of the New Certificate, Investor shall give notice to Broker that it was received in good order. Investor shall deliver the Purchase Price (expected to equal \$80,198.45 or \$0.94 for each dollar of tax credit transferred) by wire/ACH transfer to County within five (5) days. County shall promptly acknowledge receipt of funds, with copy to Broker.

Investor shall have the option to terminate this Agreement if County fails to submit the Transfer Request to FDEP within ten (10) days of Investor giving notice to County of its intent to proceed, or if FDEP fails to issue the New Certificate by December 31, 2023.

In the event that a New Certificate is issued incorrectly, Investor and Broker will work with FDEP to issue a corrected certificate ("Corrected Certificate") by December 31, 2023. If the FDEP is unable or unwilling to correct such errors or otherwise deliver a New Certificate or a Corrected Certificate to Buyer on or before December 31, 2023, has voided the proposed transfer, or otherwise has returned the original Tax Credit Certificate to Buyer, then all obligations under this Agreement relative to such original certificate only shall be null and void.

Upon receipt of their respective funds and the New Certificate in correct form and amount, all parties will be satisfied and no further actions are required, subject to the provisions of this Agreement which survive the sale or termination of this Agreement.

County shall provide all such material as is necessary to file with the Florida Department of Revenue to claim the Tax Credits.

Article 6 – County Representations

County is familiar with the rules and regulations relating to the issuance of the Tax Credits, and that it has engaged adequate legal representation with respect to the requirements under state and federal regulations, and the transfer of the Tax Credits to Investor.

County will proceed diligently in effecting the transfer thereof, and will act in good faith and in accordance with the rules and regulations of FDEP.

County acknowledges that it currently controls the Tax Credits related to the Project, and expects to do so through the completion of the transaction contemplated herein. County acknowledges that no agreement exists, written or otherwise, which would adversely affect its ability to enter into this Agreement, and to timely complete the transaction contemplated herein. County has obtained all approvals necessary or required to enter into and accomplish the terms of this Agreement. In the event that the Florida Department of Revenue disallows any portion of the Tax Credits for reasons related to the credit generation and not the Investor, then the County shall repay Investor that portion of the Purchase Price relating to such disallowed Tax Credits. Notwithstanding the above, County shall not be responsible for repayment of an amount in excess of the Purchase Price.

Article 7 – Investor Representations

Investor is purchasing the Tax Credits for its own account, for investment purposes only and not with a view to the resale or distribution thereof. Investor acknowledges that the Statute prohibits any subsequent transfer of the New Certificate except through merger or acquisition.

Investor acknowledges that the Tax Credits have not been registered under the Securities Act of 1933, as amended (the "Act") or any state securities laws and are being offered and sold in reliance upon exemptions from such registration.

Investor has not relied upon any representations or other information (whether oral or written) other than as contained in any documents so furnished to it by County or contained herein.

Investor is an "accredited investor" as that term is defined in Rule 501 of Regulation D, promulgated by the Securities and Exchange Commission, under the Act.

Investor has the financial wherewithal readily available to purchase the Tax Credit Certificate as contemplated herein and represents that no agreement exists, written or otherwise, which would adversely affect its ability to enter into this Agreement, and to timely complete the transaction contemplated herein.

Investor shall comply with all laws, ordinances, and regulations applicable to this Agreement, to include those applicable to conflict of interest and collusion. Investor is presumed to be familiar with all federal, state, and local laws, ordinance, codes and regulations, that may in any way affect this Agreement.

Article 8 – Indemnification

Investor shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of Investor.

Article 9 – Successors and Assigns

County and Investor each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither County nor Investor shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

Article 10 – Remedies

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of County and/or Investor.

Article 11 – Disclosure and Ownership of Documents

Investor shall deliver to County's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for County under this Agreement.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by County or at its expense will be kept confidential by Investor and will not be disclosed to any other party, directly or indirectly, without County's prior written consent unless required by a lawful court order.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

Article 12 – Contingent Fees

Investor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Investor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Investor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Article 13 – Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County Agreements, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Investor, its officers, agents, employees, and lobbyists in order to ensure compliance with Agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Article 14 – Non-Discrimination

Investor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information.

Article 15 – Scrutinized Companies

As provided in F.S. 287.135, by entering into this Agreement, Investor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Investor is found to have been placed on the Scrutinized Companies that boycott Israel List or is engaged in a boycott of Israel, this Agreement may be terminated at the option of the County. If the County determines, using credible information available to the public, that a false certification has been submitted by Investor, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135.

Article 16 – Public Records

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Investor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Investor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. If the Investor is acting on behalf of and providing service to the County, the Investor's compliance with the Florida Public Records Law shall be limited to only those records generated pursuant to this Agreement. The Investor is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Investor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Investor does not transfer the records to the public agency.
- D. Upon completion of the Agreement, the Investor shall transfer, at no cost to the County, all public records in possession of the Investor unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Investor transfers all public records to the County upon completion of the Agreement, the Investor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Investor keeps and maintains public records upon completion of the Agreement, the Investor shall meet all applicable requirements for retaining public records. All records stored electronically by the Investor must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Failure of the Investor to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Investor acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE INVESTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE INVESTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

Article 17 – E-verify – Employment Eligibility

Investor warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of Investor's subconsultants performing the duties and obligations of this Agreement are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Investor shall obtain from each of its subconsultants an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. Investor shall maintain a copy of any such affidavit from a subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement, which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that Investor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If County has a good faith belief that Investor's subconsultant has knowingly violated section 448.09(1), Florida Statutes, as may be amended, County shall notify Investor to terminate its contract with the subconsultant and Investor shall immediately terminate its contract with the subconsultant. If County terminates this Agreement pursuant to the above, Investor shall be barred from being awarded a future Agreement by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, Investor shall also be liable for any additional costs incurred by County as a result of the termination.

Article 18 – Severability

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Article 19 – Notices

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. Notices shall be addressed to:

County:	Alan Chin Lee Palm Beach County 100 Australian Avenue, 5th Floor West Palm Beach, FL 33406 Email: achinlee@pbcgov.org	With copy to: Palm Beach County Attorney's Office 301 North Olive Ave. West Palm Beach, FL 33401
Investor:	Leslie Skorick Ozark Automotive Distributors, Inc. 233 South Patterson Avenue Springfield, MO 65802 Email: lskorick@oreillyauto.com	
Broker:	Jeff Jacobson Clocktower Tax Credits, LLC 2 Mill & Main Place, Suite 295 Maynard, MA 01754 Email: JJacobson@ClocktowerTC.com	

Article 20 – Entirety of Agreement

County and Investor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of County and Investor has hereunto set its hand the day and year above written.

Signed, sealed and delivered in the presence of:

Witnesses:

[Signature]
Witness Signature

Leslie Skonick
Print Witness Name

[Signature]
Witness Signature

Robert Cannon
Print Witness Name

Investor: **OZARK AUTOMOTIVE DISTRIBUTORS, INC.**

By: [Signature]
Mark Merz
Senior Vice President of Finance

(SEAL)

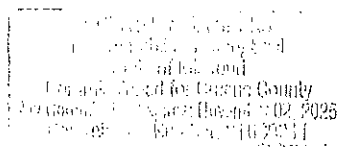
**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 6th day of December, 2023 by Mark Merz, who is personally known to me, or who has produced _____ as identification and who did/did not take an oath.

Signature: Courtney M. Mincks

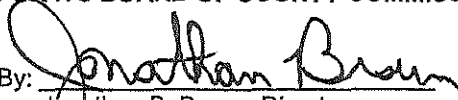
Notary Name: Courtney M. Mincks
Notary Public - State of ~~Florida~~
Missouri

(NOTARY SEAL ABOVE)



PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida

FOR ITS BOARD OF COUNTY COMMISSIONERS

By: 
Jonathan B. Brown, Director
Palm Beach County Department of
Housing and Economic Development

Approved as to
Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Economic Development

By: /s/ David C. Behar
David Behar
Assistant County Attorney

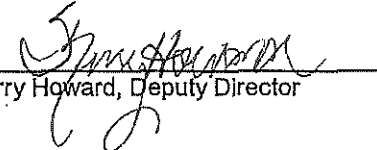
By: 
Sherry Howard, Deputy Director

EXHIBIT A

FL VCTC Certificate Transfer Information Summary

The following Information will be included in County's Letter of Instruction to the FDEP for the transfer of the VCTC Certificate:

Transfer 100% of the FL VCTC Certificate described below:

Certificate #:	1645
Application #:	1559
FDEP Facility ID:	BF501401001
Issue Date:	7/11/2023
Amount:	\$85,317.50

Transfer and delivery of the New Certificate to:

Transferee Name:	Ozark Automotive Distributors, Inc.
Transferee FEIN:	44-0651985
Transferee Email Address:	lskorick@oreillyauto.com
Transferee Contact Name:	Leslie Skorick
Transferee Contact Phone Number:	(417) 874-7142 ext. 68560