

CITY OF AURORA
RESOLUTION NO R10-396
DATE OF PASSAGE November 23, 2010

**RESOLUTION AUTHORIZING THE EXECUTION OF A SALES TAX
REVENUE SHARING AGREEMENT WITH YORKSHIRE PLAZA, LLC**

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, said Section of the Constitution authorizes a home rule unit to exercise any power and perform any function pertaining to its government and affairs for the protection of the public safety, health, welfare and morals; and

WHEREAS, Yorkshire Plaza, LLC is owner of Yorkshire Plaza Shopping Centre located at the northwest corner of Route 59 and new York Street, which has three hundred sixty-one thousand, nine hundred ninety-one (361,991) square feet of leasable space, making the property one of the larger shopping centers in the city; and

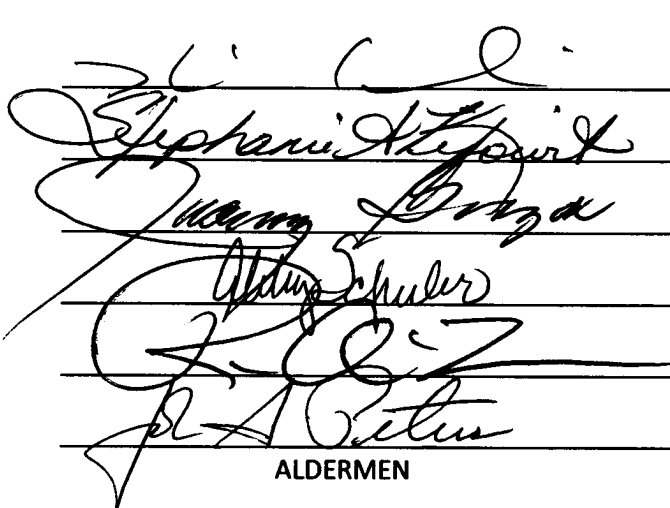
WHEREAS, Yorkshire Plaza, LLC has entered into a lease extension agreement with Best Buy Stores, LP (Best Buy), effective February 2011, and continuing for a period of ten years, ending January 31, 2021; and

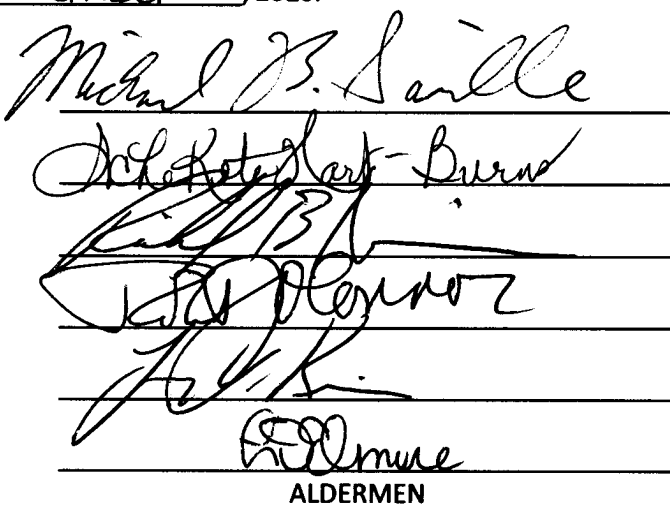
WHEREAS, in order to retain Best Buy in the City of Aurora and at Yorkshire Plaza in particular, both the City and Yorkshire Plaza, LLC acknowledge that Yorkshire Plaza, LLC will require economic assistance from the City, the particulars of which are contained in the "Sales Tax Revenue Sharing Agreement" attached hereto and made a part thereof; and

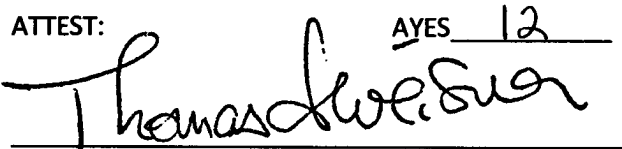
WHEREAS, the city's entry into the Sales Tax Revenue Sharing Agreement will benefit the City of Aurora with job retention, increased property values, and retention of retail sales taxes; and therefore is in the city's best interests.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, that the Mayor and City Clerk are hereby authorized to sign the attached Sales Tax Revenue Sharing Agreement.

PASSED AND APPROVED THIS 23rd DAY OF November, 2010.


ALDERMEN


ALDERMEN

ATTEST: 12 AYES 0 NAYS

MAYOR THOMAS J. WEISNER


CITY CLERK

NOTE FOR FILE:

THE ATTACHED LETTER, DATED 12-21-2011, FROM SEYFARTH SHAW, WAS RECEIVED ON 12-28-2011.

PLEASE NOTE THAT IT IS THE COVER LETTER FOR THE "ASSIGNMENT AND ASSUMPTION OF SALES TAX REVENUE SHARING AGREEMENT DATED NOVEMBER 30, 2011 BY AND BETWEEN YORKSHIRE PLAZA, LLC (PRIOR OWNER) AND YORKSHIRE PLAZA PARTNERS, LLC (NEW OWNER) AS IT PERTAINS TO" "THAT CERTAIN SHOPPING CENTER COMMONLY KNOWN AS YORKSHIRE PLAZA" (BEST BUY REVENUE SHARING AGREEMENT)

Writer's direct phone
(202) 828-5366
Writer's e-mail
jjones@seyfarth.com

December 21, 2011

VIA CERTIFIED MAIL

City Clerk
City of Aurora
44 East Downer Place
Aurora, IL 60507

Re: Assignment and Assumption of Sales Tax Revenue Sharing Agreement and Notice of Revised Notice Addresses under that certain Sales Tax Revenue Sharing Agreement, each for that certain shopping center commonly known as Yorkshire Plaza located in Aurora, Illinois (the "Property")

Dear City Clerk:

For your records, enclosed please find an original of the Assignment and Assumption of Sales Tax Revenue Sharing Agreement dated November 30, 2011 by and between Yorkshire Plaza, LLC ("Prior Owner") and Yorkshire Plaza Partners, LLC ("New Owner") as it pertains to the above-referenced Property.

Further, as of the date hereof, the notice addresses for "Yorkshire LLC" as set forth in Section 4.05 of that certain Sales Tax Revenue Sharing Agreement dated as of November 23, 2010 ("Agreement") by and between the City of Aurora and Prior Owner, predecessor in interest to New Owner, shall be hereby deleted in their entirety and the following addresses shall be substituted in lieu thereof:

"To YORKSHIRE LLC: Yorkshire Plaza Partners, LLC
c/o GK Development, Inc.
257 East Main Street, Suite 100
Barrington, Illinois 60010

with a copy to: Seyfarth Shaw LLP
131 South Dearborn Street, 24th Floor
Chicago, Illinois 60603
Attention: Ira Fierstein, Esq."

Should you have any questions, feel free to contact me at (202) 828-5366.

Very truly yours,

SEYFARTH SHAW LLP



Jennifer L. Jones

JLJ:

Enclosure

cc: Corporation Counsel, City of Aurora, 44 East Downer Place, Aurora, IL 60507
(w/encl. copy; via certified mail)
Susan Dewar (w/o encl.; via e-mail)
Gary Bazydlo, Esq. (w/o encl.; via e-mail)

ASSIGNMENT AND ASSUMPTION OF SALES TAX REVENUE SHARING AGREEMENT

THIS ASSIGNMENT OF SALES TAX REVENUE SHARING AGREEMENT (the "Assignment") made this 30th day of November, 2011, by Yorkshire Plaza, LLC, a Delaware limited liability company ("Assignor") and Yorkshire Plaza Partners, LLC, a Illinois limited liability company ("Assignee").

WITNESSETH:

Assignor is a party to the Sales Tax Revenue Sharing Agreement (the "STRSA") attached hereto as Exhibit "A" and made a part hereof with the City of Aurora relating to Yorkshire Plaza, a shopping center in Aurora, Illinois. In connection with the transfer of Yorkshire Plaza to Assignee, Assignor desires to assign to Assignee, and Assignee desires to accept the assignment from Assignor of all of Assignor's right, title, obligations and interest in and to the STRSA including, without limitation, the right to receive the revenue thereunder.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Assignor hereby grants, transfers and assigns to Assignee, its successors and assigns, all of the right, title and interest of the Assignor in and to the STRSA and assumes all obligations under the STRSA accruing to the date hereof.
2. Assignee hereby accepts said assignment and assumes all of the Assignor's duties and obligations arising out of the STRSA *including the City's default remedies* from and after the date hereof.
3. The parties hereto acknowledge (i) the existence of certain funds held in escrow to satisfy the obligations under Recital F and Section 2.02, (ii) that said funds shall be used to satisfy the financial obligations under the STRSA, and (iii) the existence of the corresponding obligations under the BB LEASE (as defined in the STRSA), which BB LEASE is being assigned by Assignor to Assignee by separate agreement.
4. Prior to the date hereof, in accordance with the terms of Section 4.02 of the STRSA, Assignor sent notice to the City of Aurora advising the same of Assignor's assignment to Assignee of all of Assignor's right, title and interest in and to the STRSA (as more specifically described in this Assignment) and directing that all future payments and reports under the STRSA go to the Assignee. A copy of said notice is attached hereto as Exhibit "B".
5. Assignor has executed a corporate resolution attached hereto as Exhibit "C" indicating that the transfer to Assignee of Yorkshire Plaza, a shopping center in Aurora, Illinois (also known as the PLAZA (as defined in the STRSA)), is a transfer of its "business" pursuant to Section 4.02.
6. The Exhibits attached hereto are incorporated herein and made a part hereof.

7. The provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This is the entire agreement between the parties with respect to the Assignment hereunder. This Assignment shall be interpreted in accordance with Illinois law.

8. This Assignment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

[Signature Page to Follow.]

IN WITNESS WHEREOF, Assignor and Assignee have each caused this Assignment to be duly executed the day and year first above written.

ASSIGNOR:

YORKSHIRE PLAZA, LLC

By: KUBS Income Fund I, L.P., its managing member

By: KUBS Income Fund I GP Business Trust, its general partner

By: 
Name: _____
Title: **VICE PRESIDENT
GARY J BAZIOLLO**

ASSIGNEE:

YORKSHIRE PLAZA PARTNERS, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, Assignor and Assignee have each caused this Assignment to be duly executed the day and year first above written.

ASSIGNOR:

YORKSHIRE PLAZA, LLC

By: KUBS Income Fund I, L.P., its managing member

By: KUBS Income Fund I GP Business Trust, its general partner

By: _____

Name:

Title:

ASSIGNEE:

YORKSHIRE PLAZA PARTNERS, LLC

By:  _____

Name:

Title:

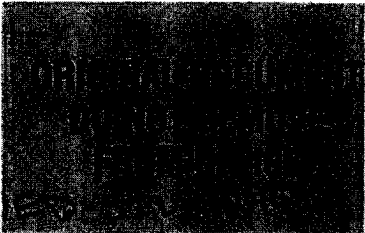
Garo Kholamian
President

EXHIBIT "A"

SALES TAX REVENUE SHARING AGREEMENT

(See Attached)

CITY OF AURORA
RESOLUTION NO. R10-396
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WHEREAS, said Section of the Constitution authorizes a home rule unit to exercise any power and perform any function pertaining to its government and affairs for the protection of the public safety, health, welfare and morals; and

WHEREAS, Yorkshire Plaza, LLC is owner of Yorkshire Plaza Shopping Centre located at the northwest corner of Route 59 and new York Street, which has three hundred sixty-one thousand, nine hundred ninety-one (361,991) square feet of leasable space, making the property one of the larger shopping centers in the city; and




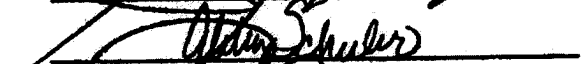


WHEREAS, Yorkshire Plaza, LLC has entered into a lease extension agreement with Best Buy Stores, LP (Best Buy), effective February 2011, and continuing for a period of ten years, ending January 31, 2021; and

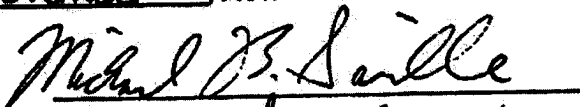


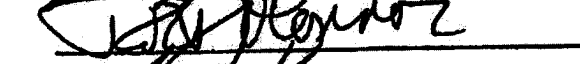


WHEREAS, in order to retain Best Buy in the City of Aurora and at Yorkshire Plaza in particular, both the City and Yorkshire Plaza, LLC acknowledge that Yorkshire Plaza, LLC will require economic assistance from the City, the particulars of which are contained in the "Sales Tax Revenue Sharing Agreement" attached hereto and made a part thereof; and

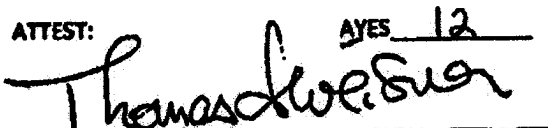
WHEREAS, the city's entry into the Sales Tax Revenue Sharing Agreement will benefit the City of Aurora with job retention, increased property values, and retention of retail sales taxes; and therefore is in the city's best interests.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, that the Mayor and City Clerk are hereby authorized to sign the attached Sales Tax Revenue Sharing Agreement.

PASSED AND APPROVED THIS 23rd DAY OF November, 2010.







ALDERMEN







ALDERMEN

ATTEST: AYES 12

MAYOR THOMAS J. WEISNER

NAYS 0

CITY CLERK

SALES TAX REVENUE SHARING AGREEMENT

This Sales Tax Revenue Sharing Agreement (hereinafter referred to as the "Agreement") is entered into on this 23rd day of November, 2010 by and between the City of Aurora, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "CITY") and Yorkshire Plaza, LLC, a Delaware limited liability company (hereinafter referred to as "YORKSHIRE LLC"). (The CITY and YORKSHIRE LLC are hereinafter sometimes referred to herein individually as a "Party" or collectively as "Parties.")

RECITALS

A. The CITY is a home rule municipality and hereby enters into this Agreement pursuant to its home-rule powers; and pursuant to Section 6 (a) of Article VII of the Constitution of the State of Illinois of 1970, the CITY has determined that it has the authority to enter into this Agreement.

B. The CITY deems it to be of significant importance to encourage development and redevelopment within the CITY, so as to maintain a viable real estate tax and sales tax base and employment opportunities.

C. YORKSHIRE LLC is owner of the Yorkshire Plaza Shopping Center located at the northwest corner of Route 59 and New York Street (hereinafter referred to as the "PLAZA"); said PLAZA being legally described on Exhibit A attached hereto and made part hereof.

D. The PLAZA contains approximately three hundred sixty-one thousand nine hundred ninety-one (361,991) square feet of leasable space, with YORKSHIRE LLC

currently having lease contracts for approximately two hundred forty-four thousand four hundred eighty-six (244,486) square feet of said leasable space.

E. YORKSHIRE LLC intends to renew the lease with Best Buy Stores, L.P. (hereinafter referred to as "BEST BUY"), for approximately fifty-seven thousand nine hundred sixty (57,960) square feet of leasable space, with said renewed lease being effective for a ten (10) year period, beginning February 1, 2011, and ending January 31, 2021, with extension options available thereafter (hereinafter referred to as the "BB LEASE").

F. The BB LEASE will include requirements that YORKSHIRE LLC: (i) fund up to One Million and 00/100ths Dollars (\$1,000,000.00) in improvements and/or renovations which BEST BUY may complete to the interior and/or exterior of the BEST BUY premises, including building signage upgrades, furniture, fixtures and equipment; (ii) assist with the funding of leasing costs; and (iii) provide tenant inducements in the form of annual rent buy-downs for the full ten (10) years of the BB LEASE (hereinafter referred to as the "BEST BUY PROJECT"); with the cost of said BEST BUY PROJECT projected to be approximately Three Million One Hundred Fifteen Thousand Nine Hundred Twenty and 00/100ths Dollars (\$3,115,920.00) as more fully detailed on Exhibit B attached hereto and made part of hereof.

G. The Parties anticipate that the BEST BUY PROJECT will maintain, and even possibly enhance, the CITY's real estate and sales tax base, and will maintain existing, and create additional, employment opportunities in the CITY, by maintaining current, and creating additional, sales, which will require the need for additional employees at BEST BUY.

H. Both YORKSHIRE LLC and the CITY acknowledge that a lease extension with BEST BUY will have a positive impact on the PLAZA's ability to attract new tenants and retain existing tenants, and will allow the PLAZA to remain competitive in future business attraction and retention.

I. Both YORKSHIRE LLC and the CITY acknowledge that YORKSHIRE LLC will require economic assistance from the CITY in order to complete the BEST BUY PROJECT. The description and anticipated costs of the BEST BUY PROJECT.

J. The CITY and YORKSHIRE LLC believe that unless the economic assistance is given by the CITY, the BEST BUY PROJECT, as contemplated, would not be economically feasible, and thus YORKSHIRE LLC would be unable to renew the lease with BEST BUY, and, as such, the CITY anticipates assisting YORKSHIRE LLC with a portion of the cost of the BEST BUY PROJECT in an amount not to exceed Two Million and 00/100ths Dollars (\$2,000,000.00) (hereinafter referred to as the "BEST BUY SHARED COSTS").

K. For purposes of this Agreement, the use of the terms "SALES TAX" or "SALES TAXES" shall be construed to refer to only the net portion of sales taxes imposed by the State of Illinois (hereinafter referred to as the "State"), for distribution to the CITY, pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. and the Service Occupation Tax Act, 35 ILCS 115/1 et seq. (as said Acts may be amended or pursuant to any replacement taxes enacted in lieu of said taxes), and which are distributed to the CITY by the State. The term "SALES TAX" shall not include any other taxes imposed by, or levied by, either the CITY or the State.

L. This Agreement is expressly limited to a rebate of fifty percent (50%) of the total amount of the SALES TAXES received by the CITY from sales at BEST BUY during the term of the BB LEASE, not to exceed the total amount of the BEST BUY SHARED COSTS.

M. The CITY and YORKSHIRE LLC agree that it is in their respective best interests to enter into the Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein made, the Parties hereto hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing Recitals are true and accurate, to the best of their respective knowledge and belief, without the requirement of further investigation or research, and incorporate such Recitals into this Agreement as if fully set forth herein as this Article I.

ARTICLE II
OBLIGATIONS OF YORKSHIRE LLC
CONDITION PRECEDENT TO CITY UNDERTAKINGS

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be deemed as a condition precedent to the related, ongoing financial undertakings on the part of the CITY pursuant to this Agreement. The CITY shall only have those financial obligations for which YORKSHIRE LLC has satisfied all relevant requirements of this Article II.

2.02 Economic Assistance for BEST BUY PROJECT. In order to receive the economic assistance of the BEST BUY SHARED COSTS provided for in this Agreement

with respect to the BEST BUY PROJECT, YORKSHIRE LLC must enter into the BB LEASE, in accordance with the terms set forth in Recital "F", keeping BEST BUY in the CITY, so as to facilitate providing the benefits set forth in the Recitals to the CITY. All improvements made to the BEST BUY premises shall be built in accordance with all CITY approvals and all applicable ordinances, rules and regulations of the CITY. YORKSHIRE LLC shall not knowingly cause or permit the existence of any violation of CITY ordinances, including but not limited to, the building code, zoning ordinance, fire code and all rules and regulations thereunder. To the extent any work in relation to the BEST BUY PROJECT is performed by contractors under the control of YORKSHIRE LLC, prevailing wages, as provided for by the Illinois Prevailing Wage Act, shall be paid relative to said work, as provided for in Section 2.07 below.

2.03 Sales Tax Information. YORKSHIRE LLC shall require BEST BUY to either (A) provide its sales and SALES TAX information from the BEST BUY premises directly to the CITY, or (B) provide written consent to the CITY obtaining the relevant sales and SALES TAX information from the State. CITY acknowledges that YORKSHIRE LLC has no direct access to sales and SALES TAX information from which it can make representations or warranties. CITY shall use the information provided by BEST BUY and/or the State to calculate the payments to be provided to YORKSHIRE LLC, relative to the BEST BUY SHARED COSTS. YORKSHIRE LLC hereby acknowledges that the CITY shall have no obligation to refund any SALES TAX under this Agreement unless it can verify the appropriate amount to be refunded, pursuant to the information to be supplied to the CITY under this Section.

2.04 Sales Tax Reporting and Confidentiality. The CITY, upon receipt of said sales tax information directly from Best Buy and/or the State, shall provide YORKSHIRE LLC with a summary of that information, along with a calculation of the payments to YORKSHIRE LLC for each calendar year of the Revenue Sharing Term, as hereinafter defined. Such report shall be certified as accurately reflecting the information provided to the CITY by an officer of the CITY. Upon written request from CITY, YORKSHIRE LLC will provide any sales and SALES TAX information that it receives. The CITY shall deliver its report to YORKSHIRE LLC on a quarterly basis before the fifteenth (15th) day following the end of the calendar quarter for which the CITY is reporting. The CITY shall then issue payment to YORKSHIRE LLC within forty-five (45) days of the delivery of said report. Upon written request, the CITY shall have the right to review YORKSHIRE LLC's records relative to the BEST BUY PROJECT. The CITY hereby represents and warrants that any and all information regarding SALES TAXES shall be confidential and used only for the purpose of calculating any amounts due and owing to YORKSHIRE LLC pursuant to this Agreement. The CITY acknowledges that sales and SALES TAX information is proprietary financial information which, if disclosed, would place the supplier thereof at a competitive disadvantage, and, therefore, not subject to disclosure pursuant to the Freedom of Information Act. YORKSHIRE LLC agrees that the CITY's compliance with any court order to produce information shall not subject the CITY to any liability hereunder for the release of said information. The CITY shall provide both YORKSHIRE LLC and BEST BUY prompt written notice of any such attempt to gain access to the sales and SALES

TAX information, and cooperate with either or both should either or both elect to challenge any such attempt.

2.05 Real Estate Taxes and Other Charges. YORKSHIRE LLC hereby covenants and agrees to promptly pay, or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to YORKSHIRE LLC or the PLAZA.

2.06 Certification of Project Costs. YORKSHIRE LLC shall supply the CITY with the actual costs for the BEST BUY PROJECT, including documentary support for the BEST BUY rent buy down inducement and leasing costs, certified as true by an officer of YORKSHIRE LLC, and such other reasonable and relevant information, at the written request of the CITY's Chief Development Officer or Finance Director, as the Chief Development Officer or Finance Director shall request to determine that all said costs are reimbursable under this Agreement. YORKSHIRE LLC represents and warrants that all such information produced to the CITY pursuant to this provision and the further provisions of this Agreement are and will be at all times in the future be true and accurate and agrees that the CITY may, and for the purposes of this Agreement does, rely on the truth and accuracy of said information as a basis for making required payments under the terms of this Agreement. Except as otherwise provided by law, the CITY agrees to keep the foregoing information confidential as financial information that is proprietary to YORKSHIRE LLC and BEST BUY, in the same manner as set forth relative to Sales and sales Tax information under Section 2.04 above

2.07 Prevailing Wage Requirement. YORKSHIRE LLC shall pay "Prevailing Wage Rates" to any workers hired by YORKSHIRE LLC or contractors and subcontractors hired directly by YORKSHIRE LLC, if any, with respect to the BEST BUY PROJECT. The CITY acknowledges that YORKSHIRE LLC has no contractual right or ability to impose this requirement on BEST BUY, its contractors or subcontractors.

ARTICLE III
CITY OBLIGATIONS AND UNDERTAKINGS

3.01 Economic Assistance. Upon satisfaction by YORKSHIRE LLC of all of the applicable conditions stated in Article II hereof, the CITY, relying on the representations and warranties of YORKSHIRE LLC, in order to make retention of BEST BUY economically viable, shall help to defray YORKSHIRE LLC's BEST BUY SHARED COSTS by rebating certain SALES TAXES to YORKSHIRE LLC, in accordance with the terms and conditions of this Agreement. Payments of SALES TAXES to be made by the CITY to YORKSHIRE LLC, pursuant to this Agreement, shall be made by the CITY to YORKSHIRE LLC for BEST BUY SHARED COSTS, from SALES TAXES on BEST BUY sales for a period of up to ten (10) years, beginning February 1, 2011, or until the full BEST BUY SHARED COSTS have been reimbursed, whichever occurs first (the aforementioned ten (10) year period, being referred to sometimes herein as the "Revenue Sharing Term"). The annual payments to YORKSHIRE LLC by the CITY shall be subject to all of the terms and conditions contained herein, and YORKSHIRE LLC'S compliance with any applicable requirements of this Agreement.

3.02 Commencement Date; Revenue Sharing Term. YORKSHIRE LLC shall give the CITY a sixty (60) day written notice stating that it has satisfied all of the conditions of Section 2.02 of this Agreement, and that it is electing to commence the Revenue Sharing Term for BEST BUY. The notice shall specify the Commencement Date as no earlier than February 1, 2011.

ARTICLE IV **GENERAL PROVISIONS**

4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the CITY nor YORKSHIRE LLC, as the case may be, nor any successors in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder. This provision shall not apply to extend times for the CITY to satisfy its payment obligations beyond thirty (30) business days.

4.02 Assignment of Agreement. This Agreement may be assigned by YORKSHIRE LLC to a bona fide purchaser of its business, provided the transaction does not violate 65 ILCS 5/8-11-20, or any statute enacted to amend or replace 65 ILCS 5/8-11-20 and provided reasonable notice of such assignment is given to the CITY prior to said assignment and further that the assignee agrees to be bound by all of the terms,

conditions and provisions of this Agreement, including, but not limited to, the CITY's default remedies.

4.03 YORKSHIRE LLC Authority. YORKSHIRE LLC hereby represents and warrants that it is a limited liability company authorized to do business in, and in good standing with the State of Illinois. YORKSHIRE LLC further represents and warrants that all actions necessary to make YORKSHIRE LLC's obligations hereunder enforceable against YORKSHIRE LLC have been taken, and that no further approvals or actions are required.

4.04 Defaults Remedies.

(A) 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 in default or violation, which notice shall be in writing and shall specify the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default within thirty (30) days from written notice of such default (or if such violation or default cannot reasonably be cured in said time, the defaulting Party shall begin the cure within said timeframe and then diligently pursue completion of same). In the event of default by the CITY of its obligations to YORKSHIRE LLC provided for in Article III, YORKSHIRE LLC's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction plus interest at the rate of prime plus three percent (3%) (hereinafter referred to as "Interest") on any past due amounts and the remedy set forth in (C) below. YORKSHIRE LLC will not be entitled to any other monetary damages

(beyond collection of amounts due, interest, and attorney fees) from the CITY and hereby expressly waives any claim for monetary damages.

(B) In the event that YORKSHIRE LLC fails to meet the provisions of this Agreement, the CITY shall have the following sole and exclusive remedies (plus the rights set forth in subsection (c) below):

1. Suspension of future payments under Section 3.01 above, until such time as the default has been cured; and
2. Specific performance of the violated terms of the Agreement.

(C) The non-prevailing Party in any action taken between the Parties on or relating to the obligations and rights under this Agreement shall pay the prevailing Party's reasonable costs and expenses, including reasonable attorney fees, in such action.

4.05 Notices. All notices and requests required pursuant to this Agreement shall be sent certified mail as follows:

to YORKSHIRE LLC: Yorkshire Plaza, LLC
c/o Kimco Realty Corporation
3333 New Hyde Park Road
Suite 100
New Hyde Park, N.Y. 11042

with copies to: Kimco Realty Corporation
c/o Robert Nadler
10600 West Higgins
Suite 408
Rosemont, IL 60018

to the CITY: City Clerk
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

with copies to: Corporation Counsel
City of Aurora

44 East Downer Place
Aurora, Illinois 60507

or at such other addresses as the Parties may indicate in writing to the other either by personal or overnight delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notices shall be deemed effective on the date received or refused.

4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in State Court in Illinois having jurisdiction over the PLAZA and/or the CITY.

4.07 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.

4.08 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 a limited obligation payable solely out of the specific SALES TAXES generated by BEST BUY as set forth herein, and shall further be limited to the actual sum of money required to be paid to YORKSHIRE LLC by the CITY (plus interest and attorney fees as set forth above).

4.09 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 the 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 unless waived in a writing signed by the waiving Party.

4.10 Paragraph Headings and Subheadings. All paragraph headings or other headings in this Agreement are for the 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.

4.11 Authorization to Execute. The manager(s) of YORKSHIRE LLC who have executed this Agreement warrant that he/she/they respectively have been lawfully authorized by YORKSHIRE LLC to execute this Agreement. The Mayor and Clerk of the CITY hereby warrant that they have been lawfully authorized by the City Council of the CITY to execute this Agreement.

4.12 Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between YORKSHIRE LLC and the CITY relative to the subject matter thereof. 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 them.

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

4.14 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 unless in so doing the fundamental purposes of this Agreement are frustrated or made impossible.

Dated this 13th day of DECEMBER, 2010.

2/10 YORKSHIRE PLAZA, LLC, a Delaware limited liability company
By: KUBS Income Fund I, LP, a DE limited partnership, its managing member
By: KUBS Income Fund I GP Business Trust, a MD business trust, its general partner

By: Robert Nadler Attest: Gary J. Grzawa
Name: Robert NADLER Name: GARY J. GRZAWA
Title: VICE-PRESIDENT Title: REGIONAL COUNSEL

City of Aurora, an Illinois municipal corporation

By: [Signature]
Mayor

Attest: Cheryl M. Donhoff
City Clerk

EXHIBIT "A"
(Legal Description for the PLAZA)

EXHIBIT "B"

**DESCRIPTION AND ANTICIPATED BEST BUY SHARED COSTS OF THE
BEST BUY PROJECT AND TOTAL COSTS OF THE BEST BUY PROJECT**

* TOTAL COSTS OF BEST BUY PROJECT:	
\$2,000,000	Rent buy down structured as \$200,000 per year in rent reduction for the entire ten year renewal term commencing 2/1/2011, and expiring 1/31/2021. Under the original lease, BEST BUY had option rents of \$405,000 annually for the five-year option term of 2/1/2011 to 1/31/2016 and \$461,250 for the option period 2/2/2016 to 1/31/2021. The renewal rents reduce those option rents by \$200,000 each year creating rent steps of \$205,000 annually and \$261,250 annually for each respective five-year period.
\$1,000,000	YORKSHIRE LLC has agreed to reimburse BEST BUY up to \$1,000,000 for work BEST BUY has a right to perform under the renewal amendment to improve its premises including furniture, fixtures and equipment replacements, roof replacement costs, HVAC repairs and replacements, and/or exterior signage. YORKSHIRE LLC will reimburse BEST BUY for expenditures in improving its store up to \$1,000,000.
\$115,920	YORKSHIRE LLC is obligated to pay BEST BUYS's broker, Metro Commercial, the amount of \$115,920 for its work toward facilitating this renewal.
\$3,115,920	Total cost to YORKSHIRE LLC to keep BEST BUY located in the CITY and at the PLAZA.
* TOTAL BEST BUY SHARED COSTS	
\$2,000,000	Although the total costs and concessions relating to keeping BEST BUY in the CITY and at the PLAZA will likely exceed \$3,000,000, YORKSHIRE LLC will be receiving under this Agreement only up to the \$2,000,000 in rent buy down set forth above.

EXHIBIT "B"

NOTICE TO THE CITY OF AURORA

(See Attached)



Gary Bazydlo
Regional Counsel

Writer's Direct Dial: 847-294-6448
Writer's Direct Fax: 847-299-1167
E-Mail: gbazydlo@kimcorealty.com

November 22, 2011

VIA FEDERAL EXPRESS

CITY CLERK
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

CORPORATION COUNSEL
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

Re: **Sales Tax Revenue Sharing Agreement, Dated November 23, 2010
Yorkshire Plaza, LLC and the City of Aurora**

Dear Clerk and Counsel:

As Regional Counsel and Vice President for Yorkshire Plaza, LLC, party to the above-referenced agreement (the "Agreement") with your City of Aurora, I have been asked to advise you pursuant Section 4.02 that Yorkshire Plaza, LLC, is in the process of selling its business, Yorkshire Plaza, to a bona fide purchaser, Yorkshire Plaza Partners, LLC. Said purchaser is agreeing to be bound by the terms of the Agreement, and is taking assignment of said Agreement in connection with its purchaser of Yorkshire Plaza.

Section 4.02 requires reasonable advanced notice of the transaction, and said transaction is due to close toward the end of this month. As a next payment will not due to the bona fide purchaser under the Agreement until the end of the fourth quarter 2011, we are confident this notice provides the City with reasonable time to redirect the providing of reports and the payment of funds beginning with the fourth quarter 2011 (not due until 2012) to Yorkshire Plaza Partners, LLC at the following address:

YORKSHIRE PLAZA PARTNERS, LLC
257 EAST MAIN STREET
SUITE 100
BARRINGTON, ILLINOIS 60010

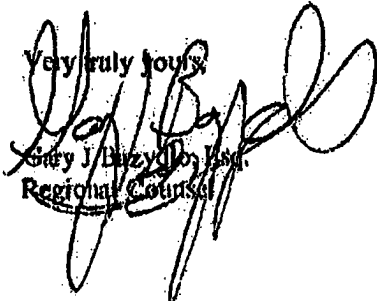
As Section 4.02 requires notice prior to the transaction, we will not be able to provide you with a fully executed assignment of the Agreement until after the closing to document for you that the bona fide purchaser has agreed to assume all obligations under the Agreement including the City's default remedies. A fully executed copy of the assignment providing for assumption of obligations will be provided to the City immediately after closing.

Assignor represents to the City as set forth in Section 4.02 that this transaction does not violate 65 ILCS 5/8-11-20 or any enacted to amend or replace same since the execution of the Agreement (if any).

By counter-signing the letter below, please acknowledge receipt of this notice of assignment for the benefit of the assignee and that upon receipt of the fully executed assignment, the City of Aurora will process payments and reports (and all other obligations under the Agreement) to and in favor of Yorkshire Plaza Partners, LLC.

If you have any questions, please feel free to contact me.

Very truly yours,

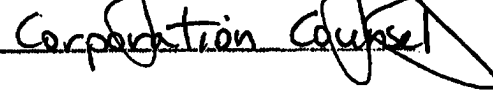

Gary J. Bizylo, Esq.
Regional Counsel

ACKNOWLEDGED AND CONFIRMED:
CITY OF AURORA

By:



Its:


Corporation Counsel

cc: Jennifer Jones
Ira Pierstein
Brian Caputo
William Wiet



EXHIBIT "C"
CORPORATE RESOLUTION

**CERTIFICATE WITH RESPECT TO
KUBS INCOME FUND I GP BUSINESS TRUST**

The undersigned, as an Assistant Secretary of KUBS INCOME FUND I GP BUSINESS TRUST, a corporation organized under the laws of the State of Maryland (the "Company"), does hereby certify that the following is a true and complete copy of certain resolutions which have been adopted by the Board of Directors of the Company and which were duly and lawfully adopted on November 28, 2011, such resolutions have not been amended, altered or rescinded and are in full force and effect on the date hereof:


RESOLVED, that the Company, in its capacity as the general partner of KUBS Income Fund I, LP, which is the managing member of Yorkshire Plaza, LLC (the "Owner"), shall cause the Owner to sell all of its right, title and interest in and to property it owns located in Aurora, Illinois, commonly known as Yorkshire Plaza (the "Property") pursuant to and in accordance with the terms of an Agreement of Sale dated as of July 18, 2011, between the Owner, as Seller, and GK Development, Inc., as Buyer, as amended, modified and/or assigned. The sale price is approximately \$20,500,000.00; and it is further

RESOLVED, that in furtherance of the foregoing, the Executive Chairman, the President, or any Vice President, Secretary or Assistant Secretary of the Company (specifically but not limited to Robert Nadler as Vice President and Gary Bazydlo as Vice President and Assistant Secretary) be, and each of them hereby is authorized on behalf of the Company, in its capacity as the general partner of KUBS Income Fund I, LP, which is the managing member of Yorkshire Plaza, LLC, the Owner, to execute and deliver any and all documents, instruments, agreements and writings as are required in connection with the consummation of the aforesaid transaction; all and each of the foregoing to contain such additional terms and provisions as the officer executing the same shall approve; and the execution and delivery of any of the foregoing shall be conclusive evidence that the same have been authorized by this resolution; and it is further

RESOLVED, that the Executive Chairman, the President, or any Vice President, Secretary or Assistant Secretary of the Company (specifically but not limited to Robert Nadler as Vice President and Gary Bazydlo as Vice President and Assistant Secretary) be, and each of them hereby is, authorized on behalf of the Company, in its capacity as the general partner of KUBS Income Fund I, LP, which is the managing member of Yorkshire Plaza, LLC, the Owner, to execute and deliver such further instruments, agreements or documents and to perform such other acts, as in their, his or her judgment may be necessary or appropriate in order to effectuate the consummation of the aforesaid transaction and the intent and purpose of the foregoing resolution; the execution and delivery of any of such further instruments, agreements or documents, and the performance of any such other acts shall be conclusive evidence that the same have been authorized by this resolution.

The undersigned hereby certifies that the business of the Company is to operate the Property being sold.

IN WITNESS WHEREOF, the undersigned has hereunto set her signature on November 28, 2011.



Susan L. Masone, Assistant Secretary

SALES TAX REVENUE SHARING AGREEMENT

This Sales Tax Revenue Sharing Agreement (hereinafter referred to as the "Agreement") is entered into on this 23rd day of November, 2010 by and between the City of Aurora, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "CITY") and Yorkshire Plaza, LLC, a Delaware limited liability company (hereinafter referred to as "YORKSHIRE LLC"). (The CITY and YORKSHIRE LLC are hereinafter sometimes referred to herein individually as a "Party" or collectively as "Parties.")

RECITALS

A. The CITY is a home rule municipality and hereby enters into this Agreement pursuant to its home-rule powers; and pursuant to Section 6 (a) of Article VII of the Constitution of the State of Illinois of 1970, the CITY has determined that it has the authority to enter into this Agreement.

B. The CITY deems it to be of significant importance to encourage development and redevelopment within the CITY, so as to maintain a viable real estate tax and sales tax base and employment opportunities.

C. YORKSHIRE LLC is owner of the Yorkshire Plaza Shopping Center located at the northwest corner of Route 59 and New York Street (hereinafter referred to as the "PLAZA"); said PLAZA being legally described on Exhibit A attached hereto and made part hereof.

D. The PLAZA contains approximately three hundred sixty-one thousand nine hundred ninety-one (361,991) square feet of leasable space, with YORKSHIRE LLC

currently having lease contracts for approximately two hundred forty-four thousand four hundred eighty-six (244,486) square feet of said leasable space.

E. YORKSHIRE LLC intends to renew the lease with Best Buy Stores, L.P. (hereinafter referred to as "BEST BUY"), for approximately fifty-seven thousand nine hundred sixty (57,960) square feet of leasable space, with said renewed lease being effective for a ten (10) year period, beginning February 1, 2011, and ending January 31, 2021, with extension options available thereafter (hereinafter referred to as the "BB LEASE").

F. The BB LEASE will include requirements that YORKSHIRE LLC: (i) fund up to One Million and 00/100ths Dollars (\$1,000,000.00) in improvements and/or renovations which BEST BUY may complete to the interior and/or exterior of the BEST BUY premises, including building signage upgrades, furniture, fixtures and equipment; (ii) assist with the funding of leasing costs; and (iii) provide tenant inducements in the form of annual rent buy-downs for the full ten (10) years of the BB LEASE (hereinafter referred to as the "BEST BUY PROJECT"); with the cost of said BEST BUY PROJECT projected to be approximately Three Million One Hundred Fifteen Thousand Nine Hundred Twenty and 00/100ths Dollars (\$3,115,920.00) as more fully detailed on Exhibit B attached hereto and made part of hereof.

G. The Parties anticipate that the BEST BUY PROJECT will maintain, and even possibly enhance, the CITY's real estate and sales tax base, and will maintain existing, and create additional, employment opportunities in the CITY, by maintaining current, and creating additional, sales, which will require the need for additional employees at BEST BUY.

H. Both YORKSHIRE LLC and the CITY acknowledge that a lease extension with BEST BUY will have a positive impact on the PLAZA's ability to attract new tenants and retain existing tenants, and will allow the PLAZA to remain competitive in future business attraction and retention.

I. Both YORKSHIRE LLC and the CITY acknowledge that YORKSHIRE LLC will require economic assistance from the CITY in order to complete the BEST BUY PROJECT. The description and anticipated costs of the BEST BUY PROJECT.

J. The CITY and YORKSHIRE LLC believe that unless the economic assistance is given by the CITY, the BEST BUY PROJECT, as contemplated, would not be economically feasible, and thus YORKSHIRE LLC would be unable to renew the lease with BEST BUY, and, as such, the CITY anticipates assisting YORKSHIRE LLC with a portion of the cost of the BEST BUY PROJECT in an amount not to exceed Two Million and 00/100ths Dollars (\$2,000,000.00) (hereinafter referred to as the "BEST BUY SHARED COSTS").

K. For purposes of this Agreement, the use of the terms "SALES TAX" or "SALES TAXES" shall be construed to refer to only the net portion of sales taxes imposed by the State of Illinois (hereinafter referred to as the "State"), for distribution to the CITY, pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. and the Service Occupation Tax Act, 35 ILCS 115/1 et seq. (as said Acts may be amended or pursuant to any replacement taxes enacted in lieu of said taxes), and which are distributed to the CITY by the State. The term "SALES TAX" shall not include any other taxes imposed by, or levied by, either the CITY or the State.

L. This Agreement is expressly limited to a rebate of fifty percent (50%) of the total amount of the SALES TAXES received by the CITY from sales at BEST BUY during the term of the BB LEASE, not to exceed the total amount of the BEST BUY SHARED COSTS.

M. The CITY and YORKSHIRE LLC agree that it is in their respective best interests to enter into the Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein made, the Parties hereto hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing Recitals are true and accurate, to the best of their respective knowledge and belief, without the requirement of further investigation or research, and incorporate such Recitals into this Agreement as if fully set forth herein as this Article I.

ARTICLE II
OBLIGATIONS OF YORKSHIRE LLC
CONDITION PRECEDENT TO CITY UNDERTAKINGS

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be deemed as a condition precedent to the related, ongoing financial undertakings on the part of the CITY pursuant to this Agreement. The CITY shall only have those financial obligations for which YORKSHIRE LLC has satisfied all relevant requirements of this Article II.

2.02 Economic Assistance for BEST BUY PROJECT. In order to receive the economic assistance of the BEST BUY SHARED COSTS provided for in this Agreement

with respect to the BEST BUY PROJECT, YORKSHIRE LLC must enter into the BB LEASE, in accordance with the terms set forth in Recital "F", keeping BEST BUY in the CITY, so as to facilitate providing the benefits set forth in the Recitals to the CITY. All improvements made to the BEST BUY premises shall be built in accordance with all CITY approvals and all applicable ordinances, rules and regulations of the CITY. YORKSHIRE LLC shall not knowingly cause or permit the existence of any violation of CITY ordinances, including but not limited to, the building code, zoning ordinance, fire code and all rules and regulations thereunder. To the extent any work in relation to the BEST BUY PROJECT is performed by contractors under the control of YORKSHIRE LLC, prevailing wages, as provided for by the Illinois Prevailing Wage Act, shall be paid relative to said work, as provided for in Section 2.07 below.

2.03 Sales Tax Information. YORKSHIRE LLC shall require BEST BUY to either (A) provide its sales and SALES TAX information from the BEST BUY premises directly to the CITY, or (B) provide written consent to the CITY obtaining the relevant sales and SALES TAX information from the State. CITY acknowledges that YORKSHIRE LLC has no direct access to sales and SALES TAX information from which it can make representations or warranties. CITY shall use the information provided by BEST BUY and/or the State to calculate the payments to be provided to YORKSHIRE LLC, relative to the BEST BUY SHARED COSTS. YORKSHIRE LLC hereby acknowledges that the CITY shall have no obligation to refund any SALES TAX under this Agreement unless it can verify the appropriate amount to be refunded, pursuant to the information to be supplied to the CITY under this Section.

2.04 Sales Tax Reporting and Confidentiality. The CITY, upon receipt of said sales tax information directly from Best Buy and/or the State, shall provide YORKSHIRE LLC with a summary of that information, along with a calculation of the payments to YORKSHIRE LLC for each calendar year of the Revenue Sharing Term, as hereinafter defined. Such report shall be certified as accurately reflecting the information provided to the CITY by an officer of the CITY. Upon written request from CITY, YORKSHIRE LLC will provide any sales and SALES TAX information that it receives. The CITY shall deliver its report to YORKSHIRE LLC on a quarterly basis before the fifteenth (15th) day following the end of the calendar quarter for which the CITY is reporting. The CITY shall then issue payment to YORKSHIRE LLC within forty-five (45) days of the delivery of said report. Upon written request, the CITY shall have the right to review YORKSHIRE LLC's records relative to the BEST BUY PROJECT. The CITY hereby represents and warrants that any and all information regarding SALES TAXES shall be confidential and used only for the purpose of calculating any amounts due and owing to YORKSHIRE LLC pursuant to this Agreement. The CITY acknowledges that sales and SALES TAX information is proprietary financial information which, if disclosed, would place the supplier thereof at a competitive disadvantage, and, therefore, not subject to disclosure pursuant to the Freedom of Information Act. YORKSHIRE LLC agrees that the CITY's compliance with any court order to produce information shall not subject the CITY to any liability hereunder for the release of said information. The CITY shall provide both YORKSHIRE LLC and BEST BUY prompt written notice of any such attempt to gain access to the sales and SALES

TAX information, and cooperate with either or both should either or both elect to challenge any such attempt.

2.05 Real Estate Taxes and Other Charges. YORKSHIRE LLC hereby covenants and agrees to promptly pay, or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to YORKSHIRE LLC or the PLAZA.

2.06 Certification of Project Costs. YORKSHIRE LLC shall supply the CITY with the actual costs for the BEST BUY PROJECT, including documentary support for the BEST BUY rent buy down inducement and leasing costs, certified as true by an officer of YORKSHIRE LLC, and such other reasonable and relevant information, at the written request of the CITY's Chief Development Officer or Finance Director, as the Chief Development Officer or Finance Director shall request to determine that all said costs are reimbursable under this Agreement. YORKSHIRE LLC represents and warrants that all such information produced to the CITY pursuant to this provision and the further provisions of this Agreement are and will be at all times in the future be true and accurate and agrees that the CITY may, and for the purposes of this Agreement does, rely on the truth and accuracy of said information as a basis for making required payments under the terms of this Agreement. Except as otherwise provided by law, the CITY agrees to keep the foregoing information confidential as financial information that is proprietary to YORKSHIRE LLC and BEST BUY, in the same manner as set forth relative to Sales and sales Tax information under Section 2.04 above

2.07 Prevailing Wage Requirement. YORKSHIRE LLC shall pay "Prevailing Wage Rates" to any workers hired by YORKSHIRE LLC or contractors and subcontractors hired directly by YORKSHIRE LLC, if any, with respect to the BEST BUY PROJECT. The CITY acknowledges that YORKSHIRE LLC has no contractual right or ability to impose this requirement on BEST BUY, its contractors or subcontractors.

ARTICLE III
CITY OBLIGATIONS AND UNDERTAKINGS

3.01 Economic Assistance. Upon satisfaction by YORKSHIRE LLC of all of the applicable conditions stated in Article II hereof, the CITY, relying on the representations and warranties of YORKSHIRE LLC, in order to make retention of BEST BUY economically viable, shall help to defray YORKSHIRE LLC's BEST BUY SHARED COSTS by rebating certain SALES TAXES to YORKSHIRE LLC, in accordance with the terms and conditions of this Agreement. Payments of SALES TAXES to be made by the CITY to YORKSHIRE LLC, pursuant to this Agreement, shall be made by the CITY to YORKSHIRE LLC for BEST BUY SHARED COSTS, from SALES TAXES on BEST BUY sales for a period of up to ten (10) years, beginning February 1, 2011, or until the full BEST BUY SHARED COSTS have been reimbursed, whichever occurs first (the aforementioned ten (10) year period, being referred to sometimes herein as the "Revenue Sharing Term"). The annual payments to YORKSHIRE LLC by the CITY shall be subject to all of the terms and conditions contained herein, and YORKSHIRE LLC'S compliance with any applicable requirements of this Agreement.

3.02 Commencement Date; Revenue Sharing Term. YORKSHIRE LLC shall give the CITY a sixty (60) day written notice stating that it has satisfied all of the conditions of Section 2.02 of this Agreement, and that it is electing to commence the Revenue Sharing Term for BEST BUY. The notice shall specify the Commencement Date as no earlier than February 1, 2011.

ARTICLE IV
GENERAL PROVISIONS

4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the CITY nor YORKSHIRE LLC, as the case may be, nor any successors in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder. This provision shall not apply to extend times for the CITY to satisfy its payment obligations beyond thirty (30) business days.

4.02 Assignment of Agreement. This Agreement may be assigned by YORKSHIRE LLC to a bona fide purchaser of its business, provided the transaction does not violate 65 ILCS 5/8-11-20, or any statute enacted to amend or replace 65 ILCS 5/8-11-20 and provided reasonable notice of such assignment is given to the CITY prior to said assignment and further that the assignee agrees to be bound by all of the terms,

conditions and provisions of this Agreement, including, but not limited to, the CITY's default remedies.

4.03 YORKSHIRE LLC Authority. YORKSHIRE LLC hereby represents and warrants that it is a limited liability company authorized to do business in, and in good standing with the State of Illinois. YORKSHIRE LLC further represents and warrants that all actions necessary to make YORKSHIRE LLC's obligations hereunder enforceable against YORKSHIRE LLC have been taken, and that no further approvals or actions are required.

4.04 Defaults; Remedies.

(A) 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 in default or violation, which notice shall be in writing and shall specify the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default within thirty (30) days from written notice of such default (or if such violation or default cannot reasonably be cured in said time, the defaulting Party shall begin the cure within said timeframe and then diligently pursue completion of same). In the event of default by the CITY of its obligations to YORKSHIRE LLC provided for in Article III, YORKSHIRE LLC's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction plus interest at the rate of prime plus three percent (3%) (hereinafter referred to as "Interest") on any past due amounts and the remedy set forth in (C) below. YORKSHIRE LLC will not be entitled to any other monetary damages

(beyond collection of amounts due, Interest, and attorney fees) from the CITY and hereby expressly waives any claim for monetary damages.

(B) In the event that YORKSHIRE LLC fails to meet the provisions of this Agreement, the CITY shall have the following sole and exclusive remedies (plus the rights set forth in subsection (c) below):

1. Suspension of future payments under Section 3.01 above, until such time as the default has been cured; and
2. Specific performance of the violated terms of the Agreement.

(C) The non-prevailing Party in any action taken between the Parties on or relating to the obligations and rights under this Agreement shall pay the prevailing Party's reasonable costs and expenses, including reasonable attorney fees, in such action.

4.05 Notices. All notices and requests required pursuant to this Agreement shall be sent certified mail as follows:

to YORKSHIRE LLC: Yorkshire Plaza, LLC
c/o Kimco Realty Corporation
3333 New Hyde Park Road
Suite 100
New Hyde Park, N.Y. 11042

with copies to: Kimco Realty Corporation
c/o Robert Nadler
10600 West Higgins
Suite 408
Rosemont, IL 60018

to the CITY: City Clerk
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

with copies to: Corporation Counsel
City of Aurora

4.14 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 unless in so doing the fundamental purposes of this Agreement are frustrated or made impossible.

Dated this 13TH day of DECEMBER, 2010.

MB

YORKSHIRE PLAZA, LLC, a Delaware limited liability company

By: KUBS Income Fund I, LP, a DE limited partnership, its managing member

By: KUBS Income Fund I GP Business Trust, a MD business trust, its general partner

By: <u>Robert Nadler</u>	Attest: <u>Gary J. Prizio</u>
Name: <u>ROBERT NADLER</u>	Name: <u>GARY J. PRIZIO</u>
Title: <u>VICE-PRESIDENT</u>	Title: <u>REGIONAL COUNSEL</u>

City of Aurora, an Illinois municipal corporation

By: Kaulwader
Mayor

Attest: Cheryl M. Donhoff
City Clerk

44 East Downer Place
Aurora, Illinois 60507

or at such other addresses as the Parties may indicate in writing to the other either by personal or overnight delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notices shall be deemed effective on the date received or refused.

4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in State Court in Illinois having jurisdiction over the PLAZA and/or the CITY.

4.07 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.

4.08 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 a limited obligation payable solely out of the specific SALES TAXES generated by BEST BUY as set forth herein, and shall further be limited to the actual sum of money required to be paid to YORKSHIRE LLC by the CITY (plus Interest and attorney fees as set forth above).

4.09 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 the 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 unless waived in a writing signed by the waiving Party.

4.10 Paragraph Headings and Subheadings. All paragraph headings or other headings in this Agreement are for the 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.

4.11 Authorization to Execute. The manager(s) of YORKSHIRE LLC who have executed this Agreement warrant that he/she/they respectively have been lawfully authorized by YORKSHIRE LLC to execute this Agreement. The Mayor and Clerk of the CITY hereby warrant that they have been lawfully authorized by the City Council of the CITY to execute this Agreement.

4.12 Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between YORKSHIRE LLC and the CITY relative to the subject matter thereof. 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 them.

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

EXHIBIT "A"
(Legal Description for the PLAZA)

EXHIBIT "B"

**DESCRIPTION AND ANTICIPATED BEST BUY SHARED COSTS OF THE
BEST BUY PROJECT AND TOTAL COSTS OF THE BEST BUY PROJECT**

*	TOTAL COSTS OF BEST BUY PROJECT:
\$2,000,000	Rent buy down structured as \$200,000 per year in rent reduction for the entire ten year renewal term commencing 2/1/2011, and expiring 1/31/2021. Under the original lease, BEST BUY had option rents of \$405,000 annually for the five-year option term of 2/1/2011 to 1/31/2016 and \$461,250 for the option period 2/2/2016 to 1/31/2021. The renewal rents reduce those option rents by \$200,000 each year creating rent steps of \$205,000 annually and \$261,250 annually for each respective five-year period.
\$1,000,000	YORKSHIRE LLC has agreed to reimburse BEST BUY up to \$1,000,000 for work BEST BUY has a right to perform under the renewal amendment to improve its premises including furniture, fixtures and equipment replacements, roof replacement costs, HVAC repairs and replacements, and/or exterior signage. YORKSHIRE LLC will reimburse BEST BUY for expenditures in improving its store up to \$1,000,000.
\$115,920	YORKSHIRE LLC is obligated to pay BEST BUYS's broker, Metro Commercial, the amount of \$115,920 for its work toward facilitating this renewal.
\$3,115,920	Total cost to YORKSHIRE LLC to keep BEST BUY located in the CITY and at the PLAZA.
*	TOTAL BEST BUY SHARED COSTS
\$2,000,000	Although the total costs and concessions relating to keeping BEST BUY in the CITY and at the PLAZA will likely exceed \$3,000,000, YORKSHIRE LLC will be receiving under this Agreement only up to the \$2,000,000 in rent buy down set forth above.

Krug, Constance

From: Wiet, William
Sent: Wednesday, November 03, 2010 7:28 AM
To: Krug, Constance
Cc: Ergo, Carie Anne
Subject: Finance Committee Item

Categories: Yellow

Connie

Could you please add this item to your Finance Committee agenda? Resolution and document should follow today.

A Resolution Authorizing the Execution of a Sales Tax Revenue Sharing Agreement with Yorkshire Plaza, LLC

Thanks

Bill

*Bill Wiet
Chief Development Officer
City of Aurora
44 E. Downer Place
Aurora, IL 60507
630-256-3010
Fax 630-256-3019
bwiet@aurora-il.org*



City of Aurora


Development Services Department • 44 E. Downer Place • Aurora, Illinois 60507-2067
(630) 256-3010 • FAX (630) 256-3019

William Wiet
Chief Development Officer

Memorandum

DATE: November 4, 2010

TO: Finance Committee
Alderman Robert O'Connor, Chairman
Alderman Lynda Elmore, Member
Alderman Leroy Keith, Member

FROM: William Wiet, Chief Development Officer 

SUBJECT: **Resolution Authorizing the Execution of a Sales Tax Revenue Sharing Agreement with Yorkshire Plaza LLC**

PURPOSE

The purpose of this correspondence is to recommend the execution of a sales tax revenue sharing agreement with Yorkshire Plaza LLC, owners of Yorkshire Plaza Shopping Center, to retain Best Buy at their current location for another ten years. To summarize, the proposed agreement calls for the City to split 50/50 the annual State Sales Tax portion only generated from Best Buy, for a period of ten years or upon receipt of \$2,000,000, whichever comes first, so long as Best Buy remains at this location.

BACKGROUND

Yorkshire Plaza Shopping Center, at the northwest corner of Rt. 59 and New York Street, has been the current location for Best Buy for the past 15 years. Yorkshire Plaza LLC and Best Buy Stores have negotiated a lease extension starting February 2011 and running for another ten years, expiring in 2021, and possibly beyond in 5-year increments. In the currently highly competitive marketplace, especially along the Rt. 59 commercial corridor, major commercial establishments are being courted by the various shopping centers along Route 59, in Aurora as well as in Naperville, who have empty retail spaces that could accommodate both small and medium size establishments. As is the case, and will be in the future, when large sales tax generators like Best Buy come close to lease expirations, there will be the potential for retailers to shop around to either

1), look for a suitable alternate site for a preferred lease rate, or 2), remain at their existing location and negotiate a preferred lease rate coupled with other site improvements. Best Buy has chosen to remain at Yorkshire Plaza, but at a much lower lease rate, and including exterior and interior remodeling improvements, the costs of which will be borne by the center ownership. The financial commitment Yorkshire Plaza LLC has made with Best Buy was conditioned upon Yorkshire receiving economic assistance from the City, specifically a split of the City's share of the State Sales Tax, which is anticipated to be approximately \$200,000 annually, capped at \$2,000,000. Yorkshire Plaza's total compensation package to Best Buy is slightly over \$3,000,000. Please be reminded that the 50% share of the State Sales tax computes to approximately 22% of the total sales tax generated to the City, which also includes the 1% Home Rule Sales Tax, and the .25% Safety, Health and Public Enhancement (SHAPE) Fund. It has historically been the City's position that Home Rule Sales tax and SHAPE Fund revenues are non-negotiable.

It is anticipated that the total sales tax generated to the City from Best Buy alone in the ten year lease period would be \$7,000,000 - \$8,000,000. This puts an electronic giant such as Best Buy in the top tier of sale tax revenue generators in Aurora. It is also anticipated that with Best Buy renewing their lease extension, the Plaza can continue to market the shopping center with Best Buy as a major tenant. Other medium size retailers often desire to be near the traffic generators such as Best Buy and it is hoped that an anchor such as this can create positive return for Yorkshire Plaza, and the City's, financial interest. While this is an existing Aurora tenant, we are looking at bringing forward in the future an overall economic assistance package for the center based upon bringing new sales tax generators, a package that may need to serve as a model for new business creation in this highly competitive commercial corridor.

While we would need to account for the expected loss of 100% of the sales tax generated from Best Buy, we can also count on the 78% that will be generated for the next ten years, and the new retailers in this corridor such as Garden Ridge and Von Maur Dry Goods, and hopefully anticipate an infusion of new sales tax from outside retailers once Best Buy commits for another ten years.

RECOMMENDATION

It is recommended that the sales tax revenue sharing agreement be approved.



City of Aurora

Development Services Department • 44 E. Downer Place • Aurora, Illinois 60507-2067
(630) 256-3010 • FAX (630) 256-3019

William Wiet
Chief Development Officer

Memorandum

Date: November 5, 2010

TO: Mayor Weisner

FROM: Bill Wiet, Chief Development Officer *Bill Wiet*

RE: Referral to Finance Committee
A Resolution Authorizing the Execution of a Sales tax Revenue
Sharing Agreement with Yorkshire Plaza LLC

Attached is a resolution and supporting documentation regarding a sales tax revenue sharing agreement with Yorkshire Plaza LLC for the retention of one of its major anchors, Best Buy Stores.

I would request that this item be heard before the Finance Committee at its November 9 Finance Committee Meeting.

If you have any questions please contact me.

CAE 11-5-10

F10.199

RECOMMENDATION

TO: THE COMMITTEE OF THE WHOLE

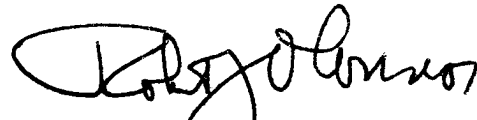
FROM: THE FINANCE COMMITTEE

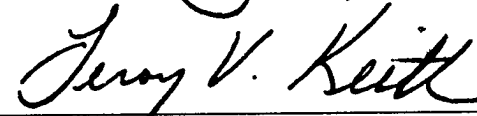
The Finance Committee at Their Regular Finance Meeting on Tuesday, November 9, 2010

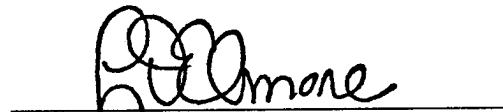
Recommended **APPROVAL** A Resolution Authorizing the Execution of a Sales Tax Revenue Sharing Agreement with Yorkshire Plaza LLC.

The Vote 3-0

Submitted By


Alderman Robert O'Connor, Chairman


Alderman Leroy Keith


Alderman Lynda Elmore

Alderman Abby Schuler, Alternate,

Dated this 10th Day of November, 2010

R10-396
Received 524-11



Gary Bazydlo
Regional Counsel

Writer's Direct Dial: 847-294-6448
Writer's Direct Fax: 847-299-1167
Writer's E-Mail: gbazydlo@kimcorealty.com

May 19, 2011

VIA E-MAIL AND FED EX

Brian W. Caputo, C.P.A.
Chief Financial Officer/City Treasurer
City of Aurora
44 E. Downer Place
Aurora, IL 60507

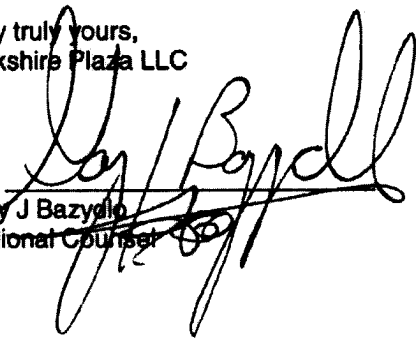
Re: Yorkshire Plaza, Aurora, Illinois

Dear Mr. Caputo:

At your request, and consistent with the terms of the Sales Tax Revenue Sharing Agreement (the "Agreement") dated November 23, 2010, by and between the City of Aurora and Yorkshire Plaza, LLC, a Delaware limited liability company, this letter shall serve as certification of Yorkshire Plaza, LLC that the Best Buy lease and First Amendment are legal and binding documents on Yorkshire Plaza, LLC, and serve as the basis for Yorkshire Plaza, LLC, being entitled to shared sales tax revenue with the City of Aurora. The documents provided to you accurately reflect the terms by which Yorkshire Plaza, LLC is currently bound. At this time, no further amendments have been executed with Best Buy, and the parties have not agreed to reduce the obligations of Yorkshire Plaza, LLC, under those documents.

Please let me know if you require anything further.

Very truly yours,
Yorkshire Plaza LLC

By: 
Gary J. Bazydlo
Regional Counsel

cc: Mr. Robert Nadler
Mr. William Wiet

✓ Ms. Cheryl Vonhoff, City Clerk