

**BUSINESS DEVELOPMENT DISTRICT
TAX SHARING AGREEMENT
PACIFIC SQUARE**

This Business Development District Sales Tax Sharing Agreement (“Agreement”) is entered into this _____ day of _____, 2020, by and between the **CITY OF AURORA**, an Illinois municipal corporation, (the “**City**”) and **PACIFIC SQUARE, DE LLC**, an Illinois limited liability company, (“**Pacific**”) (the City and Pacific may each be referred to as a “**Party**” and collectively referred to as “**Parties**”).

RECITALS

WHEREAS, the City is a home rule municipality pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970 and may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is authorized, pursuant to 65 ILCS 5/11-74.3-3 to establish a Business Development District and to grant sales tax rebates under certain circumstances; and

WHEREAS, Pacific is redeveloping and rehabilitating a retail shopping center (the “**Project**”). The retail center is located at the northwest corner of Route 59 and New York Street, legally described on **Exhibit A** and depicted on **Exhibit B** (hereinafter referred to as the “**Center**” with the intended use of the real property described on Exhibit A being referred herein as the “**Intended Use**”); and

WHEREAS, to facilitate and encourage the completion of the Project, the City, on August 27, 2019, passed Ordinance No. 019-057, titled “An Ordinance Designating Aurora Business District No. 1 (Pacifica Square Business District)”, establishing the Aurora Business District No. 1 (“**Pacifica Square Business District**” or the “**Business District**”); and

WHEREAS, in addition the foregoing, the City on August 27, 2019, passed Ordinance No. 019-058, titled “An Ordinance Imposing a Business District Retailer’s Occupation Tax, a Business District Service Occupation Tax, and a Hotel Operators’ Occupation Tax Within the Boundaries of the Aurora Business District No. 1 (Pacifica Square Business District).”, which, pursuant to 65 ILCS 5/11-74.3-6(b), imposed a “Business District Retailers’ Occupation Tax” upon all persons engaged in the business of selling tangible personal property at retail within the Business District at the rate of one percent (1%) of the gross receipts from the sales made in the course of such business; and, pursuant to 65 ICLS 5/11-74.3-6(c), imposed a “Business District Service Occupation Tax” upon all persons engaged in the business of making sales of services within the Business District, who, as an incident to making those sales of service, transfer tangible personal property within the Business District, either in the form of tangible personal property or in the form of real estate as an incident to sales of service, at the rate of one percent (1%) of the selling of price of tangible personal property so transferred within the Business District; and, pursuant to 65 ILCS 5/11-74-3-6(d), imposed a “Business District Hotel Operators’ Occupation Tax” upon all persons within the Business District engaged in the business of renting, leasing, or

letting rooms in a hotel, as defined in the Illinois Hotel Operator's Occupation Tax Act, 35 ILCS 145/1, at the rate of one percent (1%) of the gross rental receipts from the renting, leasing or letting of hotel rooms within the Business District (for the purposes of this Agreement, Business District Retailers' Occupation Tax, Business District Service Occupation Tax, and Business District Hotel Operators' Occupation Tax shall collectively be referred to as the "**Business District Taxes**"); and

WHEREAS, the City on September 24, 2019, passed Ordinance No. 019-063, titled "An Ordinance Amending the Business District Retailers' Occupation Tax Rate, the Business District Service Occupation Tax Rate and the Hotel Operators' Occupation Tax Rate Imposed in Ordinance 19-058 Within the Boundaries of the Aurora Business District No. 1 (Pacifica Square Business District.", which reduced the Business District Taxes to the rate of 0.25%; and

WHEREAS, the Mayor and City Council (the "**Corporate Authorities**"), have determined that it is in the best interest of the City to provide Pacific, pursuant to the terms of this Agreement, with rebates on the Business District Taxes imposed in the Business District in order to reimburse Pacific for certain Business District Project Costs (defined below); and

WHEREAS, after considering all the evidence, the Corporate Authorities have determined that this Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which are hereby mutually acknowledged by the Parties, the City and Pacific hereby agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. **Mutual Assistance.**

A. **Documents.** To the extent permitted by law, the Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as well as the adoption of such ordinances and resolutions of the City as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent.

3. **Pacific Obligations.**

A. Pacific, as a material inducement to the City to provide Incentive Revenue (defined below), shall undertake to continue remodeling and renovation of the Center according to contractual commitments Pacifica has previously made to the City pursuant to the agreement approved by Resolution No. R19-0145 and amended by Ordinance No. O20-072 (the "Tax Sharing Agreement").

- B. Prior to the disbursement of any Incentive Revenue, Pacific shall provide proof to the City, if such proof has not previously been provided, of the Business District Project Costs, as such term is defined by 65 ILCS 11-74.3-5, incurred by Pacific in completing the Project, in a form satisfactory to the City.

4. Business District Sales Tax Allocation Fund.

- A. Pursuant to 65 ILCS 5/11-74.3-6 and Ordinance No. O19-058, the proceeds of the Business District Taxes shall be deposited into a special fund called the Aurora Business District No. 1 Business District Tax Allocation Fund for the purpose of reimbursing Business District Project Costs and obligations incurred in the payment of those costs.
- B. The current rate of Business District Taxes is 0.25%. At the request of Pacific, the rate may be increased to not more than 1% without the requirement of an amendment to this Agreement.
- C. Upon the reimbursement of Three Million, Three Hundred Thousand Dollars (\$3,300,000.00) of Pacific's Business District Project Costs, but in no event more than twenty-three (23) years after the date of adoption of the Ordinance No. O19-058, the City shall adopt an ordinance rescinding, effective upon the earliest date allowed by law, the Business District Sales Taxes.

5. Reimbursement to Pacific.

- A. Incentive Payments. The City shall pay to Pacific bi-annually (every six (6) months) (the "**Revenue Sharing Term**"), a sum equal to the Business District Sales Taxes actually received by the City from the Illinois Department of Revenue, unless such amount exceeds Pacific's unreimbursed Business District Project Costs (the "**Incentive Revenue**"). The bi-annual payments to Pacific by the City, to discharge the aforesaid obligation, shall be made within forty-five (45) days after the end of each six (6) months of the Revenue Sharing Term, and shall be subject to all of the terms and conditions contained in this Agreement. The bi-annual payments to Pacific by the City shall be paid by wire transfer to the account specified by Pacific.

THE PAYMENT OF THE INCENTIVE UNDER THIS AGREEMENT SHALL NOT BE A GENERAL DEBT OR OBLIGATION DUE AND OWING FROM THE CITY OR CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS, BUT SHALL BE PAYABLE SOLELY OUT OF THE BUSINESS DISTRICT TAXES AFTER COLLECTION OF THE SAME AS SET FORTH HEREIN AS GENERATED BY THE PROJECT. THE MAXIMUM REIMBURSEMENT AMOUNT IS THE MAXIMUM SUM THAT THE CITY SHALL PAY TO PACIFIC UNDER THIS AGREEMENT. THE AMOUNT OF THE INCENTIVE REVENUE SHALL BE LIMITED TO AND NOT TO EXCEED THE BUSINESS DISTRICT PROJECT COSTS INCURRED BY PACIFIC AND EVIDENCED BY PACIFIC TO THE CITY.

5. MISCELLANEOUS.

A. Default; Right to Cure; Prohibition on Payments.

i. Cure. No Party shall be deemed in default under this Agreement until such Party (the “Breaching Party” for purposes of this paragraph) has failed to cure such default within thirty (30) days of receipt of written notice of default from the non-Breaching Party in the case of a monetary default or within thirty (30) days of receipt of written notice of default from the non-Breaching Party in the case of a nonmonetary default. Provided, however, if the nature of such nonmonetary default is such that it cannot reasonably be cured within such thirty (30)-day period, then the Breaching Party shall not be deemed in default if the Breaching Party commences to cure such default within the thirty (30)-day period and thereafter diligently pursues such cure to completion.

ii. Available Remedies. In the event of a default by the City, subject to the terms and limitations of this Agreement, Pacific may solely pursue the remedies of specific performance of this Agreement. In the event of a default by Pacific, subject to the terms and limitations of this Agreement, the City may solely pursue the remedies of specific performance of the terms of this Agreement and may elect to hold Incentive Revenue owed to the Pacific until Pacific cures such default.

B. Force Majeure. If the performance of any covenant or obligation to be performed under this Agreement by a Party is delayed as a result of circumstances beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, the failure of a third party to fulfill a contractual obligation, strikes or other similar acts) the time for performance and the term of this Agreement shall be extended by the amount of time of such delay. Force Majeure shall not include economic hardship, failure of Pacific to lease the Property (Center), unavailability of materials, or the failure of performance by a contractor.

C. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally or (ii) by a reputable overnight courier. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (i) the date of actual receipt; or (ii) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (iii) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 6.A., each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following address:

If to City: Richard J. Veenstra, Esq.
 Corporation Counsel

City of Aurora
44 East Downer Place
Aurora, Illinois 60507

With a copy to: Martin S. Lyons
Chief Financial Officer
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and: David Dibo
Executive Director, Economic Development
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and: Del Galdo Law Group, LLC
Attn: Michael G. Muthleb, Esq.
1441 S. Harlem Avenue
Berwyn, Illinois 60402

If to Developer: Pacific Square, LLC
Attn: Eddie Ni
3403 E. Galloway Drive
Richfield, Ohio 44286

With a copy to: Schain Banks
Attn: James R. Griffin, Esq./Robert Kenny,
Esq.
70 West Madison Street, Suite 5300
Chicago, Illinois 60602

- D. Time is of the Essence. Time is of the essence in the performance of this Agreement.
- E. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws of the State of Illinois.
- G. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

- H. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.
- I. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.
- J. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

THE CITY OF AURORA,
An Illinois municipal corporation,

By: _____

Its: _____

PACIFIC SQUARE,DE LLC,
an Illinois limited liability company

By: _____

Its: _____

EXHIBIT A
LEGAL DESCRIPTION
[ATTACHED]

PARCEL 1:

LOT 1, EXCEPT THAT PART OF LOT 1, IN YORKSHIRE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 13, 1985 AS DOCUMENT R85-109544 AND RE-RECORDED JULY 7, 1985 AS DOCUMENT R86-71755, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2 IN SAID YORKSHIRE PLAZA; THENCE NORTHERLY ALONG THE WESTERN MOST LINE OF SAID LOT 1, 108.28 FEET; THENCE EASTERLY ALONG A LINE WHICH FORMS AN ANGLE OF 85° 10'25" WITH THE LAST DESCRIBED COURSE, MEASURED COUNTER-CLOCKWISE THEREFROM, 54.55 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 40.33 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 150 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 109.57 FEET TO THE POINT OF BEGINNING IN THE CITY OF AURORA, DUPAGE COUNTY, ILLINOIS; AND LOTS 2, 6 AND 10 IN YORKSHIRE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 13, 1985 AS DOCUMENT R85-109544 AND RE-RECORDED JULY 7, 1985 AS DOCUMENT R86-71755, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 1A:

THAT PART OF LOT 1 IN YORKSHIRE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 13, 1985 AS DOCUMENT R85-109544 AND RE-RECORDED JULY 7, 1985 AS DOCUMENT R86-71755, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2 IN SAID YORKSHIRE PLAZA; THENCE NORTHERLY ALONG THE WESTERN MOST LINE OF SAID LOT 1, 108.28 FEET; THENCE EASTERLY ALONG A LINE WHICH FORMS AN ANGLE

OF 85' 10'25" WITH THE LAST DESCRIBED COURSE, MEASURED COUNTER-CLOCKWISE THEREFROM, 54.66 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 40.33 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 150 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 109.57 FEET TO THE POINT OF BEGINNING IN THE CITY OF AURORA, DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1: 1) FOR USE OF COMMON AREA, 2) FOR UTILITIES AND 3) FOR PARKING AND FOR VEHICULAR AND PEDESTRIAN ACCESS, AS CREATED BY RECIPROCAL EASEMENT AGREEMENT MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 25, 1985 AND KNOWN AS TRUST NUMBER 65221 AND UNDER TRUST AGREEMENT DATED MARCH 2, 1987 KNOWN AS TRUST NUMBER 10144004 DATED APRIL 1, 1987 AND RECORDED APRIL 8, 1987 AS DOCUMENT R87-048499, OVER, THROUGH AND ACROSS LOTS 4, 5, 7, 8 AND 9 IN YORKSHIRE PLAZA.

PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCEL 1: 1) FOR USE OF COMMON AREA, 2) FOR UTILITIES AND 3) PARKING AND FOR VEHICULAR AND PEDESTRIAN ACCESS, AS CREATED BY RECIPROCAL EASEMENT AGREEMENT MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 25, 1985 AND KNOWN AS TRUST NUMBER 65221 AND RR RESTAURANTS 1985-1, A CALIFORNIA LIMITED PARTNERSHIP, DATED MAY 30, 1985 AND RECORDED JUNE 15, 1985 AS DOCUMENT R85-61143 OVER, THROUGH AND ACROSS LOT 3 IN YORKSHIRE PLAZA.

PARCEL 4:

EASEMENTS FOR THE BENEFIT OF PARCEL 1: 1) FOR INGRESS AND EGRESS 2) PARKING 3) MECHANICAL AND OTHER BUILDING EQUIPMENT 4) PARTY WALL, AND 5) WATER, SEWER, ELECTRICAL, CABLE, FIBER OPTIC LINES, AND

OTHER UTILITIES, AS CREATED BY EASEMENT AGREEMENT DATED APRIL 10, 2000, AND RECORDED APRIL 12, 2000, AS DOCUMENT NUMBER R2000-052471, BY AND BETWEEN YORKSHIRE CENTER, LLC AND YORKSHIRE KRU, LLC.

PARCEL 5:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR PARKING AS CREATED BY PLAT OF YORKSHIRE PLAZA RECORDED AS DOCUMENT R86-71755.

PARCEL 6:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR ACCESS OVER A 30 FOOT STRIP OF LAND OVER THE EAST HALF OF LOT 5 AS CREATED BY PLAT OF YORKSHIRE PLAZA RECORDED AS DOCUMENT R86-71755.

EXHIBIT B
PROPERTY DEPICTION
[ATTACHED]

