

**SALES TAX SHARING AGREEMENT  
PACIFIC SQUARE**

This Sales Tax Sharing Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF AURORA**, an Illinois municipal corporation, (the “**City**”) and **PACIFIC SQUARE, 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 has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of blight, to encourage private development to enhance the local tax base, to increase employment, and to enter into contractual agreements with developers and redevelopers for the purpose of achieving such objectives; and

WHEREAS, the City is authorized under the provisions of Art. VII, Section 10 of the Illinois Constitution of 1970 to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

WHEREAS, the City is authorized under the provisions of Art. VIII of the State of Illinois Constitution to use public funds for public purposes; and

WHEREAS, the City is additionally authorized by 65 ILCS 5/8-11-20 to grant sales tax rebates under certain circumstances; and

WHEREAS, Pacific is proposing to redevelop and rehabilitate a retail 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, the Center contains approximately three hundred sixty-one thousand nine hundred ninety-one (361,991) square feet of leasable space (the “Minimum Footprint”); and

WHEREAS, Pacific intends to or has entered into lease agreements with new tenants to occupy the vacant space in the Center; and

WHEREAS, Pacific agreed to invest no less than One Million and No/100 U.S. Dollars (\$1,000,000.00) in the redevelopment of the Property, including the Center (the “Project Budget”); and

WHEREAS, Pacific acknowledges that its reimbursement incentive is limited such that Pacific will only receive One and No/100 Dollars (\$1.00) in incentives hereunder for every Two and No/100 Dollars (\$2.00) invested by Pacific or its tenants in improvement of the Center (the “Reimbursement Ratio”); and

WHEREAS, the maximum reimbursement incentive Pacific shall be eligible to receive pursuant to the terms of this Agreement is Four Million and No/100 U.S. Dollars (\$4,000,000.00); and

WHEREAS, the City has determined that the development of retail operations such as those contemplated herein is a highly competitive endeavor, and that the successful completion of the Project at the Property at this time necessitates the use of a variety of incentives and approvals, including, but not limited to, the payment of retailers’ occupation tax incentives permitted by 65 ILCS 5/8-11-20; and

WHEREAS, Pacific cannot successfully undertake the Project or any substantially and functionally equivalent development of the Property without the ability to obtain retailers’ occupation tax incentives pursuant to the City’s municipal home rule powers; and

WHEREAS, after due and careful consideration, the City has determined that it is in the best interests of the City to enter into this Agreement to provide economic incentives to Pacific for the Project pursuant to its authority as a home rule unit of local government and pursuant to the terms and conditions hereinafter set forth.

WHEREAS, the City, through its corporate authorities, finds:

- (a) That the buildings on the Property have remained vacant; and
- (b) That the buildings on the Property provide potential for economic growth in the City; and
- (c) That the Project is expected to create or retain job opportunities within the City; and
- (d) That the Project will serve to further the development of adjacent areas; and
- (e) That without this Agreement and the incentives provided herein, the Project would not be possible; and
- (f) That Pacific has submitted documentation to the City proving its credit worthiness; and
- (g) That the Project will strengthen the commercial sector of the City; and

(h) That the Project will enhance the tax base of the City; and

(i) That this Agreement is made in the best interest of the City.

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. The City specifically makes the following findings of fact:

A. The Project on the Property is an important development to meet the overall objectives of the City, thereby implementing and bringing to completion a significant planned development.

B. The City has complied with all notice procedures and requirements with respect to entering into this Agreement.

C. The City desires to have the Property developed in accordance with and pursuant to this Agreement to cure the blight existing thereon, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of the blighted conditions and characteristics, to encourage further private investment and development, to enhance the City's tax base, to increase employment opportunities for City residents, and to enhance the future tax revenues for those overlying taxing bodies that levy taxes on the Property and within the area.

D. Pacific has represented to the City that, but for the financial contribution from the City provided for herein, the Project is not economically feasible and Pacific would not undertake the Project.

E. The terms of this Agreement are binding on Pacific and any related or successor entity having any financial interest in the Project. Where circumstances warrant, reference to Pacific herein shall apply to Pacific or any related agent, successor or assignee of Pacific.

**2. Mutual Assistance.**

A. Documents. 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 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.

B. Approvals. The Parties shall cooperate fully with each other in completing the Project and in seeking and obtaining from any or all appropriate governmental bodies (whether federal, state, county or local) any necessary permits, entitlements and approvals, required or useful for the improvement of the Property and construction of the Project in and on the Property,

or for the provision of services to the Property. However, this paragraph shall not create any additional obligations or costs to either Party not otherwise specifically contemplated in this Agreement.

C. City Approvals. The City shall issue all permits and approvals necessary for Pacific's undertaking of the Project including, without limitation, preliminary plat, building and other permits and certificates of occupancy, provided that Pacific submits all petitions and applications for such permits and approvals and pays all fees required under the Laws as defined below, including, but without limitation, all applicable City ordinances, standards, rules, and regulations. To the extent the City is permitted by Law, the Parties agree to execute all documents and other instruments reasonably required by Pacific's lender in connection with the financing of the Project and construction of the Project, provided the same create no additional material obligations upon the City.

### 3. Pacific Obligations.

A. Development. Pacific, as a material inducement to the City to provide Incentive Revenue (defined below), shall undertake the Project. The Project shall be undertaken and conditioned (as applicable) upon the following:

- i. Notwithstanding anything to the contrary in this Agreement, Pacific shall construct, install and establish the Project on the Property and specifically on the Center in substantial compliance with the zoning, site plans, architectural plans and elevations, engineering plan, and plats, as appropriate, submitted to and approved by all necessary City commissions, boards, and departments. Pacific shall at all times operate and maintain the Project building in conformance with all applicable City, state, and federal laws, statutes, ordinances, codes, rules, and regulations, including, without limitation, all applicable zoning ordinances, building codes, environmental codes, and life safety codes of the City ("Laws").
- ii. Pacific shall complete the Project in accordance with the site-plan as set forth in **Exhibit C**. The Parties agree that from time to time the site-plan for the Center may be revised and updated in a manner consistent with the terms of this Agreement and provided the parameters established of the Minimum Footprint and the Intended Use are satisfied and provided that the aforesaid conditions are satisfied, the revised site plan shall replace current Exhibit C. The replacement of Exhibit C as contemplated herein is prohibited unless the parameters set forth in the Minimum Footprint and the Intended Use are satisfied. Full Project completion is not required for the commencement of payment of the Incentive Revenue.
- iii. Pacific shall provide the City with the documents set forth below to demonstrate that Pacific expended no less than the Project Budget to complete the Project and support the satisfaction of the Reimbursement Ratio. Pacific shall minimally provide the following documentation to the City to evidence that it

has satisfied this condition: (a) sworn statements and lien waivers for any material, fixtures, apparatus, machinery, services, or labor provided by any contractor, subcontractor, or other person or entity entitled to file a lien under the Mechanics Lien Act, 770 ILCS 60/1, et seq.; (b) bills, contracts, and invoices relative to the costs of the Project; and (c) such other reasonable documentation, at the written request of the City's Chief Finance Officer to allow the City to determine that Pacific satisfied the Project Budget requirement (the "Supporting Documentation"). Said submission shall also contain a copy of all certificates of occupancy for any occupied buildings in the Center (as applicable). Pacific represents and warrants that all such documentation 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 true and accurate and agrees that the City may rely on the truth and accuracy of said information as a basis for making required payments under the terms of this Agreement. To the extent permitted by Law, the City agrees to keep the Supporting Documentation confidential as financial information that is proprietary to Pacific and the Center.

- iv. The Parties acknowledge that aspects of the Project may be undertaken by tenants of the Center pursuant to Lease agreements with Pacific, and that such expenditures by tenants of the Center for the Project constitute sums reimbursable to Pacific under this Agreement, if such tenants generate (a) sales tax, (b) food and beverage tax and/or (c) ad valorem real property taxes. The Parties further acknowledge that the tenants will not be entitled to any independent incentive for the work being performed that is the basis for a reimbursement submission made by Pacific.
- v. The determination of the satisfaction of the foregoing shall be made by the City in accordance with the terms of this Agreement and in its reasonable discretion.

B. Construction Permits. No construction, improvement, or development of any kind shall be permitted on any portion of the Property unless and until Pacific has received approval from all necessary City commissions, boards and departments, and has been issued valid and binding building permits and otherwise in accordance with the Laws. Further, no business operation or occupancy of the Property may occur prior to the issuance of a valid and binding certificate of occupancy.

C. Fees and Expenses. Pacific shall pay all standard fees assessed on a uniform basis to the City for the Project, including permit, inspection review and tap-on fees, as provided by ordinance.

D. Successors or Assigns. Pacific, prior to completion of the Project, shall not make any assignment of its rights, benefits or obligations under the Agreement without the prior written consent of the City, which the City shall condition, withhold or grant in its reasonable discretion. Pacific, after the completion of the Project, may assign this Agreement to a bona fide purchaser of the Center, provided that: (a) the proposed assignment does not violate the Laws; (b) Pacific

provides written notice of such assignment to the City (upon which the City can and will rely); and (c) the assignee agrees to be bound by all of the terms, conditions and provisions of this Agreement. Notwithstanding the foregoing, upon written notice to the City of a transfer of ownership of the Center to any mortgagee or other third party by foreclosure or deed in lieu of foreclosure, together with reasonable evidence of such transfer, such party shall succeed to the rights and obligations of Pacific under this Agreement. Notwithstanding anything herein to the contrary, Pacific may perform a collateral assignment for its construction and financing of the Project. This Agreement shall be binding upon and inure to the benefit of the City and Pacific and their respective successors and permitted assigns. The City shall be free from any liability related to the assignment or transfer of this Agreement or any rights hereunder.

E. Payment of Real Estate Taxes. Pacific 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 the Property. Pacific further covenants and agrees that in the event the Project becomes part of a Redevelopment Project Area, as defined by Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as from time to time amended, to not appeal any property taxes assessed with respect to the Property.

F. Pacific Authority. Pacific 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. Pacific further represents and warrants that all actions necessary to make Pacific's obligations hereunder enforceable against Pacific have been taken, and that no further approvals or actions are required. Upon request of the City, Pacific agrees to submit to the City a current copy of Pacific's "Certificate of Good Standing" from the Illinois Secretary of State.

#### **4. Sales Tax Rebate.**

##### **A. Reimbursement to Pacific.**

- i. Sales Tax Incentive Determination; Base Sales Tax Amount; Incremental Sales Tax. The sales tax generated by the Center during the City's 2017 fiscal year was Seven Hundred and Fifty Three Thousand, Five Hundred Sixty-Seven and 11/100 Dollars (\$753,567.11), per data provided by the Illinois Department of Revenue (the "IDOR"). For purposes of this Agreement, the Parties agree that this shall be the base amount for the calculation of the Incremental Sales Tax ("Base Sales Tax Amount"). The amount of Incremental Sales Tax generated by the Center is the total sales tax generated by the Center ("Total Sales Tax"), less the Base Sales Tax Amount ("Incremental Sales Tax").
- ii. Incentive Provided. Upon Pacific's full satisfaction of its conditions precedent to payment in this Agreement, and provided that Pacific is not in uncured default of the terms of this Agreement, the City shall reimburse Pacific bi-annually (every six (6) months) (the "Revenue Sharing Term"), subject to the provisions of Section 4.D below and otherwise in this Agreement, a sum equal to the Incremental Sales Tax received by the City from the IDOR in the manner

as set forth in the provisions set forth below. 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 in **Exhibit D**. The failure of Pacific to receive its incentive payment due to the inaccuracy or incompleteness of information on Exhibit D shall not be deemed a breach of this Agreement. The total amount of reimbursements that may be made pursuant to this Agreement to Pacific shall not exceed the sum of Four Million, and No/100 Dollars (\$4,000,000.00) (the “Maximum Reimbursement Amount”) or a payment term not to exceed ten years, whichever occurs first. No interest payments are contemplated in this Agreement. In the event Pacific fails to satisfy its conditions precedent to payment as set forth hereunder the City shall be under no obligation to pay Pacific the Incentive Revenue. Notwithstanding any provision set forth herein, any incentive payment to Pacific pursuant this Agreement shall be limited and/or reduced in accordance with the Reimbursement Ratio set forth above.

- iii. Scope of Incentive. “Incentive Revenue” or Incremental Sales Tax” means the Total Sales Tax, less penalties and interest which are paid to the City from the Local Government Tax Fund, as created by the Retailers' Occupation Tax Act, 35 ILCS 120/3, as amended, on sales by retailers and servicemen on the Center on the Property less the Base Sales Tax Amount.
- iv. State Limitation. If the State of Illinois’s statutory mechanism for the levy and collection of sales tax revenue becomes inconsistent with this Agreement, then the City shall consult with Pacific and make all reasonable efforts to substitute a mechanism to accomplish the intent of this Agreement within its powers as a home-rule municipality.
- v. No Further Action Needed. Payments shall be made by the City pursuant to this Section without the necessity of any further action by the corporate authorities of the City.
- vi. **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 MUNICIPAL SALES 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.**

B. Sales Tax Information; Confidentiality.

- i. Forms; Submission of Required Information. Pacific shall cause the preparation and submission of such form(s) as may be required from time to time by the Illinois Department of Revenue in order to release all gross revenue and sales tax information to the City or directly prepare and submit the same (as applicable). Pacific shall require each tenant in the Center to provide written consent to the City obtaining the relevant sales and Sales Tax information from the State. City acknowledges that Pacific has no direct access to sales and Sales Tax information from which Pacific can make representations or warranties. City shall use the information provided by each tenant in the Center and/or the State to calculate the payments to be provided to Pacific. Pacific hereby acknowledges that the City shall have no obligation to refund any Incremental 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 Agreement. The failure of the City to pay any incentive under this Agreement due to the failure of Pacific to discharge its duties hereunder, including requiring its tenants in the Center to provide the necessary consent to the City to obtain the information that it needs to perform its calculations hereunder, shall not be deemed a breach of this Agreement by the City.
  
- ii. Summary of Sales Tax Information. The City, to the extent permitted by law, upon receipt of said sales tax information (documentation), shall provide Pacific with a summary of that information, and bi-annually a calculation of the payments to Pacific for each year of the Term. Pacific (as applicable) shall provide any sales and/or sales tax information that it receives to the City within five (5) business days of receipt of the same. The City shall deliver reports to Pacific on a quarterly basis before the ninetieth (90th) day following the end of the period for which the City is reporting.
  
- iii. Confidential Information. The City acknowledges and agrees that the sales tax information to be provided or caused to be provided by Pacific hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to Pacific. To the extent permitted by law, the City agrees to hold in confidence all sales figures and other information provided by Pacific or obtained from records in connection with this Agreement. The provisions of this Section shall survive the termination of this Agreement for a period of one (1) calendar year. Pacific agrees that the City's compliance with any court order or other enactment of Law to produce information shall not subject the City to any liability hereunder for the release of information. The City shall provide Pacific 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 to secure this information. At all times during the Term, the City shall have the



right to review Pacific's records relative to the Project and the Center after written direction of the City to Pacific that it will be undertaking such a review.

C. Term. Subject to the terms of this Agreement, the City hereby agrees to pay the Incentive Revenue by bi-annual payments over a maximum of a ten (10) year period commencing on the first day of the month following the execution of this Agreement by each Party (the "Commencement Date") or earlier if the Maximum Reimbursement Amount is paid prior to the expiration of the aforesaid ten-year period (the "Term"). Upon the expiration of the Term, the City's obligations under this Agreement shall be deemed satisfied and fully discharged. Pacific's failure to satisfy the Conditions shall neither toll nor extend the Term. The initial Revenue Sharing Term shall commence on the Commencement Date. Each subsequent Revenue Sharing Term shall begin on the first (1<sup>st</sup>) day of the month following the end of the previous Revenue Sharing Term (as applicable, the "Term Commencement Date"). 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 Revenue Sharing Term, and shall be subject to all of the terms and conditions contained in this Agreement. Together with each payment made by the City, the City shall provide its calculation for determining such payment, which shall be solely based on information provided to the City from Pacific that was previously generated from State of Illinois calculations regarding the same. In the event the City received inaccurate information to support the aforementioned calculations, the City shall not be deemed to be in default of this Agreement.

D. Conditions Precedent to the City's Payment Obligation. Notwithstanding and superseding anything herein to the contrary, the right of Pacific to receive its Incentive Revenue payments contemplated in this Agreement, as well as the related obligation of the City to make any such payments, shall be subject to and conditioned upon the satisfaction of the following conditions precedent to payment (the "Conditions") as determined by the City in its reasonable discretion:

- i. Pacific shall, as and when applicable, obtain all permits and approvals necessary for Pacific's completion of the Project for which at that time it seeks the subsidy set forth herein, including, without limitation all building and other permits and certificates of occupancy, (which permits and approvals shall not be unreasonably withheld by the City and in all instances in accordance with all Laws) and submit all petitions and applications for such permits and approvals and pay all fees required under applicable Law;
- ii. the Project plans are consistent with Exhibit C;
- iii. The City's receipt of Supporting Documentation for the Revenue Sharing Term for which Pacific is or will be requesting Incentive Revenue;
- iv. The City's determination that the Supporting Documentation submitted by Pacific satisfies the Reimbursement Ratio (which shall be made by the City a reasonable time after receipt of the same);
- v. The City's receipt of the Incentive Revenue from the State;

- vi. Pacific caused to be submitted (or independently submitted) all appropriate documentation to the IDOR and the City for the City to receive sales tax receipt information for the Property; and
- vii. This Agreement is still in effect and Pacific is not in violation of any Law, otherwise in material breach of this Agreement, or in arrears of any payment to the City.

**5. Default; Right to Cure; Prohibition on Payments.**

A. 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.

B. 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 specific performance of this Agreement, but notwithstanding the foregoing, any award provided to Pacific, inclusive of attorneys costs and fees, pursuant to the terms of this Agreement shall be limited to One and No/100 Dollars (\$1.00) in excess of the incentive payment. Pacific will not be entitled to any other monetary damages in excess of the aforesaid from the City and hereby expressly waives any claim for additional monetary damages. In the event of a default by Pacific, the City shall have the right to pursue all remedies at law for the enforcement of this Agreement, including the termination of this Agreement and cessation of all payments to be set forth above. The City is prohibited from making any payment to Pacific hereunder in the event that Pacific has failed to satisfy the Conditions or has an uncured default of this Agreement.

C. 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.

**6. Miscellaneous.**

A. 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: James Vasselli, Esq.  
1441 South Harlem Ave.  
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.  
70 West Madison Street, Suite 5300  
Chicago, Illinois 60602

B. Time is of the Essence. Time is of the essence in the performance of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Provided, however, no recourse under or upon any obligation or covenant of this Agreement or for any claim based thereof shall be made personally against the City's Mayor or Aldermen or the City's employees, officers, agents, contractors and consultants or Pacific directors, managers, employees, agents, contractors and consultants.

D. Non-Waiver. Neither Party shall be obligated to exercise any of the rights granted to it in this Agreement. The failure of either Party to exercise at any time any right granted to such Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect such Party's right to enforce that right or any other right.

E. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws of the State of Illinois.

F. 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.

G. 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.

H. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

I. Exhibits. All Exhibits attached to this Agreement are, by this reference, incorporated herein, and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

J. 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.

K. Authority to Execute. The individuals executing this Agreement represent and warrant that they have the power and authority to do so, and to bind the Parties for whom they are executing the Agreement. In addition, the City hereby represents and warrants that it has full

constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement and the foregoing have been or will be, upon adoption of ordinances authorizing the execution of this Agreement, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

L. No Third Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person shall be made, or be valid, against the City or Pacific.

M. 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.

N. Police Power. Nothing in this Agreement shall limit the standard police power functions and protections of the City or the City's right to enforce the same.

O. Cessation of Business by Best Buy; Good Faith Cooperation. The Center contains a Best Buy store ("Best Buy"). Provided Pacific is not in default of this Agreement, or any agreement related to the Agreement hereto, in the event Best Buy ceases or intends to cease operations at the Center, the Parties, no later than thirty (30) calendar days after receipt of such notice, shall direct appropriate officers to meet, at a mutually agreeable location in the corporate limits of the City, to in good faith discuss and evaluate a potential amendment to this Agreement to offset the economic hardship to be experienced by Pacific as a result of Best Buy's cessation of business at the Center. In evaluating a potential amendment to this Agreement to offset Pacific's economic hardship, the Parties shall review and consider, minimally the hardship imposed by the cessation of business by Best Buy at the Center, the financial status of the City and the ongoing operations at the Center.

P. Best Buy Agreement. Best Buy is subject to an outstanding incentive agreement (the "Best Buy Agreement," attached hereto as **Exhibit E**). The City shall honor the terms of the Best Buy Agreement for the remainder of its term. In the event the Best Buy Agreement is extended with terms and conditions substantially similar to its current terms and conditions, the City shall continue to honor the Best Buy Agreement.

Q. Notice to Mortgagee. The term "Mortgage" as used herein shall mean any mortgage of an interest in the Center given primarily to secure the repayment of money owed by the mortgagor. The term "Mortgagee" as used herein shall mean the Mortgagee from time to time under any such Mortgage. If a Mortgagee shall have delivered to the City a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each notice required to be given by one Party to the other at the same time as and whenever such notice shall thereafter be given by one Party to the other, at the address last furnished by such Mortgagee. This notice obligation shall be in addition to the notice provisions set forth above. The address of the existing Mortgagee is as follows:

MidCap Financial Trust, as Agent  
c/o MidCap Financial Services, LLC, as servicer

7255 Woodmont Avenue, Suite 200  
Bethesda, MD 20814  
Attention: Account Manager for Pacific Square, LLC  
Facsimile: 301-941-1450

**[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, 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:**

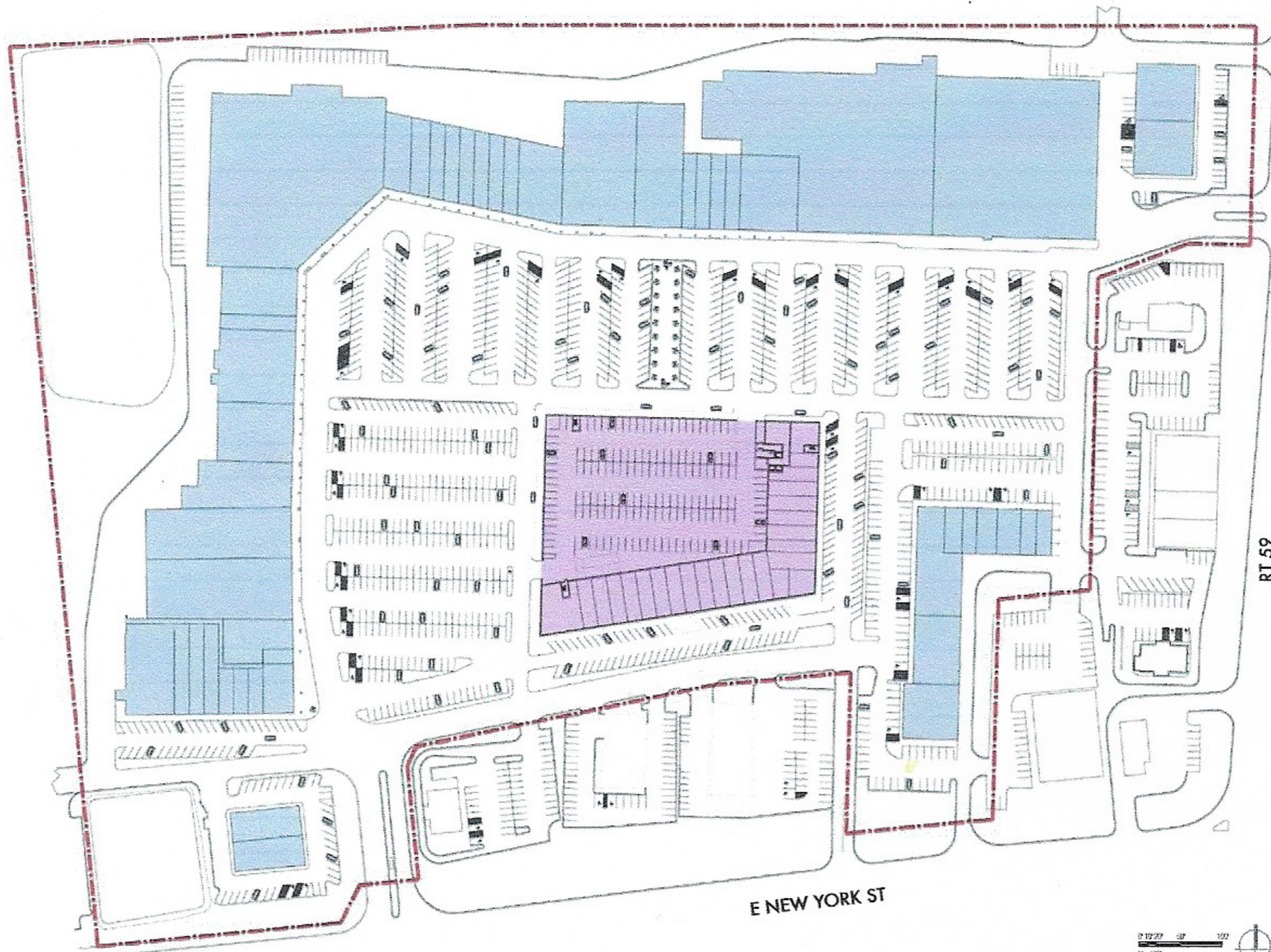
**NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR PARKING AS CREATED BY PLAT OF YORKSHIRE PLAZA RECORDED AS DOCUMENT R86-71755.**

**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]**







**EXHIBIT C**  
**DEVELOPMENT SITE PLAN**  
**[ATTACHED]**

# PHASE 1 SITE PLAN



RT 59

E NEW YORK ST

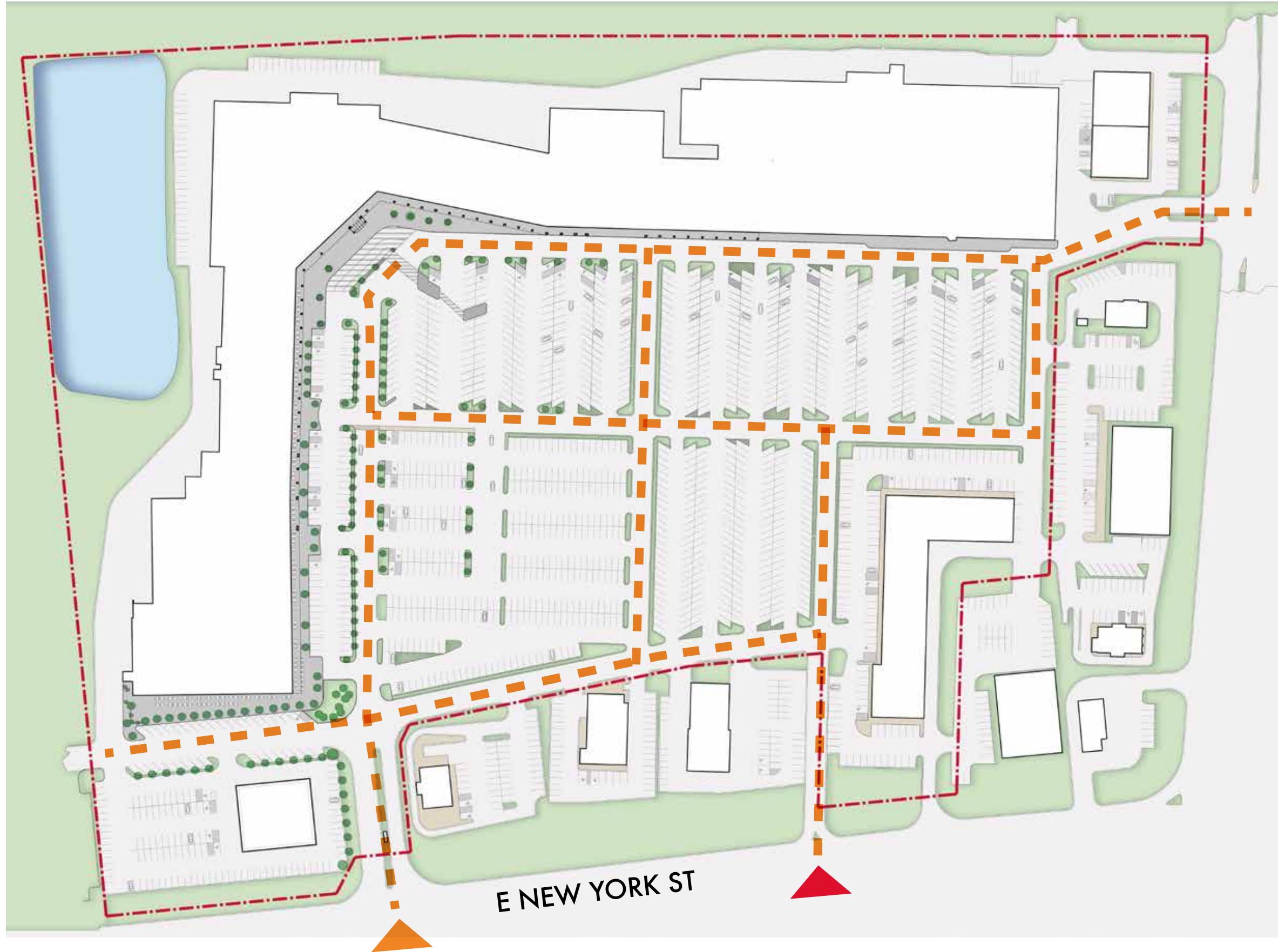
LEGEND

- EXISTING ENTRY 
- NEW ENTRY 





# PHASE 2 SITE PLAN



RT 59

E NEW YORK ST

LEGEND

- EXISTING ENTRY 
- NEW ENTRY 





# PHASE 3 SITE PLAN



RT 59

E NEW YORK ST



**EXHIBIT D**  
**WIRE INSTRUCTIONS**  
**[ATTACHED]**

**EXHIBIT E**  
**BEST BUY AGREEMENT**  
**[ATTACHED]**

## **SALES TAX REVENUE SHARING AGREEMENT**

This Sales Tax Revenue Sharing Agreement (hereinafter referred to as the "Agreement") is entered into on this 23<sup>rd</sup> 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 00/100<sup>th</sup>s 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 00/100<sup>ths</sup> 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 (15<sup>th</sup>) 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 Default 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 13<sup>th</sup> 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. Grzeta  
Name: Robert NADLER Name: GARY J. GRZETA  
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**

<b>TOTAL COSTS OF BEST BUY PROJECT:</b>	
<b>\$2,000,000</b>	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.
<b>\$1,000,000</b>	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.
<b>\$115,920</b>	YORKSHIRE LLC is obligated to pay BEST BUYS's broker, Metro Commercial, the amount of \$115,920 for its work toward facilitating this renewal.
<b>\$3,115,920</b>	Total cost to YORKSHIRE LLC to keep BEST BUY located in the CITY and at the PLAZA.
<b>TOTAL BEST BUY SHARED COSTS</b>	
<b>\$2,000,000</b>	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: 847-294-8448  
Writer's Direct Fax: 847-399-1167  
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:

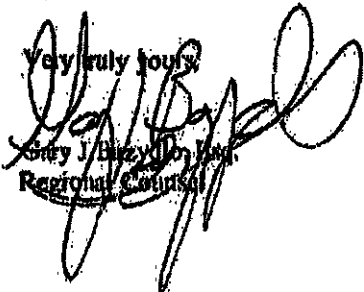
**YORKSHIRE PLAZA PARTNERS, LLC  
257 EAST MAIN STREET  
SUITE 100  
BARRINGTON, ILLINOIS 60010**

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.

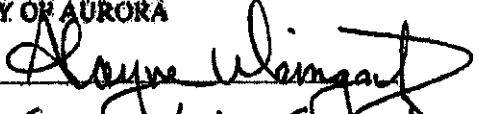
Assignor represents to the City as set forth in Section 4.02 that this transaction does not violate 65 ILCS 5/8-11-20 or any enacted to amend or replace same since the execution of the Agreement (if any).

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,  
  
Greg J. Blazynski, Esq.  
Regional Counsel

ACKNOWLEDGED AND CONFIRMED:  
CITY OF AURORA

By:   
Its: Corporation Counsel

cc: Jennifer Jones  
Ira Fierstein  
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

ASSIGNMENT AND ASSUMPTION OF SALES TAX REVENUE SHARING AGREEMENT

**THIS ASSIGNMENT OF SALES TAX REVENUE SHARING AGREEMENT** (the "Assignment") made this 30<sup>th</sup> 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**

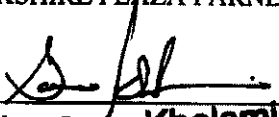
By: KUBS Income Fund I, L.P., its managing member

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

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

**YORKSHIRE PLAZA PARTNERS, LLC**

By:   
Name: **Garo Kholamian**  
Title: **President**