

AMENDMENT TO THE SALES TAX SHARING AGREEMENT: PACIFIC SQUARE

This Amendment to 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**, a Delaware 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, as a party to the Original Agreement, as defined below, was incorrectly named as “Pacifica Square, LLC” and the correct name underlying the defined term “Pacific” is, was and should be “Pacific Square DE, LLC”;

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 has invested and will 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”) up to the specified incentive amounts described herein; and

WHEREAS, the maximum reimbursement incentive Pacific shall be eligible to receive pursuant to the terms of this Agreement is Six Million and No/100 U.S. Dollars (\$6,000,000.00); 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; and

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.

;and

WHEREAS, the original sales tax sharing agreement between Pacific and the City of Aurora was approved by City Council on March 12, 2019 (R19-0145) (the "Original Agreement"); and

WHEREAS, the Parties have determined that is necessary to amend the Original Agreement by incorporating the terms set forth herein.

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, to the extent permitted by law, 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, additional obligations or costs to either Party not otherwise specifically contemplated in this Agreement.

C. City Approvals. To the extent allowed by law, 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 properly 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. CORRECTION OF MISNOMER OF "PACIFIC". Pacific and the City hereby understand, acknowledge and agree that the name "Pacifica Square, LLC" as set forth in the Preamble and elsewhere in the Agreement, is incorrect and was inadvertently inserted into the Agreement. The name "Pacifica Square, LLC", wherever set forth in the Agreement, is hereby deleted in its entirety and the correct name of "Pacific Square DE, LLC" is hereby inserted in its place. The name "Pacific Square DE, LLC" hereby:

- (a) joins in the execution of the Agreement with the City;
- (b) adopts, consents to, remakes and restates all representations and covenants contained in the Agreement and intends hereby to be bound by and be liable for the performance thereof, and to bind its successors and assigns; and
- (b) agrees to fully comply with and perform all duties, provisions, obligations, covenants, promises, payments and agreements undertaken by Pacific in the Agreement.

4. 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 its 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. amounts to the Project Budget requirement: (a) bills, contracts, and invoices relative to the costs of the Project; and (b) 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; and (b) 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.

5. 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 biannually (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 Six Million, and No/100 Dollars (\$6,000,000.00) (the "Maximum Reimbursement Amount") or a payment term not to exceed seventeen years (from the original base year of 2018), 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 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 seventeen (17) 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 seventeen-year period from the original base year of 2018 (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 (1st) 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.

6. Business Development District. A Business Development District, BDD, Ordinance has been adopted the City of Aurora to permit Pacific to collect up to an additional 1 cent sales tax. This sales tax is to be distributed on a quarterly basis to Pacific. These are sales tax revenues generated only by businesses in Pacific Square and may only be used for eligible redevelopment expenditures as outlined in the Business Development District Ordinance and per

Illinois compiled statutes. Over the life of the BDD Pacific may collect up to a maximum of \$3.3 Million, in addition to any other incentives set forth herein, over 23 year period whichever comes first.

7. 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.

8. 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: Michael Muthleb, 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; Conflict. This Agreement and the Original 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. To the extent the terms of this Agreement and the Original Agreement conflict, the terms of this Agreement shall control.

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, DE, LLC,

A Delaware Limited Liability Company

By: _____

Its: _____

DRAFT

Exhibit A

DRAFT

Exhibit B

DRAFT

Exhibit C

DRAFT

Exhibit D

DRAFT

Exhibit E

DRAFT