



AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve Sales Tax Revenue Sharing Agreement for SC 3800 Main LLC. (The Quad)
Staff:	Christopher Minick, Director of Finance Rita Tungare, Director of Community & Economic Development Matthew O'Rourke, Economic Development Division Manager

Please check appropriate box:

<input checked="" type="checkbox"/>	Government Operations (4/21/14)		Government Services
	Planning & Development		City Council

Estimated Cost:		Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

Executive Summary:

Background:

During the past several years occupancy rates and sales tax proceeds from the Charlestowne Mall property have declined. Competition from newer neighboring community shopping destinations and lack of physical upgrades has created disinvestment. Currently, the interior of the mall, excluding the anchor tenants, is almost 100% vacant and, due to its reputation, is not seen as desirable by retail/commercial tenants.

In the Fall of 2013, the applicant and present property owner SC 3800 Main LLC., brought forward a proposal to amend the zoning entitlements and physical layout of the Charlestowne Mall. The City Council approved the entitlements in The applicant intends to reinvigorate the interior and exterior of the mall and generate renewed interest as a commercial destination and anchor for the City's East Gateway retail area.

Proposed Incentive:

The applicant has submitted an application for a sales tax sharing incentive agreement between SC 3800 Main LLC. and the City of St. Charles. Staff has worked with the applicant to develop this agreement to help mitigate the extraordinary costs associated with repositioning the mall in terms of the physical plan and the mall's current perception as undesirable. There are \$12,000,000 in extra construction costs to regrade, demolish, and update the mall and \$10,000,000 in increased tenant inducements to retain and "lure" back retail tenants. These costs are over and above typical physical and inducement costs incurred to develop greenfield properties. The applicant is requesting a \$20,000,000 incentive to help offset these extraordinary costs. The proposed terms of the agreement are a 50/50 sales tax sharing incentive for a 20 year period. The proposal is for a "pay as you go" agreement. There are no proposed upfront payments proposed. The City will only reimburse the applicant 50% of future sales tax generated by the mall redevelopment and this does not include the any sales tax currently collected by the City. See the attached summary sheet for the incentive details.

Attachments: *(please list)*

Summary Sheet; DRAFT Sales Tax Incentive Agreement

Recommendation / Suggested Action *(briefly explain):*

Recommendation to Approve Sales Tax Revenue Sharing Agreement for 3800 E. Main Street LLC. (The Quad)

For office use only: *Agenda Item Number:* 5a



CITY OF
ST. CHARLES

ILLINOIS • SINCE 1834

The KRAUSZ
COMPANIES, Inc.

Sales Tax Revenue Sharing Agreement Charlestowne Mall Redevelopment

Basic Terms

- Agreement contingent upon re-development of Charlestowne Mall.
- City retains 100% of sales tax revenue received prior to the redevelopment of the mall.
- 50/50 split of new sales tax revenue generated from mall redevelopment between City and Developer.
- Sharing commences upon grand opening of re-developed mall.
- \$20 Million (Present Value) Cap on Shared Revenue.
- 20 Year Maximum Term for Payments.

SALES TAX REVENUE SHARING AGREEMENT

This **SALES TAX REVENUE SHARING AGREEMENT** (this “**Agreement**”) is entered into as of the ____ day of _____, 2014, by and between **SC 3800 MAIN LLC**, a Delaware limited liability company (the “**Company**”), and the **CITY OF ST. CHARLES**, an Illinois municipal corporation (the “**City**”). The Company and the City are hereinafter individually sometimes referred to as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. **WHEREAS**, the City has a population of more than 25,000 persons, and is a home rule unit of government pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois;

B. **WHEREAS**, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or by ordinance;

C. **WHEREAS**, the Company is the owner of an approximately 81.31 acre improved parcel commonly referred to as The Charlestowne Mall, located at 3800 East Main Street, St. Charles, Illinois, as more fully described in Exhibit A (together with any additional parcels of real property located within the Charlestowne Mall Planned Unit Development, the “**Property**”);

D. **WHEREAS**, the Company intends to create a regional shopping destination by redeveloping the Property by, among other things, renovating and partially demolishing and rebuilding the enclosed mall, constructing new retail buildings not physically connected to the existing mall structure, re-grading and re-designing parking areas for improved access and traffic circulation (the “**Project**”);

E. **WHEREAS**, the buildings on the Property have remained less than significantly occupied and underutilized for a period of greater than one year;

F. **WHEREAS**, the Project is expected to create and retain job opportunities within the City of St. Charles;

G. **WHEREAS**, the Project will serve to further the development of adjacent areas;

H. **WHEREAS**, without this Agreement, the Project would not be possible;

I. **WHEREAS**, the Company meets the high standards of creditworthiness and financial strength as set forth in 65 ILCS 5/8-11-20;

J. **WHEREAS**, the Project will strengthen the commercial sector of the City of St. Charles;

K. **WHEREAS**, the Project will enhance the tax base of the City of St. Charles;

L. **WHEREAS**, this Agreement is made in the best interest of the City of St. Charles;

M. **WHEREAS**, the City seeks to encourage commencement and completion of the Project and, in order to make the Project economically feasible, the City has agreed to pay to the Company a percentage of all Sales Taxes (as defined below) that are generated by the Project and received by the City in accordance with the terms of this Agreement; and

N. **WHEREAS**, the City Council of the City has approved this Agreement pursuant to Ordinance _____.

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The recitals set forth above are expressly incorporated into this Agreement by this reference thereto as if fully set forth in this Section 1.

2. **Definitions**. For purposes of this Agreement, the following terms shall have the meanings set forth below.

a. **Base Sales Taxes**. The aggregate amount of Retail Sales Taxes and Home Rule Sales Taxes received by the City from the State of Illinois with respect to the Property in the three (3) IDOR reporting periods covering a total of twelve (12) months of taxable sales having been most recently received by the City as of the Commencement Date (as that term is defined herein). In the event that a tenant at the Property occupying in excess of seventy-nine thousand (79,000) square feet of gross leasable area (an "Anchor Tenant") which is open for business and generating taxable sales as of the date of this agreement ceases operations on or before the Commencement Date (as that term is defined below), then any Anchor Tenant's Retail Sales and Taxes and Home Rule Sales Taxes which were otherwise includable in Base Sales Taxes shall be excluded from Base Sales Taxes, and the above agreed Base Sales Taxes amount shall be reduced accordingly. If an Anchor Tenant ceases operations at the Property subsequent to the Commencement Date, then a percentage of Base Sales Taxes which are attributable to that Anchor Tenant shall be excluded from Base Sales Taxes, and Base Sales Taxes shall be reduced as follows: in months 1-12 following the Commencement Date, 80% of such Anchor Tenant's Base Sales Taxes; in months 13-24 following the Commencement Date, 60% of such Anchor Tenant's Base Sales Taxes.

b. **City Note**. A twenty-year note in the amount of twenty million dollars (\$20,000,000), bearing interest at the City Note Interest Rate and to which is attached an amortization schedule, issued by the City to the Company on the Commencement Date. A form of the City Note is attached hereto as Exhibit B.

c. **City Note Interest Rate**. An annual rate equal to the median value of the 10-year Treasury rate published in the daily Federal Reserve Release for 15 business days prior

to the date of issuance of the City Note plus 200 basis points, but in no event to exceed seven percent (7.00%).

d. **City Note Termination.** The date upon which the City Note obligation shall be terminated, which shall be the earlier of (i) the Outside Termination Date (as defined below); and (ii) the date upon which the City has satisfied the City Note obligation in full through payment of the Sales Tax Incentive (as defined below).

e. **City Payment Obligation.** The City's obligation to pay the Company Sales Taxes as set forth in Section 3 below.

f. **Commencement Date.** The date on which the Company completes the Project, agreed to be the earlier of (i) the last day in the calendar month in which the Company holds a public "Grand Opening" for the redeveloped enclosed mall or (ii) if no such Grand Opening takes place, the last day in the calendar quarter in which the Project commences day-to-day operations under the trade name "The Quad St. Charles" or such other trade name other than the "Charlestowne Mall" as adopted by Company in its sole discretion. In no event shall the Commencement Date be deemed to be a date later than December 31, 2017 (the "Outside Commencement Date").

g. **Failure to Perform the Project Work.** In the event that the Company has not materially commenced performance of the work constituting the Project on or before December 31, 2018 (the "Outside Project Start Date"), this Agreement shall be void and of no further force and effect, and neither party hereto shall have any further right or obligation to the other with respect to this Agreement.

h. **Event of Default.** A default under this Agreement which remains uncured as set forth in Section 18 below.

i. **Home Rule Sales Taxes.** The home rule retailers occupation taxes received by the City from the State of Illinois pursuant to the Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1), the Home Rule Municipal Service Occupation Tax (65 ILCS 5/8-11-5) (as said Acts may be amended), and any taxes that may be enacted and imposed as replacements thereto.

j. **IDOR.** means the Illinois Department of Revenue.

k. **Municipal Code.** The Municipal Code of the City.

l. **Outside Termination Date.** Twenty (20) years from the Commencement Date plus any time necessary for the City to undertake final accounting and payment to the Company after such 20-year period.

m. **Payment Date.** Each March 31, July 31, and November 30 after the Commencement Date; provided, however, that the first Payment Date shall be the first of the aforesaid dates to occur after the Commencement Date. The aforesaid dates are conditional upon

the receipt of sales tax data from IDOR and the receipt of updated tenant listings which include for each tenant the tenant's name, address, and Illinois Business Tax (IBT) number (including a location code if applicable). If the conditional terms are received after the specified dates, payment will be made thirty (30) days after the last conditional item is received by the City.

n. **Project**. Shall have the meaning set forth in Recital D.

o. **Property**. Shall have the meaning set forth in Recital C.

p. **Remittance Statement**. A written statement prepared by the City setting forth the amount of Sales Tax remitted to the Company concurrently therewith and the balance of funds remaining to be paid.

q. **Retail Sales Taxes**. Occupation taxes and service occupation taxes received by the City from the State of Illinois pursuant to the Use Tax Act (35 ILCS 105/1 et seq.), the Service Use Tax Act (35 ILCS 110/1 et seq.), Service Occupation Tax Act (35 ILCS 115/1 et seq.), the Retailer's Occupation Tax Act (35 ILCS 120/1 et seq.), the State Finance Act (30 ILCS 105/6z-18), (as said Acts may be amended), and any taxes that are enacted and imposed as replacements thereto.

r. **Sales Tax Incentive**. The payments set forth in Section 3 below.

s. **Sales Taxes**. The aggregate amount of Retail Sales Taxes and Home Rule Sales Taxes.

t. **State**. The State of Illinois.

3. **Agreement to Pay**

a. The City agrees to pay to the Company an amount equal to fifty (50) percent of the Sales Taxes over and above Base Sales Taxes received by the City from the IDOR, or other equivalent agency, which are attributable to the sales generated at the Property from and after the Commencement Date (the "**City Payment Obligation**"). Payments made by the City to the Company under this Agreement shall be paid first to offset any and all accrued interest of the City Note before offsetting the principal balance of the City Note.

b. The payments shall be sent to the Company at the address set forth in Section 11.

c. For the purposes of calculating the City Payment Obligation due and owing on any particular Payment Date, the Base Sales Taxes, which have been calculated based on annual collections, shall be apportioned and applied to the Payment Dates as follows: March 31 Payment Date – 40%; July 31 Payment Date – 40%; November 30 Payment Date – 20%.

4. **Term of Agreement**

a. This Agreement shall terminate upon the earlier of to occur: (i) the twentieth anniversary of the Commencement Date; and (ii) the date upon which the City has repaid the City Note in full.

b. This Agreement shall remain in effect for enforcement and accounting purposes following the expiration of the Term.

5. **Conditions Precedent to City Payment Obligation**

a. Except as hereinafter provided, the City shall make periodic payments to the Company on a thrice-annual basis not later than thirty (30) days after the City's final receipt of Sales Taxes for each tax receipts accounting period occurring during the Term of this Agreement. The City's payment shall be accompanied by a certification signed by the City's Finance Director certifying (i) the aggregate Sales Tax revenues received from an enumerated list of tenants, including their IBT numbers; (ii) the Base Sales Tax for such payment period; and (iii) that the City has calculated the City Payment Obligation in accordance with the terms and conditions of this Agreement.

6. **Performance of the Work.**

a. The Company represents to the City that the work related to the Project that is performed by or on behalf of the Company will comply with the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*). The Company and the City agree that work related to the Project that is performed by or on behalf of one or more third parties, and that the Company has no legal or contractual obligation to perform, shall not be subject to the Illinois Prevailing Wage Act. The Project which is the subject of this Agreement is specifically defined to exclude any work relating to the improvement of any demised leasable premises within the Project for the use of any particular tenant within the Project.

7. **Interest: Limited Obligations.**

a. Except for interest paid on the City Note, no interest shall be due on the obligations set forth in this Agreement unless and until an Event of Default occurs in the payment of the Sales Tax Incentive to the Company. From and after the occurrence of an Event of Default on a portion of the Sales Tax Incentive which was then to have been paid to the Company, interest shall accrue and be payable, until paid, at the rate of four percent (4%) per annum over the rate announced from time to time in the *Wall Street Journal* or other comparable publication as the so-called "base rate" or "prime rate" of interest.

b. The Company acknowledges that: (a) the City shall not be required to make any payments of the Sales Tax Incentive to the Company unless the Company or a Successor Tenant has then delivered, or caused to be delivered, to the City the IDOR form Authorization to Release Sales Tax Information to Local Governments, or other equivalent form, that is needed to facilitate the City Payment Obligation; (b) the City Payment Obligation is a special limited obligation of the City payable solely out of the Sales Taxes above Base Sales Taxes the City receives from the IDOR, or other equivalent agency, which are attributable to the

sales generated by the Project; and (c) the City Payment Obligation shall not be construed as a general obligation of the City.

8. **Confidentiality.**

a. The City agrees to utilize sales tax information obtained by it pursuant to the terms of this Agreement solely for the purpose of effectuating the provisions of this Agreement. To the extent permitted by the Illinois Freedom of Information Act ("FOIA") and other relevant laws, the City shall endeavor to keep such information confidential. The foregoing shall not preclude the City from disclosing such information to the extent it is mandated to do so by court order or to the extent it makes a good faith determination that such disclosure is required by law.

b. The City shall use commercially reasonable efforts to give the Company prompt notice of any request that is made under the FOIA to disclose Sales Tax Information described above.

9. **Assignment.**

a. The Company may assign this Agreement and its right to receive the Sales Tax Incentive to a third party upon written notice to the City. Such assignment shall be subject to the prior written approval of the City, which approval shall not be unreasonably withheld; the failure of the City to disapprove of a proposed assignment in writing setting forth the City's reasons for such disapproval within seven (7) days of receipt of notice of such assignment shall be deemed the City's approval of the assignment. Upon approval (or deemed approval) of an assignment, the City shall make all payments due hereunder and send all reports called for herein solely to said assignee.

10. **Successors and Assigns.**

a. This Agreement shall be binding upon and inure to the benefit of the Parties and the Company's successors and assigns (unless the Company and such successors and assigns agree otherwise in writing), and on successor corporate authorities of the City.

11. **Notices.**

a. Any notices required or contemplated by this Agreement shall be sent by certified mail or via nationally-recognized private carrier (such as Fed Ex or UPS), as follows:

If to the Company:

SC 3800 Main LLC
c/o The Krausz Companies, Inc.
Attention: Daniel Krausz
44 Montgomery Street, Suite 3300
San Francisco, CA 94104
Fax: (415) 732-5699

With a copy to:

DLA Piper US LLP
Attention: Richard Klawiter, Esq.
203 North LaSalle Street, Suite 1900
Chicago, IL 60601
Fax: (312) 630-7337

If to the City:

City of St. Charles
Attention: Mark Koenen, City Administrator
2 E. Main Street
St. Charles, IL 60174
Fax: (630) 377-1984

With a copy to:

John M. McGuirk, Esq.
City Attorney
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 E. Main Street, Suite G
St. Charles, IL 60174
Fax: (630) 513-8799

12. **Waiver.**

a. The Company shall have the right, by notice to the City, to waive the City's payment to it of the Sales Tax Incentive, in whole or in part, at any time and nothing contained in this Agreement shall be construed or interpreted as precluding such right.

13. **Future Cooperation.**

a. The Parties shall cooperate with one another on an ongoing basis, make every reasonable effort and take all required actions to implement and give effect to the provisions of this Agreement and the intentions of the Parties as reflected by the provisions of

this Agreement, including, without limitation, the City's appropriation of funds as may be necessary to implement the provisions of this Agreement, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and provisions of this Agreement and the Parties' intentions as reflected by the terms of this Agreement. No waiver of City regulations shall be inferred from this Agreement, except as specifically set forth.

14. **Appropriation.**

a. To the extent the City is required to do so by law, the City has taken (or shall take) such actions as may be required from time to time to appropriate funds pursuant to Illinois law to satisfy its obligations to the Company under this Agreement.

15. **Integration.**

a. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Company and the City relative to the Sales Tax Incentive and there are no other promises, agreements, conditions or understandings, either oral or written, express or implied, between them relative thereto.

16. **Severability.**

a. Each section of this Agreement, and each sentence, clause or phrase contained in such section, shall be considered severable and if, for any reason, any section, or any sentence, clause or phrase contained in such section, is determined to be invalid or unenforceable, such invalidity or unenforceability shall not impair the operation or affect enforceability or validity of the remaining portions of this Agreement.

17. **Amendment.**

a. This Agreement may be amended by, and only by, a written instrument authorized in accordance with law and signed by both Parties.

18. **Default/Remedies.**

a. The failure of a Party to materially comply with its obligations under this Agreement shall constitute a default by such Party. The Party claiming the occurrence of such default shall notify the other Party of same and shall demand performance by giving the defaulting Party a thirty (30) day written notice specifying the default. Unless, within such thirty (30) day period (a) the defaulting Party, (i) cures such default, or (ii) commences action to cure such default and completes the curing of such default within a reasonable time or (b) the Party claiming default, by written notice to the defaulting Party, either waives the default or grants the defaulting Party a longer period to cure, then the Party claiming the default may pursue all remedies available at law and equity, including specific performance. In the event legal action or other proceeding is brought for enforcement of this Agreement or with respect to an alleged

breach, default or misrepresentation, the successful or prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and related costs (including any fees and costs incident to appeals) in addition to any other relief hereunder to which such Party may be entitled.

19. **Governing Law.**

a. This Agreement shall be governed by the laws of the State of Illinois.

20. **Counterparts; Facsimile Signatures.**

a. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile or other electronically transmitted signatures on this Agreement shall constitute original signatures of the parties.

21. **Construction.**

a. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

22. **Time is of the Essence.**

a. Time is of the essence of this Agreement and of each and every provision hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

SC 3800 MAIN LLC, a Delaware limited liability company

By: Krausz Management One LLC,
a Delaware limited liability company,
its Manager

By: _____
F. Ron Krausz, its Member

CITY OF ST. CHARLES, an Illinois municipal corporation

By: _____
Name: _____
Its: _____

DRAFT - FOR DISCUSSION ONLY

STATE OF __)

) SS.

COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, of **SC 3800 MAIN LLC**, a _____ limited liability company, who is personally known to me to be the _____ of said company, appeared before me this day in person and acknowledged that he/she signed and delivered the foregoing Agreement as his/her own free and voluntary act and as the free and voluntary act of said corporation for the purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 2014.

Notary Public

DRAFT - FOR DISCUSSION ONLY

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, of the **CITY OF ST. CHARLES**, an Illinois municipal corporation, who is personally known to me to be the _____ of said company, appeared before me this day in person and acknowledged that he/she signed and delivered the foregoing Agreement as his/her own free and voluntary act and as the free and voluntary act of said corporation for the purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 2014.

Notary Public

DRAFT - FOR DISCUSSION ONLY

EXHIBIT A

PROPERTY

The subject property is located at 3700, 3740, 3800, 3810, 3840, & 3850 E. Main Street (Illinois Route 64), St. Charles, Illinois, 60174, and is legally described as follows:

THAT PART OF LOT 1, CHARLESTOWNE CENTRE MALL ST. CHARLES, KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 2017857 AND THAT PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 1; THENCE EASTERLY ALONG A NORTHERLY LINE OF SAID LOT 1461.93 FEET TO A NORTHEASTERLY CORNER OF SAID LOT; THENCE SOUTHERLY ALONG AN EASTERLY LINE OF SAID LOT 505.23 FEET TO AN ANGLE IN SAID EASTERLY LINE; THENCE EASTERLY ALONG A NORTHERLY LINE OF SAID LOT 1015.80 FEET TO A NORTHEASTERLY CORNER OF SAID LOT; THENCE SOUTHERLY ALONG AN EASTERLY LINE OF SAID LOT 357.09 FEET TO A POINT THAT IS 110.0 FEET NORTHERLY OF THE NORTH LINE OF LOT 1, ILLINOIS ROUTE 64 - SMITH ROAD SUBDIVISION, ST CHARLES, KANE COUNTY, ILLINOIS (MEASURED ALONG SAID EASTERLY LINE EXTENDED); THENCE EASTERLY AT RIGHT ANGLES TO THE EAST LINE OF SAID NORTHEAST QUARTER 78.35 FEET TO THE WESTERLY LINE OF SMITH ROAD AS ESTABLISHED BY DOCUMENT 90K59922; THENCE SOUTHERLY ALONG SAID WESTERLY LINE, BEING A CURVE TO THE LEFT HAVING A RADIUS OF 995.0 FEET, 110.91 FEET TO THE NORTHEAST CORNER OF LOT 1 IN SAID ILLINOIS ROUTE 64-SMITH ROAD SUBDIVISION; THENCE WESTERLY ALONG A NORTH LINE OF SAID SUBDIVISION 197.34 FEET TO A NORTHWEST CORNER THEREOF; THENCE SOUTHERLY ALONG A WEST LINE OF SAID SUBDIVISION 293.27 FEET TO AN ANGLE IN SAID WEST LINE; THENCE WESTERLY ALONG A NORTH LINE OF SAID SUBDIVISION 148.48 FEET TO A NORTHWEST CORNER THEREOF; THENCE SOUTHERLY ALONG A WEST LINE OF SAID SUBDIVISION 242.05 FEET TO THE SOUTHWEST CORNER OF LOT 2 IN SAID SUBDIVISION; THENCE WESTERLY ALONG THE NORTH LINE OF ILLINOIS STATE ROUTE NO. 64 AND THE SOUTH LINE OF LOT 1 IN SAID CHARLESTOWNE CENTER MALL 2463.67 FEET TO THE SOUTHWEST CORNER OF LOT 1 IN SAID CHARLESTOWNE CENTRE MALL; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID CHARLESTOWNE CENTRE MALL 1816.74 FEET TO THE POINT OF BEGINNING (INCLUDING LOT 1 OF CHARWIL'S FIRST RESUBDIVISION OF PART OF LOT 1 CHARLESTOWNE CENTRE MALL, IN THE CITY OF ST. CHARLES, KANE COUNTY ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 93K15081); (ALSO INCLUDING LOT 1 CHARWIL'S THIRD RESUBDIVISION OF CHARLESTOWNE MALL, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 2001K007611); (EXCEPT LOT 1 OF CHARWIL'S SECOND RESUBDIVISION OF CHARLESTOWNE CENTRE MALL, ST. CHARLES, KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 94K067871); AND (EXCEPT THAT PART OF LOT 1, CHARLESTOWNE CENTRE MALL, BEING PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 201857, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2 IN ILLINOIS ROUTE 64-SMITH ROAD SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 11, 1991, AS DOCUMENT 91K55800, THENCE NORTHWESTERLY 698.41 FEET ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 20162.06 FEET (CHORD BEARS NORTH 89 DEGREES 22 MINUTES 06 SECONDS WEST, 698.38 FEET), SAID

CURVE BEING THE NORTH RIGHT OF WAY LINE OF ILLINOIS ROUTE 64 (NORTH AVENUE) PER DOCUMENT NO. 92K04278, THENCE NORTH 88 DEGREES 22 MINUTES 33 SECONDS WEST ALONG SAID NORTH RIGHT OF WAY LINE OF ILLINOIS ROUTE 64, FOR A DISTANCE OF 301.20 FEET; THENCE NORTH 01 DEGREES 37 MINUTES 27 SECONDS EAST, 9.00 FEET; THENCE SOUTH 88 DEGREES 22 MINUTES 33 SECONDS EAST, 301.20 FEET; THENCE SOUTHEASTERLY 49.72 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20153.06 FT (CHORD BEARS SOUTH 88 DEGREES 26 MINUTES 48 SECONDS EAST, 49.72 FEET); THENCE SOUTH 01 DEGREES 28 MINUTES 58 SECONDS WEST, 3.00 FEET; THENCE SOUTHEASTERLY 294.32 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20156.06 FEET, (CHORD BEARS SOUTH 88 DEGREES 56 MINUTES 08 SECONDS EAST, 294.31 FEET. THENCE NORTH 00 DEGREES 38 MINUTES 46 SECONDS EAST, 6.50 FEET; THENCE SOUTHEASTERLY 354.05 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 20149.56 FEET, (CHORD BEARS SOUTH 89 DEGREES 51 MINUTES 26 SECONDS EAST, 354.04 FEET TO THE POINT ON THE WEST LINE OF SAID LOT 2; THENCE SOUTH 00 DEGREES 06 MINUTES 12 SECONDS EAST ALONG SAID LINE, 12.50 FEET TO THE POINT OF BEGINNING, IN KANE COUNTY, ILLINOIS.

AND (EXCEPT THAT PART OF LOT 1, CHARLESTOWNE CENTRE MALL, BEING PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 201857, DESCRIBED AS FOLLOWS:: COMMENCING AT THE SOUTHWEST CORNER OF LOT 2 IN ILLINOIS ROUTE 64-SMITH ROAD SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 11, 1991, AS DOCUMENT 91K55800, THENCE WESTERLY ON THE SOUTH LINE OF SAID LOT 1, AND ON A 20162.06 FOOT RADIUS CURVE CONCAVE TO THE NORTH, 698.41 FEET, THE CHORD OD SAID CURVE BEARS AN ASSUMED BEARING NORTH 89 DEGREES 22 MINUTES 06 SECONDS WEST, 698.38 FEET TO A POINT OF TANGENCY OF SAID CURVE ON SAID SOUTH LINE; THENCE NORTH 88 DEGREES 22 MINUTES 33 SECONDS WEST ON SAID SOUTH LINE, 301.20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 88 DEGREES 22 MINUTES 33 SECONDS WEST ON SAID SOUTH LINE, A DISTANCE OF 157.62 FEET; THENCE NORTH 01 DEGREES 36 MINUTES 21 SECONDS EAST, 53.15 FEET; THENCE SOUTH 88 DEGREES 23 MINUTES 39 SECONDS EAST, 169.44 FEET; THENCE SOUTH 01 DEGREES 36 MINUTES 21 SECONDS WEST, 44.21 FEET; THENCE NORTH 88 DEGREES 22 MINUTES 33 SECONDS WEST, 11.82 FEET; THENCE SOUTH 01 DEGREES 37 MINUTES 27 SECONDS WEST, 9.00 TO THE POINT OF BEGINNING IN KANE COUNTY, ILLINOIS.

EXHIBIT B

FORM OF CITY NOTE

(Attached hereto)

DRAFT - FOR DISCUSSION ONLY