

SALES TAX SHARING AGREEMENT
BETWEEN THE VILLAGE OF HOMEWOOD, COOK COUNTY, ILLINOIS
AND DIKA-HOMEWOOD, LLC

THIS SALES TAX SHARING AGREEMENT (the "Agreement") is entered into as of this ___ day of _____, 2022 between the Village of Homewood, an Illinois municipal corporation in Cook County (the "Village") and DIKA-Homewood, LLC ("DIKA"), an Illinois limited liability company operating within the corporate boundaries of the Village. The Village and DIKA are sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Parties are entering into this Agreement under Section 8-11-20 of the Illinois Municipal Code (65 ILCS 5/8-11-20) ("Code"), regarding the build out and reoccupation of a vacant storefront (the "Project") at 17825 Halsted Street formerly occupied by OfficeMax (the "Subject Property") within the Village of Homewood, Cook County, Illinois; and

WHEREAS, the Subject Property is within part of PIN 29-33-100-060-0000; and

WHEREAS, Section 8-11-20 of the Illinois Municipal Code (65 ILCS 5/8-11-20) authorizes the corporate authorities of a municipality to enter into economic incentive agreements relating to development or redevelopment of land within its corporate limits; and

WHEREAS, the Village may, under an economic incentive agreement such as this Agreement, agree to rebate or share a portion of the Retailers' Occupation Taxes received by the Village which have been generated by the development or redevelopment over a finite period; and

WHEREAS, (i) the Project includes the build out of 23,560 square feet of commercial space formerly occupied by OfficeMax to facilitate leasing of the Subject Property to Burlington Coat Factory; (ii) the estimated cost of the build out is \$2.0 million; (iii) this Agreement recognizes the significant improvements required by DIKA in connection with the Project; and (iv) this Agreement is intended to reimburse DIKA for a portion of the improvement costs; and

WHEREAS, the taxable sales made at the Project will not be subject to local Retailers' Occupation Taxes in another unit of local government; and

WHEREAS, the "Subject Property" has been vacant for 18 months; and

WHEREAS, construction of and operation of the Project will create or retain job opportunities within the Village; and

WHEREAS, the Project will serve to further the redevelopment of adjacent areas; and

WHEREAS, without this Agreement, the Project would not be possible; and

WHEREAS, DIKA meets high standards of credit worthiness and financial strength as demonstrated by one or more of the following: (i) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Services, Inc.; (ii) a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or (iii) specific evidence of equity financing for not less than 10% of the total project costs; and

WHEREAS, the Project will strengthen the Village's commercial sector and substantially enhance the Village's tax base; and

WHEREAS, the Corporate Authorities of the Village have determined that it is in the Village's best interest to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree:

SECTION 1 - INCORPORATION

The Preambles to this Agreement are declared to be the finding of the Parties and the Preambles are incorporated herein as if fully set forth in this Section 1.

SECTION 2 - CONDITIONS PRECEDENT TO UNDERTAKINGS BY THE VILLAGE

All undertakings by the Village under this Agreement are subject to the satisfaction of these conditions by DIKA by _____, unless otherwise specifically hereinafter stated:

DIKA shall complete the Project to the Village's satisfaction and in substantial conformance with the site and building plans attached as Group Exhibit 1.

Before any payment by the Village of any sums to DIKA, as provided in this Agreement, DIKA shall require the tenant ("Burlington Coat Factory" or "Burlington") of the Subject Property to provide the Village with a limited power of attorney, addressed to and in a form satisfactory to the Illinois Department of Revenue ("IDOR"), authorizing IDOR to release to the Village all gross revenues and sales tax information submitted by Burlington to IDOR for the Project. If IDOR fails to provide the Village with the necessary tax information, DIKA shall cause to be delivered to the

Village, on a quarterly basis, the Illinois Retailers' Occupation Tax, Use Tax and Service Occupation Tax returns and/or other documentation submitted by Burlington to the IDOR, which detail the Sales Tax (defined below) that Burlington paid to IDOR regarding its operation on the Subject Property. Additionally, if DIKA does not provide such tax returns, or IDOR does not provide to the Village said documentation, DIKA shall cause such alternative documentation, acceptable to the Village, which details the Sales Tax that Burlington paid to IDOR regarding the Project.

For purposes of this Agreement, the use of the terms "Sales Tax" and "Sales Tax Revenue" shall be construed to refer to:

The net portion of taxes imposed by the State of Illinois for distribution to the Village under the Retailers' Occupation Tax Act (35 ILCS 120/1, *et seq.*), as amended, or the Service Occupation Tax Act (35 ILCS 115/1, *et seq.*), as amended, that are generated by DIKA's dealership and/or the Project and collected by the State and distributed to the Village; and

Any other sales tax or similar tax that may be enacted by the State of Illinois, generated by DIKA's dealership and/or the Project and collected by the State and distributed to the Village; and

Any revenues derived by the Village from any tax on receipts from sales enacted to replace, in whole or in part, the above referenced tax(es) except for any increased sales tax revenues required by state law to be used for a purpose other than as set forth in this Agreement.

The foregoing notwithstanding, the definition of "sales tax" or "sales tax revenue" shall not include (i) any retailer's or service occupation taxes that have been or may be imposed by the Village under the Non-Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1.3), as amended, or the Non-Home Rule Municipal Service Occupation Tax Act (65 ILCS 5/8-11-1.4), as amended; or (ii) any Home Rule Municipal Retailers' Occupation Taxes or Home Rule Service Occupation Taxes that the Village may impose if the Village becomes a Home Rule unit of local government.

SECTION 3 - UNDERTAKINGS BY THE VILLAGE UPON SATISFACTION OF ALL CONDITIONS HEREIN STATED

A. Upon satisfaction by DIKA of all the conditions in Section 2 above, the Village undertakes to make the payments in Section 3.B below.

B. To ensure the proper development of the Subject Property, to ensure completion of the Project, and to foster the continued economic growth of the area, the Village agrees to rebate to DIKA Fifty Percent (50%) of that net portion of Sales Taxes

imposed by the State of Illinois, generated by Burlington on the Subject Property, and distributed to the Village, The Sales Taxes that DIKA is entitled to have rebated will be called the "Rebated Taxes" where appropriate.

C. This Agreement and the Sales Tax rebate provided for in Section 3.B, above, shall continue for four (4) years.

D. Payment of any Sales Tax rebates to which DIKA may be or become entitled shall be calculated as set forth below in quarterly installments until the Termination Date (see 3.C, above), subject to these conditions and restrictions:

- (i) Commencing with the first calendar month the IDOR reports sales tax receipt after execution of this Agreement ("Starting Date"), the Village shall pay to DIKA any rebate to which it is entitled quarterly in arrears, provided, however, that no such payments shall be made unless DIKA has fully completed the Project in substantial conformance with the site and building plans attached as Group Exhibit 1 no later than _____.
- (ii) Such sums shall be paid from the Rebated Taxes generated exclusively from sales by Burlington at the Subject Property. The amount due to DIKA shall not be a general obligation of the Village and the Village shall not have an obligation to pay any amounts to DIKA except from the Village's share of Sales Taxes actually received from IDOR. Nothing in this Agreement is intended to constitute an express or implied covenant by DIKA to cause a business to continuously operate on the Subject Property. However, if Burlington or another similar retailer fails to operate on the Subject Property, the Village shall have the right to terminate this Agreement and cease making payments.

E. The Village shall complete and submit a report by electronic filing to the Department of Revenue within thirty (30) days after the execution of this Agreement, as required by 65 ILCS §§ 5/8-11-21(c) and (d).

F. The Village shall, upon receipt of the IDOR Sales Tax Report reflective of each three (3) month period following the Starting Date, pay to DIKA the Rebated Taxes, which payments shall continue without interruption for four years.

G. During the term of this Agreement, the Village will cause to be created a separate line item for accounting purposes only to be known as the "DIKA Rebate." The Rebated Taxes shall be accounted for in said line item.

H. Until this Agreement terminates, the Village agrees that it will take no action or omit to take any action that will affect the continued existence of the DIKA Rebate line item or the availability of the DIKA Rebate line item to pay DIKA.

I. If any sales tax returns submitted to the Village are amended, DIKA agrees that it will require Burlington to promptly forward a photocopy of such amended sales tax returns to the Village, clearly identifying them as an amendment of a sales tax return submitted to the Village.

SECTION 4 - REPRESENTATIONS AND WARRANTIES OF DIKA

A. DIKA represents and warrants that the Project requires reimbursement for project costs from the Village for it to be completed, and, but for the substantial economic assistance to be given by the Village, as heretofore stated, the Project as contemplated would not be possible.

B. DIKA represents and warrants that it shall comply with all ordinances, resolutions, codes, rules, regulations, guidelines and procedures of the Village and any other governmental entity, including all building and fire code regulations, governing the development of the Project in substantial compliance with the site and building plans attached as Group Exhibit 1.

C. DIKA represents and warrants it shall comply with the terms, provisions, and conditions of this Agreement and it shall use its best efforts to avoid a default under this Agreement or of the financing and/or development of the Project.

SECTION 5 - AUDIT - RECONCILIATION

Each payment by the Village to DIKA shall come with a statement executed by the Village Finance Director or the Finance Director's designee, setting forth the calculations of such payment. The Village Finance Director or the Finance Director's designee shall further issue a statement to DIKA setting forth all payments made to date to DIKA. DIKA shall have thirty (30) days following the receipt of the payment to contest the calculations or information in such statements. If DIKA shall initiate any such contest, it must be made by written notice to the Village. If such contest shows that the amount paid to DIKA was incorrect, either the Village shall pay to DIKA the balance of such amount within thirty (30) days of completing such contest, or the Village shall set off any overpayment against the next payment due, whichever is applicable.

SECTION 6 - CONFIDENTIALITY

The Village agrees that information to be provided by DIKA is proprietary and valuable information and to the extent permitted by state or federal law including, but not limited to, the Illinois Freedom of Information Act ("FOIA"), the Village agrees to hold in confidence all sales figures and other information provided by DIKA in connection with this Agreement, and in connection therewith, the Village shall not copy any such information except (i) as necessary for dissemination to the Village's

agents or employees who are reasonably deemed by the Village to need to know such information for purposes of this Agreement, provided such agents and employees shall hold in confidence such information to the extent required of the Village; or (ii) to the extent required or permitted by order of court or by state or federal law. The confidentiality requirements of this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind the Village, its successors, assigns and legal representatives for two (2) years from the termination, expiration or cancellation of this Agreement. The Village shall promptly notify DIKA of a FOIA request related to this Agreement and/or the commencement of any legal action in regard thereto such that DIKA shall have a meaningful opportunity to object to the release of any such confidential information and to take such action as DIKA deems necessary to protect against the release of such confidential information. The Village shall deny any request for the release of such confidential information if allowed to do so in its sole and absolute discretion; provided, however, the Village shall have no obligation to take any legal action to defend against the release of any such confidential information. Any costs and attorney's fees incurred by the Village in responding to or denying any FOIA request (and/or any other request for information) that relates to this Agreement at DIKA's written request shall be the sole responsibility of DIKA.

SECTION 7 - DEFAULTS

A. The occurrence of any of the following shall constitute a default under this Agreement:

1. Failure to comply with any term, provision or condition of this Agreement within the times herein specified, except to the extent compliance is rendered impossible due to causes beyond the reasonable control of the party in default. For the purposes of this Section, "causes beyond the reasonable control of the party" shall not include any causes related to COVID-19.
2. If a representation or warranty of DIKA contained herein is not true and correct;
or
3. If DIKA:
 - (i) Shall be unable, or admits in writing to its inability to pay its debts as they mature; or makes a general assignment for the benefit of its creditors concerning its debts as they mature; or
 - (ii) Is adjudicated a bankrupt; or
 - (iii) Files a petition in bankruptcy or to affect a plan or other arrangement with creditors; or

- (iv) Files an answer to a creditor's petition admitting the material allegations thereof for an adjudication of bankruptcy or to affect a plan or other arrangement with creditors; or
- (v) Applies to a court to appoint a receiver for substantially all of its assets; or
- (vi) Has a receiver or similar official appointed for substantially all of its assets and such appointment shall not be discharged within sixty (60) days after his appointment or DIKA has not bonded against such receivership or appointment; or
- (vii) Has a petition described in (iv) filed against it which remains undismissed for sixty (60) consecutive days, unless the same has been bonded, provided nothing in this Agreement shall be construed to prevent the assignment of DIKA's rights herein for collateral purposes with the prior permission of the Village, which permission will not be unreasonably withheld or denied.

B. In the event of the occurrence of a default, the non-defaulting Party shall provide the defaulting Party written notice of such default and the defaulting Party shall have thirty (30) days to cure such default. Failure to cure shall permit the non-defaulting Party to terminate the Agreement. Failure to cure by DIKA shall relieve the Village of any of its obligations to pay DIKA the any rebate amounts until the Project is again being operated and the default is cured or the Village may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, undertaking, covenant or agreement of DIKA or the Village in this Agreement.

C. Notwithstanding a default by DIKA as hereinabove set forth, so long as DIKA continues to operate at the Project, the Village shall be obligated to make the payments required under Section 3 above. If DIKA fails to operate at the Project for any ninety (90) consecutive days after the Starting Date, excluding the failure to operate because of a casualty or remodeling, coupled with a default by DIKA as hereinabove set forth, which default is not cured within the time permitted, then upon at least thirty (30) days prior written notice thereafter from the Village during which time DIKA may cure any default, the Village shall be relieved of any of its obligations arising hereafter under this Agreement until DIKA is again operating at the Project and the default is cured. DIKA or the Village make take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, undertaking, covenant or agreement of DIKA or the Village in this Agreement.

D. In the case of any default by DIKA on the sole basis that DIKA has failed to provide a limited power of attorney to the IDOR as required by this Agreement, the

Village's sole remedy shall be to withhold the any rebate payments attributable to DIKA until the Village receives such power of attorney.

SECTION 8 - LIMITATION OF LIABILITY

The sole source of funds for payments to DIKA under this Agreement shall be funds which comprise the Rebated Taxes. DIKA may not compel any exercise of taxing authority by the Village to make payments provided for hereunder. This Agreement does not constitute an indebtedness of the Village or a loan of the credit of the Village within the meaning of any constitutional or statutory provision. Under no circumstances shall the Village be required to pay any monies to DIKA from any source other than the Rebated Taxes.

SECTION 9 - BUDGET

To the extent required by law, each year during the term of this Agreement, the Village agrees that it will budget funds as necessary to satisfy its obligations. Such appropriation shall be a part of the Village's annual budget ordinance adopted under 65 ILCS 5/8-2-9 or as part of the Village's annual budget adopted under 65 ILCS 5/8-2-9.4 as the case may be. The Village shall make any appropriation necessary for the year that the Agreement is entered into by a supplemental appropriation under 65 ILCS 5/8- 2-9 or by an amendment to the annual budget under 65 ILCS 5/8-2-9.6.

SECTION 10 - LITIGATION

Neither the Village nor DIKA, nor their respective successors and assigns, shall challenge the legality or enforcement of any recital, provision or covenant of this Agreement. If any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision, or covenant of this Agreement, the Village will not take a position adverse to enforcement of the same. The Village, upon DIKA's request, agrees to vigorously defend this Agreement. DIKA, in its sole discretion, may petition to intervene in any such proceeding and to participate, at its sole cost, in the defense of any claim against the Village which challenges the legality or enforceability of any recital, provision or covenant of this Agreement. DIKA shall reimburse the Village for any of its costs (including reasonable attorneys' fees) incurred as a result of the Village defending this Agreement upon DIKA's request. If DIKA does not request the Village to defend this Agreement, the Village shall have no obligation to participate in the defense thereof and shall not be obligated to appear, answer or file any pleadings whatsoever. In that event, DIKA shall bear the risk of an adverse judgment and shall have no recourse against the Village.

SECTION 11 - MAINTENANCE OF BUSINESS

This Agreement is made contingent upon DIKA causing the Project to be completed and the store on the Subject Property to operate by _____ subject to force majeure (which includes no delays caused or related to COVID-19). After Burlington opens to the public on the Subject Property, the failure of Burlington to be open for any consecutive ninety (90) days during the term of this Agreement, excluding failing to operate because of a casualty, condemnation, or remodeling, shall, at the election of the Village, result in the termination of this Agreement and the Village shall not be obligated to make any payments not then due or which have not been earned under the provisions hereof.

SECTION 12 - PREVAILING WAGE

DIKA covenants and agrees to pay, and to contractually obligate and cause any general contractor, contractors, and subcontractors to pay the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department") for any public improvements included in the Project (including but not limited to any sewer and water utility improvements). If the Department revises such prevailing wage rates, the revised rates shall apply to all such requests. Upon the Village's request, DIKA shall provide the Village with copies of all such contracts entered into by DIKA or any applicable general contractor to evidence compliance with this Section.

SECTION 13 - GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of Illinois, and the Parties agree that sole and exclusive jurisdiction over any disputes arising from or in relation to this Agreement shall be in the Circuit Court of Cook County, Illinois.

SECTION 15 - AMENDMENTS

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

SECTION 16 - NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by Certified Mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the Village:

Village Manager
Village of Homewood

2020 Chestnut Rd.
Homewood, Illinois 60430

With a copy to:

Christopher J. Cummings
Village Attorney
2024 Hickory Rd., Suite 205
Homewood, Illinois 60430

If to DIKA-Homewood, LLC:

With a copy to:

Notices shall be deemed received on the fourth business day following deposit in the United States Mail, if given by Certified Mail, and upon receipt or refusal, if personally delivered.

SECTION 17 - EFFECTIVE DATE

This Agreement shall be effective on the first date set forth above.

SECTION 18 - MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out this Agreement, including, without limitation, the enactment by the Village of such ordinances and resolutions and taking such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement. If any Party to this Agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

SECTION 19-SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

SECTION 20 - ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the Parties.

SECTION 21 - SUCCESSORS AND ASSIGNS

The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the Parties and their heirs, successors, transferees and assigns. Nothing contained herein shall be deemed to create or impose any covenant or obligation running with or binding upon the land. Neither DIKA nor the Village shall assign this Agreement or any rights hereunder to anyone except with the prior written consent of the other Party, provided DIKA may assign this Agreement or its rights hereunder to (i) any entity controlling, controlled by, or under common control with DIKA (a "DIKA Affiliate") or (ii) in connection with a sale or disposal of the assets of DIKA or a DIKA Affiliate.

SECTION 22 - FORCE MAJEURE

Any obligation of a Party shall be extended by one day for every day that performance is delayed by unusual adverse weather conditions, strike, lockout, civil commotion, Act of God or any other cause beyond such Party's reasonable control; provided, however, that in no event shall (i) financial problems, (ii) inability to pay, or (iii) delays caused by COVID-19 be considered a force majeure event.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first above written, and by so executing this Agreement, they mutually represent and warrant to one another that they have full power and authority to enter into this Agreement.

Village of Homewood

Attest:

Richard A. Hofeld
Village President

Marilyn Thomas
Village Clerk

DIKA-Illinois, LLC

By: _____
Name: _____
Title: _____

EXHIBIT 1-BUILD OUT PLANS