

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL MEETING  
NOVEMBER 18, 2014 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
Planned Development Amendment, at Butterfield Square, 1021 Butterfield Road and a First Amendment to the Economic Incentive Agreement Between the Village of Downers Grove and Art Van Furniture-Midwest, LLC	Resolution ✓ Ordinance Motion Discussion Only	Stanley J. Popovich, AICP Planning Manager

**SYNOPSIS**

An ordinance has been prepared 1) to amend Planned Development #44 to permit 990 square feet of signage at 1021 Butterfield Road, Butterfield Square; and 2) approving a First Amendment to an Economic Incentive Agreement between the Village of Downers Grove and Art Van Furniture-Midwest, LLC

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011-2018 include *Strong and Diverse Local Economy*.

**FISCAL IMPACT**

N/A

**UPDATE & RECOMMENDATION**  
 This item was discussed at the November 11, 2014 Village Council meeting. Staff recommends approval on the November 18, 2014 Active Agenda.

**BACKGROUND**

The petitioner is requesting approval of an amendment to Planned Development #44 to permit 990 square feet of signage for a proposed furniture store (Art Van Furniture) at 1021 Butterfield Road. The petitioner is proposing an expansion of the retail floor area within the existing building footprint, an extensive interior renovation, a reconfiguration of the parking lot, major façade improvements and a sign package that includes 990 square feet of signage. The renovation and site improvements will be administratively approved with the building permit. The purpose of the Planned Development Amendment is limited to the request to permit a 990 square foot sign package.

The proposed sign package includes the removal of the existing non-conforming monument sign along Butterfield Road and installation of 990 square feet of wall signs. The requested deviations from the sign regulations are as follows:

1. Increase the maximum total sign area from 300 square feet to 990 square feet;
2. Permit a sign on the east façade without frontage where no sign is allowed; and
3. Allow two signs on the north, south and west facades where only one is permitted.

The property is located on the south side of Butterfield Road, where the only access is via Frontage Road at Downers Drive, approximately 1,500 feet west of the site, or Highland Avenue, approximately 650 feet east of the site. The 5.16 acre property, which is zoned B-3, General Services and Highway Business, is Lot 1 of the Butterfield Square Planned Development (#44).

The Village entered into an Economic Incentive Agreement with Art Van Furniture in November 2013, which included the interior and exterior remodel of the building and acknowledged the need to evaluate signage. As recognized in the Comprehensive Plan and the Economic Incentive Agreement, this property has unique access challenges. Additional signage has been determined to be necessary for the property to sustain a retail use.

#### Compliance with the Zoning Ordinance

The proposed expansion of the retail space within the existing building footprint, reconfiguration of the parking lot, interior remodel and façade improvements are allowed by-right and comply with the requirements in the Zoning Ordinance. The proposed sign package includes the removal of the existing non-conforming monument sign along Butterfield Road and installation of 990 square feet of wall signs.

As the petitioner is removing the non-compliant monument sign and will not be installing a new Butterfield Road or tollway monument signs, the petitioner is essentially requesting to swap the allowance for a tollway monument sign (225 square feet) for wall signage. The tollway monument sign square footage does not count toward the maximum total sign area. Therefore, the petitioner is only requesting an additional 465 square feet of signage in order to overcome site accessibility challenges.

Given the complexities of the adjacent roadways and in order to adequately identify the proposed furniture store, the petitioner has proposed wall signage on all four facades. As a flagship location, two secondary businesses will be co-located within the proposed furniture store and require adequate identification. As such, the petitioner has proposed two wall signs on the north, south and west facades where one sign will identify the proposed furniture store and the other sign will identify one of the two secondary businesses.

#### Compliance with the Comprehensive Plan

The property is designated as Regional Commercial in the Comprehensive Plan, which includes a blend of corporate offices, large shopping centers, hotels and big box development. The Plan calls for reinvestment of the regional commercial areas, specifically within the Butterfield Road corridor, to retain current businesses and attract new retailers and restaurants. The proposed furniture store is a new business to the area and the petitioner will be modernizing the existing building that has been vacant for the past several years. Reinvestment of this scale is anticipated to spur further reinvestment and modernization of the properties along Butterfield Road and enhance the corridor. Specifically, the Plan identifies the need to maximize visibility, which the petitioner will achieve with the proposed exterior remodeling and sign package. The proposed use, improvements and sign package are consistent with the Comprehensive Plan.

#### Public Comment

No public comments were received.

#### First Amendment to Economic Incentive Agreement

On November 12, 2013, the Village Council approved an economic incentive agreement with Art Van. The incentive agreement provided that the Village would consider the creation of a business district as part of the incentive package. Art Van is no longer requesting that that the Village consider the creation of the business district, therefore, the agreement is being amended to reflect that change. The agreement has also been amended to reflect a new project completion date of December 31, 2015.

**ATTACHMENTS**

Ordinance

Aerial Map

Planned Development Map

Staff Report with attachments dated October 6, 2014

Draft Minutes of the Plan Commission Hearing dated October 6, 2014

Ordinance

First Amendment to Economic Incentive Agreement

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Village Manager **DATE:** November 18, 2014  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "AN ORDINANCE APPROVING A FIRST AMENDMENT TO AN ECONOMIC INCENTIVE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND ART VAN FURNITURE-MIDWEST, LLC", as presented.



**SUMMARY OF ITEM:**

Adoption of this motion shall approve a first amendment to an economic incentive agreement with Art Van Furniture.

**RECORD OF ACTION TAKEN:**

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING A FIRST AMENDMENT TO AN ECONOMIC INCENTIVE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND ART VAN FURNITURE-MIDWEST, LLC**

**WHEREAS**, the Village of Downers Grove (“Village”) is a home rule unit of government and 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.

**WHEREAS**, 65 ILCS 5/8-11-20 authorizes municipalities to enter into economic incentive agreements in order to encourage the development or redevelopment of land within their corporate limits.

**WHEREAS**, 65 ILCS 5/8-1-2.5 authorizes municipalities to expend funds for economic development purposes within their corporate limits.

**WHEREAS**, Art Van Furniture-Midwest, LLC (the “Company”) entered into an Economic Incentive Agreement (the “Incentive Agreement”) with the Village on November 12, 2013.

**WHEREAS**, the Village and the Company desire to amend the Incentive Agreement to delete the provisions relating to the creation of a business district among other changes.

**WHEREAS**, the Company is the lessee of the property commonly known as 1021 Butterfield Road, Downers Grove, Illinois (the “Property”) which is improved with an approximately 100,000 square foot, two-story vacant building (the “Building”), above and below grade parking and loading.

**WHEREAS**, as the Company intends to (a) make substantial interior renovations to convert the Building to approximately 80,000 square feet of retail space and 20,000 square feet of office and warehouse space and (b) undertake substantial exterior renovations including, but not limited to façade improvements, roof repair, and access road improvements. The acquisition of the Property, the interior renovations and the exterior renovations are collectively referred to as the “Project.”

**WHEREAS**, in light of the less costly alternate locations and the substantial extraordinary costs associated with the Project, the rebating of amounts equal to a portion of sales taxes is critical to the Company’s decision to proceed with the Project.

**WHEREAS**, pursuant to 65 ILCS 5/8-11-20, the Village Council has made the following findings with respect to the Project:

- A. The Property has remained vacant for at least one year.
- B. The Project is expected to create or retain job opportunities within the Village.
- C. The Project will serve to further the development of the adjacent area.
- D. Without this Agreement, the Project would not be possible.
- E. The Company meets high standards of creditworthiness and financial strength, as demonstrated by a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the Company.
- F. The Project will strengthen the commercial sector of the Village.
- G. The Project will enhance the tax base of the Village.
- H. This Agreement is made in the best interest of the Village.

**WHEREAS**, pursuant to 65 ILCS 5/8-1-2.5, the Village Council has determined that the Project will promote economic development within the Village by creating employment opportunities and enhancing the Village's tax base.

**WHEREAS**, the Company represents and warrants that the Project requires economic assistance from the Village and, but for the economic assistance provided pursuant to this Agreement, the Project would not be possible.

**NOW THEREFORE**, BE IT ORDAINED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows

1. That the form and substance of a certain Economic Incentive Agreement (the "Agreement"), between the Village and the Company, for certain economic development incentives and sales tax rebates, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.
2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form

approved in the foregoing paragraph of this Ordinance, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance be and are hereby repealed.

5. That this Ordinance shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

**FIRST AMENDMENT TO**  
**ECONOMIC INCENTIVE AGREEMENT**

THIS **FIRST AMENDMENT TO THE** AGREEMENT is entered into on this \_\_\_\_\_ of November, 201~~3~~4, by and between the Village of Downers Grove, Illinois, an Illinois municipal corporation (hereinafter referred to as the “Village”) and Art Van Furniture-Midwest, LLC, a Michigan limited liability company (hereinafter referred to as the “Company”);

**WITNESSETH:**

**WHEREAS**, the Village is a home rule unit of government and 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.

**WHEREAS**, 65 ILCS 5/8-11-20 (the “Sales Tax Act”) authorizes municipalities to enter into economic incentive agreements in order to encourage the development or redevelopment of land within their corporate limits.

**WHEREAS**, 65 ILCS 5/8-1-2.5 (the “Economic Development Act”) authorizes municipalities to expend funds for economic development purposes within their corporate limits.



~~WHEREAS, 65 ILCS 5/11-74.3-1 (the "Business District Act") authorizes municipalities to establish business districts within their corporate limits in order to enhance their tax base, create employment opportunities and eradicate blight.~~

WHEREAS, the Company is the ~~lessee~~contract purchaser of the property commonly known as 1021 Butterfield Road, Downers Grove, Illinois (the "Property") which is improved with an approximately 100,000 square foot, two-story vacant building (the "Building"), above and below grade parking and loading. The Property is legally described on Exhibit "A" attached hereto and made a part hereof.

WHEREAS, ~~if~~ the Company ~~acquires the Property,~~ it intends to (a) make substantial interior renovations to convert the building to approximately 80,000 square feet of retail space and 20,000 square feet of office and warehouse space and (b) undertake substantial exterior renovations including, but not limited to façade improvements, roof repair, and access road improvements. The acquisition of the Property, the interior renovations and the exterior renovations are collectively referred to as the "Project."

WHEREAS, the Company anticipates that it will incur substantial extraordinary renovation and capital costs in connection with the Project.

WHEREAS, the Company has requested that the Village agree ~~(a)~~ to rebate amounts equal to a portion of Sales Taxes (as hereinafter defined) received by the Village that are generated by the Project for a certain period of time; ~~and (b) consider~~

~~the establishment of a business district pursuant to the Business District Act and impose a Business District Retailers' Occupation Tax in the amount of one half of one percent (0.005%) (the "Business District Tax") on the Property.~~

**WHEREAS**, in light of the less costly alternate locations and the substantial extraordinary costs associated with the Project, the rebating of amounts equal to a portion of Sales Taxes ~~and establishment of a business district are~~ critical to the Company's decision to proceed with the Project.

**WHEREAS**, pursuant to the Sales Tax Act, the Village Council has made the following findings with respect to the Project:

- A. The Property has remained vacant for at least one year.
- B. The Project is expected to create or retain job opportunities within the Village.
- C. The Project will serve to further the development of the adjacent area.
- D. Without this Agreement, the Project would not be possible.
- E. The Company meets high standards of creditworthiness and financial strength, as demonstrated by a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the Company.
- F. The Project will strengthen the commercial sector of the Village.
- G. The Project will enhance the tax base of the Village.
- H. This Agreement is made in the best interest of the Village.

**WHEREAS**, pursuant to the Economic Development Act, the Village Council has determined that the Project will promote economic development within the Village by creating employment opportunities and enhancing the Village's tax base.

**WHEREAS**, the Company represents and warrants that the Project requires economic assistance from the Village and, but for the economic assistance provided pursuant to this Agreement, the Project would not be possible.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate, the Village and the Company agree as follows:

**Section 1. Incorporation of Recitals.** The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Agreement.

**Section 2. Conditions Precedent.** The Village's obligation to disburse Sales Taxes pursuant to this Agreement is subject to satisfaction of the following conditions precedent by the Company: (a) the Company shall have obtained a certificate of occupancy from the Village no later than ~~March 1~~December 31, 2015 provided that the Village shall follow all standard and customary procedures for issuance of such certificate and (b) the Company shall commence selling products from the Property no later than ~~March 1~~December 31, 2015.

If the conditions precedent set forth in this Section 2 are not met by ~~March 1~~December 31, 2015, the Village shall have the option to terminate this Agreement. Notwithstanding the foregoing, if the Company's satisfaction of the conditions precedent is delayed due to one or more Events of Force Majeure, as hereinafter defined, the performance period shall be extended by the number of days the Company

was delayed due to such events. Upon giving written notice to the Company of such termination, this Agreement shall terminate and the obligations of the Village and the Company hereunder shall become null and void.

**Section 3. Definitions.**

For purposes of this Agreement, terms not otherwise defined herein shall have the following meanings:

“Commencement Date” – means the date that the Company provides written notice to the Village that the Project is open to the general public for business.

“Department” – means the Illinois Department of Revenue.

“Distribution” – means a distribution of an amount equal to a portion of Sales Taxes generated by the Project and made pursuant to the terms of this Agreement ~~and the amount of any Business District Tax rebated to the Company.~~

“Force Majeure Event” – means an accident, fire, partial or complete destruction of the improvements on the Property, unreasonable weather conditions, strike, shortage of materials, act of war or terrorism, acts of God or similar causes beyond the Company's reasonable control.

“Sales Tax(es)” – means (a) the local distributive share of any and all of those taxes imposed by the State of Illinois pursuant to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act and the Retailer’s Occupation Tax Act, each as supplemented and amended from time to time, or substitute taxes therefore as

provided by the State of Illinois in the future and (b) the Home Rule Municipal Service Occupation Tax and the Home Rule Municipal Retailer's Occupation Tax, imposed by the Village pursuant to Sections 21.101 and 21.201 of the Municipal Code, or any other home rule municipal use, retail or service occupation tax imposed by the Village, all as may be supplemented and amended from time to time, or substitute taxes therefore as provided by the Village in the future.

"Sales Tax Participation Period" – means a period of fifteen (15) years from the Commencement Date, unless extended pursuant to the terms hereof due to one or more Force Majeure Events, or until the total amount of Distributions, exclusive of accrued interest, paid to the Company by the Village equals THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000.00) whichever occurs first.

"Sales Tax Year(s)" – means the twelve (12) consecutive month period starting on the first day of the first month following the Commencement Date and ending on the last day of the month that is twelve (12) months later, and each consecutive succeeding twelve (12) month period thereafter.

"Village Assistance" – means an amount equal to THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000.00) payable in accordance with the terms of this Agreement.

**Section 4. Sales Tax Distributions.**

- (a) Provided the Company shall comply with and continue to be in compliance with the provisions of this Agreement, the Village shall distribute an amount equal to fifty percent (50%) of the Sales Taxes generated by the Project for each Sales Tax Year during the Sales Tax Participation Period, to the extent the same are received by the Village from the Department. Simple interest shall accrue on the unpaid balance of the Village Assistance (inclusive of any Holdback Funds) during the Sales Tax Participation Period at a rate of one and one-quarter percent (1.25%). Interest shall be computed on the basis of a 360 day year. Payments by the Village shall be applied first to accrued but unpaid interest, and the remainder, if any, to principal. In the event that any payment shall be insufficient to pay all accrued, but unpaid interest under this Agreement, interest shall accrue but shall neither be added to principal nor itself bear interest.
- (b) For each Sales Tax Year during the Sales Tax Participation Period, the Village shall make one (1) Distribution as provided herein. The Village shall compute the Sales Taxes for each Sales Tax Year and shall make the Distribution within one hundred twenty (120) days after the end of each Sales Tax Year, provided the Village shall have first actually received from the Department the distribution of all Sales Taxes applicable to the Sales Tax Year in question, and each Distribution shall be accompanied by a

letter from the Village setting forth the determination of such Distribution. If the payment due date does not fall on a business day, payment shall be made on the next following business day. If for any reason the Department fails to distribute all of the Sales Taxes due to the Village that are generated by the Project within one hundred twenty (120) days of the close of any Sales Tax Year, then the Village shall make the required annual Distribution within a reasonable period of time after it shall have received from the Department all of the Sales Taxes due to the Village for such period.

- (c) The Village shall withhold an amount equal to one quarter (1/4) of the Distribution due to the Company for each annual period to ensure compliance with Section 10(d) of this Agreement (the "Holdback Funds"). The amount of the Holdback Funds shall be adjusted annually based upon the amount of the Distribution for the applicable Sales Tax Year. If the Company fails to continue to operate in accordance with Section 10(d) of this Agreement, the Holdback Funds shall be automatically forfeited to the Village and shall be credited against any amount that may be due from the Company pursuant to Section 10(e). Provided, however, that if the Company has continued to operate in compliance with Section 10(d), the Holdback Funds from the preceding Sales Tax Year shall be disbursed to

the Company within thirty (30) days of the end of the most recent Sales Tax Year.

**Section 5. Third Party Retailers.** The Village acknowledges that the Company may license or lease space to one or more third party retailers within the Project; provided, however, that Village consent shall be required, such consent not to be unreasonably withheld or conditioned. The Village hereby approves as third party retailers: ABT Electronics, Best Buy, Paul's TV or an affiliate company, Luna Carpets, Olson Rug Company and Starbucks Coffee. To the extent that such third party retailers generate Sales Taxes, such Sales Taxes shall be deemed "Sales Tax generated by the Project" and distributed to the Company in accordance with Sections 4 and 6. The Village's obligation to distribute Sales Taxes attributable to such third party retailers shall be subject to and governed by the provisions of Sections 4, 6, 7, 8, 9 and 10. The intent of the parties with respect to the preceding sentence is that Sales Taxes generated by such third party retailers shall be treated as if generated by the Company's operations in all respects.

**Section 6. Changes in Sales Tax Law.** The parties acknowledge that the agreement to distribute Sales Taxes herein provided is predicated on existing law in the State of Illinois providing for the payment by the Department to Illinois municipalities of one percent (1%) of the taxable sales generated within each municipality and the Home Rule Municipal Service Occupation Tax and the Home Rule Municipal Retailer's



Occupation Tax, imposed by the Village pursuant to Sections 21.101 and 21.201 of the Municipal Code. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of sales tax revenues to Illinois municipalities. It is expressly understood that if a governmental or legislative body other than the Village enacts any law or statute which results in any material changes or amendments to the foregoing sales tax provisions, which prohibits the Village from complying with this Agreement or which adversely affect the Village's ability to comply herewith, then the Village and the Company shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than one hundred eighty (180) days from the effective date of the law or statute which has materially affected the Village's compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder. Notwithstanding the foregoing, the parties agree that they shall negotiate in good faith to achieve a restructured agreement that affords the Company substantially similar economic benefits as those contemplated by this Agreement.

**Section 7. Obtaining Sales Tax Information.**

- (a) The Company and the Village shall provide such authorization and/or take such additional actions as may be required to obtain necessary information from the Department to enable the Village to determine the

amount of Sales Taxes generated by the Project during any portion of the Sales Tax Participation Period, if applicable. The Company shall provide the Department with any and all documentation required by the Department and shall provide the Village with a power of attorney letter addressed to, and in a form satisfactory to, the Department authorizing the Department to release all gross revenue and sales tax information to the Village, which letter shall authorize such information to the Village as long as the Company continues to operate or own a business on the Property and this Agreement is in effect. Such letter shall be in the form required from time to time by the Department in order to release such information to the Village.

- (b) In the event the Department refuses or otherwise fails to make the necessary sales tax information available to the Village, the Company shall furnish to the Village copies of the ST-1 and ST-2 monthly statements filed with the Department, certified by the Company, showing the amount of Sales Taxes paid during such month by the Company, together with evidence of the payment of such taxes, and the Village agrees to rely upon such certified monthly statements and evidence of payment in calculating the amount of Sales Tax Distributions available for disbursement to the Company hereunder. If the Department stops using either the ST-1 or ST-

2 monthly statement forms for the reporting of gross sales receipts and the determination of gross sales tax obligations, the Company shall furnish to the Village, and the Village, in fulfilling its obligations under this Agreement, shall rely upon, such equivalent or replacement forms as the Department may then employ for determining and receiving such information provided the Village receives certified copies of such equivalent or replacement forms as evidence of payment of the sums referred to in such forms.

- (c) The Company acknowledges that the Village shall have no obligation to make Distributions to the Company that reflect the retail sales activities of the Project unless and until the Village receives from the Company or the Department the documentation and evidence of payment referred to in this Section.

**Section 8. Confidentiality of Information.** The Company hereby claims that the Sales Tax information received by the Village pursuant to this Agreement is proprietary, privileged and confidential and that the disclosure of such information would cause competitive harm to the Company; therefore, the Village, to the fullest extent permitted by law, shall treat information received by it pursuant to this Agreement as confidential financial information under the Illinois Freedom of Information Act. To the extent the Village is required to disclose such information, it shall limit such disclosure, to the

extent possible, to the release of gross revenue and sales tax information so that proprietary information of individual businesses and purchasers is protected and kept confidential.

**Section 9. Amended Returns and Audits.** If, as a result of an amended tax return filed with either the Department or the Village, the Village owes an additional Distribution to the Company, such Distribution shall be made promptly upon receipt by the Village of such additional Sales Taxes. If, as a result of an amended return, the Village is entitled to receive a portion of a Distribution back, the Company shall repay such amount to the Village within thirty (30) days of written notice from the Village. In the event the Company amends any tax return filed with the Department upon which a Distribution was made to the Company pursuant to this Agreement, the Company will notify the Village of such amendment within ten (10) days of filing such amended return and the Village shall use its reasonable best efforts to obtain such information from the Department. If an audit by the Department results in adjustment to tax returns previously submitted upon which Distributions were made, upon final disposition of any changes made as a result of such audit, any amount due and owing to a party shall be made in the manner described in the preceding paragraph. In the event that the Company is audited by the Department, the Company shall notify the Village of such audit within ten (10) days of completion of said audit. The obligations set forth in this

Section 9 shall survive for a period of thirty-six (36) months from the date of the last Distribution hereunder.

**Section 10. Limitations on Distributions.** The Distributions set forth herein shall be subject to the following additional terms and conditions:

- (a) At all times during the term of this Agreement, the Company shall be in material compliance with all of the terms and conditions of this Agreement and any and amendments thereto and all other applicable laws, codes, ordinances (including, but not limited to, Ordinance No. 5344 & passed by the Village on November 12, 2013 and November , 2014), rules, regulations and permits applicable to the Project, including, but not limited to, the Village's Zoning Ordinance (collectively with the Agreement, "Applicable Laws"). Should the Company, for any reason other than a Force Majeure Event (as hereinabove defined), fail to remain in continual, material compliance with Applicable Laws, after thirty (30) days written notice by the Village to the Company detailing with specificity the Company's failure hereunder, and failure of the Company to cure such failure within such thirty (30) day period (or such longer period as may be reasonably necessary to cure such failure provided the Company is diligently pursuing the same), the Village's duty to make the Distributions during such period of material non-

compliance may be suspended in the Village's reasonable discretion and the Company shall forfeit an amount equal to fifty percent (50%) of the Sales Taxes generated by the Project during the period of material non-compliance. Such period of material non-compliance shall be deemed to have commenced after the cure period afforded above and shall continue until such date as the material non-compliance has been substantially cured, if at all. If, at any time during the balance of the term of this Agreement, the Company shall re-establish material compliance with all of the Applicable Laws and the Village shall acknowledge that such compliance exists (which acknowledgment shall be reasonably given), the Village's duty to make Distributions as herein provided for shall again become effective. In no event (whether caused by a Force Majeure Event or otherwise) shall the Sales Tax Participation Period be extended due to events described in this subsection (a). If a Force Majeure Event occurs, the Company shall not be required to make any reimbursements to the Village pursuant to Section 10(e) hereof and shall bring the Project back into compliance as soon as commercially reasonable, but in no event later than eighteen (18) months from the start of such occurrence. The Distributions shall not cease during the period of the Force Majeure Event, provided that the Company is performing hereunder. In the event one or

more Force Majeure Events causes the Company to fully cease operations during the Sales Tax Participation Period, the term of this Agreement shall be extended by the period between the cessation of operations and the date the Company resumes operations.

- (b) The amount of Distributions, if any, shall be based solely from Sales Taxes, as appropriate, actually received by the Village and generated by the Project, and the Village shall not be obligated to make any Distributions identified herein from any other fund or source. However, the Village reserves the right to make Distributions from any funding source it deems appropriate. The obligation of the Village created by or arising under this Agreement shall not be a general debt of the Village or a charge against its general credit or taxing powers, and no recourse shall be had for any payment required to be made under this Agreement against any officer, employee, attorney, elected or appointed official, past, present or future, of the Village.
- (c) The Village shall not be required to effect any Distribution(s) from any Sales Taxes generated after expiration of the Sales Tax Participation Period except as provided in Section 10(a) hereof. The foregoing, however, shall not relieve the Village from effecting Distributions, if any, from Sales Taxes paid after expiration of the Sales Tax Participation Period, subject to the

limitations of this Section, to the extent that such Sales Taxes were generated during the Sales Tax Participation Period, as applicable.

- (d) **Commitment to Continue Operation:** The parties agree that all Distribution payments are based in part upon: 1) a commitment by the Company to continue operation of a retail store of at least 65,000 gross square feet on the Property (inclusive of licensed or leased third party retailer space) for a period of not less than twenty (20) years from the Commencement Date of this Agreement, and; 2) a scheduled reimbursement of such Distribution payments, if the terms of this commitment are not fulfilled. To that end, the Company agrees to continue the operation of a retail store of at least 65,000 gross square feet on the Property (inclusive of licensed or leased third party retailer space) for twenty (20) years from the Commencement Date of this Agreement. If, at any time during this time period, the Company, or a successor, fails to operate a retail store as described in this Section 10(d), then the Village shall be released and discharged from any further obligation to make payments under this Agreement, and the Company or its successors shall reimburse the Village in accordance with Section 10(e) of this Agreement. The failure to meet this commitment is not a breach, but rather a foreseeable event for which the offsetting terms have been agreed to in



Section 10(e) of this Agreement. Accordingly, the Village's sole remedy under this Agreement for the Company's failure to operate a retail store as described in this Section 10(d) shall be reimbursement in accordance with Section 10(e).

(e) **Reimbursement:** In the event the Company, or any approved successor, fails to continue to operate a retail store on the Property as provided in Section 10(d) of this Agreement but subject to Force Majeure, the Company, or such approved successor, shall reimburse to the Village within sixty (60) days of receipt of a written demand from the Village specifying the amount of the reimbursement all or a portion of the Distribution payments paid hereunder according to the following schedule: If said event occurs during:

- 1) Year one through five of the Term - One hundred percent (100%) of the amount of the Distributions
- 2) Year six through 10 of the Term - Seventy-five percent (75%) of the amount of the Distributions
- 3) Year 11 through 15 of the Term - Fifty percent (50%) of the amount of the Distributions
- 4) Year 16 through the end of the Term – Twenty-five percent (25%) of the amount of the Distributions

After the expiration of a sixty (60) day written demand by the Village to the Company or its successors, specifying the amount due, the Village may, in its sole discretion, pursue any and all available legal remedies to recover said monies, including,

without limitation, the right to proceed with an action in law or in equity to recover the amounts owed. Notwithstanding the foregoing, no reimbursement shall be due to the Village in the event that the Company ceases operations and leases the Property to one or more tenants (or sells the property to a retailer) that generate estimated sales tax revenues that are comparable to the average Sales Taxes generated by the Project for the preceding three Sales Tax Years; provided, however, that Village consent shall be required, such consent not to be unreasonably withheld or conditioned.

**Section 11. Appropriation.** The Village shall provide for payments required under this Agreement in its annual budget ordinance for the fiscal year in which such payment may be due.

~~**Section 12. Business District Establishment.** The Village acknowledges that the Village's establishment of a business district for the Property, imposition of the Business District Tax on the Property and the rebate of all Business District Taxes collected or received by the Village to the Company are material to the Company's undertaking of the Project. The parties further agree and acknowledge that it is not legally feasible to establish a business district or impose the Business District Tax within the time periods desired by either party. The parties also agree that any and all Business District Tax rebated to the Company shall be included in the total amount of the Distribution paid to the Company. The Village agrees that, to the extent permitted by law, it shall take all actions necessary or desirable to consider the establishment of a business district on the~~

~~Property and impose the Business District Tax on the Property, all on terms and conditions that are reasonably acceptable to the Company, within one hundred eighty (180) days of the effective date of this Agreement (the "Establishment Date"). On or before the Establishment Date, the Village shall also use good faith efforts to consider an amendment to this Agreement or a separate agreement, on terms and conditions that are reasonably acceptable to both parties, which set forth the terms for, among other things, the collection and distribution of the Business District Tax (the "Business District Agreement").~~

**~~Section 13.~~ Section 12. Prevailing Wage.** The Company is hereby notified by the Village that work contemplated by this Agreement may be subject to the Prevailing Wage Act 820 ILCS 130/1 *et seq.* The Company agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by the Illinois Department of Labor ("IDOL"). The Company further agrees to contact IDOL for a determination of applicability of the Prevailing Wage Act to the projects contemplated by this Agreement. If required by IDOL, the Company agrees to pay the prevailing wage rates and to require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform construction work on the projects contemplated by this Agreement. The Company recognizes and agrees that it is solely responsible for compliance with the Prevailing Wage Act and agrees to fully indemnify, defend and hold harmless the Village

pursuant to Section ~~22~~21 below with regard to any actions or proceedings instituted regarding such compliance.

~~Section 14.~~ Section 13. **Signage Approvals.** The Village acknowledges that the Company has requested approval of a signage package (the “Company Signage”), the approval of which is material to the success of the Company’s business at this location. The parties further agree and acknowledge that it is not legally feasible to secure all of the necessary approvals for the Company Signage within the time periods desired by either party. The Village agrees that, to the extent permitted by law, it shall consider an amendment to the Planned Unit Development Number 33, Ordinance Number 4886, to address the Company Signage request.

~~Section 15.~~ Section 14. **Notices.** All notices and requests required pursuant to this Agreement shall be sent by certified mail as follows:

To the Company:                     Art Van Furniture Midwest, LLC.  
  Attn: Real Estate Department  
  6500 14 Mile Road  
  Warren, Michigan 48092

with copies to:                     Art Van Furniture Midwest, LLC.  
  Attn: General Counsel  
  6500 14 Mile Road  
  Warren, Michigan 48092

~~with copies to:                     Dykema Gossett PLLC  
  10 South Wacker Drive  
  Suite 2300  
  Chicago, Illinois 60606  
  Attn: Andrew P. Scott~~

To the Village:                     Village of Downers Grove

Attn: Village Manager  
801 Burlington Avenue  
Downers Grove, IL 60515-4782

with copies to: Village of Downers Grove  
Attn: Village Attorney  
801 Burlington Avenue  
Downers Grove, IL 60515

or at such other addresses as the parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

~~Section 16.~~ Section 15. **Law Governing/Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the Illinois state courts.

~~Section 17.~~ Section 16. **Assignments.** This Agreement may not be assigned without the Village's consent; provided, however, that nothing contained herein shall be construed as limiting the Company's rights to assign this Agreement to an entity controlling or controlled by the Company, a joint venture of which the Company is a general partner, or a lender so long as the Company notifies the Village of such assignment. The parties acknowledge that this Agreement is an obligation which runs to the Company and is not a covenant running with the land.

~~Section 18.~~ Section 17. **Third Party Beneficiaries.** The Village and the Company agree that this Agreement is for the benefit of the parties hereto and not for the benefit of any third party beneficiary. No third party shall have any rights or claims against the Village arising from this Agreement.

~~Section 19.~~ Section 18. **Time.** Time is of the essence under this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

~~Section 20.~~ Section 19. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Village, the Company and the Company's permitted assigns.

~~Section 21.~~ Section 20. **Limitation of Liability.** Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Village created by or arising out of this Agreement shall not be a general debt of the Village or a charge against its general credit or taxing powers, but shall be payable solely out of the Sales Taxes or substitute sources of revenue as set forth herein. No recourse shall be had for any payment pursuant to this Agreement against any officer, employee, attorney, elected or appointed official, past, present or future of the Village.

~~Section 22.~~ Section 21. **Indemnification:** In the event that any third party or parties institutes any legal proceedings against the Village and/or the Company, which relate to the terms of this Agreement, then, in that event, the Company shall indemnify

and hold harmless the Village from any and all such proceedings; provided, however, that the Company shall have no indemnification obligations or proceedings arising out of the willful misconduct or fraud by the Village. Further, the Company, upon receiving notice from the Village of such legal proceedings, shall assume, fully and vigorously, the entire defense of such lawsuit or proceedings and any and all reasonable costs and expenses of whatever nature relating thereto; provided, however, that the Company may not at any time settle or compromise such proceedings without the Village's consent and even then only so long as such settlement or compromise does not involve an admission of wrongdoing on the part of the Village, nor any liability on the part of the Village, monetary or otherwise.

If the Village, in its sole discretion, determines that there is, or may probably be, a conflict of interest between the Village and the Company on an issue of material importance to the Village, or which may reasonably have a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event that the Village exercises such option, then the Company shall reimburse the Village from time to time on written demand from the Village and notice of the amount due for any and all reasonable out-of-pocket costs and expenses, including but not limited to court costs, reasonable attorney's fees, witnesses' fees and/or other litigation expenses incurred by the Village in connection therewith.

~~Section 23.~~ **Section 22. No Waiver or Relinquishment of Right to Enforce Agreement.** Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such terms, covenant, agreement or conditions, but the same shall continue in full force and effect.

~~Section 24.~~ **Section 23. Village Approval or Direction.** Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met.

~~Section 25.~~ **Section 24. Section Headings and Subheadings.** All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

~~Section 26.~~ **Section 25. Authority to Execute.** The Company has provided the Village with a certified copy of its By-Laws and Certificate of Incumbency providing that R. Kim Yost, its CEO, is a duly authorized agent of the Company and is specifically authorized to sign this Agreement. The Village Manager of



the Village hereby warrants that he has been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement.

**~~Section 27.~~ Section 26. Amendment.** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Company and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them. However, whenever under the provisions of this Agreement any notice or consent of the Village or the Company is required, or the Village or Company is required to agree to or take some action at the request of the other, such approval or such consent or such request shall be given for the Village, unless otherwise provided for herein, by the Village Manager or his designee and for the Company by any officer or employee the Company so authorizes.

**~~Section 28.~~ Section 27. Counterparts.** This Agreement may be executed in two (2) or more counterparts each of which taken together, shall constitute one and the same instrument.

**~~Section 29.~~ Section 28. Default.** In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the

party or parties in default or violation, which notices shall be in writing and shall specify the particular violation or default. All parties hereto reserve the right to cure any violation of this Agreement or default by any of them hereunder within thirty (30) days from written notice of such default or such additional period as may reasonably be required to cure such default.

~~Section 30.~~ Section 29. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

~~Section 31.~~ Section 30. Term. Unless sooner terminated by agreement of the parties or otherwise pursuant to the provisions of this Agreement, this Agreement shall be effective upon the execution by both parties thereto and shall continue in effect until the date that is twenty (20) years from the Commencement Date unless such period is extended due to one or more Force Majeure Events; provided, however that the Village's obligation to make a Distribution payment shall end at the end of the Sales Tax Participation Period and the remaining terms and conditions of the Agreement shall remain in full force and effect until the date that is twenty (20) years from the Commencement Date unless such period is extended due to one or more Force Majeure Events.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date and year first written above.

VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation,

By: \_\_\_\_\_  
Village Manager

ATTEST:

\_\_\_\_\_  
Village Clerk

ART VAN FURNITURE-MIDWEST, LLC, a Michigan limited liability company,

By: \_\_\_\_\_  
\_\_\_\_\_ 007.29/2014

ATTEST:

\_\_\_\_\_  
Irene Sadikoff  
Legal Specialist

24 Art Van Furniture-Midwest, LLC

De  
M3f

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF DU PAGE        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, Mayor of the VILLAGE OF DOWNERS GROVE, and \_\_\_\_\_, Village Clerk of said Village, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and Village Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument, as their own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth; and the said Village Clerk then and there acknowledged that she, as custodian of the corporate seal of said Village, did affix the corporate seal of said Village to said instrument, as her own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 201~~3~~<sup>4</sup>.

\_\_\_\_\_  
Notary Public

STATE OF ~~ILLINOIS~~ <sup>Michigan</sup> )  
 COUNTY OF ~~DU PAGE~~ <sup>Macomb</sup> )      SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that R. Kim Yost, CEO of Art Van Furniture-Midwest, LLC, and \_\_\_\_\_, \_\_\_\_\_ of said Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument, as their own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged that s/he, as custodian of the corporate seal of said Company, did affix the corporate seal of said Village to said instrument, as her/his own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 29<sup>th</sup> day of October, 2017<sup>4</sup>.

Jennifer Lunsford  
 Notary Public

JENNIFER LUNSFORD  
 NOTARY PUBLIC, STATE OF MI  
 COUNTY OF WAYNE  
 MY COMMISSION EXPIRES Dec 17, 2019  
 ACTING IN COUNTY OF Macomb

# EXHIBIT "A"

## LEGAL DESCRIPTION

Lot 1 in Butterfield Square Subdivision, being a subdivision of part of the West half of the Southwest quarter of Section 29, Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded September 26, 2007 as Document No. R2007-177599, in DuPage County, Illinois.

Together with all easements of record for ingress, egress and utilities.