

## COUNCIL WORKSHOP ITEM

**ITEM:** Economic Assistance Request for Gartner Saab, Inc.  
**DATE:** February 4, 2003  
**PREPARED BY:** Steven Rockwell, CECD Director Economic Development  
**PURPOSE:** Approval by Resolution to authorize Sales Tax Revenue Sharing with Gartner Saab a new car dealership located at 205-217 Ogden Avenue. This incentive is permitted under Village policy adopted in July 2000, to react on a case by case basis to development proposals and incentive requests.

### DISCUSSION:

Roland H. Gartner, President and owner of Gartner Saab of Aurora, Illinois intends to purchase, raze and redevelop the site at 205-217 Ogden Avenue which now houses the Downers Grove Motel and Hostess Bake Shoppe, respectively. Initial documents require that the property be sold/closed by February 18, 2003. Gartner Saab's due diligence period for these properties was 90 days for the motel and initially 60 days for the bake shop, with a thirty day extension in terms to arrive at the February 18, 2003 date. This period was used by Gartner Saab to file for a Special Use with the Zoning Board of Appeals and the Council to repair automobiles in a business district, which was granted in January 2003.

Additionally, Gartner Saab utilized this period to request an incentive from the Village. The Economic Development Commission, through its various subcommittees, accepted an application from Gartner Saab; met with the principal, Roland H. Gartner his accountants, Crowe-Chizek and Company, LLP of Oak Brook, Illinois and his architect, Jeff Brown of the JRB Group Architects of Arlington Heights, Illinois; deliberated in public meetings held on January 23<sup>rd</sup> and 28<sup>th</sup>, 2003 over the request and how it might improve current Ogden Avenue conditions and finally scored the *EDC Incentive Application* with the Incentive Matrix adopted by the Council for this purpose.

The EDC sub committee, chaired by *Mike Kelch*, President of Heartland Business Systems, *Jeff Bilek*, Partner with Ernst and Young, *Mike Riordan*, Director of US Planning and Reporting for the McDonald's Corporation, *Liz Chalberg*, Realtor with Coldwell Banker Real Estate; *John Luca*, Senior Vice President of Column Financial, Inc., a Credit Suisse-First Boston Company and *Barbara Wysocki*, Executive Director of the Downers Grove Area Chamber of Commerce learned and evaluated the following:

- 1) Mr. Gartner was recently awarded an exclusive Area of Responsibility (AOR) from Saab from Illinois 53; to just south of O'Hare; to Cicero Avenue; to I -80. Saab currently has 7 dealerships in greater Chicagoland including 3 with Gartner. Saab projects that 25-35% of cars sold would be in the Downers Grove AOR.
- 2) Saab recently became a subsidiary of GM and is searching for a US manufacturing site.
- 3) Gartner Downers Grove would anticipate selling 350 new Saabs at an average retail price of \$33,000 and an additional 300 used vehicles at an average retail price of \$22,000.

- 4) Saab expects very high standards from its dealers. They use expensive wood flooring, white tile, high grade carpets and high tech Swedish architecture/design. They do not use prefabrication.
- 5) Mr. Gartner expressed a timetable of 7-12 months and wants to sell new cars from a new facility on Ogden in December 2003.
- 6) Prior to utilizing the new facility, Mr. Gartner states that he intends to sell 15 new cars per month from the remodeled Hostess facility.
- 7) Provision of the ST-1(Sales and Use Return) and ST-556 (Sales Tax Transaction Return) provided the following insight at the current Aurora facility.

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Saab Sales	220	213	281
Total Taxable Sales	\$6,871,430	\$6,900,553	\$9,466,830
Total State Sales Tax	\$ 446,643	\$ 448,536	\$ 615,344
Total Rebated @ 1%	\$ 68,714	\$ 69,006	\$ 94,668

- 8) Gartner is the 16<sup>th</sup> largest car dealership in Illinois and the 2<sup>nd</sup> largest Buick dealership. Mr. Gartner believes that he can grow the Saab business here as well. Mr. Gartner established his current location in 1996 and has been in car sales since the 1970's.
- 9) Mr. Gartner stated that he needed the incentive to offset the following impacts. Mitigate the very high acquisition costs of real estate. Sellers are including loss of business and rental income (present and future) in selling price.

<u>Parcel</u>	<u>Market Value</u>	<u>Purchase Price</u>	<u>Difference</u>
1. Hostess/IBC	425,000	1,000,000	575,000
2. Motel	760,000	1,500,000	740,000
3 4320 Cumnor	<u>166,000</u>	<u>650,000</u>	<u>484,000</u>
<b>Total</b>	<b>1,351,000</b>	<b>3,150,000</b>	<b>1,799,000</b>

10) Mitigate the cost of demolishing existing buildings	200,000
11) Mitigate the cost of underground storm water detention	200,000
12) Mitigate the cost of site prep at 4320 Cumnor	<u>100,000</u>
<b>Total</b>	<b>2,299,000</b>

The subcommittee determined that it should evaluate the value of the new automotive dealership at this time and at this place on Ogden Avenue. It was determined that the Gartner Saab dealership would satisfy several Major Goals of the *Ogden Avenue Commercial Corridor Master Plan* prepared by the Lakota Group, Inc in March 1999 including:

- Encourage redevelopment of identified “Opportunity Sites” or other locations whose value to the Corridor and community could be enhanced through redevelopment. *(This was identified as an Sub Area E East- Southwest Corner Ogden & Cumnor “opportunity site” No. 24)*
- Encourage redevelopment of sites with buildings in poor physical condition or whose size/layout makes them inefficient or unusable. This would create opportunities for new buildings. *(A new building is proposed to improve size, layout and condition)*
- Improve the facades of unattractive and/or deteriorating buildings to improve the general appearance of Ogden Avenue. *(A new building is proposed with attractive architecture)*
- Improve business signage to reduce sign clutter and enhance the Corridor’s physical character and traffic safety, while maintaining individual business identification. *(Existing signage will be demolished)*
- Establish a common landscape/streetscape design theme along Ogden Avenue to enhance the visual quality of the Corridor for shoppers, visitors and residents. Improve the parkway with new trees *(Mr. Gartner explained he would prefer to do greenery other than trees)*, plantings, signage and sidewalks.
- Where feasible, consolidate driveways to more efficient, shared locations to reduce curb cuts along Ogden Avenue and improve turning movements. *(Mr. Gartner’s plans propose to close three Ogden Avenue curb cuts)*

The sub committee also agreed to discuss “opportunity costs”. These are the costs that the Village would/could incur if the proposed project did not develop at this time( *i.e. loss of TIF revenue, loss of sales tax revenue and failure to close curbs and remove inefficiencies.*) These goals were taken into consideration in individual Matrix Scores by committee members as well as the following: 1) Downers Grove will attract a business which will increase the Village’s sales tax revenue immediately and dramatically.2) Downers Grove will attract a business which will increase the Village’s real estate tax revenue immediately and dramatically. 3) Incentives rebated to the business are earned by the business through sales. The Village does not loan, guarantee or advance the rebates. 4) The village is attracting a business with an investment of over \$11 million. 5) Traffic patterns on 300 feet of Ogden will be improved. Curb cuts will be reduced from four to one. Two businesses with average traffic volume will be replaced with one business with equal or less ingress/egress traffic.

With consideration to these items, as well as the presentation by and answers from Gartner Saab representatives of the subcommittee evaluated the proposal with an overall score of 177. As in the past recommendations, this committee has provided the Village Council with other enterprises scores to help establish a baseline for comparison.

<b>Name</b>	<b>Year</b>	<b>Matrix Score</b>	<b>Actual/ Post Development <sup>1</sup></b>
Burpee Gardens	1999	123	Post Development
Max Madsen	1999	165	Post Development
Luxury Motors	2000	144	Actual
Fry’s Electronics	2001	232	Actual
Gartner Saab	2003	177	Actual

<sup>1</sup> post development scores occur when the 2000 matrix is used on pre-2000 projects.

**Agreement Terms:**

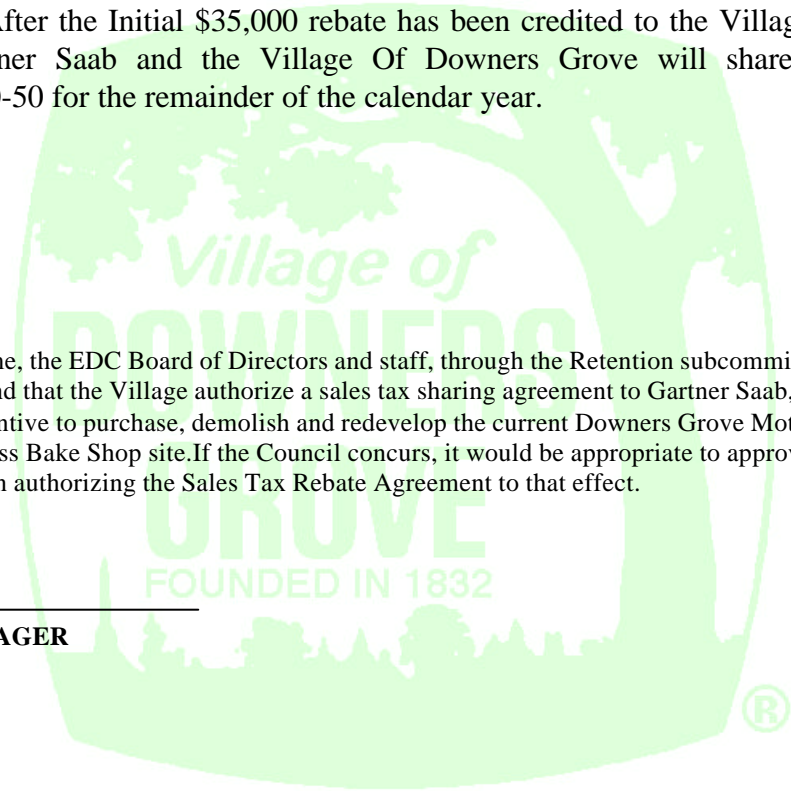
- **Term of Rebates** – Rebates will commence on the 1<sup>st</sup> day the Dealership begins new sales and operations in the New Dealership for a period not to exceed seven years
- **Initial Rebates** – The Initial Rebates of \$35,000 shall not be shared with Gartner Saab, but will accrue to the Village Of Downers Grove for the first and each succeeding year of the term.
- **Shared Rebates** – After the Initial \$35,000 rebate has been credited to the Village Of Downers Grove, Gartner Saab and the Village Of Downers Grove will share the remaining Sales Tax 50-50 for the remainder of the calendar year.

**RECOMMENDATION:**

At this time, the EDC Board of Directors and staff, through the Retention subcommittee recommend that the Village authorize a sales tax sharing agreement to Gartner Saab, Inc., as an incentive to purchase, demolish and redevelop the current Downers Grove Motel and Hostess Bake Shop site. If the Council concurs, it would be appropriate to approve an Resolution authorizing the Sales Tax Rebate Agreement to that effect.

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**APPROVED BY VILLAGE MANAGER**



## **EDC Retention Committee and Staff Report**

**Name of Enterprise:** Gartner Saab.

**Owners:** Roland H. Gartner

**Phone:** 630-241-8500

**Address:** 205-217 Ogden Avenue

**Established in 2003**

### **History**

Gartner Saab opened its doors in 1996 in Aurora at its present location when Roland Gartner expanded his Buick dealership from another part of Aurora. Since then, Gartner Buick-Hyundai-Saab, Inc. has come to be known as one of the preeminent vendors of Buick and Saab automobiles in the western suburbs and throughout the state of Illinois.

### **Proposed Project**

Roland Gartner Saab is contemplating purchasing the Downers Grove Motel at 205 Ogden Avenue and directly adjacent to that business location, 215 Ogden Avenue, the Hostess Bakery Thrift Shop. It is contemplated that the structures upon the property will be discretely and safely removed to make way for a new dealership with 18,000 square feet of showroom and shop space. The external parking lot/ display area will hold over 120 vehicles. It is proposed that all of the property will then be finished with a tastefully designed and appointed surface to include landscaping. When the new dealership becomes the combination of these two parcels, it will be 210 feet deep and have 340 feet of frontage on Ogden Avenue. Mr. Gartner also states that he is in conversation with the owners of 4320 Cumnor Avenue to purchase that parcel as well. Although this parcel would increase the total site by 30,000 square feet and increase the total size to 2.7 acres, this third parcel would need to be rezoned if automobile uses are contemplated. The EDC Staff and subcommittee also informed the petitioner that only one of the three existing curb cuts on Ogden would be acceptable in our recommendation.

### **Economic Need**

Mr. Gartner states that in order to make this project economically feasible, it is necessary that the Village of Downers Grove form some degree of partnership with the enterprise to accomplish this endeavor. Specifically, Gartner Saab must receive financial assistance to complete the anticipated purchase and renovation. The proposed development plan submitted to the Village of Downers Grove for review for consideration under our Economic Incentive Policy expects total capital investment of approximately \$7.8 million. \$2.5 million is expected for Land Acquisition, although the addition of 4320 Cumnor could add \$650,000, with an additional \$500,000 for Demolition. Two million dollars is budgeted for new Construction and another \$900,000 in Capital Expenses and \$250,000 in Fixed Assets. \$250,000 is also allocated for Soft Costs.

## Cost Benefit Analysis/Matrix Scoring

**AESTHETICS** – In the opinion of the EDC Board and staff, the proposed changes will, without question, improve the aesthetics of the study area.

**CODE-ZONING VARIANCE REQUIREMENTS**- The project should need no zoning variances and will eliminate several code difficulties that have been grandfathered for many years (no interior traps for auto liquids)

**CREATES MORE MARKETABLE SPACE**- The EDC Board and Staff determined that the space was moderately marketable in its current state. That being said, it would be completely possible to create another motel, etc. and keep the status quo.

**CULTURAL BENEFITS**- Few points were awarded here as demolishing a building and building a parking lot rarely qualify as cultural.

**DENSITY**- The proposed project will reduce the negative attributes associated with a congested appearance that now exists for both businesses.

**ENVIRONMENTAL IMPACTS**- Three to four points were awarded the proposed project, on average. This occurred over comments that building material, automobile fuels, etc would be cleaned up.

**FILLS VACANCY**- Again , only a perceived vacancy , few points

**FINANCIAL INVESTMENT OF IMPROVEMENTS**- As the proposed project will have very good investment, the EDC Board and staff felt that some of the money would be spent merely on acquiring and demolishing the motel. Points were awarded for the money in excess of that amount.

**JOB CREATION/RETENTION** – The committee awarded minimal points for the increase to 30 plus jobs from the present condition.

**MEETS REDEVELOPMENT GOALS** – A conservative approach was utilized in assigning points here and the project still scored very well. As the project was deemed to be in keeping with the Ogden Avenue Plan, the positive impact scored high.,

**NEW/CONTINUING VILLAGE REVENUES**- This parameter is obviously a double-edged sword. Less property tax for the hotel tax, more sales taxes from increased car sale and real estate values.. The resultant number was very acceptable and higher.

**PARKING/TRAFFIC IMPACTS**- The committee granted good points here because the proposed project closed three curb cuts and regulated traffic with signs and hours.

**PROXIMITY TO LIKE BUSINESSES** - Comparison shopping scores very well for sales tax purposes. Although, this proposed project urges comparisons with Westmont, the committee believed that a critical mass has been established. A maximum score was the result.

**PUBLIC SAFETY RESOURCE REQUIREMENTS**- This proposed project will allow for a reduction in the number of Police/Fire and even Code inspections that are required annually. A reduction in public safety would most assuredly occur with the implementation of this project.

**REAL ESTATE ASSESSED VALUATION IMPACT**- This number is expected to triple with a tear down and a clean up real estate. The values should rise, because another property is to be constructed.

**REDEMPTION OF A BLIGHTED PROPERTY**- A maximum score was awarded for this.

**SPIN-OFF BENEFITS**- The staff and EDC Board of Directors could not come up with any substantial benefits here, except for food and beverage patronage increases on Ogden and possibly more out of area visits.

**TYPE OF BUSINESS USE-** This is absolutely the type of business use that the EDC is attempting to solicit and/or expand.



## Evaluation Matrix

**ROLAND GARTNER SAAB** –avg.

<i>Weighted Score</i> <i>(1-5)</i>	<i>General Criteria</i>	<i>Raw Score</i> <i>(-5 to +5)</i>	<i>Total</i> <i>(-25 to +25)</i>
Four X	1) Aesthetics	4	16
Three X	2) Code/Zoning Variance Requirement	2	6
One X	3) Creates More Marketable Space	4	4
Three X	4) Cultural Benefits	2	6
Three X	5) Density	4	12
Three X	6) Environmental Impact	2	6
Two X	7) Fills Vacancy	1	2
Three X	8) Financial Investment of Improvements	3	9
Four X	9) Job Creation/Retention	3	12
Five X	10) Meets Redevelopment Goals	5	25
Five X	11) New/Continuing Village Revenues	3	15
Four X	12) Parking/Traffic Impact	2	8
Three X	13) Proximity to Like Businesses	3	9
Four X	14) Public Safety Resource Requirement	3	12
One X	15) Real Estate Assessed Valuation Impact	4	4
Five X	16) Remediation of Blighted Property	3	15
Two X	17) Spin-off Benefits	2	4
Three X	18) Type of Business Use	4	12
<b>Total Score</b>		<b>54</b>	<b>177</b>

## **RECOMMENDATION TO THE VILLAGE COUNCIL**

In the opinion of the EDC Board of Directors and staff, this Incentive Matrix/Policy continues to be a success. Although the Board took this task extremely seriously, the conservative approach used in scoring this particular project did not keep Gartner Saab from scoring very well. As such, the Board is prepared to recommend that the Village Counsel prepare documents that incorporate the sharing of tax revenues

Thank you for this opportunity to review this expanding business.

**REVIEW SALES TAX AGREEMENT DRAFT FROM LEGAL DEPARTMENT**

**The Board of Directors and Staff  
of the Economic Development Commission**



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A SALES TAX REBATE AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND GARTNER HOLDINGS, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,  
as follows:

1. That the form and substance of a certain Sales Tax Rebate Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Gartner Holdings, Inc. (“Gartner”), for the general rebate of sales tax generated from the operation of the Gartner Saab auto dealership, 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 Resolution, 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 resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

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

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

**SALES TAX REBATE AGREEMENT BETWEEN  
THE VILLAGE OF DOWNERS GROVE AND GARTNER HOLDINGS, INC.**

This Agreement made and entered into this \_\_\_\_ day of February, 2003, by and between the Village of Downers, Illinois, an Illinois Municipal Corporation situated in the County of DuPage, Illinois (the "Village") and Gartner Holdings, Inc., an Illinois Corporation, ("Gartner");

**WITNESSETH:**

**WHEREAS**, the Village is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution, and;

**WHEREAS**, Gartner is the owner and operator of an automobile dealership presently located in Aurora, Illinois; and,

**WHEREAS**, Gartner is endeavoring to acquire property in the vicinity of 205-217 Ogden Avenue, Downers Grove, Illinois (P.I.N. 09-04-305-004, -005, and -006) and to make onsite improvements, construct and operate an automobile dealership (the "Dealership") upon the property (the "Dealership Property"); and,

**WHEREAS**, the Village, recognizing the economic and other benefits derived therefrom by the Village and its residents, seeks to encourage Gartner to locate and develop its Dealership in the Village; and

**WHEREAS**, the Village and Gartner agree that to permit Gartner to purchase the Dealership Property and to construct the improvements necessary for the purpose of leasing the Dealership on the Dealership Property, it will be necessary to first purchase and then develop the land at a substantial cost, and that it is necessary that the Village provide the aforesaid encouragement and incentive in the

form of certain sales tax rebate assistance as hereinafter described in order for the project to be completed.

**NOW, THEREFORE,** for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

**1. General Terms:**

a) Gartner, after receipt of the promises and inducements contained herein, plans to construct and lease a Saab automobile sales dealership at or on the Dealership Property. It is understood and agreed that there will be a specific site plan to be submitted to and approved by the Village in relation to the Dealership and the Dealership Property at some time in the future. In addition, the architecture, building, zoning, sign requirements and landscape plans for the Dealership Property must be submitted to and approved by the Village. The Dealership to be constructed on the Dealership Property shall be constructed substantially in accordance with the plans and specifications approved by the Village.

b) The parties hereto acknowledge, and Gartner represents and warrants, that it requires economic assistance from the Village in order to commence and complete the Dealership, and that, but for said economic assistance, the Dealership as contemplated would not be economically viable, nor would the funds necessary for its commencement and completion be available.

c) For purposes of this Agreement, the use of the terms “sales tax” and “sales tax revenue” shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the Village pursuant to the Retailers’ Occupation Tax Act and the Service Occupation Tax Act (as said acts may be amended from time to time) and which are collected by the State and

distributed to the Village, and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body enacts any law or statute which results or which may result in any material changes or amendments to the foregoing sales tax provisions, which changes or amendments prohibit the Village from complying with this Agreement or which adversely affect the Village's ability to comply herewith, then the Village, at its sole discretion, may reevaluate and/or discontinue the incentive to be provided herein.

d) This Agreement, and the incentives and inducements set forth herein, shall apply only to the planned Dealership to be located on the Dealership Property. It is expressly understood that this Agreement shall not apply to any automobile sales that may occur on the Dealership Property prior to the construction and operation of the improvements as specified in the site plan and Dealership that are to be developed on the Dealership Property.

e) Gartner agrees that in the event there is a change in the ownership (legal or beneficial) of the Dealership or Dealership Property, or any portion thereof, the Village shall no longer be required to pay all or any portion of the incentive payments provided for in this Agreement, except as provided for in Section 10.

f) Gartner agrees that it shall purchase, obtain and/or otherwise acquire an ownership interest of the Dealership Property prior to, or within a reasonable time following, the execution of this Agreement. In the event that Gartner fails to purchase, obtain and/or otherwise acquire an ownership interest of the Dealership Property within thirty (30) days following the execution of this Agreement, this Agreement, and any and all obligations imposed thereunder, shall become null, void and of no legal effect.

**2. Incentive:** In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Gartner, including the construction, development and operation of the Dealership on the Dealership property, the Village hereby agrees to pay Gartner by quarterly installments over a maximum period of seven (7) years as follows, subject however to the following conditions and restrictions:

- a. It is understood that each amount will be due and payable solely from the proceeds of sales tax revenue received by the Village from the Dealership Property.
- b. It is acknowledged and understood by and between the parties hereto that the Village receives sales tax revenue monthly, and that the taxes generated by sales in any one month are distributed to the Village approximately three months later (e.g. taxes generated by sales in July are generally not received by the Village until October).
- c. The initial payment year (hereinafter referred to as the “Initial Payment Year”) shall be that twelve (12) month period commencing on the first day of the full month that follows the month in which the Dealership is operating and opened to the public for business (each subsequent twelve month period is hereinafter referred to as “Subsequent Incentive Year”).
- d. The incentive base for the Initial Payment Year and for each Subsequent Incentive Year shall be **THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00)** (hereinafter referred to as the “Incentive Base”). For the Initial Payment Year and each of the following six Subsequent Incentive Years, the Village shall be entitled to all the sales tax revenue received from the Dealership Property up to the Incentive Base. For the Initial Payment Year or the Subsequent Incentive Years, respectively, Gartner shall thereafter be entitled to fifty percent (50%) of the sales tax revenue, if any, received from the Dealership Property that exceeds the Incentive Base.
- e. The Incentive Payments shall be computed at the close of each calendar quarter (March 31, June 30, September 30, December 31) by the Village as provided herein. The Village will make payments to Gartner within thirty (30) days after it receives notification from the State of the sales tax revenue generated by the Dealership Property.

**3. Disclosure:** Gartner East, Inc. (the “Lessee”) shall execute and provide the Village with a power of attorney letter (or other necessary document), in form and content reasonably

acceptable to the Village and Gartner, which letter shall be addressed to the Illinois Department of Revenue and shall authorize the Illinois Department of Revenue to release any and all gross revenue and sales tax information on a monthly basis with respect to the operation of the Dealership on the Dealership Property to the Village while this Agreement is in effect. In addition to said letter, Gartner shall prepare and submit such other or additional forms as may be required from time to time by the Illinois Department of Revenue in order to release such information to the Village. Finally, in the event that the sales tax revenue information is not released by the State due to the failure of Gartner to execute the necessary authorization and/or release, the Village shall not be required to make any of the incentive payments provided for in this Agreement.

**4. Construction of Dealership:** Gartner shall commence construction of the Dealership on the Dealership Property on or before August 30, 2003, and shall not cause or permit the existence of any violation of Village ordinances, including but not limited to the Village's building code, zoning ordinances, fire code and any and all rules and regulations thereunder. Gartner shall have completed construction of the Dealership and shall have begun operations and sales from the Dealership on or before June 30, 2004. As part of the construction activities Gartner agrees that it will close a minimum of three curb cuts on Ogden Avenue on the Dealership Property, either by landscaping appropriate blocking materials, or installing actual curbs, as presented in the Economic Development Commission's Ogden Avenue Commercial Corridor Plan adopted by the Village Council in March of 1999. If the conditions of this Section are not met, this Agreement shall be declared null, void and of no legal effect.

**5. Commitment to Continue Dealership:** The parties agree that the Incentive Payments are based in part upon: 1) a commitment by Gartner to continue operation of the Dealership, or an equivalent dealership, on the Dealership Property for a period of not less than twelve (12) years from

the effective date of this Agreement or five (5) years after the date upon which Gartner receives the incentive payment for the last Subsequent Incentive Year hereunder, and; 2) a scheduled reimbursement of such incentive payments, if the terms of this commitment are not fulfilled. To that end, Gartner agrees to continue the operation of a new car Dealership(s) on the Dealership Property and shall continue to offer automotive sales with the point of sale being in Downers Grove for twelve (12) years from the effective date of this Agreement or five (5) years after the date upon which Gartner receives the incentive payment for the last Subsequent Incentive Year hereunder. If, at any time during this time period, the Dealership, or a successor, fails to offer automotive sales of new automobiles as proposed by the Dealership, then the Village shall be released and discharged from any further obligation to make payments under this Agreement, and Gartner or its successors shall reimburse the Village in accordance with Section 6 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 6 of this Agreement.

**6. Reimbursement:** In the event Gartner, or any approved successor, fails to continue the Dealership on the Dealership Property as provided in Section 5 of this Agreement, Gartner, 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 Incentive Payments paid hereunder according to the following schedule:

If said event occurs during:

- \* *Year one through three - One hundred percent (100%) of the Incentive Payment received*
- \* *Year four through year six - seventy-five percent (75%) of the Incentive Payment received*
- \* *Year seven through year nine - fifty percent (50%) of the Incentive Payment received*
- \* *Year ten through twelve- twenty-five percent (25%) of the Incentive Payment received*

After the expiration of a 60 day written demand by the Village to Gartner, 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:

- \* Drawing upon the Letter of Credit provided for above; and/or
- \* Proceed with an action in law or in equity to recover the amounts owed.

**7. Letter of Credit:** On or before March 31<sup>st</sup> of each year of this Agreement beginning in year 2004, and prior to the payment of any Incentive Payments for any quarter for that year, Roland Gartner, President of Gartner Holdings, Inc., or the principals of any successors shall provide the Village with an unconditional letter of credit in an amount equal to 100% of the amount of the Incentive Payments paid to date multiplied by the refund percentage due to the Village for that specific year in accordance with Section 6 of this Agreement. The principals of any successors of Gartner shall provide the above described letter of credit within thirty (30) days from when the succession occurs. The Letters of Credit shall be in a form acceptable to the Village Attorney and, at a minimum, shall (1) provide that it shall not be canceled without the prior written consent of the Village; and (2) not require the consent of Gartner or its successors prior to the collection by the Village of any amounts covered by said letter of credit or other instrument. Gartner or its successors shall be solely responsible for any costs associated with obtaining the letter of credit. The letter of credit shall serve as security for the benefit of the Village in the event that any of the Incentive Payments must be refunded by Gartner or its successors to the Village, as hereafter provided.

**8. Indemnification:** In the event that any third party or parties institutes any legal proceedings against the Village and/or Gartner, which relate to the terms of this Agreement, then, in that event, Gartner shall indemnify and hold harmless the Village from any and all such proceedings.

Further, Gartner, 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 costs and expenses of whatever nature relating thereto; provided, however, that Gartner 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 Gartner 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 Gartner 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.

In the event that the Village institutes legal proceedings against Gartner for a breach of this Agreement, or any term or condition hereof, and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in any judgment against Gartner all costs and expenses of such legal proceedings incurred by the Village, including but not limited to court costs, reasonable attorney's fees and witnesses' fees, incurred in connection therewith. Either party may, in its sole discretion, appeal any judgment rendered in relation thereto.

**9. Limitation of Actions:** No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had

against the Village, its officers, agents and employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Gartner hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by the Village, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of Gartner or the Dealership against the Village, its officers, directors, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

**10. Assignments:** Gartner shall not assign this Agreement to any person or entity without the prior written consent of the Village, said consent not to be unreasonably withheld. No such assignment shall be effective, even if consented to by the Village, unless and until the Assignee acknowledges in writing to the Village that the obligations of the Village to Gartner or any Assignee hereunder are contingent upon certain obligations on the part of Gartner which such Assignee is willing to assume, including the issuance of a letter of credit in accordance with Section 7. Notwithstanding any such assignments and/or assumption of responsibility, Gartner shall remain liable for all of its agreements, covenants and obligations and the performance thereof pursuant to this Agreement.

**11. Breach:** In the event of breach of any of the terms and conditions of the Agreement, the non-breaching party shall have the right to terminate this Agreement, which will not relieve the breaching party from performance. In addition, the non-breaching party shall have the right, by any action or proceeding at law or in equity, to secure the specific performance of the covenants and agreements herein contained, and may be awarded damages or failure of performance, or both, except that the exclusive remedy for the failure to meet the Section 5 commitment is the payment of the scheduled reimbursements as set forth in Section 6. The foregoing rights and remedies shall be

cumulative and exclusive. Nothing herein shall modify, limit or abrogate any right of the Village to a refund as provided under Section 6 of this Agreement.

**12. Amendments:** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings by and between the parties relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those expressly set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with the law and reduced in writing and signed by them.

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

**14. Notices:** Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail return receipt requested, or by delivering the same in person or to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

Village Manager  
Village of Downers Grove  
801 Burlington Avenue  
Downers Grove, Illinois 60515

All notices to Gartner shall be sent to:

Mr. Roland H. Gartner  
c/o Gartner Holdings, Inc.  
4333 Ogden Avenue  
Aurora, Illinois 60504

**15. Jurisdiction:** This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be the appropriate state or federal court located within the State of Illinois.

**16. Waiver:** A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

**17. Authorization to Execute:** The officer of Gartner who has executed this Agreement hereby warrants that he has been lawfully authorized by Gartner to execute this Agreement on behalf of Gartner.

WITNESS their hands and seals the day and year first above written.

THE VILLAGE OF DOWNERS GROVE,  
ILLINOIS, an Illinois Municipal Corporation

GARTNER HOLDINGS, INC.

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Roland H. Gartner

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

By \_\_\_\_\_

Date \_\_\_\_\_

Attest \_\_\_\_\_  
Secretary

Date \_\_\_\_\_