

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND GARTNER HOLDINGS, INC.
AND GARTNER SAAB EAST, 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”) and Gartner Saab East, Inc. (“Gartner East”), 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 That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.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. AND GARTNER SAAB EAST, 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") **and Gartner Saab East, Inc., an Illinois Corporation ("Gartner East");**

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~~ **and lease to Gartner East** 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~~ **Gartner East to operate the 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 **to Gartner East for operation of 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 to Gartner East for operation 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, **or any change in the Lessee (i.e. Gartner East)** 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)~~ **ninety (90)** 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") and/or Gartner 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, and Gartner East 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 and/or Gartner East 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 or Gartner East 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 Gartner East 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 and Gartner East 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 and/or Gartner East 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, **Gartner East**, or any approved successor, fails to continue the Dealership on the Dealership Property as provided in Section 5 of this Agreement, Gartner, **Gartner East** 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, **Gartner East** 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~~**below**; and/or
- * Proceed with an action in law or in equity to recover the amounts owed.

7. Letter of Credit: On or before March 31st 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~~ **irrevocable** 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 **or Gartner East**, which relate to the terms of this Agreement, then, in that event, Gartner **and Gartner East** shall indemnify and hold harmless the Village from any and all such proceedings. Further, Gartner **and Gartner East**, 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 **or Gartner East** 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 or Gartner East 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 and Gartner East 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 or Gartner East 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 or Gartner East 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 or Gartner East 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~~ Gartner East 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 and/or Gartner East 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 and Gartner East 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 and Gartner East 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~~ upon 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

All notices to Gartner East shall be sent to:

Mr. Roland H. Gartner
c/o Gartner Saab East, Inc.
205-217 Ogden Avenue
Downers Grove, Illinois 60515

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 officers of Gartner and Gartner East who have executed this Agreement hereby warrants that he/she has been lawfully authorized by Gartner and Gartner East to execute this Agreement on behalf of Gartner and Gartner East.

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

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

By _____
Mayor

Attest _____
Village Clerk

Date _____

GARTNER HOLDINGS, INC.

By _____
Roland H. Gartner

Attest _____
Secretary

Date _____

GARTNER SAAB EAST, INC.

By _____

Attest _____
Secretary

Date _____