

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**JUNE 9, 2009 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Addendum to the Sales Tax Agreement with Pugi of Chicagoland	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

**SYNOPSIS**

A resolution has been prepared to approve an addendum to the Sales Tax Rebate Agreement between the Village of Downers Grove and Downers Grove Imports, LTD. D/B/A Pugi of Chicagoland.

**STRATEGIC PLAN ALIGNMENT**

The Strategic Plan Goals 2008 to 2013 include a *Strong, Diverse Local Economy* and *Vibrant Major Corridors*.

**FISCAL IMPACT**

Approval of the addendum would require the Village to make rebate payments for an additional five years. Because sales revenue from Pugi are tracking substantially lower than anticipated at the time the sales tax rebate agreement was executed, the total amount of rebate payments to be made to Pugi over the life of the extended agreement are expected to be equal to or less than the originally anticipated rebate payments.

**RECOMMENDATION**

Approval on the June 16, 2009 consent agenda.

**BACKGROUND**

In March 2005, the Village entered into a sales tax rebate agreement with Pugi of Chicagoland. The agreement states, among other things that:

- Pugi shall purchase the property at 1850 Ogden Avenue and improve it with a new showroom on other site improvements including landscaping and sidewalks. Pugi has completed the purchase and improvements.
- The Village shall rebate a portion of the sales tax revenue generated by Pugi for a period of seven years (no rebate for sales tax revenue up to \$270,000, 50% rebate for sales tax revenue between \$270,000 and \$800,000, and 25% rebate for sales tax revenue above \$800,000).
- Pugi shall continue to operate the dealership for a period of not less than 10 years from the effective date of the agreement.
- In the event Pugi fails to continue to operate the dealership per the terms of the agreement, Pugi shall reimburse the Village according to a specific schedule
  - Years 1 through 3 - 100% of the rebate payments
  - Years 4 through 5 – 75% of the rebate payments
  - Years 5 through 10 – 50% of the rebate payments

Pugi has requested an addendum to the agreement to extend the term of the agreement and to waive the letter of credit requirement. The current economic conditions have negatively impacted Pugi's sales revenue. Their current sales revenues are substantially lower than the sales revenues anticipated at the time the agreement was executed. Therefore, the amount of the rebate payments due to Pugi has been substantially less than anticipated. To assist Pugi in covering the costs of the improvements to the building

and property, Pugi has requested that the term of the agreement be extended. Further, changes in the banking industry practices regarding letters of credit have negatively impacted Pugi's ability to submit the letter of credit. At the time the agreement was executed, banks would provide letters of credit for a fee equal to a small percentage of the total amount of the letter of credit. Currently, banks generally require that the letter of credit be backed by a cash deposit equal to the amount of the letter of credit in addition to the percentage fee. Therefore, Pugi has requested that the letter of credit requirement be waived.

The addendum includes the following amendments to the existing agreement:

- Extends the term of the rebate payments from seven years to twelve years.
- Extends the requirement for Pugi to operate the dealership from ten years to fifteen years.
- Requires Pugi to reimburse the Village in an amount equal to 25% of the rebate payments for years 10 through 15 in the event that Pugi fails to operate the dealership
- Deletes the letter of credit submittal requirement.

#### **ATTACHMENTS**

Resolution

Addendum to the Sales Tax Rebate Agreement

Sales Tax Rebate Agreement

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

**A RESOLUTION AUTHORIZING EXECUTION OF AN ADDENDUM  
TO A SALES TAX REBATE AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND  
DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND**

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 Addendum to Sales Tax Rebate Agreement (the “Addendum”), between the Village of Downers Grove (the “Village”) and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland (“Pugi”), as set forth in the form of the addendum 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 Addendum, 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 Addendum.

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

**ADDENDUM TO A SALES TAX REBATE AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND  
DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND**

The Village of Downers Grove, Illinois (the "Village") and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland ("Pugi") hereby agree that the following language shall be and is hereby incorporated into the contract dated March 1, 2005, as follows:

**SECTION 1. GENERAL TERMS**

**3. Sales Tax Incentives:**

In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Pugi, including but not limited to the construction of the sidewalk improvements and landscaping as well as the construction and development and operation of the Dealership on the Property, the Village hereby agrees to pay Pugi quarterly installments over a maximum period of ~~seven (7)~~ twelve (12) years (the "Incentive Period") 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 at the 1850 Ogden Avenue site is operating and opened to the public for business and the sidewalk and landscaping improvements have been completed (each subsequent twelve month period is hereinafter referred to as "Subsequent Incentive Year").
- d) The incentive base for the Incentive Period shall be TWENTY SEVEN MILLION DOLLARS (\$27,000,000.00) (hereinafter referred to as the "Incentive Base"). For the Incentive Period, the Village shall be entitled to all the sales tax revenue received from the Dealership Property up to the Incentive Base. For the Incentive Period, respectively, Pugi 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 up to \$800,000.00 cumulative and after said incentive is reached, the Village shall receive seventy-five percent (75%) of the sales tax revenue and Pugi shall be entitled to twenty-five percent (25%) of the sales tax revenue for the remainder of the Incentive Period.
- 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 Pugi within thirty (30) days after it receives notification from the State of the sales tax revenue generated by the Dealership Property.

**4. Commitment to Continue Dealership:**

The parties agree that all Incentive Payments are based in part upon: 1) a commitment by Pugi to purchase the property and to continue operation of the Dealership, or an equivalent dealership, on the Property for a period of not less than ~~ten (10)~~ fifteen (15) years from the effective date of this Agreement, and; 2) a scheduled reimbursement of such incentive payments, if the terms of this commitment are not fulfilled. To that end, Pugi agrees to continue the operation of a new car Dealership(s) on the Property and

shall continue to offer automotive sales with the point of sale being in Downers Grove for ~~ten (10)~~ fifteen (15) years from the effective date of this Agreement. 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 Pugi or its successors shall reimburse the Village in accordance with Section 7 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 7 of this Agreement.

**7. Reimbursement:**

In the event Pugi, or any approved successor, fails to continue the Dealership on the Property as provided in Section 6 of this Agreement, Pugi, 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 and TIF Reimbursement 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
- \* Year four through year five - seventy-five percent (75%) of the Incentive Payment
- \* Year five through year ten - fifty percent (50%) of the Incentive Payment
- \* Year ten through year fifteen – twenty-five percent (25%) of the Incentive Payment.

After the expiration of a 60 day written demand by the Village to Pugi 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 below; and/or~~
- \* Proceed with an action in law or in equity to recover the amounts owed.

**8. Letter of Credit:**

This paragraph shall be deleted in its entirety and all other paragraphs renumbered accordingly.

SECTION 2. All terms and conditions of the 2005 Agreement shall apply equally to this 2009 Addendum Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year first specified above.

**VILLAGE OF DOWNERS GROVE**

**DOWNERS GROVE IMPORTS, LTD.  
D/B/A PUGI OF CHICAGOLAND**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 2005-06

**A RESOLUTION AUTHORIZING EXECUTION OF A SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND**

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

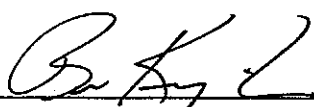
1. That the form and substance of a certain Sales Tax Rebate Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland ("Pugi"), for the general rebate of sales tax generated from the operation of the Pugi auto dealership, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

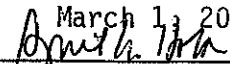
2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager 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: March 1, 2005  
Attest:   
Village Clerk

**SALES TAX REBATE AGREEMENT BETWEEN  
THE VILLAGE OF DOWNERS GROVE AND  
DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND**

This Agreement made and entered into this 1st day of March, 2005, by and between the Village of Downers, Illinois, an Illinois Municipal Corporation situated in the County of DuPage, Illinois (the "Village") and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland ("Pugi");

**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, the Village has the authority to prevent the spread of blight and to encourage private development to enhance the local tax base and to enter into contractual agreements for the purpose of achieving these purposes; and

WHEREAS, Pugi currently operates an automobile dealership within the Village of Downers Grove located at 2020 West Ogden Avenue, Downers Grove, Illinois, and Pugi is planning on purchasing a site for a new dealership to be located at 1850 Ogden Avenue, Downers Grove, Illinois and legally described as follows (the "Property"):

LOT 5 IN "LLOYD A. GODING'S ASSESSMENT PLAT" OF PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 19, 1958 AS DOCUMENT 873882 IN DUPAGE COUNTY, ILLINOIS.

(Commonly known as 1850 Ogden Avenue, Downers Grove, IL PIN: 09-06-300-003)

WHEREAS, Pugi is endeavoring to purchase the Property, build a new showroom and make other on-site improvements such as landscaping and sidewalks pursuant to the Ogden Avenue Commercial Corridor Plan and as indicated on the Design Plan attached hereto and herein incorporated as Exhibit A (the "Project"); and,

WHEREAS, the Village, recognizing the economic and other benefits derived therefrom by the Village and its residents, seeks to assist Pugi in its endeavors to build its new dealership; and

WHEREAS, the Village desires to assist in the Project in order to serve the needs of the Village, to produce increased tax revenues and to stimulate employment and development within the Village; and

WHEREAS, the Village and Pugi agree to permit Pugi to purchase the Property and to construct the Project, that it is necessary that the Village also provide an incentive in the form of certain sales tax rebate assistance in accordance with law and the terms of this Agreement; and

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. **Incorporation of Recitals:** The foregoing recitals are hereby incorporated and adopted as set forth herein.

2. **General Terms:**

a) Pugi, after receipt of the promises and inducements contained herein, agrees to purchase the Property and construct its automobile sales dealership in substantial accordance with the Design Plan (Exhibit A). 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 Property as required by the Village Zoning Code at some time in the future. In addition, the architecture, building, zoning, sign requirements and landscape plans for the Property must be submitted to and approved by the Village. The redevelopment of the Property shall be constructed substantially in accordance with the plans and specifications approved by the Village and construction shall commence within six (6) months of the approval of the applicable rezoning and special use ordinances concerning the Property.

b) The parties hereto acknowledge, and Pugi represents and warrants, that it requires economic assistance from the Village in order to commence and complete the Project, and that, but for said economic assistance, the Project 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. The use of the terms "sales tax" and "sales tax revenue" shall not be construed to mean any additional taxes imposed by the Village as a home rule municipality

d) For purposes of this Agreement, the incentives and inducements set forth herein shall apply only to Pugi and the Project. It is expressly understood that this Agreement shall not apply to any automobile sales that may occur on the Property prior to the construction and operation of the improvements as specified in Exhibit A.

e) Pugi agrees that in the event there is a change in the ownership (legal or beneficial) of the Dealership or 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 11.

f) Pugi agrees that it shall purchase the Property prior to, or within a reasonable time following, the execution of this Agreement. In the event that Pugi fails to purchase, obtain and/or otherwise acquire an ownership interest of the Dealership Property within ninety (90) days following the execution of this Agreement or in the event that the Village does not grant a special use permit for the Property to be used as an automobile dealership, this Agreement, and any and all obligations imposed thereunder, shall become null, void and of no legal effect.

**3. Sales Tax Incentives:** In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Pugi, including but not limited to the construction of the sidewalk improvements and landscaping as well as the construction and development and operation of the Dealership on the Property, the Village hereby agrees to pay Pugi quarterly installments over a maximum period of seven (7) years (the "Incentive Period") 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 at the 1850 Ogden Avenue site is operating and opened to the public for business and the sidewalk and landscaping improvements have been completed (each subsequent twelve month period is hereinafter referred to as "Subsequent Incentive Year").
- d) The incentive base for the Incentive Period shall be TWENTY SEVEN MILLION DOLLARS (\$27,000,000.00) (hereinafter referred to as the "Incentive Base"). For the Incentive Period, the Village shall be entitled to all the sales tax revenue received from the Dealership Property up to the Incentive Base. For the Incentive Period, respectively, Pugi 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 up to \$800,000.00 cumulative and after said incentive is reached, the Village shall receive seventy-five percent (75%) of the sales tax revenue and Pugi shall be entitled to twenty-five percent (25%) of the sales tax revenue for the remainder of the Incentive Period.
- 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 Pugi within thirty (30) days after it receives notification from the State of the sales tax revenue generated by the Dealership Property.

4. **Disclosure:** Pugi 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, 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 Property to the Village during the Incentive Period. In addition to said letter, Pugi 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 Pugi 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.

5. **Construction of Dealership:** Pugi shall commence construction of the Project within six (6) months of the approval of the applicable rezoning and special use ordinances concerning the Property 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. Pugi shall have completed construction of the Project and shall have begun operations and

sales from the Dealership within one (1) year from commencement of construction. As part of the Project, Pugi agrees that it, pursuant to the Economic Development Commission's Ogden Avenue Commercial Corridor Plan adopted by the Downers Grove Village Council in March of 1999, will install the public sidewalk within the sidewalk easement and will landscape the Property. Pugi further agrees that it will dedicate to the Village sufficient right-of-way to construct public sidewalks in from of its existing dealership located at 2020 Ogden Avenue. If the conditions of this Section are not met, this Agreement shall be declared null, void and of no legal effect.

**6. Commitment to Continue Dealership:** The parties agree that all Incentive Payments are based in part upon: 1) a commitment by Pugi to purchase the property and to continue operation of the Dealership, or an equivalent dealership, on the Property for a period of not less than ten (10) years from the effective date of this Agreement, and; 2) a scheduled reimbursement of such incentive payments, if the terms of this commitment are not fulfilled. To that end, Pugi agrees to continue the operation of a new car Dealership(s) on the Property and shall continue to offer automotive sales with the point of sale being in Downers Grove for ten (10) years from the effective date of this Agreement. 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 Pugi or its successors shall reimburse the Village in accordance with Section 7 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 7 of this Agreement.

**7. Reimbursement:** In the event Pugi, or any approved successor, fails to continue the Dealership on the Property as provided in Section 6 of this Agreement, Pugi, 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 and TIF Reimbursement 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
- \* Year four through year five - seventy-five percent (75%) of the Incentive Payment
- \* Year five through year ten - fifty percent (50%) of the Incentive Payment

After the expiration of a 60 day written demand by the Village to Pugi 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 below; and/or
- \* Proceed with an action in law or in equity to recover the amounts owed.

8. **Letter of Credit:** In consideration of the Incentive Payments received by Pugi, on or before March 31<sup>st</sup> of each year of this Agreement beginning in year 2005, and prior to the payment of any Incentive Payments for any quarter for that year, Pugi, or the principals of any successors shall provide the Village with an 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 7 of this Agreement. The principals of any successors of Pugi 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 Pugi or its successors prior to the collection by the Village of any amounts covered by said letter of credit or other instrument. Pugi 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 Pugi or its successors to the Village, as hereafter provided.

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

**10. 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 Pugi 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 Pugi 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.

**11. Assignments:** Pugi 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 Pugi or any Assignee hereunder are contingent

upon certain obligations on the part of Pugi which such Assignee is willing to assume, including the issuance of a letter of credit in accordance with Section 8. Notwithstanding any such assignments and/or assumption of responsibility, Pugi shall remain liable for all of its agreements, covenants and obligations and the performance thereof pursuant to this Agreement.

**12. 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 6 commitment is the payment of the scheduled reimbursements as set forth in Section 7. 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 7 of this Agreement.

**13. 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.

**14. 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.

**15. Notices:** Any notices required in this Agreement shall be effective when in writing and 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:

All notices to Pugi shall be sent to:

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

Downers Grove Imports, Ltd. d/b/a Pugi of  
Chicagoland  
Attn: Mr. Dominic L. Pugliani  
2020 Ogden Avenue  
Downers Grove, IL 60515

**16. Exhibits:** Exhibits attached herein are hereby incorporated in and made a part of this Agreement.

**17. 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.

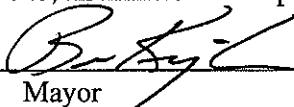
**18. Waiver:** A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

**19. Authorization to Execute:** The officers of Pugi who have executed this Agreement hereby warrant that he/she has been lawfully authorized by Pugi to execute this Agreement on behalf of Pugi.

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

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

DOWNERS GROVE IMPORTS, LTD. D/B/A  
PUGI OF CHICAGOLAND

By   
Mayor

By \_\_\_\_\_

Attest   
Village Clerk

\_\_\_\_\_  
Secretary

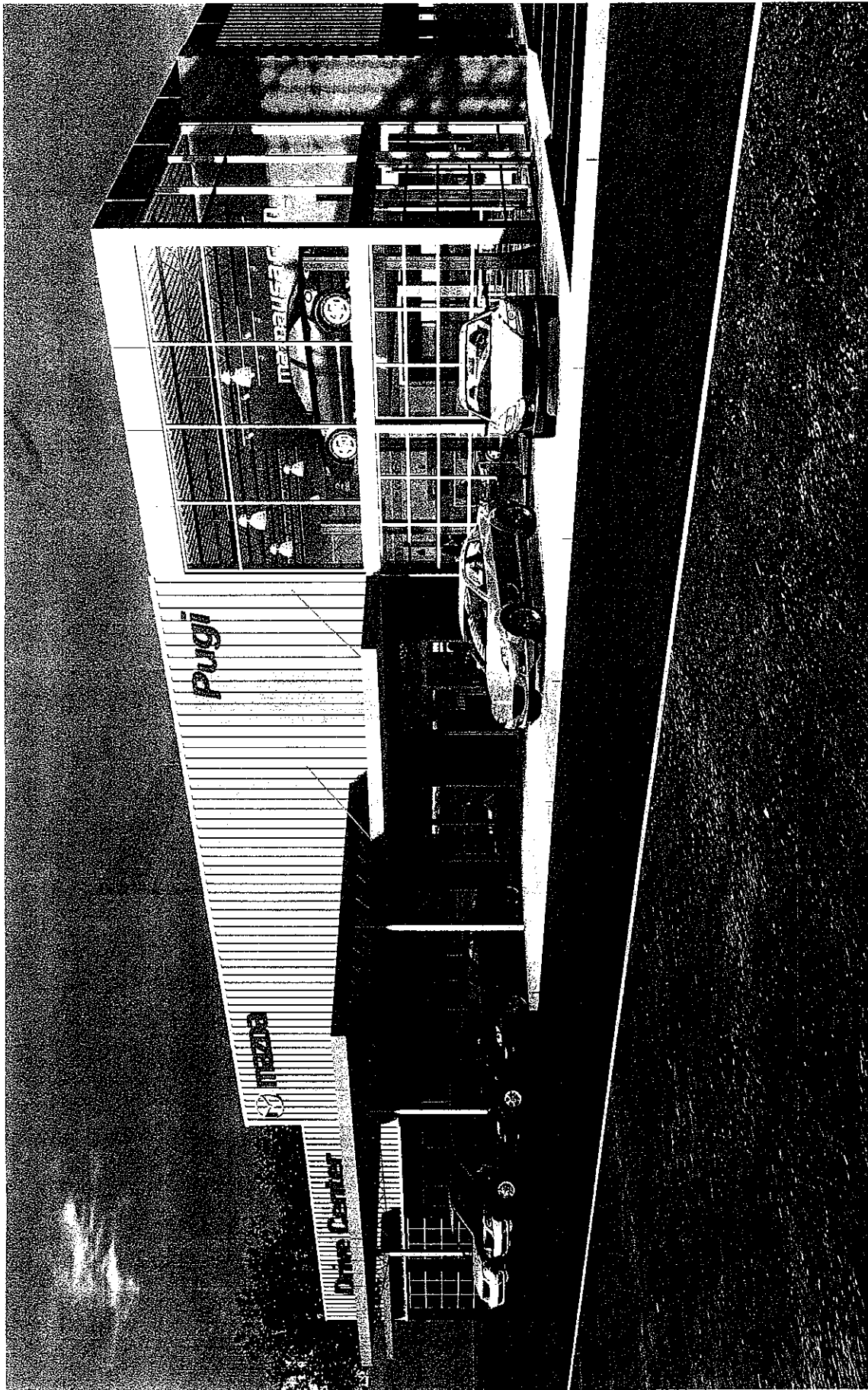
Date March 1, 2005


\_\_\_\_\_  
Attest

Date \_\_\_\_\_

**EXHIBIT A**  
**Design Plan**





DRAWING NO.	DRAWING TITLE EXTERIOR RENDERING	design·forum®	SCALE	REVISED	DATE OCT'04	DRAWN JEC	PROJECT NO. 222763.36	PUGI MAZDA DOWNERS GROVE, IL	 <b>mazda</b>
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