

## **CONDITIONAL REZONING AGREEMENT**

THIS CONDITIONAL REZONING AGREEMENT ("Agreement"), is made as of \_\_\_\_\_, 2015, by and between the CITY OF ROCHESTER HILLS, a Michigan municipal corporation ("City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, and AUTO CITY INVESTMENTS, INC., a Michigan corporation ("Owner"), whose address is 14165 N. Fenton Road, Suite 202, Fenton, MI 48430

### **R E C I T A L S**

- A. Owner is the fee simple title holder of certain real property located in the City consisting of two parcels totaling 1.06 acres, more or less, located on the east side of Rochester Road, north of South Boulevard, identified as Parcel I.D. No's. 15-35-352-019 and 15-35-352-067 as legally described on Exhibit A attached hereto ("Property").
- B. The Property is currently zoned B-5, Automotive Business, and Owners desire to rezone the property to B-2, General Business.
- C. Applicant has submitted a conditional rezoning application with attachments to the City, seeking to rezone the Property from its current B-5 designation to B-2.
- D. Applicant intends to develop the Property as a cohesive development, with compatible and complementary architecture, building surface materials and appropriate landscaping as depicted in the Preliminary Site Plan attached as Exhibit B.
- E. MCL 125.3405 provides, in part, that an owner of land may voluntarily offer in writing and the City may approve certain use and development of the land, as a condition to a rezoning of the land or an amendment to a zoning map.
- F. Owner voluntarily offers, in writing, to condition the rezoning of the Property on the conditions set forth in this Agreement.
- G. On June 29, 2015, the City Council approved the rezoning request subject to the conditions voluntarily offered by Owner under MCL 125.3405.
- H. This Agreement is consistent with the intent of and satisfies the conditions of MCL 125.3405, and the City desires to ensure that the Property is developed and used in accordance with the conditions voluntarily provided by Owner pursuant to this Agreement for the use and development of the Property in accordance with the conditions set forth in this Agreement.

NOW, THEREFORE, Owner and the City, in consideration of the mutual covenants described herein, and with the express understanding that this Agreement contains important and essential terms as part of the City's approval of the rezoning request from B-5 to B-2, agree as follows:

1. **Incorporation of Recitals.** The parties acknowledge and represent the foregoing Recitals are true and accurate and are hereby incorporated into this Agreement, to be binding upon the parties.

2. **Rezoning Approval.** The City acknowledges and agrees that the Property has been granted rezoning approval, and the Property is hereby rezoned from its current B-5 Automotive Business classification to B-2 General Business classification.

3. **Rezoning Conditions.** The rezoning of the Property is granted subject to the following conditions:

- a. The building will be no larger than 7600 square feet, and will be consistent in size, layout, design, configuration and elevations depicted in Exhibit B.
- b. There would be at most one drive-thru at the northern end on the building limited to a user such as a sandwich shop, donut shop, coffee shop or ice cream parlor (no McDonald's, Burger King, or similar uses which have extremely high day and night continuous drive thru traffic).
- c. Uses will be limited to the uses listed in the City's B-2 Zoning Ordinance with the exception of those excluded below.
- d. A stand alone drive-thru for fast food operation is prohibited. However, a stand alone bank or credit union with a drive-thru would be acceptable.
- e. Applicant agrees to prohibit and not lease to tattoo shops, adult entertainment uses of any kind, pool halls, bars, nightclubs, hookah lounges and similar uses.
- f. Medical/Professional offices are permitted.
- g. There will be a six-foot solid wood fence and a row of hedges maintained along the eastern side next to homes to block views and headlights and reduce noise from the Property.
- h. Hours of operation will be restricted to 5 a.m. until midnight seven days a week.
- i. Any call box for a drive-thru will be designed to ensure no noise will be heard by adjacent residents.
- j. Access points will be limited to those approved by MDOT for Rochester Rd. and Eastlawn Drive in concurrence with the City Traffic Engineer.
- k. Trash pick up and loading/unloading deliveries will be restricted to 8:00 a.m. to 8:00 p.m.
- l. The drive-thru will have sound shielding.
- m. No outdoor storage is allowed.

4. **Zoning Termination/Reversion.** The zoning conditions contained in this Agreement shall apply to the Property from and after receiving final Site Plan approval from the City for the Property. In the event the conditions are not satisfied, or in the event Owner, or its successors or assigns abandon the development or use of the Property, the Property shall revert to its former zoning classification of B-5, Automotive Service without any rezoning action being required by the City. Notwithstanding the foregoing, Owner, for itself and its successors and assigns, reserves the right at any time prior to the commencement of construction of the improvements contemplated herein, to terminate this Agreement, in which event the Property shall revert to its former B-5 zoning classification.

5. **Integration/Amendments.** This Agreement and its exhibits set forth the entire agreement between the parties relative to the subject matter hereof. No prior or contemporaneous oral or written representations, statements, promises, agreements, or undertakings made by either party or agent of either party that are not contained in this Agreement shall be valid or binding. This Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement. Remedial amendments to correct errors and omissions, as well as minor technical changes to the development, may be approved and executed by the parties, as long as they are consistent with the spirit and intent of this Agreement.

6. **Governing Law.** This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. Any and all suits for any and every breach of this Agreement may be instituted and maintained in any court of competent jurisdiction in the County of Oakland, State of Michigan.

7. **Waiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

8. **Remedies.** In the event that a party believes that the other party is not acting reasonably, or in conformity with this Agreement, then the aggrieved party may petition the Oakland County Circuit Court to resolve such dispute and the parties shall make themselves available for a hearing on a date to be set by the Court. All remedies afforded in this Agreement shall be taken and construed as cumulative, being in addition to every other remedy provided by law and/or equity.

9. **Inconsistency.** Except as otherwise stated in this Agreement, regulations governing permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the Property and the Adjacent Property shall be the current regulations in force at the time. This Agreement shall not prevent the City from adopting or applying new or amended regulations that do not conflict with this Agreement. In the event of a conflict with City regulations, the terms of this Agreement shall control. Any clerical errors or mistakes in this Agreement or its exhibits may be corrected by any of the parties, and all parties agree to cooperate in making such corrections in order to effectuate the intent of the parties in entering into this Agreement.

10. **Authority.** The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals and the authority to bind each party to this Agreement according to its terms. Further, each of the parties represent that the execution of this Agreement has been duly authorized and is binding on such party.

11. **Binding Effect.** This Agreement shall not be effective until the effective date of the City's Ordinance rezoning the Property to B-2. The Agreement shall be recorded by Owner in the office of the Oakland County Register of Deeds and a copy of the recorded Agreement shall be delivered to the City. This Agreement shall run with the land and bind the parties, their heirs, successors and assigns. It is also understood that the members of the City Council and/or City departments may change, but the City shall nonetheless remain bound by this Agreement.

12. **Zoning Authority.** This Agreement shall not be construed to prohibit, curtail or restrict the City's lawful and legislative authority to amend the zoning or rezone the Property at any time. However, in the event the zoning of the Property is amended or rezoned, and the development or this Agreement have not otherwise been abandoned or terminated, then the Owner shall be deemed to have a vested right to continue the use and development of the Property in accordance with the conditions of this Agreement as a lawful nonconforming use.

[Signatures Follow on Next Page]





**EXHIBIT A  
LEGAL DESCRIPTION**

File No.: 523254

The land referred to in this Commitment, situated in the County of Oakland, City of Rochester Hills, State of Michigan, is described as follows:

Lots 1 through 5, both inclusive, including ½ of vacated public alley adjoining at the rear of Lot 1 through Lot 4, both inclusive, and on the West of Lot 5 and a part of Lot 6, GRANDVIEW SUBDIVISION, according to the plat thereof as recorded in Liber 37 of Plats, page 44, Oakland County Records, and part of the Southwest ¼ of Section 35, Town 3 North, Range 11 East, Township of Independence, Oakland County, Michigan, all described as: Beginning at a point on the Easterly right of way line of Rochester Road, said point being North 225.30 feet along the Westerly line of Lots 1 through 4, both inclusive, "Grandview Subdivision", according to the plat thereof as recorded in Liber 37 of Plats, page 44, Oakland County Records, and said Westerly line extended from the Southwest corner of Lot 4 of said subdivision; thence from this Point of Beginning, South along the above described line 225.30 feet to the Southwest corner of said Lot 4; thence Easterly along the Northerly line of Eastlawn Avenue 200.00 feet to a point in the South line of Lot 6 of said subdivision; thence North 02 degrees 08 minutes 50 seconds East, 225.00 feet along a line parallel to the Easterly line of said Lot 6 and said Easterly line extended to a point; thence South 87 degrees 51 minutes 10 seconds West, 211.67 feet to the Point of Beginning.

**ALSO DESCRIBED FOR TAX PURPOSES AS FOLLOWS:**

Lots 1 through 5, both inclusive, including vacated alley lying adjacent to same, also the West 32.30 feet of Lot 6, GRANDVIEW SUBDIVISION, according to the plat thereof as recorded in Liber 37 of Plats, page 44, Oakland County Records.

Tax Item No. 15-35-352-019

Part of the Southwest ¼ of the Southwest ¼ of Section 35, Town 3 North, Range 11 East, Township of Independence, Oakland County, Michigan, described as: The South 65.00 feet of the West 210.00 feet of the following described parcel: Beginning at the Northwest corner of Lot 1 of "Grandview Subdivision", according to the plat thereof as recorded in Liber 37 of Plats, page 44, Oakland County Records; thence North 86 degrees 21 minutes 10 seconds East, 350.00 feet; thence North 200.00 feet; thence North 87 degrees 15 minutes 00 seconds West, 350.00 feet; thence South to the Point of Beginning.

Tax Item No. 15-35-352-067

EXHIBIT B  
PRELIMINARY SITE PLAN







