

**APPLICATION TO REZONE (CONDITIONAL REZONING)**  
City of Rochester Hills

Applicant MJMS, LLC c/o JOHN D. GABER

Address WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.  
380 N. OLD WOODWARD AVENUE, SUITE 300, BIRMINGHAM, MICHIGAN 48009  
(Street) (City) (State) (Zip)

Telephone (248) 642-0333 Fax (248) 642-0856 Email jdg@wwrplaw.com

Applicant's Interest in Property Contract Purchaser

Property Owner(s) CROOKS MANGLA, LLC

Address 1052 OAKTREE LANE, BLOOMFIELD HILLS, MICHIGAN 48304  
(Street) (City) (State) (Zip)

**PROPERTY CHARACTERISTICS:**

- Platted Lot Lot No. 105, 106 Subdivision Sunnydale Gardens No. 2  
107, 108, 109, Part of 114
- Acreage Parcel Parcel Identification No. 70-15-33-351-003, 004, 005, 006, 007,  
Part of 019

Location Northeast Corner of Crooks and South Boulevard

Property Dimensions: Width at Road Frontage 390' on Crooks Depth 385' (295' on Lots 109 and 114)

Total Area: Number of acres 3.28 Present use Vacant

**CHANGE OF ZONING:**

R-4 Current Zoning SP Proposed Zoning

If rezoned, the property will be used for Senior Housing

**TAB 2**  
**(Conditional Rezoning Agreement)**

**CONDITIONAL REZONING AGREEMENT**  
**(SPECIAL PURPOSE)**

THIS CONDITIONAL REZONING AGREEMENT ("Agreement"), is made as of \_\_\_\_\_, 2007, 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 CROOKS MANGLA, LLC, a Michigan limited liability company ("Owner"), whose address is 1052 Oaktree Lane, Bloomfield Hills, Michigan 48304.

**RECITALS**

- A. Owner is the fee simple title holder of certain real property located in the City consisting of a 3.28 acre vacant parcel, more or less, located on the east side of Crooks Road, north of South Boulevard, identified as Parcel I.D. No. 70-15-33-351-003, 70-15-33-351-004, 70-15-33-351-005, 70-15-33-351-006, 70-15-33-351-007, and part of 70-15-33-351-019, as legally described on Exhibit A attached hereto ("Property").
- B. The Property is currently zoned R-4, Single Family Residential, and Owners desire to rezone the property to SP, Special Purpose.
- C. MJMS LLC, a Michigan limited liability company ("Applicant") has entered into a purchase agreement with Owner to purchase the Property.
- D. Applicant has submitted a conditional rezoning application with attachments to the City, seeking to rezone the Property from its current R-4 designation to SP, with Owner's consent.
- E. Owner and Applicant are also each the owners of portions of certain real property located in the City consisting of a 1.62 acre vacant parcel, more or less, and located on the north side of South Boulevard and the east side of Crooks Road, adjacent to the south boundary of the Property, identified as Parcel I.D. No. 70-15-33-351-008, 70-15-33-351-009, 70-15-33-351-018, and part of 70-15-33-351-019 ("Adjacent Property").

- F. Applicant intends to develop the Property and the Adjacent Property as a cohesive development (which may be developed in phases), with compatible and complimentary architecture, building surface materials and landscaping, shared access drive(s), interconnected pedestrian walkways, cross easements and shared storm drainage facilities.
- G. Applicant has simultaneously submitted a conditional rezoning application to rezone the Adjacent Property from its current designation of R-4 to O-1, Office, including many of the same conditions set forth in this Agreement.
- H. MCL 125.584g 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.
- I. Owner voluntarily offers, in writing, to condition the rezoning of the Property on the conditions set forth in this Agreement.
- J. On \_\_\_\_\_, 2007, the City Council approved the rezoning request subject to the conditions voluntarily offered by Owner under MCL 125.584g.
- K. This Agreement is consistent with the intent of and satisfies the conditions of MCL 125.584g, 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 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 R-4 to SP, 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 R-4 Single Family Residential classification, to the SP Special Purpose classification.

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

- a. **Building Materials.** The elevations of the building on the Property shall substantially consist of brick, stone or similar materials approved by the Planning Commission as part of site plan approval for the Property, unless otherwise approved by City Council after recommendation from the Planning Commission.
- b. **Compatible Architecture and Building Materials.** The architecture and surface materials of the buildings on the Property and the Adjacent Property shall be complimentary and compatible to each other as approved by the Planning Commission as part of site plan approval for the Property and the Adjacent Property, unless otherwise approved by City Council after recommendation from the Planning Commission.
- c. **Shared Access Drive.** There shall be only a single access drive from South Blvd. to both the Property and the Adjacent Property, as approved by the Planning Commission as part of site plan approval for the Property and the Adjacent Property, unless otherwise approved by City Council after recommendation from the Planning Commission.
- d. **Cross Access Drive.** There shall be a cross access drive(s) between the Property and the Adjacent Property for vehicular access, at a location(s) to be determined on the site plan for the Property and the site plan for the Adjacent Property approved by the Planning Commission, unless otherwise approved by City Council after recommendation from the Planning Commission.
- e. **Pedestrian Walkways.** There shall be a sidewalk(s) or other pathway(s) between the Property and the Adjacent Property for pedestrian access, at a location(s) to be determined on the site plan for the Property and the site plan for the Adjacent Property approved by the Planning Commission, unless otherwise approved by City Council after recommendation from the Planning Commission.
- f. **Cross Easements.** There shall be cross easements granted for vehicular and pedestrian access between the Property and the Adjacent Property, unless otherwise approved by City Council after recommendation from the Planning Commission.
- g. **Simultaneous Site Plans.** Either (i) a single site plan for the Property and the Adjacent Property shall be submitted for approval; or (ii) separate site plans for the Property and the Adjacent Property shall be submitted simultaneously for approval, provided that elevations and floor plans for the Property may be submitted and

approved by the Planning Commission at a later time, prior to the issuance of any building permits for the Property. In the event that a single site plan is submitted, and the owner of either the Property or Adjacent Property desires to amend the site plan as it applies to such owner's parcel in the future, then such owner may apply for a site plan amendment or modification without the consent of the owner of the other parcel being required, provided that such requested amendment does not affect the approved site plan for the other parcel.

- h. Landscaping.** The landscaping for the Property and the Adjacent Property shall be complimentary and compatible, and the landscape materials and screening used to comply with the landscape screening and buffer requirements of Section 138-1216 of the City's Zoning Ordinance for the Property and the Adjacent Property shall be either substantially identical, or complimentary and compatible, as approved by the Planning Commission as part of site plan approval for the Property and the Adjacent Property, unless otherwise approved by City Council after recommendation from the Planning Commission.
- i. Shared Storm Water Detention.** The Property and the Adjacent Property shall share common storm water detention facilities to the extent permitted by the Oakland County Drain Commission, the City Engineer and any other applicable governmental authority with jurisdiction over the parcels, as approved by the Planning Commission as part of site plan review for the Property and the Adjacent Property, unless otherwise approved by City Council after recommendation from the Planning Commission.
- j. Best Storm Water Management Practices.** Owner and Applicant shall work with the City Engineer to investigate and consider the implementation of best storm water management practices and alternative storm water distribution and infiltration systems and methods that differ from or exceed the requirements of City Ordinances, provided, however, that Owner and Applicant shall only be required to comply with the City Ordinance requirements and engineering design standards in effect at the time of such submittal.

**4. Zoning Expiration.** The zoning conditions contained in this Agreement shall apply to the Property for a period of four (4) years from and after receiving final Site Plan approval from the City for the Property, provided, however, that upon application of the Owners, their successors or assigns, the City may extend the time period during which the conditions of this Agreement apply to the Property. In the event the conditions are not satisfied within the time specified herein, and any extension

thereof, or in the event Owners, or their successors or assigns, notify the City of their abandonment of their development of the Property, the Property shall revert to its former zoning classification of R-4, Single Family Residential. Notwithstanding the foregoing, Owners, for themselves and their successors and assigns, retain the right at any time prior to the commencement of construction of the improvements contemplated herein, to terminate this Agreement, and the Property shall revert to its former R-4 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.** To the extent that the Agreement and its exhibits conflict with City Ordinances, the terms of this Agreement and exhibits will 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. In all events, any reference to the City Ordinances shall mean existing ordinances of the City of Rochester Hills at time of execution of 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 SP. The Agreement shall be recorded by Owners in the office of the Oakland County Register of Deeds and a certified 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 its departments may change, but the City shall nonetheless remain bound by this Agreement.

[Signatures Follow on Next Page]







## EXHIBIT A

### Legal Description of Property

The following property in the City of Rochester Hills, Oakland County, Michigan:

Lots 105, 106, 107, 108, 109 and part of Lot 114 of "Sunnydale Gardens No.2" as recorded in Liber 64 of Plats, Page 19, Oakland County records, **EXCEPT:** All that part of said Lot 114 lying south of the easterly extension of the south line of said lot 109 of said "Sunnydale Gardens No.2", Being part of the West 1/2 of the West 1/2 of Section 33, T3N, R11E, City of Rochester Hills, Oakland County, Michigan.