

AGREEMENT

THIS AGREEMENT ("Agreement") is made, entered into on June 13, 2017 by and between the **CITY OF BEECHWOOD VILLAGE**, with an address of P. O. Box 7527, Louisville, KY 40207, and **AUTOMOTIVE MANAGEMENT SERVICES, INC. a/k/a AMSI**, its successor or assignee, with an address of 505 S. Flagler Drive, Suite 700, West Palm Beach, FL 33401 ("AMSI") (collectively referred to as the "Parties" or individually as a "Party").

RECITALS:

WHEREAS AMSI entered into a contract to purchase the real property generally known as 100 Marshall Drive and 102 Marshal Drive, Louisville, Kentucky, collectively consisting of approximately 0.75 acres, both of which are located in the City of Beechwood Village (the "Subject Property"), from MANDY FIELDS VINE, as Trustee of the Andrew Douglas Vine Gift Trust under Trust Agreement dated October 31, 2005, SUSAN S. VINE, as Trustee of the Michael R. Vine Gift Trust under Trust Agreement dated October 31, 2005, JACK VINE and SHERI VINE, his wife, VALERIE VINE MILLER and MICHAEL MILLER, her husband, and JAMES E. HAYNES and SARA V. HAYNES, his wife (collectively, "Seller"), the sale of which is conditional on the Subject Property being rezoned from R-7 to C-2, amongst other conditions set forth in the purchase contract.

WHEREAS AMSI owns the real property generally known as 4311 Shelbyville Road, Louisville, Kentucky, which is already zoned C-2, is adjacent to the Subject Property, is what the Metro Land Development Code identifies as a pre-Plan Certain site, and is located in the City of St. Matthews (the "pre-Plan Certain Site").

WHEREAS AMSI filed a Change in Zoning application with Louisville Metro Planning and Design Services ("DPDS") on or about January 23, 2017 for the Subject Property to change the zoning from R-7 to C-2, more specifically set forth in Case No. 16ZONE1087, to be operated as an automotive dealership display area in conjunction with the pre-Plan Certain Site (the "Rezoning Application");

WHEREAS AMSI agrees to (1) develop the Subject Property only in accordance with certain Binding Elements pursuant to approval of the detailed district development plan (the "DDDP") presented at the June 1, 2017 Planning Commission public hearing for the Rezoning Application; and (2) develop the pre-Plan Certain Site only in accordance with certain Conditions of Approval pertaining to use and design of it.

WHEREAS the Council has agreed to endorse the Rezoning Application on the Subject Property, provided AMSI agrees to present the Binding Elements attached hereto and made a part hereof as Exhibit "A" and to be contractually bound by Conditions of Approval attached hereto and made a part hereof as Exhibit "B".

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for good and valuable consideration, the adequacy and sufficiency of which is hereby

*Submitted @ PC
on 6/15/17
by WBB*

acknowledged, and with the intent to be legally bound, the Parties hereby agree as follows:

1. **RECITALS:** The Recitals set forth hereinabove are incorporated and made a part of this Agreement as if set forth in whole in this Section 1 of the Agreement.
2. **AMSI CONSIDERATION:** AMSI agrees to the following: (a) to impose the Conditions of Approval on the pre-Plan Certain Site; and (b) to make every reasonable effort to convince the Planning Commission to adopt the Binding Elements, together with the Wall Design specifications and the Detailed Landscape Plan attached hereto and made a part hereof as Exhibit "C" as part of the approval of the DDDP at the June 15, 2017, Planning Commission continuation hearing.
3. **ENFORCEMENT OF THE CONDITIONS OF APPROVAL:** The Conditions of Approval are enforceable through the actions of the Council as a matter of contract law. The Conditions of Approval run with the land, and as such, are enforceable against AMSI while it owns the pre-Plan Certain site and the Subject Property, and, if it divests itself of its real property rights in the pre-Plan Certain site and/or Subject Property, AMSI's obligations in this Agreement shall cease, which obligations thereafter will be enforceable against any successors and assigns.
4. **ENFORCEMENT OF THE BINDING ELEMENTS:** The Binding Elements are enforceable through the action of DPDS and its enforcement division or related entity.
5. **COUNCIL CONSIDERATION.** As a result of the consideration of AMSI as set forth herein, the Council agrees to continue to express support of and not oppose the Rezoning Application and DDDP.
6. **AGREEMENT CONDITIONAL:** This Agreement is conditional on (a) the Planning Commission and Metro Council approving the Rezoning Application and DDDP, with the Binding Elements. In the event the Rezoning Application and/or DDDP are not approved, this Agreement shall be considered null and void.
7. **MINOR PLAT:** The Parties understand that a new minor plat shall be created to consolidate the Subject Property and the pre-Plan Certain Site, but for purposes of this Agreement the two properties shall nevertheless be considered separate and by their current boundaries for enforcement purposes.
8. **GOVERNING LAW:** The provisions of this Agreement shall be construed, enforced and governed by and in accordance with the laws of the Commonwealth of Kentucky without regard to conflicts of laws principles.
9. **BINDING AGREEMENT:** The Parties agree that this Agreement shall be binding on and inure to the benefit of the Parties hereto, their legal representatives, heirs, successors, and assigns. In entering into this Agreement, the Parties acknowledge that they

had the right and opportunity to obtain legal counsel to assist them, and that the terms of this Agreement are fully understood and voluntarily accepted by them.

10. COUNTERPARTS: This Agreement may be executed in counterparts, and facsimile or electronic signatures, delivered via email on this Agreement shall be effective as original signatures.

11. CONDITIONAL: This Agreement is conditional on, and no rights, releases or waivers shall be effective, until all parties have signed hereinbelow.

12. MODIFICATION: This Agreement may not be amended or modified except by agreement set forth in the written memorandum executed by all of the Parties hereto.

[End of the Agreement with signatures to follow on the next page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

AUTOMOTIVE MANAGEMENT SERVICES, INC., a/k/a AMSI

By: Anna Reynolds

Title: Assistant Secretary

CITY OF BEECHWOOD VILLAGE

By: Phil Jones 6-13-17

Title: Mayor of Beechwood Village

EXHIBIT "A"
BINDING ELEMENTS

BINDING ELEMENTS

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the City of Beechwood Village for review and to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Signage:
 - a. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site. Temporary way finding signs, construction-related signs or directional signs are permitted. Plans for all proposed freestanding signage shall be submitted to the City of Beechwood Village for review.
 - b. No median, street signage or other structure in the City of Beechwood Village right of way can be installed or removed without review and coordination with the City of Beechwood Village.
 - c. The property owner shall be responsible for reimbursing the City of Beechwood Village for legal fees incident to any and all necessary signage enforcement on the City's part.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A minor plat or legal instrument shall be recorded consolidating the property into the larger lot to the west (4311 Shelbyville Road). A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.

7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
8. No idling of trucks shall take place within 200 feet of residences. No overnight idling of trucks shall be permitted on-site.
9. Hours of Operation:
 - a. Deliveries: 7am-7pm Monday- Friday; 9am-5pm Saturday and Sunday
 - b. Trash Pick-Up: 7am-6pm Monday-Friday
 - c. Construction: 7am-7pm Monday- Friday; 8am-5pm Saturday and Sunday
 - d. Business Hours: 7am- 9pm Monday-Sunday
10. The only permitted use of the subject property shall be an automobile sales parking lot. Any changes in use shall be reviewed and approved by the Planning Commission or its designee. Thirty (30) days advance notice of any Planning Commission or designee decision shall be given to the City of Beechwood Village and 1st tier adjacent property owners.
11. The applicant shall provide a copy of the plan and application to the City of Beechwood Village, within one week of filing to Planning and Design Services, of all Revised Detailed District Development Plans, Amendment to Binding Elements, Change of Zoning or Conditional Use Permit requests, Waivers, and Variances.
12. Dumpsters shall be enclosed as required by the Land Development Code, be lidded and the lid shall not be made of metal.
13. Landscaping shall be installed pursuant to the "Detailed Landscape Plan" presented at the June 15, 2017 Planning Commission hearing and presented to the City of Beechwood Village on May 9, 2017. Any and all landscaping shall be maintained, including mowing, trimming, pruning, replacing all bushes, trees, grass, and or plantings. Any replacement landscaping shall be of similar quality and size as approved by Planning and Design services staff. All landscaping approved by the Planning and Design Services staff shall be installed following the exact specifications of the approved final landscaping plan.
14. Lighting:
 - a. At the time a building permit for the parking lot construction is requested, the applicant/developer shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the Land Development Code and shall be maintained accordingly thereafter. No permits shall be issued unless such certification statement is submitted.
 - b. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall assure that no light source is visible off site. Lighting levels attributable to the fixtures located on the subject site shall not exceed 0.25 foot candles at the property line. Light shall be LED or equivalent.
15. Proper drainage of storm water and water run off from site shall not overflow and encroach onto neighboring private property owners, City of Beechwood Village or its right of way. If water encroaches or ponds onto said properties, land owner shall take immediate action to remedy the

situation. Storm water shall drain according to MSD and in accordance with MSD approved construction documents. Any storm water runoff is sole responsibility of property owner. Owner shall take appropriate actions to meet recommended site drainage specifications as approved by MSD.

16. No test drives of vehicles shall be permitted within the City of Beechwood Village. Managers, sales agents and customers shall be advised by the applicant, developer and/or property owner of this prohibition.
17. An 8-foot tall (at top of columns) masonry wall shall be installed as located on the DDDP pursuant to the "brick wall detail" (except for height as noted herein) presented at the June 1, 2017 Planning Commission Public Hearing. The wall shall be maintained by the property owner.

EXHIBIT "B"
CONDITIONS OF APPROVAL

Conditions of Approval

1. No light pole shall exceed 30 feet in height. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall assure that no light source is visible off site. Lighting levels attributable to the fixtures located on the subject site shall not exceed 0.25 foot candles at the property line. Light shall be LED or equivalent.
2. Dumpsters shall be enclosed as required by the Land Development Code, be lidded and the lid shall not be made of metal.
3. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system.
4. No overnight idling of trucks shall be permitted on-site.
5. Hours of operation:
 - a. Deliveries: 7:00 AM-7:00 PM Monday-Friday; 9:00 AM-5:00 PM Saturday and Sunday
 - b. Trash pick-up: 7 AM-6 PM Monday-Friday
 - c. Construction (except as regards snow and ice removal): 7 AM-7 PM Monday-Friday;. 8 AM-5PM Saturday and Sunday
 - d. Business hours: 7 AM-9 PM Monday-Sunday
6. No test drives of vehicles shall be permitted within the City of Beechwood Village. Managers, sales agents and customers shall be advised by the applicant, developer and/or property owner of this prohibition.
7. Any car wash shall be designed to muffle dryers, blowers, or other loud sounds related to car washing and with doors that automatically open and close. Vehicle service and maintenance shall occur behind closed doors.
8. A 12-inch high concrete curb shall be installed along the east property line of the existing auto dealership lot from its northeast corner to the northwest corner of the lot subject to rezoning.
9. The existing pipe along the east property line of the existing auto dealership property shall be cleaned out. It and its inlets shall be continuously maintained thereafter.
10. A grass swale shall be cut along the north property line to drain to the inlet at the northeast corner of the existing auto dealership property.
11. A 7 foot tall wood fence shall be installed along the north and east property lines of the existing auto dealership property.

EXHIBIT "C"

WALL DESIGN AND DETAILED LANDSCAPE PLAN

DETAILED LANDSCAPE PLAN

 EXISTING TREES & SHRUBS

 PROPOSED TREES & SHRUBS



Fencing and Wall Design

Specs to Wall

