

AGENDA

PONTIAC CITY COUNCIL
Thursday, September 12, 2013
6:00pm
226th Session of the Eighth Council

Call to order

Invocation

Moment of Silence

Pledge of Allegiance

Roll Call

Authorization to Excuse Members from Meeting

Approval of Journal

1. September 5, 2013

Recognition of Elected Officials

Special Presentation- Kim Hodge

Public Comment

The public may address the Council during the public discussion portion of the agenda. You must complete a public discussion card located in the City Council Office. Please indicate on the card your name, address, and topic(s) for discussion, and leave your card with the City Council Office staff prior to the start of the meeting at 6:00 p.m. Citizens will be allowed five (5) minutes to discuss city business during a Council meeting; and provided further; the Council President shall determine the order in which each person may speak (City Council Rule VI-D, adopted 2/27/2003)

Miscellaneous

2. Report received from the Department of Planning for the 45399 Woodward Avenue/M-1 Concourse Planning Commission Re-Zoning Recommendation.
3. Report Received from the City Council for a Resolution for the Public Safety Subcommittee on September 11, 2013.

Closing Comments

Mayor

Deputy Mayor

City Clerk

Council

Adjournment

September 5, 2013

**Official Proceedings
Pontiac City Council
225th Session of the Eighth Council**

A Regular Meeting of the City Council of Pontiac, Michigan was called to order in City Hall, Thursday, September 5, 2013 at 6:00 P.M. by President Lee Jones.

Invocation by Kermit Williams

Moment of Silence

Pledge of Allegiance

Roll Call

Members Present: Carter, Jones, Pietila, Watkins, G. Williams and K. Williams
Absent: Patrice Waterman
Clerk announced a quorum.

13-181 **Excuse Councilmember Patrice Waterman.** Moved by Councilperson G. Williams and supported by Councilperson Pietila.

Ayes: Carter, Jones, Pietila, Watkins, G. Williams and K. Williams.
No: None
Motion Carried

13-182 **Journal.** Moved by Councilperson G. Williams and supported by Councilperson Carter to approve the Journals of the meeting minutes held on August 29, 2013.

Ayes: Carter, Jones, Pietila, Watkins, G. Williams and K. Williams
No: None
Motion Carried

There were 13 individuals who addressed the body during public comments.

Mayor Jukowski, Deputy Mayor Glass, Councilman G. Williams, Councilman R. Carter, Councilwoman M. Pietila, Councilman K. Williams, Councilman D. Watkins and President Lee Jones made closing comments. City Clerk Sherikia L. Hawkins had no closing comments.

13-183 **Adjournment.** Moved by Councilperson G. Williams and supported by Councilperson Pietila.

September 5, 2013

Ayes: Carter, Jones, Pietila, Watkins, G. Williams and K. Williams

No: None

Motion Carried

Meeting Adjourned at 7:58 p.m.

SHERIKIA L. HAWKINS
CITY CLERK

MISCELLANEOUS

City of Pontiac
Department of Planning

Date: August 27, 2013

To: Honorable Pontiac City Council

From: C. James Sabo, AICP
Professional Planner

Re: 45399 Woodward Avenue/M-1 Concourse
Planning Commission Rezoning Recommendation

The Planning Commission approved case number PF-13-28, 45399 Woodward Avenue for rezoning on May 1, 2013 and recommended approval to the City Council. The recommendation was conditioned upon execution of a Conditional Rezoning Agreement between the City of Pontiac and M-1 Concourse LLC. On August 16, 2013 a Conditional Rezoning Agreement was executed and signed and is attached for review. The recommended rezoning is from M-2 General Industrial district to C-1 Local Business for portions of the property. The property is located at the northwest corner of South Boulevard and Woodward Avenue and the applicant proposes a multi-building commercial development project at this intersection. A map detailing the proposed zoning map amendment portions of the parcel is attached for review.

The standard procedure for a rezoning request is a recommendation from the Planning Commission to the City Council for official action. The Planning Commission recommends adoption of the proposed ordinance to conditionally rezone for the property known as 45399 Woodward Avenue from M-2 General Industrial district to C-1 Local Business district for portions of the property.

The purpose of this correspondence is to introduce the proposed ordinance, which has been reviewed and approved by the City Attorney. Upon introduction, the Clerk shall distribute a copy to each Council member and to the Mayor, and shall file a reasonable number of copies in the office of the Clerk and such other public places as the Council may designate, and shall publish a summary of the proposed ordinance in a newspaper of general circulation in the City together with a notice of the time and place for consideration by the Council.

At the first meeting, the City Council should pass a resolution setting a time and place for consideration of this proposed ordinance.

At the meeting where the proposed ordinance is considered, City Council is requested to adopt the following resolution:

Whereas, on May 1, 2013, the Pontiac Planning Commission recommended that portions of certain parcels on the northwest corner of Woodward Ave and South Blvd. be conditionally rezoned; and,

Whereas, on August 16, 2013 the City entered into a conditional zoning agreement with the developer;

Now, therefore, be it resolved, that the Pontiac City Council accepts the recommendation of the Pontiac Planning Commission and adopts:

AN ORDINANCE TO AMEND APPENDIX B OF THE MUNICIPAL CODE OF THE CITY OF PONTIAC TO AMEND ARTICLE 2, ZONING DISTRICTS AND PERMITTED USES, SECTION 2.103, ZONING MAP, TO CHANGE THE ZONING CLASSIFICATIONS FOR SPECIFIC PARCELS ON WOODWARD AVENUE FOR CONDITIONAL REZONING.

CITY OF PONTIAC
ORDINANCE NUMBER No. 23xx

AN ORDINANCE TO AMEND APPENDIX B OF THE MUNICIPAL CODE OF THE CITY OF PONTIAC TO AMEND ARTICLE 2, ZONING DISTRICTS AND PERMITTED USES, SECTION 2.103, ZONING MAP, TO CHANGE THE ZONING CLASSIFICATIONS FOR SPECIFIC PARCELS ON WOODWARD AVENUE FOR CONDITIONAL REZONING.

The City of Pontiac ordains:

Section 1. Amendments:

TO CONDITIONALLY CHANGE THE ZONING DISTRICT CLASSIFICATION FROM M-2 GENERAL INDUSTRIAL DISTRICT TO C-1 LOCAL BUSINESS DISTRICT AND ALLOW ONLY THE USES OF OFFICE OR COMMERCIAL RETAIL FOR PORTIONS OF PARCEL IDENTIFICATION NUMBERS 14-33-351-001, 14-33-351-012, 14-33-302-001, 14-33-302-002, 14-33-302-003 LEGALLY DESCRIBED AS:

LAND SITUATED IN THE CITY OF PONTIAC, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS:

PROPOSED PARCEL A:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF RAPID STREET (46 FEET WIDE) WITH THE WESTERLY LINE OF THE GRAND TRUNK WESTERN RAILROAD RIGHT OF WAY (80 FEET WIDE) SAID POINT BEING ALSO THE NORTHEASTERLY CORNER OF LOT 1 OF RAPID MOTOR ADDITION AS RECORDED IN LIBER 5 OF PLATS, PAGE 49, OAKLAND COUNTY RECORDS; THENCE SOUTH 29 DEGREES 51 MINUTES 20 SECONDS EAST ALONG THE WESTERLY LINE OF SAID RAILROAD RIGHT-OF-WAY, SAID LINE BEING ALSO PART OF THE EASTERLY LINE OF SAID LOT 1, A DISTANCE OF 753.26 FEET TO A POINT OF CURVE IN SAID RIGHT-OF-WAY; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 3090.45 FEET, AN ARC DISTANCE OF 140.47 FEET (CHORD BEARS SOUTH 31 DEGREES 09 MINUTES 27 SECONDS EAST, 140.46 FEET) TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 3090.45 FEET, AN ARC DISTANCE OF 584.83 FEET (CHORD BEARS SOUTH 37 DEGREES 52 MINUTES 52 SECONDS EAST, 583.96 FEET) TO THE SOUTHEASTERLY CORNER OF SAID LOT 1 OF SAID SUBDIVISION; THENCE SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE ON THE ARC OF A CURVE WHICH IS CONCAVE TO THE NORTHEAST AND WHICH FORMS THE NORTHEASTERLY LINE OF LOTS 9 AND 10 OF ASSESSOR'S PLAT NO. 90, AS RECORDED IN LIBER 18 OF PLATS, PAGE 90, OAKLAND COUNTY RECORDS, AN ARC DISTANCE OF 45.90 FEET (CHORD BEARS SOUTH 43 DEGREES 29 MINUTES 04 SECONDS EAST, 45.90 FEET) TO THE LOT CORNER COMMON TO LOTS 10 AND 11 OF SAID ASSESSOR'S PLAT; THENCE CONTINUING SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 3090.45 FEET, AN ARC DISTANCE OF 242.81 FEET (CHORD BEARS SOUTH 46 DEGREES 16 MINUTES 05 SECONDS EAST, 242.76 FEET) TO THE POINT OF INTERSECTION OF SAID RIGHT-OF-WAY WITH THE WESTERLY LINE OF SAGINAW STREET, AS WIDENED; THENCE SOUTH 26

DEGREES 44 MINUTES 58 SECONDS EAST, 106.88 FEET ALONG THE WESTERLY LINE OF SAID SAGINAW STREET TO A POINT; THENCE SOUTH 66 DEGREES 51 MINUTES 20 SECONDS WEST, 357.81 FEET; THENCE NORTH 36 DEGREES 13 MINUTES 51 SECONDS WEST, 234.83 FEET; THENCE SOUTH 53 DEGREES 46 MINUTES 09 SECONDS WEST, 89.66 FEET; THENCE NORTH 84 DEGREES 53 MINUTES 50 SECONDS WEST, 350.56 FEET; THENCE NORTH 05 DEGREES 07 MINUTES 23 SECONDS EAST, 527.39 FEET; THENCE SOUTH 89 DEGREES 46 MINUTES 55 SECONDS EAST, 53.41 FEET; THENCE NORTH 26 DEGREES 03 MINUTES 00 SECONDS EAST, 151.89 FEET; THENCE NORTH 57 DEGREES 32 MINUTES 25 SECONDS EAST 128.50 FEET TO THE POINT OF BEGINNING.

PROPOSED PARCEL B:

COMMENCING AT THE NORTHEAST CORNER OF FRANKLIN ROAD (WIDTH VARIES) AND SOUTH BOULEVARD (WIDTH VARIES) SAID POINT BEING ALSO THE SOUTHWEST CORNER OF LOT 42 OF DONALDSON ADDITION NO. 1, AS RECORDED IN LIBER 18 OF PLATS, PAGE 39, OAKLAND COUNTY RECORDS; THENCE SOUTH 84 DEGREES 29 MINUTES 13 SECONDS EAST, ALONG THE NORTH LINE OF SOUTH BOULEVARD (WIDTH VARIES), SAID LINE BEING ALSO THE SOUTH LINE OF PART OF LOT 16, THE SOUTH LINE OF LOTS 10, 9 AND 1 OF ASSESSOR'S PLAT NO. 91, AS RECORDED IN LIBER B-1 OF PLATS, PAGE 91, OAKLAND COUNTY RECORDS, THE SOUTH LINE OF LOTS 32, 31 AND 30, THE SOUTH END OF VACATED YORK STREET (40 FEET WIDE), THE SOUTH LINE OF LOTS 19 THROUGH 14, INCLUSIVE, THE SOUTH END OF VACATED DUKE STREET (40 FEET WIDE) AND THE SOUTH LINE OF LOTS 3, 2, AND 1 OF DONALDSON ADDITION, AS RECORDED IN LIBER 8 OF PLATS, PAGE 5, OAKLAND COUNTY RECORDS, AND THE SOUTH LINE OF LOTS 33 THROUGH 39, INCLUSIVE, AND LOT 42 OF SAID DONALDSON ADDITION NO. 1, A DISTANCE OF 1325.87 FEET TO THE POINT OF BEGINNING; THENCE NORTH 05 DEGREES 30 MINUTES 47 SECONDS EAST, 125.39 FEET; THENCE SOUTH 85 DEGREES 15 MINUTES 16 SECONDS EAST, 42.01 FEET; THENCE NORTH 33 DEGREES 44 MINUTES 44 SECONDS EAST, 67.52 FEET; THENCE SOUTH 56 DEGREES 15 MINUTES 16 SECONDS EAST, 76.90 FEET; THENCE NORTH 33 DEGREES 19 MINUTES 16 SECONDS EAST, 180.00 FEET; THENCE NORTH 56 DEGREES 40 MINUTES 44 SECONDS WEST, 76.90 FEET; THENCE NORTH 33 DEGREES 52 MINUTES 53 SECONDS EAST, 556.90 FEET TO A POINT ON THE WESTERLY LINE OF SAGINAW STREET AS WIDENED; THENCE SOUTH 26 DEGREES 15 MINUTES 20 SECONDS EAST ALONG THE WESTERLY LINE OF SAID SAGINAW STREET, 176.93 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE ON THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 5789.62 FEET, AN ARC DISTANCE OF 152.98 FEET (CHORD BEARS SOUTH 26 DEGREES 58 MINUTES 05 SECONDS EAST, 152.93 FEET); THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, SOUTH 27 DEGREES 43 MINUTES 04 SECONDS EAST, 320.46 FEET TO AN ANGLE POINT IN SAID STREET LINE; THENCE SOUTH 22 DEGREES 52 MINUTES 27 SECONDS EAST ALONG THE WESTERLY LINE OF SOUTH SAGINAW STREET, AS WIDENED, A DISTANCE OF 305.95 FEET TO THE NORTHEASTERLY CORNER OF A TRIANGULAR PARCEL OF LAND DEEDED TO THE MICHIGAN STATE HIGHWAY DEPARTMENT FOR HIGHWAY PURPOSES, AS RECORDED IN LIBER 5802 OF DEEDS ON PAGE 794, OAKLAND COUNTY RECORDS; THENCE SOUTH 33 DEGREES 51 MINUTES 26 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID TRIANGULAR PARCEL, A DISTANCE OF 19.97 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTH BOULEVARD; THENCE NORTH 84 DEGREES 29 MINUTES 13 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTH BOULEVARD, 909.20 FEET TO THE POINT OF BEGINNING.

Section 2. Severability.

If any section, clause, or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 3. Repealer

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 4. Effective Date

This Ordinance shall be effective ten days after adoption by the City Council and approved by the Transition Advisory Board and seven days after publication of this Ordinance by the Clerk in a newspaper of general circulation.

CONDITIONAL REZONING AGREEMENT

THIS CONDITIONAL REZONING AGREEMENT is hereby entered into by and between M-1 CONCOURSE, LLC., a Michigan limited liability company, whose address is c/o Kotz, Sangster, Wysocki P.C. 36700 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304 ("Owner/Developer"), and the CITY OF PONTIAC, a Michigan municipal corporation, whose address is 47450 Woodward Avenue Pontiac, Michigan 48342 ("City") on August 16, 2013.

RECITALS

- A. Owner/Developer is currently the fee owner of certain real property located at the Northwest corner of Woodward Avenue and South Boulevard Pontiac, Michigan 48341, multiple parcels, more specifically described on Exhibit "A", attached hereto ("Property").
- B. Owner/Developer desires to have two portions of the Property zoned C-1, Local Business Commercial District under the City of Pontiac Zoning Ordinance ("Zoning Ordinance").
- C. Owner/Developer has voluntarily offered to enter into this Conditional Rezoning Agreement consistent with the Michigan Zoning Enabling Act.
- D. This Conditional Rezoning Agreement is made by the City pursuant to authority granted to the City under MCLA §125.3405, as amended.
- E. The City, by action of its Emergency Manager on August 16, 2013, has accepted the voluntary offer of Owner/Developer to enter into this Conditional Rezoning Agreement.

ARTICLE 1

DESCRIPTION OF DEVELOPMENT

1.1 **Development Description.** The development involves proposed retail commercial space at approximately 36,000 square feet, office space at approximately 67,000 square feet, out lot restaurant use at 7,000 to 8,000 square feet, vehicle storage warehouse at approximately 308,000 square feet located at the Property, and possible future improvements on the Property.

1.2 **Site Plan.** Owner/Developer shall submit drawings and plans for the Property which shall constitute a final site plan in support of an allowable C-1 retail commercial use and an allowable M-2 General Industrial use project, ("Site Plan").

ARTICLE 2

REZONING AND CONDITIONS

2.1 **Rezoning.** The City hereby rezones the Property from M-2, General Industrial District to C-1 Local Business Commercial District as that term is identified in Article II of the Zoning Ordinance. The following conditions shall apply to such rezoning:

a. The use of the Property shall be limited to an approved concept preliminary site plan described as Planning Department file number PF-13-32 for 45399 Woodward Avenue located at the northwest corner of the intersection of Woodward Avenue and South Boulevard. The use shall be limited to retail commercial use, office space use, restaurant use, vehicle storage use, outdoor performance venue use, warm up track use, and event assembly space use. Owner/Developer waives its right to seek approval for any other permitted uses or any uses permitted subject to special exception permit conditions provided in the C-1 Local Business District; or any other permitted uses or uses permitted subject to special exception permit conditions provided in the M-2 General Industrial District.

b. The concept preliminary site plan approval conditions for PF-13-32 are as follows:

1. Review and a recommended of approval to the City Council/EM for Zoning Map Amendment application PF-13-32 for the parcels identified in the application and Exhibit A herein.
2. Submission of a traffic impact study to the Engineering and Planning Department for the proposed M-1 project at the time of final site plan review.
3. Compliance with all development standards identified in the City of Pontiac Zoning Ordinance as amended.
4. Final Site Plan Review in accordance with the Preliminary Site Plan conditions from the Planning Department in file PF-13-32.
5. Compliance with specific City of Pontiac departmental requirements and standards.
6. Compliance with all applicable Michigan Building Code codes and permitting requirements.
7. Compliance with all City of Pontiac business licensing requirements.
8. Provide documentation for all property ownership prior to any action for rezoning.

c. The Owner/Developer agrees that any other C-1 Local Business District uses and any other M-2 General Industrial uses are prohibited on the Property.

d. Owner/Developer offers and the City accepts that this Agreement is contingent upon final site plan approval for the permitted uses as stated for PF-13-32. Upon submittal and approval of the final site plan review for a commercial retail use, office space use, restaurant use, vehicle storage use, outdoor performance venue use, warm up track use, and event assembly space use, this condition shall be deemed satisfied.

2.2 Conditions Subsequent to Re-Zoning. If any of the following events shall occur, then this Conditional Rezoning Agreement shall be null and void and the zoning of the Property will revert to the M-2, General Industrial District zoning classification:

- a. If Owner/Developer, at any time prior to the commencement of construction elects to terminate this Agreement by written notice to the City.
- b. Construction of the retail commercial use (37,000 sf), the office space use (67,000 sf), the restaurant use (7,500 sf), the vehicle storage use (308,000s sf), the outdoor performance venue use (100,000 sf), the warm up track use (10 acres), and the event assembly space use (32,000 sf), pursuant to the approved Site Plan PF-13-32, has not commenced within two (2) years after the recording of this Conditional Rezoning Agreement. This time period may be extended upon application of the Owner/Developer and approved by City

Council/Emergency Manager. In the event the time period is not extended, and construction has not commenced within two (2) years, the reversion process shall be initiated by the City Council/Emergency Manager requesting that the Planning Commission proceed with consideration of rezoning of the land to its former zoning classification.

c. The portion of the Property upon which the commercial retail use, office space use, restaurant use, vehicle storage use, outdoor performance venue use, warm up track use, and event assembly space use was constructed ceases to be operated as such for twelve consecutive months.

2.3 Force Majeure. Notwithstanding anything to the contrary contained in Section 2.2 above, if any failure or inability of Owner/Developer to meet the condition set forth in Section 2.2 is caused by delay beyond the reasonable control of Owner/Developer, such as war, civil insurrection, strike, or Acts of God, then Owner/Developer shall be given an extension of time to satisfy such condition equal to the period of delay.

ARTICLE 3

GENERAL PROVISIONS

3.1 The City's Representations and Warranties.

a. Authority. The City has the authority to enter into this Conditional Rezoning Agreement and to perform and carry out all obligations, covenants and provisions hereof.

b. Transfer of Ownership. The transfer of title of the Property shall not constitute an event of default under this Conditional Rezoning Agreement;

c. Compliance. The Conditional Rezoning Agreement complies with the requirements of City Ordinances, including the Zoning Ordinance.

d. Sole Authority. The City Council/Emergency Manager is the sole and appropriate municipal body to enter into the Conditional Rezoning Agreement

with the Owner/Developer.

e. **Plan Review.** The City will timely review the plans and documents submitted for site plan, building permits, public utilities and signage, and all materials submitted by Owner/Developer to achieve the purposes of this Conditional Rezoning Agreement.

f. **Uses.** The intended land use for the Property is commercial retail use, office space use, restaurant use, vehicle storage use, outdoor performance venue use, warm up track, use, and event assembly space use, which are permitted uses under Section 2.313, M-2 zone district and Section 2.308, C-1 zone district of the Zoning Ordinance.

g. **Restraints.** Neither the execution nor delivery of this Conditional Rezoning Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, the City's Charter, or any agreement to which the City is a party or by which it is bound.

h. **Disclosure.** No representation or warranty by the City, or any statement or certificate furnished to Owner/Developer pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will fail to state any fact necessary to make the statements contained herein or therein not misleading.

i. **Litigation.** The City has no notice of and there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect the City or its principals from carrying out the covenants and promises made herein.

3.2 Owner/Developer's Representations and Warranties.

a. **Organization.** Owner/Developer is duly organized and validly existing, in

good standing under the laws of the State of Michigan and has all requisite power and authority to own and operate its assets and properties, to carry on its business as now being conducted, and to enter into and perform the terms of the Conditional Rezoning Agreement.

b. **Authorization.** The execution and delivery of this Conditional Rezoning Agreement and consummation of the transactions contemplated hereby have been duly authorized by Owner/Developer.

c. **Restraints.** Neither the execution nor delivery of this Conditional Rezoning Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, Owner/Developer's organizational documents, or any agreement to which the Owner/Developer is a party or by which it is bound.

d. **Disclosure.** No representation or warranty by the Owner/Developer, or any statement or certificate furnished to the City pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will fail to state any fact necessary to make the statements contained herein or therein not misleading.

e. **Litigation.** Owner/Developer has no notice of and there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect Owner/Developer or its principals from carrying out the covenants and promises made herein.

f. **Voluntary Offer.** Owner/Developer represents and warrants that it has voluntarily offered to enter into this Conditional Rezoning Agreement and Owner/Developer shall not commence any action after the date hereof against the City asserting that it did not voluntarily offer to enter into this Conditional Rezoning Agreement.

ARTICLE 4

NOTICES

All notices, consents, approvals, requests and other communications, herein collectively called "Notices," required or permitted under this Conditional Rezoning Agreement shall be given in writing, signed by an authorized representative of the City or Owner/Developer and mailed by certified or registered mail, return receipt requested, personally delivered, sent by overnight courier or sent by facsimile transmission to a party as follows:

To City: City of Pontiac
Community Development Director
47450 Woodward Avenue
Pontiac, Michigan 48342
Tel: (248) 758-3000 Fax: (248) 758-3292

To Owner/Developer: M-1 Concourse, LLC.
c/o Kotz, Sangster, Wysocki
36700 Woodward Avenue Suite 300
Bloomfield Hills, Michigan 48304
Tel: (248) 646-1058

All such notices, certificates or other communications shall be deemed served upon the date of personal delivery, the day after delivery to a recognized overnight courier, the date of the transmission by facsimile or other electronic means is verified or two days after mailing by registered or certified mail. Any party may by notice given under this Conditional Rezoning Agreement designate any further or different addresses or recipients to which subsequent notices, certificates or communications hereunder shall be sent.

ARTICLE 5

MISCELLANEOUS

5.1 Non-Liability of City, Officials and Employees. No City officer, employee, Planning Commissioner, City Council Member, elected or appointed official, attorneys,

consultants, advisors, agents and representatives, shall be personally liable to Owner/Developer for any default or breach by the City of any obligation under this Conditional Rezoning Agreement or in any manner arising out of the performance of this Conditional Rezoning Agreement by any party.

5.2 **Successors/Provisions Running With the Land.** All or a portion of the Property, including all improvements thereon, may be sold, transferred or conveyed, in whole or in part, provided that this Agreement shall inure to the benefit of and shall bind the parties hereto and any assignee, transferee or successor in interest to the Owner/Developer shall be bound by the terms and conditions of this Agreement. The provisions of this Conditional Rezoning Agreement shall be deemed benefits and burdens which shall run with the Property.

5.3 **Recording.** This Conditional Rezoning Agreement shall be recorded with the Oakland County Register of Deeds at the expense of Owner/Developer.

5.4 **Complete Agreement.** This Conditional Rezoning Agreement and the Site Plan, which was approved on May 1, 2013 for development of the Property as a condition of this Agreement, constitutes the entire agreement between the parties with respect to the subject of this Conditional Rezoning Agreement, and supersede all prior and contemporaneous oral and written representations, statements, promises, agreements or undertakings made by either party or agent of either party that are not contained in this Agreement. This Agreement may not be amended or its terms varied except in writing and signed by the required parties.

5.5 **Conflicts.** In the event of conflict between the provisions of this Conditional Rezoning Agreement and any provision of the Zoning Ordinance either existing on the date hereof or adopted in the future, the provisions of this Conditional Rezoning Agreement shall prevail.

5.6 **Default Remedies of Owner/Developer.** The City shall not be in default in any term or condition of this Agreement unless and until Owner/Developer has provided the City with written notice that the City has failed to comply with an obligation under this Agreement, and the

City has failed to cure such failure within sixty (60) days of the written notice, unless the nature of the noncompliance is such that it cannot be cured with due diligence within such period, in which case the City has failed to commence to cure within such period and thereafter diligently pursued the cure.

5.7 **Default Remedies of City.** Owner/Developer shall not be in default in any term or condition of this Agreement unless and until the City has provided Owner/Developer with written notice that Owner/Developer has failed to comply with an obligation under this Agreement, and Owner/Developer has failed to cure such failure within sixty (60) days of the written notice, unless the nature of the noncompliance is such that it cannot be cured with due diligence within such period, in which case Owner/Developer has failed to commence the cure within such period and thereafter diligently pursued the cure.

5.8 **Third Party Beneficiaries.** No term or provision of this Conditional Rezoning Agreement is intended to be, or shall be, for the benefit of any person not a party to the Agreement, and no such person shall have any right or cause of action hereunder.

5.9 **Severability.** The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses, or provisions hereof, which shall remain valid and enforceable to the fullest extent permitted by law.

5.10 **Waiver of Breach.** A party to this Agreement does not waive any default, condition, promise, obligation, or requirement applicable to any other party hereunder, unless such waiver is in writing, signed by an authorized representative of that party, and expressly stated to constitute such waiver. Such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation, or requirement in any past or future instance. No failure of a party to insist upon strict performance of any covenant, agreement, term or condition of this Conditional Rezoning Agreement or to the exercise of any right or remedy in the event of a default shall constitute a waiver of any such

default in such covenant, agreement, term, or condition.

5.11 **Governing Law.** This Conditional Rezoning Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan. Owner/Developer agrees, consents and submits to the personal jurisdiction of any competent court of jurisdiction in Oakland County, Michigan, for any action brought against it arising out of this Conditional Rezoning Agreement.

5.12 **Joint Drafting.** This Conditional Rezoning Agreement has been negotiated by the parties based upon the voluntary offer of conditions made by the Owner/Developer, and each party has joined in and contributed to its drafting. Accordingly, there shall be no presumption favoring or burdening any of the parties based upon draftsmanship.

THE UNDERSIGNED HAVE EXECUTED THIS CONDITIONAL REZONING AGREEMENT AS OF THE DATE SET FORTH ABOVE.

WITNESS:

OWNER/DEVELOPER:

M-1 CONCOURSE, LLC.
a Michigan limited liability company

Joseph M. Atwater, M.P.H.

By: Brad Oleshansky
Its: Owner

STATE OF MICHIGAN)
)
 ss.
COUNTY OF OAKLAND)

On this 16 day of August 2013, before me appeared Brad Oleshansky, to me personally known, who, being by me duly sworn, did said that he is an Owner of M-1 Concourse, LLC., and that said instrument was signed and sealed on behalf of said corporation, by the authority of its governing body, and he acknowledges said instrument to be the free act and deed of said corporation.

JAKI K HOLZER
Notary Public, State of Michigan
County of Oakland
My Commission Expires Dec. 22, 2019
Acting in the County of Oakland

Jaki K. Holzer
Jaki K. Holzer, Notary Public
Oakland County, Michigan
My Commission Expires: 12-22-2019
____ Acting in the County of Oakland

WITNESSES:

CITY:

CITY OF PONTIAC,
a Michigan municipal corporation.

Joseph M. Schmitt, CPA

By: *Louis H. Schimmel*
Louis H. Schimmel
Its: Emergency Manager

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this 16 day of August 2013, before me appeared Louis H. Schimmel, to me personally known, who, being by me duly sworn, did said that he is the Emergency Manager of the City of Pontiac, and that said instrument was signed and sealed on behalf of said City, by the authority of its Emergency Financial Manager, and they acknowledge said instrument to be the free act and deed of said City.

JAKI K HOLZER
Notary Public, State of Michigan
County of Oakland
My Commission Expires Dec. 22, 2019
Acting in the County of Oakland

Jaki K. Holzer
Jaki K. Holzer, Notary Public
Oakland County, Michigan
My Commission Expires: *12-22-2019*
Acting in the County of *Oakland*

EXHIBIT "A"

LEGAL
DESCRIPTIONS

LAND SITUATED IN THE CITY OF PONTIAC, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS:

PROPOSED PARCEL A:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF RAPID STREET (46 FEET WIDE) WITH THE WESTERLY LINE OF THE GRAND TRUNK WESTERN RAILROAD RIGHT OF WAY (80 FEET WIDE) SAID POINT BEING ALSO THE NORTHEASTERLY CORNER OF LOT 1 OF RAPID MOTOR ADDITION AS RECORDED IN LIBER 5 OF PLATS, PAGE 49, OAKLAND COUNTY RECORDS; THENCE SOUTH 29 DEGREES 51 MINUTES 20 SECONDS EAST ALONG THE WESTERLY LINE OF SAID RAILROAD RIGHT-OF-WAY, SAID LINE BEING ALSO PART OF THE EASTERLY LINE OF SAID LOT 1, A DISTANCE OF 753.26 FEET TO A POINT OF CURVE IN SAID RIGHT-OF-WAY; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 3090.45 FEET, AN ARC DISTANCE OF 140.47 FEET (CHORD BEARS SOUTH 31 DEGREES 09 MINUTES 27 SECONDS EAST, 140.46 FEET) TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 3090.45 FEET, AN ARC DISTANCE OF 584.83 FEET (CHORD BEARS SOUTH 37 DEGREES 52 MINUTES 52 SECONDS EAST, 583.96 FEET) TO THE SOUTHEASTERLY CORNER OF SAID LOT 1 OF SAID SUBDIVISION; THENCE SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE ON THE ARC OF A CURVE WHICH IS CONCAVE TO THE NORTHEAST AND WHICH FORMS THE NORTHEASTERLY LINE OF LOTS 9 AND 10 OF ASSESSOR'S PLAT NO. 90, AS RECORDED IN LIBER 18 OF PLATS, PAGE 90, OAKLAND COUNTY RECORDS, AN ARC DISTANCE OF 45.90 FEET (CHORD BEARS SOUTH 43 DEGREES 29 MINUTES 04 SECONDS EAST, 45.90 FEET) TO THE LOT CORNER COMMON TO LOTS 10 AND 11 OF SAID ASSESSOR'S PLAT; THENCE CONTINUING SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 3090.45 FEET, AN ARC DISTANCE OF 242.81 FEET (CHORD BEARS SOUTH 46 DEGREES 16 MINUTES 05 SECONDS EAST, 242.76 FEET) TO THE POINT OF INTERSECTION OF SAID RIGHT-OF-WAY WITH THE WESTERLY LINE OF SAGINAW STREET, AS WIDENED; THENCE SOUTH 26 DEGREES 44 MINUTES 58 SECONDS EAST, 106.88 FEET ALONG THE WESTERLY LINE OF SAID SAGINAW STREET TO A POINT; THENCE SOUTH 66 DEGREES 51 MINUTES 20 SECONDS WEST, 357.81 FEET; THENCE NORTH 36 DEGREES 13 MINUTES 51 SECONDS WEST, 234.83 FEET; THENCE SOUTH 53 DEGREES 46 MINUTES 09 SECONDS WEST, 89.66 FEET; THENCE NORTH 84 DEGREES 53 MINUTES 50 SECONDS WEST, 350.56 FEET; THENCE NORTH 05 DEGREES 07 MINUTES 23 SECONDS EAST, 527.39 FEET; THENCE SOUTH 89 DEGREES 46 MINUTES 55 SECONDS EAST, 53.41 FEET; THENCE NORTH 26 DEGREES 03 MINUTES 00 SECONDS EAST, 151.89 FEET; THENCE NORTH 57 DEGREES 32 MINUTES 25 SECONDS EAST 128.50 FEET TO THE POINT OF BEGINNING.

PROPOSED PARCEL B:

COMMENCING AT THE NORTHEAST CORNER OF FRANKLIN ROAD (WIDTH VARIES) AND SOUTH BOULEVARD (WIDTH VARIES) SAID POINT BEING ALSO THE SOUTHWEST CORNER OF LOT 42 OF DONALDSON ADDITION NO. 1, AS RECORDED IN LIBER 18 OF PLATS, PAGE 39, OAKLAND COUNTY RECORDS; THENCE SOUTH 84 DEGREES 29 MINUTES 13 SECONDS EAST, ALONG THE NORTH LINE OF SOUTH BOULEVARD (WIDTH VARIES), SAID LINE BEING ALSO THE SOUTH LINE OF PART OF LOT 16, THE SOUTH LINE OF LOTS 10, 9 AND 1 OF ASSESSOR'S PLAT NO. 91, AS RECORDED IN LIBER B-1 OF PLATS, PAGE 91, OAKLAND COUNTY RECORDS, THE SOUTH LINE OF LOTS 32, 31 AND 30, THE SOUTH END OF VACATED YORK STREET (40 FEET WIDE), THE SOUTH LINE OF LOTS 19 THROUGH 14, INCLUSIVE, THE SOUTH END OF VACATED DUKE STREET (40 FEET WIDE) AND THE SOUTH LINE OF LOTS 3, 2, AND 1 OF DONALDSON ADDITION, AS RECORDED IN LIBER 8 OF PLATS, PAGE 5, OAKLAND COUNTY RECORDS, AND THE SOUTH LINE OF LOTS 33 THROUGH 39, INCLUSIVE, AND LOT 42 OF SAID DONALDSON ADDITION NO. 1, A DISTANCE OF 1325.87 FEET TO THE POINT OF BEGINNING; THENCE NORTH 05 DEGREES 30 MINUTES 47 SECONDS EAST, 125.39 FEET; THENCE SOUTH 85 DEGREES 15 MINUTES 16 SECONDS EAST, 42.01 FEET; THENCE NORTH 33 DEGREES 44 MINUTES 44 SECONDS EAST, 67.52 FEET; THENCE SOUTH 56 DEGREES 15 MINUTES 16 SECONDS EAST, 76.90 FEET; THENCE NORTH 33 DEGREES 19 MINUTES 16 SECONDS EAST, 180.00 FEET; THENCE NORTH 56 DEGREES 40 MINUTES 44 SECONDS WEST, 76.90 FEET; THENCE NORTH 33 DEGREES 52 MINUTES 53 SECONDS EAST, 556.90 FEET TO A POINT ON THE WESTERLY LINE OF SAGINAW STREET AS WIDENED; THENCE SOUTH 26 DEGREES 15 MINUTES 20 SECONDS EAST ALONG THE WESTERLY LINE OF SAID SAGINAW STREET, 176.93 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE ON THE ARC OF A CURVE CONCAVE TO THE NORTHEAST, RADIUS 5789.62 FEET, AN ARC DISTANCE OF 152.98 FEET (CHORD BEARS SOUTH 26 DEGREES 58 MINUTES 05 SECONDS EAST, 152.93 FEET); THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, SOUTH 27 DEGREES 43 MINUTES 04 SECONDS EAST, 320.46 FEET TO AN ANGLE POINT IN SAID STREET LINE; THENCE SOUTH 22 DEGREES 52 MINUTES 27 SECONDS EAST ALONG THE WESTERLY LINE OF SOUTH SAGINAW STREET, AS WIDENED, A DISTANCE OF 305.95 FEET TO THE NORTHEASTERLY CORNER OF A TRIANGULAR PARCEL OF LAND DEEDED TO THE MICHIGAN STATE HIGHWAY DEPARTMENT FOR HIGHWAY PURPOSES, AS RECORDED IN LIBER 5802 OF DEEDS ON PAGE 794, OAKLAND COUNTY RECORDS; THENCE SOUTH 33 DEGREES 51 MINUTES 26 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID TRIANGULAR PARCEL, A DISTANCE OF 19.97 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTH BOULEVARD; THENCE NORTH 84 DEGREES 29 MINUTES 13 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTH BOULEVARD, 909.20 FEET TO THE POINT OF BEGINNING.

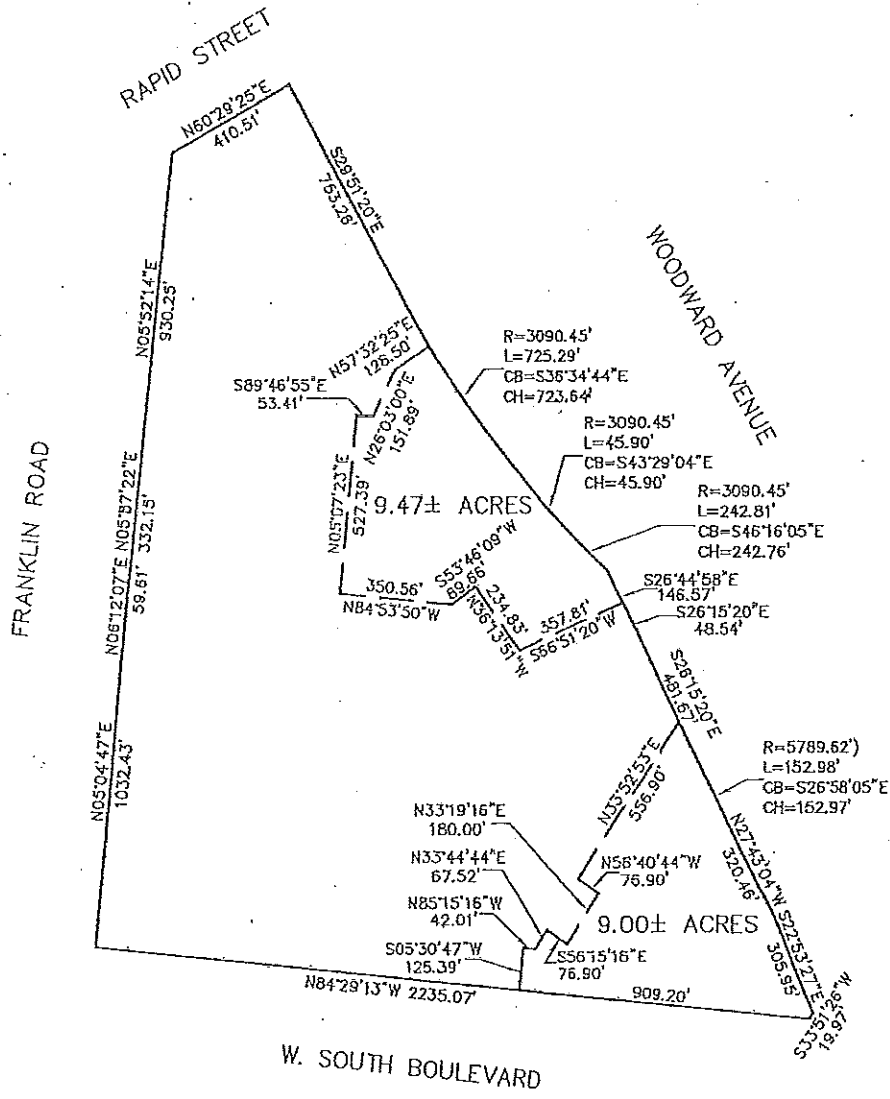
REZONING EXHIBIT

PROPERTY DESCRIPTION:
SEE SHEET 2 OF 2

DRAFT



SCALE 1" = 400'
0' 200' 400'
100' 300'



NOTES:

1. A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.
2. ALL PROPERTY SPLITS REQUIRE PRIOR CITY, TOWNSHIP, COUNTY, AND/OR STATE APPROVAL.
3. EXISTING AND PROPOSED PROPERTY DESCRIPTIONS ARE BASED UPON PROPERTY DESCRIPTIONS AS PROVIDED BY CLIENT.

	KEM-TEC & ASSOCIATES 22556 GRATIOT AVE. EASTPONTE, MI 48021 PROFESSIONAL SURVEYORS - PROFESSIONAL ENGINEERS (586)772-2222 * FAX (586)772-4048	
	PREPARED FOR: MI CONCOURSE	
FIELD SURVEY: N/A	DATE: JUNE 17, 2013	
DRAWN BY: TS/CD	SHEET: 1 OF 2	
SCALE: 1" = 400'	JOB NO.: 13-02059	

City of Pontiac

City Council Resolution

Whereas, The Pontiac City council has accepted the written and oral report for the Public Safety Sub Committee meeting that took place on September 11, 2013.

Whereas, the City Clerk will properly file and keep this written report.

Now, Therefore, be it resolved by the Pontiac City Council has accepted the written and oral report for the Special Services Sub Committee Meeting that took place September 11, 2013.

Resolution Dated: September 12, 2013

Public Safety Subcommittee Report 9-11-2013

Prepared by G. Williams

Attendance: G. Williams, M. Pietila,(City Council) Sgt. Miller(Sheriff's Dept.) J. Pherbus (Waterford Regional Fire) J. Rayner(Star) Mayor's office Mayor Jukoski, S. Scott

Meeting started 5:00 pm by G. Williams ask report from Sheriff's Dept. Sgt. Miller stated that things were going good normal calls. Councilwoman Pietila asked for crime and murder static for this year. Sgt. Miller advised Mary to get those numbers from Capt. Atkins's secretary. Mary stated she wanted numbers brought to next Public Safety meeting. Sam Scott ask, Sgt. Miller if abandon vehicles could be towed from private property? He stated no, only if was stolen. No other question

A report was ask from Waterford Regional Fire, John stated fires were down from last year. Abandon homes fire were up. G. Williams if those increases or decreases be given in percentages in the future. No other questions.

J. Rayner was asked report from star, he stated everything was going good. The car seat inspections were coming again. Sept. 18 2013 1-4 pm at Star EMS 63 Oakland ave. Pontiac, mi.

Adjourn 5:15pm

NOTES
