

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ADAMS/HAMLIN DEVELOPMENT
CO., LLC, HAMLIN REDEVELOPMENT
~~Goldsmith~~ Phyllis C. McMillen
CO, LLC, and HAMLIN/ADAMS
PROPERTIES, LLC,

Case No. 04-060730-CZ
Hon. ~~Mark A.~~

Plaintiffs, _____

v.

THE CITY OF ROCHESTER HILLS, a
Michigan municipal corporation,

Defendant.
_____ /

~~KALAS KADIAN, P.L.C. JOHNSON, ROSATI, LABARGE,
By: THOMAS KALAS (P41805) ASELTINE & FIELD, P.C.
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_____ /

AMENDED CONSENT JUDGMENT

AMENDED CONSENT JUDGMENT

At a session of Court held in the
City of Pontiac, State of Michigan,
on _____

PRESENT: HONORABLE ~~MARK A. GOLDSMITH~~ _____
Circuit Court Judge

Upon the Motion of Defendant, The City of Rochester Hills, a Michigan municipal corporation (the "City"), to reopen this matter, upon notice to the Plaintiffs, and upon the stipulation and consent of the partiesCity, by and through ~~their respective~~its attorneys, this Court finds:

1. ~~Plaintiff, Adams/Hamlin Development Company, LLC, at certain times hereto, was the owner of a parcel of land, referred to as the "West Parcel", containing approximately 18.8 acres,~~Plaintiffs and the City stipulated to, and this Court approved, a Consent Judgment in this matter on April 20, 2006 the ("Consent Judgment") which was subsequently recorded in the Oakland County Register of Deeds against certain real property approximately twenty-eight (28) acres in size and located generally at the northeast corner of the intersection of Hamlin and Adams Roads in the City of Rochester Hills.~~Plaintiff, Hamlin Redevelopment Company, LLC, at certain times hereto, was the owner of a parcel of land, referred to as the "East Parcel", containing approximately 9.2 acres, and located adjacent to the West Parcel. For purposes of this Consent Judgment, the West Parcel and East Parcel shall be referred to as the "Property", the legal description being attached as Exhibit A.~~more fully described in Exhibit A attached hereto (the "Property").
2. ~~Plaintiff, Hamlin/Adams Properties, LLC, is the current fee simple owner of the Property, having purchased the Property in December of 2005.~~
3. ~~Defendant, City of Rochester Hills ("City"), is a municipal corporation, organized and existing under Act 279, Public Act 1909, as amended, MCL 117.1 et. seq., located in Oakland County, Michigan.~~

- ~~4.2.~~ Pursuant to the Zoning Act, the City has duly adopted a Zoning Ordinance ("Zoning Ordinance"), Chapter 138 of the City Code of Ordinances, which has been amended from time to time.
- ~~5.3.~~ The Property is currently vacant land. The Property is zoned R-2, One-Family Residential, under the Zoning Ordinance. The Property is also Master Planned for single-family residential use.
- ~~6.~~ ~~On November 20, 2003, Plaintiffs filed an application to rezone the Property from R-2 to B-2, General Business.~~
- ~~7.~~ ~~On June 15, 2004, the Planning Commission, after public hearing, recommended denial of the rezoning. On July 14, 2004, the City Council denied the rezoning request.~~
- ~~8.~~ ~~On July 22, 2004, Plaintiffs filed a Zoning Board of Appeals' application seeking a use variance.~~
- ~~9.~~ ~~On August 23, 2004, the Zoning Board of Appeals conducted a public hearing, and denied Plaintiffs' application.~~
- ~~10.~~ ~~On August 27, 2004, Plaintiffs filed suit against the City seeking both equitable relief and monetary damages.~~
- ~~11.~~ ~~The Court subsequently ordered this matter into Facilitation, which Facilitation took place over several months.~~
4. ~~The parties now desire to settle this lawsuit in accordance with the terms and conditions of this~~ The Property was the former location of the Christensen Dump which operated in the mid-1950's until the mid-1960's where illegal dumping activities occurred both during and after the operation of the Christensen Dump. The Property was and is contaminated with hazardous substances which causes the Property to be classified as a "facility" under Part 201 of the Michigan Natural Resources and Environmental Protection Act, Michigan Public Act 451, as amended, MCL 324.20101 et. seq. ("Part 201").
5. ~~The Consent Judgment, in order~~ required Plaintiffs, if the Plaintiffs chose to redevelop the Property, to adequately address the environmental contamination at the Property to ~~avoid further costs~~ reduce unacceptable exposures to the environmental contamination ~~and expenses~~ otherwise comply with Part 201. The

Consent Judgment also allowed the Plaintiffs to develop the Property into a mixed-use commercial and ~~the uncertainty of a trial,~~ office development under the limitations and ~~to resolve their disputes relative to this matter without~~ terms provided in the Consent Judgment. However, the Plaintiffs chose not to perform any ~~admission~~ of the development and improvements on the Property allowed under the Consent Judgment. Nor did the Plaintiffs address the environmental contamination on the Property, and the Property has remained vacant, undeveloped, and unremediated since the entry of the Consent Judgment.

6. DBB Hamlin, LLC and DBB Adams, LLC became the owners of ~~liability.~~ the Property (the “Owner”) and succeeded to and extinguished the legal interests of the Plaintiffs in the Property on September 13, 2016.
7. The Owner intends to transfer its interest in the West Property, as defined below, to GCI Acquisitions, LLC (or to an affiliated entity or entities) (“Developer”) and the Owner will either transfer its interest in the East Property, as defined below, to the Developer, or to an affiliated entity or entities of the Developer to be designated by the Developer, or the Owner will allow the Developer to conduct specified activities on the East Property, as defined below, upon condition that this Court approve this Amended Consent Judgment. After the Effective Date, as defined in Section 4.10 of this Amended Consent Judgment, and after this Amended Consent Judgment is entered and recorded against the Property, the Developer, or an affiliated entity or entities designated by the Developer, intends to improve the Property in the manner described in this Amended Consent Judgment.
8. The entry of this Amended Consent Judgment will facilitate economic use of the Property and will allow Developer to improve the Property in a manner which will provide substantially more benefits than the development permitted under the Consent Judgment. Specifically, the additional benefits to the City, to the surrounding community, to the general public, and to the environment will include but are not limited to: (a) the removal of environmental contamination below the proposed multiple family residential development, to unrestricted residential cleanup levels, on the western portion of the Property as depicted on

the Conceptual Plans, as that term is defined below, (“West Property”); (b) environmental remediation, the installation of engineering controls, and the placement of use restrictions upon the eastern portion of the Property (“East Property”), as depicted on the Conceptual Plans; (c) the limitation of, and imposition of conditions for future development on the East Property through a recorded restrictive covenant required by the Michigan Department of Environmental Quality (“MDEQ”); and, (d) the development of the West Property under this Amended Consent Judgment as a multiple family residential development which is more consistent with the City’s Master Plan and the current zoning of the Property than the commercial and office facility with associated parking which was previously permitted under the Consent Judgment in 2006.

~~12.9.~~ This Amended Consent Judgment is presented to the Court pursuant to stipulation of the ~~parties~~City, after notice to Plaintiffs, by and through ~~their respective~~the City’s counsel, and the Court has determined that this proposed Amended Consent Judgment is reasonable and just.

IT IS HEREBY ORDERED THAT:

Section 1-- Approvals

1.1 Zoning

The Property shall remain zoned R-2, One-Family Residential. Nothing in this Amended Consent Judgment shall prohibit or preclude the City from subsequently amending the zoning classification applicable to the Property; or exercising its legislative discretion. Despite the residential or any amended zoning, the Property may be developed, constructed, and used in conformity with the terms of this Amended Consent Judgment (herein "Development"). All uses provided for in this Amended Consent Judgment shall be deemed legal conforming permitted uses. ~~In the event any of the buildings or structures are destroyed or damaged by fire or other~~ ~~casualty, Plaintiffs~~Developer may rebuild same in accordance with the terms of this Amended Consent Judgment.

1.2 Conceptual Plans

~~Plaintiffs~~Developer shall be permitted to develop, construct, and use the Property in conformance with the Conceptual Plans ~~and Specifications~~ (collectively “~~Conceptual Plans~~”) attached hereto as **Exhibit B** and made a part of this Amended Consent Judgment. References to the Amended Consent Judgment shall be deemed to include the Conceptual Plans. The Conceptual Plans, prepared by ~~Design Team Limited~~

PEA, Inc., divide the Property into two distinct areas: the West Property and the East Property. The West Property is intended to be the location of multi-family apartment buildings, various amenities, parking spaces, and ~~Design Haus, consist of:~~

- ~~a. Site Data Concept A;~~
- ~~b. Site Data Concept B;~~
- ~~c. Gateway Feature (NE corner Hamlin/Adams);~~
- ~~d. Commercial Building;~~

~~e. Two attached/detached garages, as generally depicted on the Conceptual Plans.~~
The East Property is intended to be an open area with limited uses, such as outdoor recreation trails, outdoor fitness, fences, parking, and one half story office building; other uses consistent with the requirements contained in a document entitled “Documentation of Due Care Compliance” to be approved by the MDEQ in accordance with MCL 324.20114g (the “DDCC”), as may be amended, which may include encapsulation and access controls, as generally depicted on the Conceptual Plans.

- ~~f. One story office building;~~
- ~~g. Rear elevation/one story office;~~
- ~~h. Multi tenant commercial building.~~

The parties acknowledge that the Conceptual Plans do not include final building elevations ~~for all buildings shown on the overall concept site layouts "A" and "B", and which may be built on the Property. The elevations which are not shown for the remaining buildings depicted on the Concept Plans shall be architecturally consistent with the building elevations included in the Conceptual Plans, and the remaining~~such elevations shall be prepared ~~and approved during the site plan approval process by the Developer and approved by City staff, the Planning Commission and the City Council during the Site Plan Review process described below. However, the City shall approve final building elevations which are generally consistent~~

with the surrounding neighborhood and provide for a Tudor style with a partial fieldstone front façade, unless the Developer and City agree on other forms of elevations generally consistent with the Zoning Ordinance.

1.3 Site Plan Approval

This Amended Consent Judgment shall constitute conceptual site plan approval for the Development and all permitted uses of the Property, as reflected in the Conceptual Plans and this Amended Consent Judgment. Prior to commencement of any physical development of the Property, ~~Plaintiffs~~Developer shall apply for site plan approval pursuant to Article ~~IV, Sections 2, Chapter 2~~ (Site Plan Review); Article 4, Section ~~138-141 to 138-1444.202~~ (Purpose of RM-1 Multiple Family Residential District); and Article 6, Chapter 1 (Supplemental District Standards for RM-1 Multiple Family Districts), and other applicable provisions of the Zoning Ordinance applicable to the Development, and proceed as provided for herein. Prior to receiving site plan approval, ~~Plaintiff~~ for any portion of the Property, the Developer shall ~~submit and have the prepare an Act 381 work plan~~ (“Work Plan, ~~required under Section 2.4 of this Consent Judgment, approved~~”), as defined in the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, as amended (“Act 381”) to be submitted to the MDEQ by the City’s Brownfield Redevelopment Authority, ~~the City Council, the MDEQ, and the USEPA. In light of the conceptual site plan for the approval, Plaintiffs shall not be required to submit an Environmental Impact Statement. Plaintiffs of the MDEQ.~~ Developer shall submit a technically-compliant site plan package to the Planning Commission, in accordance with Article ~~IV2, Chapter 2~~, Site Plan Review, ~~Section 138-141(e) and (e)~~ of the Zoning Ordinance and this Amended Consent Judgment, which body shall have the right to review and recommend approval or modification to the City Council. ~~n~~In the event the site plan submittal is not technically compliant, ~~Plaintiffs~~Developer shall be notified of same within twenty-one (21) days of submittal, along with what additional items are necessary for submittal, to make the site plan technically compliant. The Planning Commission review shall be limited to determining whether the site plan package submitted is consistent and in substantial compliance with the Conceptual Plans and the terms of this Amended Consent Judgment. The Planning Commission shall not have the right to make any recommendation or modification which is inconsistent with the Conceptual Plans and the terms of this Amended Consent Judgment. The City ~~Council~~

~~s~~Council's decision for approval of the ~~Final Site Plan~~final site plan shall be given within forty-five (45) days of submission of a technically-compliant site ~~pl.anplan~~ package to the Planning Commission. Notwithstanding the foregoing and anything to the contrary herein contained, and upon receiving all necessary approvals for same, ~~Plaintiffs~~Developer may commence activities identified in the Brownfield ~~redevelopment of~~Plan approved by the City's Brownfield Redevelopment Authority (the "Brownfield Plan") at the Property prior to receiving final site plan approval.

Except as otherwise restricted in ~~section~~Section 2; 2(C), ~~Plaintiffs~~, Developer shall be allowed only those uses permitted as principal uses in ~~the B-2 district and 0RM-1 district, including pharmacy/drug store with one (1) drive thru lane; bank with two (2) drive thru lanes and one (1) ATM lane; and coffee shop with one (1) drive thru lane. Stacking of cars~~(Multiple Family Residential District) for the ~~drive thru lanes shall be a maximum of three (3) cars for each drive thru lane; however, site conditions permitting and as long as it is practical and does~~West Property shown on the Conceptual Plans, not change site layout, Plaintiffs will attempt to increase the stacking to five (5) cars. exceed three hundred sixty-eight (368) apartment units, with a mix of standard parking spaces, attached garages, detached garages (carriage buildings), and related amenities. The ~~Final Site Plan~~final site plan shall adhere to the general plan reflected in the Conceptual Plans relative to building location, parking, buffering, ingress/egress, road pattern and building layout.

The Conceptual Plans approved under this Amended Consent Judgment depict, and the chart prepared by PEA, Inc. (attached hereto as Exhibit C) identifies, the acceptable variances, exceptions, and deviations from the City's Zoning Ordinance for the RM-1 (Multiple Family Residential District) zoning district for the Development.

1.4 Building and other Permits

The City will issue building permits and all other permits necessary to enable ~~Plaintiffs~~Developer to construct the improvements shown on the ~~Final Site Plan~~final site plan, and contemplated by this Amended Consent Judgment, after proper application by ~~Plaintiffs~~Developer and the payment of all applicable application and permit fees, and

compliance with all applicable building codes and engineering and zoning requirements. issuance of permits shall not be unreasonably delayed or withheld, time being of the essence.

1.5 Separate Tax Parcel Identification

~~Plaintiffs~~Developer shall furnish the City Assessor with a legal description for each parcel (or condominium unit), for which ~~Plaintiffs want~~Developer wants to divide as a separate parcel or unit, or combine as a single parcel, or change lot lines of the existing parcels, and obtain a separate tax bill, as long as ~~Plaintiffs' record~~Developer records a Declaration of Easements and/or Restrictions for ingress/egress and parking, or a Master Deed, the form of which shall be reviewed and approved by the City Attorney. ~~Plaintiffs~~Developer may apply for any number of parcel divisions as may be permitted under the Michigan Land Division Act ("~~Aet~~"), and the City Assessor shall provide a separate Parcel ~~dentification~~Identification Number for each description or condominium unit. The City shall allow the boundary of any proposed land division or lot line adjustment proposed by the Developer to correspond with the boundary of the proposed restrictive covenant as referenced in 2.3 B. of this Amended Consent Judgment. The City and Assessor shall cooperate with ~~Plaintiffs~~Developer to approve any land division/combination or lot line adjustment necessary to effectuate the Development if such proposed land division/combination or lot line adjustment complies with all applicable ordinances. The Developer currently contemplates that the boundary line between the two existing tax parcels comprising the Property shall be adjusted and relocated to reflect the intended development areas shown on the Conceptual Plans as the West Property and the East Property.

Section 2 - Conditions

2.1 Applicability

The conditions listed in this Section 2 shall apply to the Conceptual Plans and the development of the Property.

2.2 Features of Development

A. Permitted Buildings

(i) ~~Plaintiffs~~Developer shall be permitted to construct the buildings and improvements on the Property as shown on the Conceptual Plans. Parking spaces and configuration shall be as depicted on the Conceptual ~~Pans. The drug store/pharmacy and coffee shop shall be allowed one (1) drive-thru lane each. Plaintiffs shall have the option to develop the commercial buildings under either of the two alternative options shown as Concept "A" or Concept "B". However, in no event shall the commercial buildings located along Hamlin Road combined exceed a maximum of 72,600 square feet of gross building floor area, with the largest building containing no more than 40,000 square feet.~~Plans. Building configurations and parking may be altered when necessary, due to topography and other practical considerations, as long as total ~~square footage~~allowable number of multi-family residential units is not increased, and setbacks of buildings along Adams Road and Hamlin Road and the northern property line are not decreased.

(ii) The ~~three (3) office~~multi-family apartment buildings, ~~labeled F, G and H are depicted~~ on the Conceptual Plans. Buildings 1, 2, 3, and 4 shall contain no ~~more~~greater than ~~95,500 square~~two (2) stories or thirty (30) feet in height, and Buildings 5, 6, and 7 along the southern boundary of gross building floor area combined. Building F ~~the West Property and parallel to Hamlin Road~~ shall be no greater than ~~(1) story in height, or twenty (20) feet. Building G shall have a building four (4) stories in height no greater than two (2) stories, or thirty (30) feet. Building H (60 feet).~~ The main entrances to the buildings shall not be required to adhere to the requirements of the Zoning Ordinance relating to the front facades, orientation, location, front porches, stoops, and other dimensional or location requirements and shall have a building height ~~be permitted to be built and located as generally depicted on the Conceptual Plans. All carriage buildings shall be~~ no greater than two and one-half ~~(2-112) stories, or forty-two (42) feet. Building H is permitted to be two and one-half (2-1/2).~~5 stories ~~because of the existing, lower topography. It is the intention of the parties that the top floor of Building H shall be consistent from a line of sight perspective to the top floor of the adjacent four (4) residential homes to the north on average, and that the rooftop and mechanical equipment in height (35 feet) and shall not be visible from those residential homes. Plaintiffs, at their option, may replace~~

~~commercial square footage with office square footage, but not vice versa.~~ required to be at or in front of the front building, or as may be required by the Zoning Ordinance, and shall be permitted to be built and located as generally depicted in the Conceptual Plans. Building height, except as provided for herein, shall be measured in accordance with the applicable ~~0-1RM-1 (Multiple Family Districts)~~ zoning district criteria.

B. Setbacks

All buildings and structures on the West Property, as herein defined, shall be setback at least one hundred (100) feet from the northern Property line, at least fifty (50) feet from the northern Property west and south Property lines, and zero (0) feet from any easterly lot line. ~~Building H (2 ½ story office)~~ All parking, if any, on the East Property, as herein defined, shall be setback at least one hundred (100) feet from the northern Property line. There is no setback requirement for the lot line between the West Property and East Property, because the East Property will be encumbered with a restrictive covenant as described in Section 2.3 B. of this Amended Consent Judgment. Encroachments will be allowed in within the ~~northern Property line~~ setback area, in a park-like setting areas, to accommodate retention/detention areas, walkways, landscaping, underground utilities, courtyards, mechanical apparatus with brick or masonry retaining wall and landscape screening, ~~parking in the eastern portion of the Property~~ as shown on the Conceptual Plans, and ~~items~~ as may necessary or permitted under ~~Plaintiffs' Due Care Plan for environmental response~~ Part 201 or under the DDCC for activities on the East Property.

C. Office Multiple Family Uses Permitted

~~Buildings F, G and H may be used, except as otherwise provided herein, for those uses permitted as of right in the 0-1, Office Business District, Section 138-752, and without the limitations of Section 138-752(4), and for those office-type uses permitted in the B-2 General Business District under Section 138-522(2)b and (3), but excluding electrician, baker, an establishment doing radio, television or home appliance repair. Additional prohibited uses shall be any service activity that requires significant processing equipment such as a dry cleaning plant, and those activities that are predominantly retail in nature, with the sale of hard goods; and tattoo and body piercing studios, art studios containing only adult-related art, any adult-related business and any large health club facility (such as Lifetime Fitness); or any propane exchange~~

~~use. Due to the proximity of the office buildings to the adjacent residential homes, twenty four (24) hour open for business operation shall be prohibited. Hours for business operation to the public, shall be allowed from 6:00 a.m. to 11:00 p.m. In addition, the elevations and appearance of the office buildings shall be residential in design and character. The office buildings shall be constructed with pitched, shingled roofs (except for Building H 21/2 story) and exterior wall materials designed in conformance with the elevation plans included in Exhibit B.~~

~~D. Description of Commercial Uses Permitted/Prohibited.~~

~~Use of the commercial buildings on the Property shall be limited to those uses permitted as of right under the 8-2 zoning classification (Section 138-522 of the Zoning Ordinance). Further, twenty four (24) hour business operations shall not be permitted. Outdoor seating for restaurants may be allowed subject to later review and approval through the Site Plan process. Prohibited uses shall be tattoo and body piercing studios, art studios containing only adult-related art, any adult-related business and any large health club facility (such as Lifetime Fitness), or party store type operations with sale of alcohol or liquor being a predominant part of the business (except for a "Merchant of Vino" type high end use).~~

~~E. Building Design.~~

~~Due to the proximity of the property~~The West Property may be used, except as otherwise provided herein, for those uses permitted as of right in the RM-1 district (Multiple Family Residential District) as shown on the Conceptual Plans. The East Property shall remain vacant, except for, outdoor recreation, trails, outdoor fitness, fences, and other access controls shown on the Conceptual Plans or with such features as may be approved in a final site plan, or required by applicable law and regulations, and the Developer intends to install on the East Property a hydraulic barrier, a liner and cap, and a passive methane venting system, all as approved by the MDEQ in the Work Plan. The East Property may also be used for parking upon approval of the City and if such use is consistent with the DDCC. The East Property shall not be used for any activity which is not consistent with the DDCC.

D. Building Design

Due to the proximity of the Property to residential uses on the north and west, the elevations and appearance of all buildings on the Property shall be residential in design and

~~character as depicted on the Conceptual Plans, and designed to promote a fully integrated, office and commercial mixed use, pedestrian friendly oriented development.~~

F. Performance Standards-

Except as otherwise modified by the terms of this Amended Consent Judgment, development and use of the Property shall conform with the performance standards set forth in ~~Section 138-1068~~Article 6, Chapter 1 (RM-1, Multiple Family Residential Districts) of the Zoning Ordinance.

G. Landscaping-

Because of the uncertainty of the extent of environmental cleanup/remediation within the 100-foot buffer ~~areas,~~area on the north side of the Property (“Northern Buffer Area”), it is mutually agreed that the landscaping plan for the ~~100-foot buffer areas~~Northern Buffer Area will be designed and submitted for review and approval during the Site Plan ~~Approval~~Review process outlined in Section 1.3. Landscaping plans for the entire Property shall be approved by the City's Landscape Architect for type and size of material prior to or simultaneous with the ~~site plan approval~~Site Plan Review process. ~~Plaintiffs~~Developer shall not be required to have manicured landscaping in the ~~northern 100-foot buffer area~~Northern Buffer Area; instead, it is intended that ~~Plaintiffs Shall~~Developer shall supplement the existing landscaping in the bare areas, to provide coverage to the residences to the north during all seasons of the year. The landscaping plan shall be designed to provide ~~the maximum~~adequate screening ~~possible~~ while still accounting for the normal and expected growth of the ~~species~~species. The landscaping plan shall incorporate a ~~staggering~~staggered planting which ~~results~~is intended to result in a visual overlapping of the trees' branching. ~~Plaintiffs~~Developer shall provide warranties and performance guarantees in accordance with City ordinance.

The ~~Landscaping~~landscaping along the northern property line shall be completely installed prior to issuance of a final certificate of occupancy for any building in the Development. If such landscaping is not completed due to weather or seasonal delays, unavailability of materials and the like, temporary certificates of occupancy shall be issued for

building(s) in the Development, with the condition that final certificates of occupancy shall not be issued until such landscaping is completed.

H. Tree Installation and Replacement-

~~Plaintiffs~~Developer shall comply with the City's Tree Conservation Ordinance. ~~such~~ Such Ordinance shall not interfere with the building site and parking layout. In recognition that existing trees will need to be removed to perform the proposed cleanup of the West Property and the remediation activities on the East Property, the City shall give the Developer a credit for each tree removed from the Property towards compliance with the City's Tree Conservation Ordinance. The Developer will preserve trees on the Property to the extent reasonably feasible and no trees will be removed within the Northern Buffer Area unless absolutely necessary to construct and maintain the Development, to comply with the DDCC, or to comply with the Work Plan.

I. Wetlands-

There are no regulated wetlands on the Property.

J. Signs-

Signs for the ~~B-2 and O-1~~ buildings and uses shall be permitted in accordance with the City's Sign Ordinance relative to such uses, in effect at the time of site plan approval. The Developer and the City shall cooperate to include a gateway feature on the Property at the intersection of Hamlin Road and Adams Road, as generally depicted on the Conceptual Plans, during the site plan approval process.

K. Outside Storage Prohibited-

No outdoor storage shall be permitted on the Property. after completion of the Project.

L. Storm Water Detention/Retention-

~~Plaintiffs~~Developer shall provide storm water drainage and storm water retention/detention on ~~site~~ the West Property in conformance with the storm water management plan documents to be submitted by ~~Plaintiffs'~~Developer's engineers, provided that such plans do

not exceed the requirements, standards, or calculations of the ~~afy~~City ordinance for storm water run-off in effect during the year 2005. ~~The Plaintiffs intend~~ The storm water detention system shall only be designed for the storm water generated on the Property. The Developer intends to utilize an underground and/or above ground storm water detention/retention system, and to utilize ~~their~~its best efforts to keep any above ground detention/retention, outside of the ~~100-foot buffer area. Plaintiffs~~Northern Buffer Area. Developer may use the ~~100-foot buffer area to the north~~Northern Buffer Area for any underground storm water detention/retention facilities if such does not interfere with the landscaping required in Section 2.2 (G) above. Further, if any above ground detention/retention is necessary in the ~~100-foot buffer area, Plaintiffs~~Northern Buffer Area, Developer will locate such detention/retention as far east on the West Property as practically possible, so as to keep the detention/retention away from the residential homes to the north. In no event shall above-ground detention/retention be permitted directly abutting any of the existing residential homes. ~~The underground storm water detention/retention system shall be integrated throughout the Property. The underground~~The storm water detention/retention system will be subject to a storm water retention/detention maintenance and construction agreement in accordance with normal City practices which will provide for the maintenance of such storm water retention/detention system by ~~Plaintiffs or the Association, as defined herein~~Developer or by any association(s) formed to maintain the storm water retention/ detention system; and for the purpose of providing the City with the right to perform any required maintenance to the storm water retention/detention system which is not performed by ~~Plaintiffs~~Developer or by the ~~individual condominium associations, such~~ association(s), if established, as the case may be. In areas outside the ~~100-foot buffer area, Plaintiffs~~Northern Buffer Area, Developer shall not install or be required to install, any landscaping on the Property that will impede the flow of the storm water drainage and the proper functioning of storm water detention/retention system. If necessary and without cost to ~~Plaintiffs~~Developer for such access, the City shall cooperate with ~~Plaintiffs~~Developer and grant all easements necessary for access, construction, and discharge of storm water through City-owned properties or easements. Due to the topography of the Property and anticipated environmental ~~responses~~response activities, the parties acknowledge that storm water management/detention/retention for the Property may be difficult. Therefore, the City agrees to work with ~~Plaintiffs~~Developer in good faith and with due diligence in achieving the necessary storm water management for the Property, including drainage to natural drains or City

or County facilities capable of receiving same. The storm water detention/retention system or drainage from the Property shall not have any long-term detrimental effect on the City land and park located to the east. ~~Plaintiffs of the Property. Developer~~ shall minimize any disturbance to the City land and park, and if such disturbance is necessary to accommodate ~~Plaintiffs'~~ Developer's storm water management plan, then ~~Plaintiffs~~ Developer shall reasonably restore these areas to their original condition, after implementation of the plan.

M. Water and Sewer-

~~Plaintiffs~~ Developer shall, at ~~their~~ its sole expense, construct and install improvements and/or connections tying into the municipal water and sewage systems. Such improvements shall be designed and constructed in accordance with the ~~Final Site Plan~~ final site plan and ~~Engineering Construction Plan~~ engineering construction plan, and all applicable city, state, and county standards, codes, regulations, ordinances, and laws. Such water and sanitary sewer service facilities, including any on-site and off-site facilities, extensions, and easements to reach the area to be served, shall be provided by the ~~Plaintiffs~~ Developer, as further explained below, and at the sole expense of ~~Plaintiffs~~ Developer, and shall be completed, approved and dedicated to the City to the extent necessary to fully service all proposed and existing facilities, structures and uses to be served thereby, prior to issuance of any building permits.

The Development shall connect to the existing City sanitary sewer lines and water lines. ~~Plaintiffs~~ Developer shall pay the connection fees and tap-in charges in effect at the time of such connections and/or tap-ins. ~~Plaintiffs~~ Developer shall be provided with use of existing easements, gravity sewer, force main and lift stations, as applicable, for transport of sewage from the Development to the facility servicing the Property. The City will not unreasonably withhold capacity and taps available in the sewer district servicing the Property. ~~Plaintiffs shall be permitted capacity to the extent that was originally included in the basis of design for the Property. In the event additional capacity is necessary to service the Development, then a more extensive study to determine whether the site can discharge additional flow will be necessary to determine the amount of capacity available in the sewer district. This study, which shall analyze the capacity available in the sewer district, and which shall encompass only this Development, shall be performed by the Plaintiffs and submitted to the City for review and approval. The study shall be conducted by Professional Engineering Associates, Inc. or another engineering firm~~

~~approved by the City. Any and all costs for the study, the study review, and any needed off site or on site improvements costs necessary to permit a greater discharge rate (such as easement acquisition, construction, design, pump stations, etc.) shall be completely borne by the Plaintiffs. Plaintiffs will be entitled to use additional capacity which may be available in the sewer district in the event that the study determines that additional capacity exists. If capacity is insufficient, Plaintiffs and the City shall work together in good faith and with due diligence to minimize the cost of any such infrastructure improvements. Plaintiffs shall only be responsible for improvements necessary to accommodate the increased capacity directly attributable to Plaintiffs' Development, and not capacity for future growth.~~

N. Parking and Loading-

Parking areas and loading zones shall be installed and located in accordance with the Conceptual Plans. The Development shall meet the parking and loading requirements of the applicable Zoning Ordinance provisions, for RM-1 (Multiple Family Districts), except as modified in this Amended Consent Judgment. ~~A designated area for loading must be maintained that is separate from the designated parking areas. There shall be no rear loading zones for the office buildings.~~

O. Dumpsters and Truck Delivery-

The dumpsters shown on the Conceptual Plans or ~~Final Site Plan~~final site plan, if any, shall be enclosed on three sides by brick ~~walls~~or stone facade, or may be inset into the building design. The brick or stone shall be the same as that used on the building that the dumpster serves. ~~Plaintiffs agree~~Developer agrees to contract with a private trash disposal company to regularly pick up the trash. The contract shall contain a provision prohibiting the picking up of trash before 7 a.m. or after 7 p.m. In addition, truck deliveries to all buildings in the Development shall be prohibited prior to 7:00 a.m. and after 7:00 p.m.

P. Lighting-

~~Plaintiffs agree~~Developer agrees that no exterior light source on the Property shall be higher than ~~sixteen (16)~~fifteen (15) feet ~~for the office and eighteen (18) feet for the commercial,~~

as measured from ground to top of fixture and that such lights, which may be decorative, shall be of such design to limit the illumination of neighboring properties. All exterior light fixtures attached to the ~~office~~-buildings shall be installed in such a manner as to limit illumination of neighboring properties. At no time shall lighting exceed zero (0) foot candle light at the northern Property line or abutting any residential zoning. Photometric plans for the Property shall be supplied by the ~~Plaintiffs~~Developer and approved by the City staff and/or consultants during the ~~site plan approval~~Site Plan Review process.

Q. Road Improvements-

All required road improvements associated with the development shall be included in the submission for site plan approval. All roads within the Development shall be constructed with road geometric and rights-of-way, and in accordance with the applicable City ordinance requirements. The Road Commission for Oakland County ("RCOC") has jurisdiction over Adams Road and any work required within the public right-of-way or public road easement shall require a permit from the RCOC. Any road connection to Rapids Way ~~is~~ expressly prohibited: based on the request of the residents. Sufficient road, utility, and pedestrian pathway easements, in accordance with existing ~~planned~~-widths and right-of way for the pedestrian pathways and roads, shall be provided by ~~Plaintiffs~~Developer at no cost to the City. In accordance with applicable City ordinance requirements, ~~Plaintiffs~~Developer shall post the required performance and other bonds necessary to cover the road improvements, easements ~~and approvals~~, and approvals. The City may withhold release of up to two hundred and fifty thousand dollars (\$250,000) of financial security until approval of the DDCC by the MDEQ. The City shall not prohibit direct connection of the private roads within the Development to either Adams Road or Hamlin Road as long as such connections are in accordance with all applicable City and County road design standards. With respect to the off-site road improvements, ~~Plaintiffs~~Developer shall only be responsible for improvements necessary to ~~modify and/or align the turnarounds with the~~ ingress/egress ~~points~~point of the Development ~~and~~(such as acceleration/deceleration lanes), except that Developer shall reimburse the City up to twenty thousand dollars (\$20,000) for the City's actual construction costs of a right turn lane off of northbound Adams Road onto Portage Trail Drive if such improvement is completed within two (2) years from the Effective Date of this Amended Consent Judgment. Developer shall commence the road improvements necessary

to the ingress/egress point of the Development (such as acceleration/deceleration lanes); ~~Plaintiffs shall commence the road improvements.~~ assuming all engineering and other approvals have been received for construction of the road improvements. All costs incurred for the road improvements, tree removal or replacement, engineering, permits and other items associated with the contemplated road improvements identified in this Amended Consent Judgment, shall be the responsibility of ~~Plaintiffs. Plaintiffs shall dedicate any proposed right-of-way to the City simultaneous with commencing physical development of~~ Developer. The roads within the Property shall be private roads.

R. Utilities for Internal Roads:

All roadways in the Development shall be constructed in such a manner that underground utilities can be accommodated within the right-of-way, private road easements, or other private easements, as approved by the City Engineer. Installation of water and sanitary sewer lines under pavement within the boundaries of the Property, shall be permitted; provided, however, wherever possible and practical, ~~Plaintiffs~~ Developer may propose water main utility construction within a greenbelt to avoid the limits of the pavement. Water mains constructed within a greenbelt shall also be positioned so that they are not underneath landscaping berms, trees, and shrubs. Under no circumstances shall utilities be installed under the pavement of public roads, unless approved by the City Engineer or governmental authority having jurisdiction over same. Developer may dedicate the utilities within the Property to the City in accordance with the typical process of such dedication.

S. Phasing:

Phasing of the Development shall be at the discretion of ~~Plaintiffs. However, construction under~~ Developer. The City shall cooperate to issue approvals for any phase ~~shall be governed by the provision of Section 2.2V below.~~ consistent with this Amended Consent Judgment.

T. Engineering Review:

~~Plaintiffs~~ Developer shall submit to the City engineering plans for the Development (including road, utility, and storm drainage plans) which shall be comprehensively reviewed and

approved, or comments provided by the City Engineer, within forty-five (45) days of submittal. ~~Plaintiffs~~[Developer](#) shall submit revised engineering plans within thirty (30) days thereafter, and review comments or approval shall be made by the City Engineer within fourteen (14) days after re-submission. The procedure set forth herein shall be followed until the engineering plans are approved. Approvals by the City or the City Engineer, consistent with this [Amended](#) Consent Judgment, shall not be unreasonably delayed or withheld.

U. Construction of Utilities, Pathway and work within the Hamlin or Adams Road right-of-ways-

The installation of public utilities [within the Hamlin or Adams Road right-of-ways](#) shall not commence until the construction plans therefore have been approved by the City Engineer and the required permits have been obtained. In addition, no utility construction shall be permitted until all items on the engineering project checklist have been reasonably and substantially completed and a pre-construction meeting has been held with the City's engineering department. The design of ~~the~~[such](#) utilities shall comply with City and Oakland County applicable standards in effect at the time of submittal of such plans, except as modified herein. The City engineering standards shall apply to the construction and inspection of the storm, water and sanitary sewers servicing the Property-: [within the Hamlin or Adams Road right-of-ways](#). However, the year 2005 City design and construction criteria shall be applicable to ~~the storm sewer~~[stormwater management](#), as long as engineering plans for the ~~storm-sewer~~[stormwater management](#) are submitted to the City for consideration within twenty-four (24) months of ~~entry~~[the Effective Date](#) of this [Amended](#) Consent Judgment with the Court.

The City shall also review, approve, and inspect pathways and work within the Hamlin and Adams Road rights-of-way. Work within the Hamlin Road right-of-way shall not proceed until the City has issued a right-of-way use permit to the ~~Plaintiffs~~[Developer](#). [No pedestrian pathways on the Property shall connect to the residential subdivision abutting the Property to the north.](#)

V. Construction Commencement-

~~Site preparation and the construction of roads and foundation and installation of utilities, may commence immediately following (1) cleanup/remediation of the entire Property and abutting neighbors' backyards to the north, (2) review and approval of the engineering plans by the City Engineer and (3) Developer may commence the construction of structures above the level of the ground and slabs within the West Property immediately following: (1) approval of a Brownfield Plan for the West Property by the City; (2) approval by the MDEQ of a Work Plan for the West Property; (3) review and approval of the engineering plans by the City Engineer for the West Property; and, (4) issuance of the necessary permits, licenses and approvals by the City and other governmental entities having jurisdiction over the West Property, except as otherwise modified by this Amended Consent Judgment. The Developer may commence the work intended within the East Property, as shown on the Conceptual Plans, immediately following: (1) approval of a Brownfield Plan for the Property by the City; (2) review and approval of the engineering plans by the City Engineer; (3) approval by the MDEQ of a Work Plan for the West Property and for the East Property; and, (4) issuance of the necessary permits, licenses and approvals by the City and other governmental entities having jurisdiction over the Development, except as otherwise modified by this Consent Judgment. Prior to commencing construction of any of the buildings in the Development under any phase, Plaintiffs shall have completed the (a) cleanup/remediation of the entire Property and abutting neighbors' backyards to the north; and (b) the Gateway Feature on the northeast corner of Hamlin and Adams Roads and landscaping to the northern Property line setback area have been designed, approved and a bond or letter of credit posted for the cost of such improvements. The Gateway Feature shall be constructed (weather permitting and material availability) prior to any final certificate of occupancy being issued for the commercial building that is located on the southwest corner of the Property (Building A on the Conceptual Plans). In the event the Building A is not the first building constructed, then the Gateway Feature shall be constructed within two (2) years of the issuance of the certificate of occupancy for the first building constructed in the Development.~~

East Property, except as otherwise modified by this Amended Consent Judgment. If any governmental or regulatory entity with jurisdiction over the Development requires minor modification of any plans before issuance of any approvals, permits or licenses, ~~Plaintiffs~~ Developer shall notify the City Engineer of any proposed minor modification (as defined in Section 2.4 below) which, for purposes of this Amended Consent Judgment, shall be

considered an approved minor modification. The plans, including engineering plans and any ~~plans~~ plans with revisions showing a technical change, shall be filed with the City. The City shall extend any final site plan expiration date as requested by Developer if reasonably necessary to accommodate the phasing schedule of Developer.

W. Easements-

To the extent that access to existing City sanitary sewer lines, water lines, detention or other utilities as required through property or easements owned by the City, onto which the City is entitled or may have access (including off-site), ~~Plaintiffs~~ Developer shall be permitted to use the easements (to the extent the easements allow such use) for the purpose of constructing and connecting to the existing sanitary sewer lines, water lines, detention or other utilities as is contemplated for the Development. To the extent that access to existing City sanitary sewer lines, water lines, detention or other utilities, including roads, is required through easements not owned or otherwise available to the City, the City will assist in securing the necessary easements at ~~Plaintiffs'~~ Developer's cost. ~~Plaintiffs~~ Developer shall pay for the actual physical improvements to these utilities as provided for in this Amended Consent Judgment.

X. Fire Department Approval-

All Fire Department requirements shall be met and approved by the City during the Site Plan ~~approval~~ Review process, unless modified by this Amended Consent Judgment.

Y. Maintenance Agreement-

With respect to each of the components of the Development, a Declaration of Easements, Covenants, Conditions, and Restrictions, Master Deed or similar document will be executed and recorded by ~~Plaintiffs~~ Developer to ensure the continued maintenance of certain aspects of the Development, applicable to the entire Property, including drainage facilities, storm water retention/detention system, greenbelts, pathways, buffer areas and/or parking areas within the Development. Such documents shall be first reviewed and approved by the City Attorney, which approval will not be unreasonably withheld.

~~2.3 — Investigation and Remediation of Environmental Contamination/Methane-~~

Z. Landscape Allowance

The Developer shall cooperate with each of the property owners who have homes adjacent to the north side of the Property (corresponding to the parcel identification numbers listed below), if requested by any of the property owners for their respective owned properties, to arrange for the purchase and installation of additional landscaping on such properties to provide additional landscape screening, if practical, subject to the following terms:

- (1) The obligations of the Developer under this Section 2.2.Z. shall remain in effect until September 1, 2020.
- (2) The owners of the following thirteen (13) tax parcels are eligible for the benefits of this Section 2.2.Z.: 15-20-356-015; 15-20-356-016; 15-20-356-017; 15-20-356-018; 15-20-356-019; 15-20-356-020; 15-29-101-013 ;15-29-101-012 ;15-29-101-014; 15-29-101-015; 15-29-101-016; 15-29-101-017; and, 15-29-101-018.
- (3) This Section 2.2.Z. is for the benefit of the owners of each of the parcels listed above who may take advantage of this provision by making arrangements with the Developer directly without the City's involvement.
- (4) The Developer shall create an escrow fund for the benefit of the thirteen (13) owners in the total amount of thirty-six thousand dollars (\$36,000), provided, however, that a maximum of three thousand dollars (\$3,000) of the escrow fund will be available for each of the thirteen (13) tax parcel owners to use as herein provided.
- (5) Any amount in the escrow fund not disbursed by September 1, 2020 shall be used by the Developer to provide further screening within the Northern Buffer Area.
- (6) The Developer shall provide a statement to the thirteen (13) owners and to the City of the actual disbursements from the escrow fund on or about September 1, 2020.
- (7) Any dispute between the Developer and any owner of the thirteen (13) tax parcels as to the use of the escrow fund for such properties shall be submitted to and decided by the Planning Director of the City.
- (8) City Council Member Stephanie Morita advised the parties that she and her husband own a home along the northern boundary of the Development (such property is listed above as tax parcel number 15-20-356-017) and that they do not want to receive any benefit from the escrow fund to avoid any appearance of impropriety. So long as

City Council Member Stephanie Morita and her husband own such tax parcel, no amounts from the escrow fund shall be paid to them under this Section 2.2.Z. for landscaping on such property. If City Council Member Stephanie Morita and her husband transfer their fee interest in such property prior to September 1, 2020, then the fee owner or owners of such tax parcel shall be allowed access to up to three thousand (\$3,000) from the escrow fund under terms and conditions of this Section 2.2.Z.

aa. Exercise Equipment

Developer shall install outdoor exercise equipment for public use on the East Property in the location depicted on the Conceptual Plans after recording of the restrictive covenant on the East Property, as referenced below, and as may be approved by the City and allowed by applicable law and regulations, consistent with the DDCC.

2.3 Environmental Protection

A. Work Plan.

The parties acknowledge that the remediation of the Property and/or the reduction of environmental risks associated with the contamination at the Property (~~"remediation or remedial activities"~~), ~~was the major incentive,~~ through an MDEQ approved Work Plan, is a material and significant inducement to the City to approve the entry of this Amended Consent Judgment. The City ~~agreed~~ agrees to the uses permitted in this Amended Consent Judgment to ensure the remediation of the environmental contamination on the Property. ~~Prior to any development of the Property or the issuance of any building permits, the~~ in accordance with an MDEQ approved Work Plan. The City and its counsel must be presented with the copies of all reports ~~required below~~ and specifications outlining the proposed ~~site activities and goals,~~ Work Plan and the City's ~~Consultant must~~ environmental consultant may peer review and ~~approve~~ comment on the work contemplated to verify that the environmental activities conducted in support of the ~~development~~ Development will protect the users and occupants from exposure to contamination. The City shall be permitted to provide comments of any kind to ~~both the Michigan Department of Environmental Quality ("MDEQ") and the United States Environmental Protection Agency~~

~~("EPA")MDEQ~~ relative to the proposed environmental activities. ~~The following work~~ However, the MDEQ shall be performed prior ~~make the final determination as to the issuance of whether~~ any ~~land improvement permits on~~ Work Plan is consistent with existing law. The concurrence of the Property: City is required for any significant or material deviation, change, or amendment to the Work Plan or the proposed remediation scope and activity.

~~A. Eastern and Central Parcels:~~

~~Prior to commencing site activities, notification shall be made by Plaintiffs and its consultant to the MDEQ through submittal of the Act 381 Work Plan, after acceptance by the City's Brownfield Authority, for reduction of existing contamination to comply with MCL 20107a, and the EPA (with respect to the PCBs) prior to the implementation of remedial activities through the filing of a Notification of Self Implementing Clean Up under 40 CFR 761.61 at a minimum, to outline the proposed site activities, and develop critical remediation objectives and project milestones. Plaintiffs' Consultant shall develop Work Plans outlining the proposed soil and groundwater investigations on each parcel, including a Site Specific Health and Safety Plan. Plaintiffs' Consultant shall, based on the work plans, investigate the central and eastern portions of the site, through drilling, sampling and analytical testing, by accepted industry methods to determine and delineate (as necessary) levels of contaminants in both soil and water (as necessary) that may affect the development and usability of the site. Plaintiffs' Consultant shall document all results, activities, laboratory data, etc. and provide copies in a timely fashion to the City of Rochester Hills and the City's Consultant for review. If site investigations indicate serious and/or imminent threats to life and health or the environment, Plaintiffs shall notify appropriate regulatory agencies and implement Interim Response Measures to mitigate such. Based on the results of the site characterization, Plaintiffs' Consultant shall develop various assessments in support of the proposed Remedial Plan. The assessments/studies will address issues of particular importance on these parcels including, but not limited to; source control, control of contaminated runoff to surface waters, and an evaluation of relevant exposure pathways for all identified contaminants of concern including, but not limited to, PCBs, and methane. It is anticipated that this assessment will aid Plaintiffs in documenting "substantial environmental benefit" for justification of additional remedial funding from MDEQ/TIF. After all exposure pathways and receptors are assessed and the results of the assessments conducted above are evaluated, a regulatory compliant Due Care Plan must be designed.~~

~~In designing the Due Care Plan, and with respect to the area outside of the fenced area on the Property (East Parcel), Plaintiffs have agreed to engage in response activities which are more "site specific" and do not consistently align with a MDEQ generic clean up category (land uses and cleanup levels outlined in categories commercial II, III, IV), which shall mean that, if economically feasible (as mutually agreed to by the City and the Plaintiffs and approved by the MDEQ under a 381 Work Plan), relative to overall cost and payback period under the Brownfield Plan, Plaintiffs shall remediate to levels found in the MDEQ, Part 201 Operational Memorandum 1, Attachment 1, Commercial II category for volatile organic compounds and semi-volatile compounds and Category IV land use for metals. Plaintiffs shall use institutional and engineered controls to protect the occupant, users of the site and the general public from unacceptable levels of exposure to site contaminants. Plaintiffs shall characterize, remove and properly dispose of metallic debris, concrete, tires, drums, liquid waste and drum remnants, general refuse and miscellaneous solid wastes. Plaintiffs intend to remove the top layer of soil, as well as any waste and debris, to a depth of approximately two (2) feet, depending on the results of the initial site investigation and Remedial Plan, in those areas shown on the attached Exhibit C.~~

~~With respect to the fenced area on the eastern portion of the Property, Plaintiffs shall undertake additional investigation and analyze the results of the same to formulate a plan which will remove as much of the contamination as economically feasible, as mutually agreed to by the City and the Plaintiffs. In other words, in the fenced area, the remediation may involve removal of all soils, a combination of soil and debris removal with encapsulation in a smaller area, or complete encapsulation of the contaminated area, but only if complete encapsulation is the only economically feasible option, as mutually agreed to by the City and the Plaintiffs, and as approved by MDEQ and EPA.~~

~~The Due Care/Remedial Plan will be delivered to the City prior to commencement of remedial activity. The Due Care/Remedial Plan shall be submitted to the MDEQ and EPA, as required by those agencies. The Due Care Plan should contain, as attachments, the required Soil Erosion and Sedimentation Control Plan and a Fugitive Dust Emission control and Contingency Plan. Plaintiffs shall notify the City and its Environmental Consultant in writing a minimum of three (3) days prior to any site activity.~~

~~Any necessary Due Care remedial activities that are required to be performed in order to meet Plaintiffs' Due Care obligations shall be geared towards a level that achieves the intent of remediation set forth in the paragraphs above. Based on the levels of contaminants noted in the investigation, Plaintiffs shall conduct due care activities, which may include institutional and engineered controls to protect the occupants, users of the site, surrounding neighbors, and the general public from unacceptable levels of exposure to site contaminants. As previously stated, Plaintiffs shall characterize, remove and properly dispose of metallic debris, concrete, tires, drums, liquid wastes and drum remnants, general refuse, and miscellaneous solid wastes, as needed on the Property. Plaintiffs shall document all activities and results taken for any site activity whatsoever related to this Section 2.3. The City may, at its option and expense, provide its Environmental Consultant to observe and document site activities according to the Specifications and Plans prepared by Plaintiffs.~~

~~B. Backyards of the Northern Subdivision.~~

~~Based upon existing data collected by Plaintiffs, it appears that there may be soil contamination of the neighboring residences to the north of the Property. The source of this contamination is unknown at this time but is assumed to be related to the previous site activities and/or remediation efforts performed by others not party to this litigation. The City and its Consultant will work with each of the property owners having homes adjacent to the Property to the north, if they so choose, and after the homeowner agrees in writing to release the City from any and all claims related to the investigation, testing and/or contamination, the City will investigate the existence of contaminants, including PCB's, in their south back yard. Investigation and analysis will be conducted by the City's Environmental Consultant, with the reasonable costs of all testing, not to exceed \$20,000.00, to be paid by Plaintiffs. Plaintiffs' environmental consultant may split soil samples for independent testing and confirmation, and Plaintiffs shall also bear the cost of their consultant's time and split sample analysis cost. If contaminants are found exceeding the Residential Cleanup Criteria in any or all of the residential lots and/or abutting properties that may be maintained by a homeowners association, Plaintiffs, with the assistance of the City, shall work with each homeowner to develop a remediation plan, if requested by any of the property owners, that is to be as non-intrusive and non-disruptive as possible. Plaintiffs shall conduct necessary remedial activities. These activities may take the form of removal of the soil and sod materials in the back yard and replacement of the earth, grass~~

~~and landscaping. The work shall be performed by the Plaintiffs with the City's Environmental Consultant in attendance. Up to \$150,000.00 of costs for the remedial activities shall be paid directly by the Plaintiffs. Under no circumstances will Plaintiffs be responsible to conduct remediation which exceeds the cost of \$150,000.00. The City shall have no responsibility to conduct any remediation or pay any costs related to the remediation of the backyards. For verification of soil remediation purposes, if soil is removed from the yards, split samples shall be provided to the City's environmental consultant for testing and confirmation, and the City shall pay the cost of analyzing the split samples. Plaintiffs shall properly dispose of any excavated soils. Plaintiffs shall document all site activities, communications with the residents and public, and analytical results of samples collected for verification or remediation purposes. The cost of the remediation efforts shall be borne by Plaintiffs as provided for herein. The foregoing assumes that contaminants are near the surface. If contaminants are located deeper than two (2) feet below ground surface, Plaintiffs shall work with the property owners to develop a suitable remedy, with input from necessary regulatory authorities. Additional costs for remediation of deeper contaminants are not the responsibility of either Plaintiffs or the City. This obligation shall remain in effect for a period equal to the lesser of two (2) years from the date of entry of this Consent Judgment or the date that Plaintiffs have concluded all due care remedial actions below ground surface; however, those neighboring property owners who wish to engage in this activity, must notify the City of same, in writing, within one hundred twenty (120) days after entry of this Consent Judgment with the court, and notice provided to the se residents. This provision is for the benefit of the individual property owners who may take advantage of this provision by making arrangements with the City to allow Plaintiffs direct access to their properties. Plaintiffs shall create an escrow fund with a recognized title company in the amount of One Hundred Fifty Thousand dollars (\$150,000.00). The fund shall be used to pay for the remediation undertaken pursuant to this paragraph. Any amount not expended at the end of the aforementioned period shall be refunded to the Plaintiffs. Notwithstanding the above, Plaintiff or City shall not be required to undertake the above remedial activities unless they have obtained from the requesting residents, a written release of further liability from the requesting residents after completion of the obligations contained herein.~~

C. ~~Baseline Environmental Assessment/Brownfield Work Plan~~

~~Plaintiffs shall modify the existing Baseline Environmental Assessment and Due Care Plan to reflect the conditions found in the forthcoming investigation(s) and submit a copy to the City. The Brownfield Redevelopment Work Plan shall be revised and submitted to the City for further approval as soon as is practical after completion of the above and any update, time being of the essence.~~

~~D. — Methane~~

~~Prior to submitting the Act 381 Work Plan, Plaintiffs shall hold a meeting with the MDEQ to determine what will be required on the site for methane assessment and methane intrusion detection and protection of the structures and occupants of the structures. If methane assessment is required by the MDEQ, Plaintiffs shall prepare a methane assessment Work Plan, as agreed upon with the MDEQ, for inclusion within the Act 381 Work Plan. Plaintiffs' consultant shall perform a methane assessment in accordance with the MDEQ approved Act 381 Work Plan. Plaintiffs shall install protective measures and design the protective measures (design them in) in the proposed structures as required by the MDEQ and applicable building codes, as needed. All methane related costs to maintain Due care (i.e. assessment and protective measures) will be considered eligible activities/costs and will be deemed to be reimbursable if so approved by the MDEQ.~~

~~E. — Eastern 9 Acre Parcel~~

~~Plaintiffs shall investigate the extent of PCB contaminated soils, and other contaminants of concern, through additional investigation, soil sampling and laboratory analysis in and around the fenced area. Plaintiffs shall determine appropriate testing, closure, and protection and reuse scenarios for the area, in conformance with the intent for remediation of this area as described above. Plaintiffs shall document all activities and results of analysis. Testing shall include a distance of up to one hundred (100) feet beyond the fence that currently defines the former barrel excavation limits. Plaintiffs and their consultant shall undertake an Alternatives Analysis (AA) to determine appropriate methods for clean up and containment of PCBs or other contaminants of concern. Plaintiffs' consultant shall, within thirty (30) days of completion, and prior to implementation of any remedy, communicate the results of AA to the City and MDEQ and EPA prior to implementation.~~

~~F. — An Environmental Consultant~~ An MDEQ approved Work Plan shall describe the activities necessary under MCL 324.20120a to meet the unrestricted residential cleanup criteria standard in MCL 324.20120a(1)(a) for the West Property and the activities necessary to meet the limited non-residential cleanup criteria standard for the East Property, as described in the Brownfield Plan. The Developer shall comply with the applicable portions of the Work Plan and of the Brownfield Plan, as they may be amended, when it conducts any development work on the Property.

An environmental consultant, selected by the City, and the City, will be notified in writing three (3) days in advance of ~~said on-site~~ activities under the MDEQ approved Work Plan at the Property and ~~may~~ the environmental consultant, selected by the City, and the City are permitted to be ~~on-site~~ present on the Property at all times during the performance of ~~remediation~~ such activities ~~contemplated by the above sections.~~ Additionally, at reasonable intervals as requested by the City, ~~Plaintiffs~~ Developer shall meet with the City and/or its consultant, and if necessary other regulatory agencies, as needed, to review the progress. Routine status updates will allow the City to monitor the ~~Plaintiffs' progress relative to Due Care remedial activities at the site. When Plaintiffs notify the City that the remediation efforts are complete, the City's Environmental Consultant will review all documentation, reports and data prepared by Plaintiffs to date, and conduct a site walkover to confirm that the proposed remedial tasks were completed according to the specifications that were approved by the governing regulatory bodies. When the City's Environmental Consultant confirms that the remediation efforts are complete, site development and improvements may commence consistent with the terms of this Consent Judgment.~~ Developer's progress.

~~G. — A copy of all files and documentation generated during the course of the activities shall be submitted to the City.~~

~~H. — Management Plans for each engineered control (methane venting, soil or vegetative cover, pavement, water detention, etc.) must be completed and filed with the City.~~

~~I. — Plaintiffs shall~~ Developer may submit ~~an~~ amended ~~381~~ Work Plan(s) consistent with the requirements of this Amended Consent Judgment, to the MDEQ, and will submit the same to the City. Developer may submit amendments to a Brownfield Plan to the City. Any amendment to ~~the~~ a Brownfield ~~Redevelopment~~ Plan will incorporate additional costs as needed to meet the terms and intent of this Amended Consent Judgment. The City ~~will~~ may approve

~~the any~~ Brownfield Plan(s)), and any amendments thereto, if they comply with all the requirements of this Amended Consent Judgment. The 381MDEQ will approve any Work Plan(s) must be accepted by the City (which acceptance will not be delayed or unreasonably withheld), and any amendments thereto, if they comply with all of the requirements of this Amended Consent Judgment. The parties intend that the Work Plan(s) and approved by the MDEQ prior to Plaintiffs receiving site plan approvalBrownfield Plan(s), as amended, shall be consistent with each other.

J. — The parties shall cooperate and work together to seek the consent of the MDEQ to meet the intent of this Amended Consent Judgment. However, in the event a ~~381~~ Work Plan is not accepted by the MDEQ, the ~~381~~ Work Plan will be amended to reflect activities which will be approved by the MDEQ. ~~Notwithstanding any provisions above to the contrary, Plaintiffs shall only be required to perform remedial activities to the extent of the approval of the 381 Work Plan(s).~~

B. ~~K.~~ Restrictive Covenant

The Developer shall execute and record a restrictive covenant, approved by the MDEQ, for the East Property upon the completion of all environmental work on the East Property contemplated under this Amended Consent Judgment. The restrictive covenant shall prohibit any invasive activity, non-residential use, and development on the East Property, except for outdoor recreation, parking, trails, fences, and other access controls shown on the Conceptual Plans or with such features as may be approved in a final site plan, or allowed by applicable law and regulations, consistent with the DDCC. The City shall have the discretion to determine the amount of tax increment financing available annually, and determine the periodAssessor shall place an assessed valuation of time during which taxes may be captured, during its review and decision on thethe East Property at one dollar (\$1.00) or some other nominal value, to acknowledge that the East Property is incapable of any economic value after the recording of the restrictive covenant. The City shall be under no obligation to own or maintain the East Property.

C. Baseline Environmental Assessment/ Due Care Plan

The Developer shall prepare one or more baseline environmental assessments to reflect conditions of the Property and shall submit copies to the City. The Developer shall prepare and follow all due care plans required under Part 201 (including environmental construction

management plans), as applicable for the Property, and shall submit copies to the City. All due care plans and environmental construction management plans, including the DDCC, will contain, as attachments, a soil erosion and sedimentation control plan and a fugitive dust emission control and contingency plan.

D. ~~Brownfield Redevelopment Plan.~~ ~~However, notwithstanding the foregoing, the Plan Duration~~

The period of time to fully reimburse ~~Plaintiffs~~ Developer for eligible expenses shall not exceed ~~seven (7)~~ twenty-four (24) years from the completion of all ~~site~~ site improvements and all buildings comprising the ~~Development~~. ~~This seven-year time period is based upon the assumption that the remediation~~ Development. However, if the costs ~~will be approximately \$3,500,000.00. Plaintiffs shall receive each year, at a minimum, seventy five percent (75%) of the yearly tax increment. In the event the costs to remediate~~ for reimbursement exceed the amount ~~of \$3,500,000.00~~ authorized in the Brownfield Plan, or any amendment thereto, the parties shall negotiate in good faith an extension of the repayment period in the Brownfield Plan as necessary.

2.4 Other Governmental Approvals

The parties are aware that some minor modifications to the Conceptual Plans may result from further engineering or regulatory requirements of other governmental agencies. Such minor modifications shall be deemed approved by the City if the changes are substantially in compliance with this Amended Consent Judgment, the intent of the parties; the Conceptual Plans, and the ~~Final Site Plan~~ final site plan. For purposes of this Amended Consent Judgment, the term "minor modifications " shall be those minor changes that do not affect the residential design character of the Development; do not violate the setback and buffer area distances depicted on the Conceptual Plans; do not substantially affect the required landscaping ~~or~~ Gateway Area; do not increase the permitted ~~square footage~~ height of the buildings; do not affect easement descriptions; do not substantially impact the required engineering approval; and do not substantially impact the required environmental response activities.

2.5 Other Applicable Laws

Nothing contained in this Amended Consent Judgment shall be construed to relieve ~~Plaintiffs~~Developer of the obligation to comply with the provisions of state law or obtain the approvals of other governmental or regulatory entities when needed.

2.6 Variances

Except as specifically provided in this Amended Consent Judgment, no variances from the City's Zoning Ordinance or other codes or regulations may be applied for or granted for the development of the Property. However, the City's Zoning Board of Appeals shall be bound by the terms of this Amended Consent Judgment to effectuate any variances authorized by this Amended Consent Judgment.

~~Section 3 – Mutual Release~~

~~3.1 – Mutual Release from Liability~~

~~Plaintiffs, Adams/Hamlin Development Company, LLC, Hamlin Redevelopment Company, LLC, and Hamlin/Adams Properties, LLC, for themselves, their officers, owners and employees, successors and assigns, and City of Rochester Hills, the City's employees, officials, boards, councils, independent contractors, consultants, and attorneys mutually release and forever discharge each other of and from any and all claims, demands, actions, causes of action, suits, debts, judgments, executions, damages and rights of whatever nature in law, equity or otherwise, which now exist or which may subsequently accrue by reason of any acts, events or facts arising out of or related to this lawsuit and existing on the date of this Consent Judgment, whether known or unknown on that date; provided, however, that this release shall not release the Plaintiffs or the City from liability, if any, which may exist related to the environmental condition or contamination of the Property under state and federal law. This Mutual Release shall not bar claims brought to enforce the provisions of this Consent Judgment.~~

~~3.2~~—2.7 Certificates of Occupancy

Any requested certificate of occupancy shall not be issued by the City for any portion of the West Property until: (a) the MDEQ issues a “no further action letter” for the West Property under MCL 234.20114d related to the attainment of the unrestricted residential cleanup criteria standard; and, (b) the Developer commences work on the East Property.

Section 3 – Enforcement of Consent Judgment and Attorney Fees

3.1 Attorney Fees. In the event of a proceeding to enforce any term or provision of this Amended Consent Judgment, either party may seek to recover costs and attorney fees in addition to any other applicable and available relief.

Section 4 - Additional Provisions

4.1 Good Faith. The parties and their respective successors and assigns shall treat each other in good faith and shall neither take any action which is contrary to or interferes with the spirit of this Amended Consent Judgment, nor omit any action which is necessary or convenient to or consistent with the spirit and intent of this Amended Consent Judgment.

4.2 Recordation. This Amended Consent Judgment shall be recorded with the Oakland County Register of Deeds, and the covenants contained herein are declared to be covenants running with the land and all portions or divisions thereof, and the obligations, duties and rights herein shall be binding on the parties, their respective heirs, successors, grantees, ~~and~~ assigns ~~and transferees, upon the parties, owners of the Property and their respective heirs, successors, grantees, assigns and transferees, including the Developer,~~ and the Oakland County Register of Deeds is ordered to record a true copy of this Amended Consent Judgment in the land records of Oakland County.

4.3 Authority. By ~~their~~its execution of this Amended Consent Judgment, ~~Plaintiffs, Adams/Hamlin Development Company, LLC, Hamlin Redevelopment Company, LLC, and Hamlin/Adams Properties, LLC, and~~ the City ~~warrant~~warrants that ~~they have~~it has the authority to execute this Amended Consent Judgment and bind ~~their~~its respective entities, successors and assigns to its terms and conditions.

4.4 Conflicting Provisions. To the extent that this Amended Consent Judgment conflicts with any City Ordinance or regulation, or the Conceptual Plans, the terms of this Amended

Consent Judgment shall control. To the extent that the [Amended](#) Consent Judgment is silent on issues regulated by City Ordinances or regulations, then the City Ordinances and regulation shall control.

4.5 [Amendment](#). The terms of this [Amended](#) Consent Judgment may be amended, changed, or modified but only by written agreement executed by the parties hereto, [or upon motion by the City for good cause](#), and later [as](#) approved and ordered by this Court. Minor modifications to the Conceptual Plans, as previously described in Section 2.2T4, may be done administratively, without having to amend this [Amended](#) Consent Judgment.

4.6 [Severability](#). Each restriction and clause is intended to be severable and in the event that any restriction is for any reason held void, it shall not affect the validity of the remainder of this [Amended](#) Consent Judgment.

4.7 [Clerical Errors](#). Any clerical errors or mistakes in document or exhibit descriptions contained in this Judgment may be corrected by the parties, and all parties agree to cooperate in making such corrections in order to effectuate the spirit and intent of the parties in entering into this [Amended](#) Consent Judgment.

4.8 [Judgment and Exhibits](#). This [Amended](#) Consent Judgment is hereby deemed to include all exhibits attached hereto and the Conceptual Plans referenced herein, said exhibits and Conceptual Plans being incorporated herein and made a part hereof as fully and to the same extent as if the contents of the exhibits and the Conceptual Plans were set out in their entirety in the body of this [Amended](#) Consent Judgment. All references to this [Amended](#) Consent Judgment are deemed to be a reference to the body of this Judgment and to the exhibits and the Conceptual Plans. [All terms of the Consent Judgment entered with this Court on April 20, 2006 are hereby vacated, are replaced by the terms of this Amended Consent Judgment which shall supersede the Consent Judgment, and shall be of no further effect, except relating to the mutual release of the parties contained in the Consent Judgment.](#)

4.9 [Continuing Jurisdiction](#). This Court retains continuing jurisdiction to assure enforcement and compliance with the terms of this [Amended](#) Consent Judgment.

[4.10 Effective Date. This Amended Consent Judgment shall only become effective and enforceable upon the date that Developer, or its affiliated entity or entities designated by the Developer, becomes the fee owner of the Property \(the "Effective Date"\).](#)

THIS AMENDED CONSENT JUDGMENT RESOLVES ALL PENDING CLAIMS AND CLOSSES THIS CASE.

~~GOLDSMITH~~PHYLLIS C. MCMILLEN

HONORABLE

~~MICHAEL~~ _____ A.

Circuit Court Judge

Stipulated and Approved by:

~~ADAMS/HAMLIN DEVELOPMENT CO., LLC~~
~~CITY OF ROCHESTER HILLS~~

By: _____
~~By:~~
Its: _____ Its: Mayor

~~HAMLIN REDEVELOPMENT CO, LLC~~

By: _____ By: Jane Leslie
Its: _____ Its: Clerk

~~HAMLIN/ADAMS PROPERTIES, LLC~~

By: _____
Its: _____

~~THOMAS KALAS (P41805)~~ ~~CAROL A. ROSATI (P32288)~~
~~Attorney for Plaintiffs~~ ~~Attorney for Defendant~~

~~JOHN D. GABER (P45294)~~ ~~JOHN D. STARAN (P35649)~~
~~Co-Counsel for Plaintiffs~~ ~~Co-Counsel~~ City Attorney for Defendant

Stipulated and Approved by:

GCI ACQUISITIONS, LLC,
for itself and on behalf of the entity or entities designated by GCI Acquisitions, LLC, as successors in
interest to the ownership of the Property, only, and not as parties

By: _____

Its: _____

ROMAN HALANSKI (P14531)

Co-Counsel

for

Plaintiffs

|

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL I:

Part of the West 1/2 of the Northwest 1/4 Section 29, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, described as follows: Beginning at a point distant South 00 degrees 33 minutes 37 seconds East, 120.85 feet from the Northwest section corner; thence North 88 degrees 30 minutes 46 seconds East, 836.53 feet; thence South 38 degrees 06 minutes 17 seconds East, 750.59 feet; thence South 76 degrees 30 minutes 50 seconds West, 1327.14 feet; thence North 00 degrees 33 minutes 37 seconds West, 878.45 feet to the beginning.

Tax identification number: 15-20-101-023

PARCEL II:

Part of the West 1/2 of the Northwest 1/4 Section 29. Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, described as follows: Beginning at a point distant North 88 degrees 07 minutes 26 seconds East, 841-94 feet from the Northwest section corner; thence north 88 degrees 07 minutes 26 seconds East, 759 feet; thence South 01 degrees 26 minutes 07 seconds West, 674.52 feet; thence South 76 degrees 30 minutes 50 seconds West, 291 feet; thence North 38 degrees 06 minutes 17 seconds West, 750.509 feet;

Tax identification number. 15-29-101-022

EXHIBIT B
CONCEPTUAL PLANS

[See attached]



Draft – 02/27/2018

EXHIBIT C

Chart prepared by PEA, Inc.

[See attached]



Civil Engineers | Land Surveyors | Landscape Architects

experienced. responsive. passion for quality.

Washington Township Office: 59255 Van Dyke • Washington Twp, MI 48094
t: 844.813.2949 • www.peainc.com

**RE: Hamlin and Adams Apartments
NEC Hamlin and Adams
Rochester Hills, Oakland County, Michigan
List of deviations from RM-1 Zoning Ordinance**

Below is a list of requirements from the RM-1 zoning district per the current zoning Ordinance dated August 15, 2016 that cannot be achieved with the proposed development. Waivers for these requirements are requested to be granted and included as part of the amended consent judgment.

Requirement of Ordinance	Proposed by Developer	Reason
Max. Density: 3 bedroom: 6,400 sf/unit = 6,400 * 56 = 8.2 acres 2 bedroom: 6,000 sf/unit = 6,000 * 172 = 23.7 acres 1 bedroom: 5,600 sf/unit = 5,600 * 140 = 18.0 acres Total area required = 49.9 acres	368 units on 22.49 acres (net) = = 16.4 units / acre = 2,663 sf / unit 368 units on 28.23 acres (gross)= = 13.0 units / acre = 3,340 sf / unit	The project needs enough units to help cover the environmental cost.
Min. Building Separation: Front to Rear = 60' Rear to Rear = 60' Side to Side = 30' Corner to Corner = 30'	Proposed: Front to Rear = 50' min. Rear to Rear = 50' min. Side to Side = 10' min. Corner to Corner = 10' min.	So much of the land is not usable since we have large buffers to the north and environmental area that cannot be built on.
Max. Height: 2.5 stories/30 feet	2 stories/30 feet along North property line 4 stories/60 feet remainder of property	The northern buildings will be only 2 stories to satisfy neighbor concerns. The southern buildings need to be four-story because so much of the land is not usable (buffers and environmental).
Garage Orientation: Max. 25% of garage doors may be located at or in front of the front building wall of the building with all other garage doors being located at least 10 feet behind the front building wall of the unit or facing the side or rear of the unit	Garage door locations vary on each building. Maximum of 100% of doors located at or in front of the front building wall.	Some buildings may not have any garage doors, others will have the door locations staggered to provide architectural detail to the buildings and to limit impact on neighbors.

Front Door Orientation: Min. 75% of the main entrances to the individual dwellings shall be located on the front façade of the building & shall include a front porch or stoop that is at least 6 feet in width & depth with a min. area of 36 s.f.	Main building entrances will be in front.	Due to the multiple floor levels of the building, the front doors for each unit may be internal to the building within a stairwell or hall.
Vehicular Circulation/Cross Access: Street connections shall be provided to adjacent neighborhoods in residential districts	No proposed connection to the adjacent subdivision to the north	No connection to adjacent subdivision due to request from that neighborhood to not provide a connection
Tree Removal/Replacement: Any healthy tree greater than 6" in caliper that is removed must be replaced with one tree credit	Developer will preserve trees to the extent feasible, especially in the northern buffer, however some trees require removal for the environmental remediation. The tree removal due to environmental remediation will not be required to be replaced.	