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

REI BROWNSTOWN LLC,
a Michigan limited liability company,

Intervening Plaintiff,

v

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation,
as successor to the Charter Township
of Avon, a Michigan municipal corporation,

Plaintiff,

v

SUBURBAN SOFTBALL, INC.,
a Michigan corporation, ALBERTDEEN
BASCH and DOROTHY STEWART,

Defendants.

Case No. 81-226225

Hon. RICHARD D. KUHN

TODD M. FINK (P48962)
Attorney for REI BROWNSTOWN LLC
40900 Woodward Avenue, Suite 130
Bloomfield Hills, MI 48304
PH: (248) 540-8040

JOHN D. STARAN (P35649)
BEIER HOWLETT, P.C.
Attorneys for City of Rochester Hills
200 E. Long Lake Rd., Ste. 110
Bloomfield Hills, MI 48304-2328
(248) 645-9400

AMENDED CONSENT ORDER AND JUDGMENT

At a session of said Court, held in the County
Courthouse, City of Pontiac, County of Oakland,
State of Michigan on:

PRESENT: HON. **RICHARD D. KUHN**
Circuit Court Judge

The facts on which this Amended Consent Order and Judgment ("Judgment" or "Consent Judgment") is based are as follows:

RECITALS AND PREAMBLE

This matter was originally before the Court in 1981, when the Charter Township of Avon, predecessor in interest to the City of Rochester Hills (the "City"), commenced an action against the above-captioned Defendants relating to the use and operation of a softball facility on property previously used as a landfill. That action resulted in, among other things, the entry of a Consent Order by this Court on July 28, 1981, pursuant to which the parties agreed to certain matters governing the improvement of the property and the continued use and operation thereof. The Consent Order expressly bound the parties and their successors and assigns.

REI Brownstown LLC, a Michigan limited liability company, hereinafter referred to as "REI", for purposes hereof controls certain property located in the City. The "Property" which currently is the subject of this lawsuit consists of approximately 97 acres of land described in *Exhibit A* attached, and includes the property that was subject to the original Consent Order described above. None of the original Defendants has any ownership or other rights with respect to the Property or the matters contained in this Consent Judgment. REI desires to redevelop the Property, and in connection therewith, will cause the remediation of certain portions of the Property previously used as a landfill (as more fully described herein), which activities will confer a substantial public benefit upon the City by way of eliminating potentially hazardous conditions, remediating the Property so that it may be redeveloped and enhancing the value of the Property and the City's tax

base. The Property is also located adjacent to the planned realignment of Adams Road and new M-59/Adams Road interchange in the City, as is more fully depicted in *Exhibit B* attached. REI may acquire additional contiguous land, and, in that event, the City and REI intend that this Consent Judgment shall be amended to include such additional contiguous land under the coverage of this Consent Judgment and within the definition of the "Property." The Property currently has several zoning classifications under the City Zoning Ordinance.

REI is engaged in the business of real estate development and has entered into agreements for the purchase of the Property with the intended purpose of developing the entire Property for mixed uses as set forth herein.

The parties have engaged in extensive discussions which have resulted in the terms and conditions as set forth within this Consent Judgment. The parties agree that the proposed mixed uses are consistent with the City's master plan for the Property and are compatible with surrounding developments in the City of Rochester Hills.

Further, the Property is unique. It is located adjacent to the major interchanges of Adams and M-59 and Crooks and M-59, and the location of the Property, as well as its size, shape and access makes it an ideal parcel for the proposed mixed-use development. Such a development can complement existing surrounding uses and zoning, and can be designed to minimize impact on related public facilities and services.

The parties agree that the current zoning of the Property is constitutional and reasonable, and the REI's proposed mixed-use development as set forth herein is a reasonable and appropriate use for the Property. Such developments are commonly provided for by means of a Planned Mixed Use Development Zoning Ordinance or

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Planned Unit Development within the Zoning Ordinance. The City is in the process of revising its Zoning Ordinance including revision of the mixed use (i.e., planned unit development) section of the Zoning Ordinance which currently does not provide the flexibility needed to adequately address the intended development of this Property under this Consent Judgment.

The parties acknowledge there exists a mutual opportunity for the parties, reflected by the City's desire to have the former landfill(s) located on the Property remediated in compliance with applicable laws, and REI's desire to cause the Property to be redeveloped in a manner that justifies the significant expenditures associated with clean-up of the landfill(s). The parties agree that conditions on the site and surrounding area require flexibility in terms of land uses and dimensional standards, and that the City will allow REI to recover the costs incurred in connection with the remediation and redevelopment of the Property by way of a brownfield plan and the recapture of real property taxes associated therewith, as permitted under the Michigan Brownfield Redevelopment Financing Act, Public Act 381 of 1996, as amended ("Act"). The City recognizes that the redevelopment of the Property may not be economically feasible without funding the landfill excavation and backfilling and associated brownfield activities through a public financing vehicle, which may include a combination of state, county and/or federal grants or bonds, some of which funding sources may require local participation. In connection therewith, REI and the City will work together in good faith to secure public financing in an amount sufficient to cover all eligible brownfield activities under the Act (including, without limitation, those activities more fully described in Paragraph 8.E. of this Judgment) and to permit the governmental agency(ies) involved to

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recover any costs advanced through tax increments generated by the project. However, the foregoing is not intended to commit or obligate the City to provide financing or issue bonds for the brownfield activities.

The parties intend that the proposed mixed use development will be compatible with surrounding areas, and will have an integrated street and pedestrian walkway system which are designed to accommodate, regulate and blend the uses contemplated. The parties intend that the proposed mixed use development will not be detrimental to the health, safety and welfare of any property owner, resident and/or citizens of the City. The parties have agreed, in concept, on the size and scope of the project, and the parties believe the project will be a benefit to the health, safety and welfare of the community with sufficient parking, drainage and traffic management handled adequately as provided herein. The project as set forth herein will provide the City with certain controls, restrictions and benefits, which are beyond those contained within its Ordinances. This project is designed to enable REI to obtain necessary approvals for such development in an orderly manner.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED as follows:

The parties stipulate and consent to, and this Court hereby orders, that:

Subject to the terms of this Consent Judgment, REI shall be permitted to develop a mixed used development consisting of the mixed use(s) provided herein with no greater than 2,000,000 square feet of gross leasable floor area of office, hotel, research and development, and commercial, and of any of the land uses described in Paragraph 3, *infra*, in any combination within the development zones described herein. Attached hereto is a Conceptual Plan, ***Exhibit C***, which has attached various land use areas which

have been specified and which may be constructed at REI's discretion, within certain areas where the land is suitable for development as provided herein. The separate use areas are referred to as Components or Phases or Development Zones. Notwithstanding the foregoing, REI agrees that the gross leasable area of freestanding retail uses on the Property (i.e., excluding retail as an accessory use that is (i) located wholly within another principal use structure, such as an office, hotel, O-R-T building or the like; (ii) principally intended to serve the tenants or occupants of such principal use structure; (iii) has its primary access through either an atrium, lobby or corridor of the principal use; and (iv) not identified by prominent signage on the exterior of the principal use structure in which it is located)("Freestanding Retail") shall not exceed 500,000 square feet. Any retail use which does not meet the foregoing criteria shall be considered "Freestanding Retail" and shall be included in the 500,000 square foot maximum set forth above.

REI acknowledges that the character of Hamlin Road and that of any retail development fronting on Hamlin Road are of critical importance to the City of Rochester Hills. Accordingly, the gross leasable area of Freestanding Retail fronting on Hamlin Road within Development Zone B (as depicted on Exhibit C) shall be restricted to 75,000 square feet and shall be designed and located so as to mitigate off-site visual impact along Hamlin Road, whether through landscape screening, architectural controls or a combination thereof, such landscape screening and architectural controls to be reviewed in connection with the site plan approval process (and approval of the same shall not be unreasonably withheld, conditioned or delayed). In addition, if REI can demonstrate to the reasonable satisfaction of the City Council that additional retail development along Hamlin Road will be architecturally harmonious, properly screened and well-integrated

into the balance of the development on the Property, then REI may be permitted to develop up to an additional 50,000 square feet of Freestanding Retail fronting on Hamlin Road, for a total of 125,000 square feet of gross leasable area. In addition, REI agrees that any "large format" retail use (defined as a retail user with a building footprint in excess of 120,000 square feet), will be located in Development Zone D (as depicted on Exhibit C), unless REI determines to instead locate office, ORT or hotel uses (or any combination thereof) in Development Zone D, in which case any large format retail use shall be located in the southern portion of Development Zone C.

1. PERMITTED USES

The parties agree that a coordinated mixture of office, research office and/or light industrial, commercial, large and small scale retail, restaurants and lodging uses shall be permitted, such shall include:

- (a) Generally recognized retail businesses developed as a shopping center or in stand alone buildings which supply commodities on the premises such as, but not limited to, groceries, gourmet markets, apparel, drugs, dry goods, sporting goods, appliances, hardware store, restaurants within shopping center buildings, furniture, pet store or supplies, book store, department store, and/or a home improvement center, along with a garden center as an accessory use for any of the foregoing.
- (b) Sit down or carryout restaurants. Outdoor seating shall be a permitted accessory use, with precise location(s) and configuration to be reviewed in connection with the site plan approval process. Stand alone drive through restaurants shall not be permitted, however the development of a specialty food retailer with drive-through service, may be permitted as a conditional use upon reasonable approval of the City Council. Any such drive through specialty food retailers and signage relating thereto shall be designed and located so as to mitigate off-site visual impact along Hamlin Road, whether through landscape screening, architectural controls or a combination thereof, such landscape screening and architectural controls to be reviewed in connection with the site plan approval process (and approval of the same shall not be unreasonably withheld, conditioned or delayed).

- (c) Any principal or accessory uses permitted under the City's O-1 Office Business District ordinance or other similar districts that may replace or supplement the zoning ordinance in effect at the time of this agreement.
- (d) Personal service establishments which perform services on the premises such as, but not limited to, watch, radio, television or shoe repair, tailor shops, beauty salons or barbershops, pet grooming, veterinary hospitals, photographic studios, self dry cleaners and printing or copy centers.
- (e) Theaters, health or fitness clubs including ancillary recreational amenities such as outdoor pool, tennis court, pool and amusement and entertainment establishments, provided all such uses are indoor, but excluding any adult regulated uses and bowling alleys.
- (f) Banquet halls.
- (g) Garden centers that include accessory open air sales of plant material, lawn furniture, playground equipment and similar goods, but only as an accessory use to the principal uses described in this Section 1.
- (h) Hotels and conference centers.
- (i) Professional Office buildings;
- (j) Medical offices including clinics, outpatient centers, urgent care and emergency care facilities.
- (k) Banks, credit unions, savings and loan associations and similar uses with drive-in facilities as an accessory use only, provided that no single bank shall have more than three (3) drive-through lanes and one (1) ATM lane, for a total of four (4) drive-through lanes.
- (l) City of Rochester Hills municipal uses and facilities.
- (m) Nursery schools and day care uses.
- (n) Any stand alone wireless communication facilities that meet City standards.
- (o) Research and technology uses as permitted in the City's ORT Office-Research-Technology District or other similar districts that may replace or supplement the zoning ordinance in effect at the time of this agreement.
- (p) Other uses as determined by the City Council.
- (q) Accessory structures and uses customarily incidental to the uses permitted above.
- (r) Parking structures.

2. PROHIBITED USES

Uses permitted within the City's various commercial (B 1-3), Office- Business (O-1) and Office-Research-Technology (ORT) zoning districts, or similar districts which may be adopted following approval of this Agreement are permitted. However, the developer agrees that, because of the flexibility offered through this Agreement and in response to the City's expected quality development on the site, certain principal uses allowed in those districts shall be prohibited unless approved by the City council, as follows:

- (a) Mobile home parks;
- (b) Outdoor sales of boats and recreational vehicles;
- (c) Auto sales establishment;
- (d) Mini-storage establishments;
- (e) drive-through restaurants, however, specialty food retailers with drive-through may be permitted as a conditional use, subject to the provisions of Paragraph 1(b) above;
- (f) Adult regulated uses;
- (g) Bus passenger stations;
- (h) Auto body repair, except where an accessory use;
- (i) Funeral homes;
- (j) Race tracks;
- (k) Senior housing;
- (l) Schools, churches and public or governmental uses or facilities (other than City of Rochester Hills municipal uses and facilities), or other property tax-exempt uses;
- (m) Tattoo parlors;
- (n) Gasoline service stations; and
- (o) Hypermarkets (grocery and discount department store in combination).

3. DIMENSIONAL STANDARDS

A. Height of buildings.

Commercial uses shall have a maximum height of 40 feet plus up to five (5) feet for parapet to screen roof mounted mechanical and HVAC units and/or architectural features. For any commercial/retail use located adjacent to Hamlin Road, two feet (2') of setback shall be required for every foot in building height over thirty feet (30'), including parapet walls. Such height shall be measured from the elevation of the road crown on eastbound Hamlin Road.

ORT, offices or hotels shall have a maximum height of eight (8) stories, or ten (10) stories if parking is included under the first floor of such building. City Council shall have the right to review the architecture of any above-grade parking structure as part of site plan approval and any such structure shall be designed to be architecturally harmonious and compatible with the building(s) it is intended to serve. In addition, no parking structure shall exceed four (4) stories or decks, except that the City Council may approve a higher parking structure that is designed to be architecturally harmonious and compatible with the building(s) it is intended to serve.

B. Building Setbacks.

Highly challenging site conditions created by landfill material will significantly limit the area of the Property suitable for development, as illustrated by the Buildable Area Site Study attached as *Exhibit D*, which the parties acknowledge is preliminary and may change upon further site investigation. As a result of these extraordinary site conditions, and in order to permit building envelopes necessary to accommodate the uses and densities permitted hereunder and to facilitate (where feasible) greater separation between buildings and remaining landfill material, setbacks and buffer zones will be minimized. Accordingly, building setbacks within the project shall be as follows:

Front yard: 20 feet from Hamlin Road, subject to the provisions of Paragraph 3A above. The Hamlin Road setback shall be measured from edge of right of way and shall consist of landscape buffer and, if desired by REI, parking (subject to the 10 foot parking setback described in Paragraph 4(j) below.

Side yard: 0 feet each side, 0 feet for office-research or where abutting a residential use. In addition, there shall be a 10 foot setback from the east line of the Property

Rear yard and along M-59 frontage: 0 feet.

In addition, except as set forth above, there shall be no required landscape or open space buffer adjacent to M-59, Adams Road, Hamlin Road, or any adjacent property.

4. PARKING

The parties agree that parking will be provided based upon the following minimum formula:

- (a) For retail and commercial uses: 5.0 spaces per 1000 feet of gross leaseable area, for the first 49,999 square feet of buildings or centers; 4.0 spaces per 1000 gross square feet for buildings or centers with 50,000 and above or in accordance with City Zoning requirements, whichever is lower.
- (b) If needed - with .5 spaces per 1000 feet retained as green space, but graded and banked for parking lot expansion if additional parking is determined to be required by the City and developer based on actual use or a change in use, and if such land is available and buildable.
- (c) For stand alone restaurants; ten (10) spaces per 1000 gross square feet for sit down or carryout restaurants; or one (1) space per each three persons allowed as maximum occupancy by the fire department whichever is greater.
- (d) Hotels, banks, and similar commercial uses not addressed above: in accordance with City zoning requirements.
- (e) Offices: one space per 250 gross square feet of building.
- (f) Medical offices: one space per 150 gross square feet of building.
- (g) Given the potential for shared trips, the City may grant or, in the exercise of its reasonable discretion after taking into account user and tenant requirements, the City may require, shared parking arrangements, cross-access agreements and other modifications on a site by site basis.
- (h) Parking spaces shall be 10 x 18 feet, with a minimum 24 foot wide aisle unless City Ordinance at time of Site Plan Approval for a Component has lesser standard. Notwithstanding the foregoing, parking spaces may be 9.0 x 19 feet, with a minimum of 24 foot wide aisle, [or such lesser standard if City Ordinance so provides] for any retail or commercial user, owner or tenant whose structure/building is 100,000 square feet of ground area or more.
- (i) REI shall have the ability to bank parking, and have shared parking.
- (j) Parking shall be setback a minimum of 10 feet along Hamlin Road and 10 feet from right-of-way or easement lines along internal streets and drives to provide an attractive streetscape. This greenbelt area shall be planted as provided in the landscape plan(s) approved in connection with the site plan approval for each phase of the development. No side yard parking setback shall be required where parking lots are connected.

5. SITE DESIGN STANDARDS

A. **Smart Zone**

In recognition of the City's efforts to establish a Smart Zone, if eligible corporate or research uses are developed, the project may be designed to meet criteria for certification as a "business improvement park."

B. **Streets**

The development shall be served by an internal integrated street and pedestrian network. The specific alignment for the street and safety path system will be specified with the initial site plan submission, but may be revised depending upon the needs and timing of the uses developed.

C. **Pedestrian Circulation.**

Sidewalks will be provided along streets within the commercial components. Sidewalks shall also be provided to link hotels or offices with restaurants or other commercial uses. Individual sites shall be designed to accommodate internal pedestrian movements that minimize conflicts with automobiles and to keep automobile speeds at an appropriate level. In addition, reasonable and appropriate pedestrian and non-motorized facilities (such as benches and bicycle parking) will be incorporated into the development as a site amenity as part of the site plan approval process.

D. **Landscaping / Trees.**

There shall be unified landscaping in accordance with approved plans which shall be provided along the public streets within any commercial component of the development. A streetscape concept plan will be submitted for approval of the City council with the initial site plan submittal. Design of landscaping within each site or component will be the responsibility of the individual applicant, for approval by the City council through individual site plan approval. The City's existing tree conservation ordinance shall apply to the project and be complied with by REI, and its successors, assigns including any grantees.

E. **Signs.**

Signs shall meet the City's requirements at date of this Judgment or upon site plan approval which ever is most favorable, with the following exceptions:

(1) Any request for variances from the City's sign ordinances shall be resolved in the manner described in Paragraph 9(g) of this Judgment. The City will not unreasonably withhold, condition or delay its consent to sign variances relating to number of signs, dimensions, or otherwise.

(2) During construction, REI may place the following temporary signs advertising the project: one temporary sign along Adams Road (not to exceed 200 square feet in area), two temporary signs along Hamlin Road (not to exceed 100 square feet in area each) and two temporary signs along M-59 (not to exceed 200 square feet in area each). The signs must be removed upon completion of that portion of the project to which the signs relate.

F. Lighting

Lighting shall be designed in accordance with City standards with the following exceptions:

(1) Uniform street lighting may be installed along the internal street system. Poles and wall mounted lights along the site perimeter (excluding M-59 and Hamlin Road) and within the site shall be a maximum 30 feet tall from the top of the base, and a maximum of 20 feet tall along Hamlin Road, unless higher lights are permitted by City Council during site plan approval. Full photometrics, pole details and wall-pack details will be subject to review during site plan approval.

G. Wetlands

There are no regulated wetlands on the Property.

H. Clinton River Trail Relocation

In connection with the development of the Property, the City has agreed to permit REI relocate a portion of the Clinton River Trail that bisects the Property (the "Rails to Trails Property") and to substitute replacement property therefor, which shall be designated during site plan approval. Because the Rails to Trails Property was acquired pursuant to a Michigan Natural Resources Trust Fund grant, it appears that MDNR consent is required in order to cause the Rails to Trails Property to be relocated. The City agrees to use its best efforts to obtain all necessary permits from the MDNR in order to effectuate the relocation of the Rails to Trails Property. REI agrees to donate to the City a parcel of equal acreage, width and value in substitution for the Rails to Trails Property, the precise location of which shall be approved by City Council (which approval shall not be unreasonably withheld, conditioned or delayed) as part of site plan approval. REI will also cause the relocated trail on the Property to be gravel or asphalt surfaced (or otherwise consistent with the adjacent portions of the trail) and constructed 10 feet in width and designed to AASHTO standards, the cost of which will not be included in the \$500,000 of improvements to be provided pursuant to Paragraph 8.F. below. The relocated trail also will be landscaped in a manner designed to be harmonious with the development on the Property and suitable for users of the trail (which may include one or more drinking fountains), which landscaping plan shall be subject to review and approval by City Council as part of site plan review. Any additional amenities on the relocated trail shall be a joint decision of the City Council and

REI, and the cost thereof shall be included in the \$500,000 allowance described in Paragraph 8.F. below.

6. **BUILDING DESIGN**

Given the potential variation in uses, there will likely be a variation in building design, colors and materials. However, any commercial uses developed as a shopping center shall be designed in a harmonious manner with similar or complementary design and materials. Building architecture shall conform to the following guidelines:

- (a) Buildings shall provide varied architectural features.
- (b) Building material on the exterior wall shall be brick, masonry, natural stone or similar materials, wood, metal and glass E.F.I.S. and Pre-Cast concrete panels, subject to reasonable approval during site plan review. The sides and rear of the buildings not facing Adams Road or M-59 may be of a material similar in appearance to the front façade, but may be of a different material which is in harmony with the other materials.
- (c) Building entrances may utilize windows, canopies and/or awnings, and, if requested by REI, shall be permitted to project into setbacks and/or buffer zones.
- (d) Building facades visible from Adams Road or M-59 or Hamlin Road shall be constructed similar in appearance to the front façade, but may be of a different material. Any loading areas visible from M-59 or Hamlin Road shall be screened from view through design, screen walls and/or landscaping.
- (e) Enclosures, screening, trash collection points shall be compatible with the primary structure with respect to color, material and design. All trash receptacles shall be screened with masonry walls.
- (f) Building materials shall be of a quality of the examples attached as *Exhibit "E"*, which are for illustration purposes only of the kind and quality of materials intended.
- (g) REI shall provide and submit site elevations, landscape and sign package with the first Site Plan submitted.

7. **MAINTENANCE**

REI shall, prior to the construction of the first phase for an individual site, form a master property owners association and/or condominium association and/or reciprocal

easement agreements to maintain certain aspects of the development, applicable to the entire Property, including the following:

- (a) Drainage facilities, which may be the subject of one or more separate associations based upon recommendations of engineering and drainage studies, and potential ability to utilize the centrally located natural feature area and excess areas within expressway interchange rights-of-way for storm water detention. The existing, collapsed storm drain located on the Property shall be repaired, capped, abandoned, grouted and/or re-routed in connection with the development of the Property, subject to the approval of the City's engineering department.
- (b) The City shall also permit REI to construct and one or more stormwater detention basins on the City's property located north of Hamlin Road, as depicted on *Exhibit F* (the "Offsite Detention Area"), to accommodate stormwater runoff from the Property and shall grant such easements as are necessary or appropriate thereto. Such detention basin(s) will be designed to improve surface water quality and to be an environmentally beneficial amenity to the City's existing parkland. Such basin(s), including design, engineering and precise location, shall be subject to reasonable review and approval by the City in conjunction with the initial site plan submittal.
- (c) Greenbelts, signs, lighting and safety paths within public rights-of-way or private roads.
- (d) Common areas.
- (e) REI or the developer of each component shall dedicate any required utility easements to the City or county, as appropriate. Similarly, the City shall assist in securing any easements required by the developer and shall cooperate in negotiations with the state to permit use of excess areas within the M-59 right-of-way for additional storm water facilities if necessary.

8. PROVISIONS RELATING TO DEVELOPMENT AND LANDFILL REMEDIATION

A. The "Conceptual Plan" depicts alternative uses and areas for parking which are subject to change and modification as may be determined by the REI as it is intended to be a flexible Plan.

B. All of the uses set forth herein for the mixed use development on the Property are lawful.

C. The Conceptual Plan provides for the regulation of such mixed use development including such issues as traffic facility improvements, parking, landscaping, egress and ingress, retention, detention of storm water, etc., so that they will benefit the health, safety and welfare of the community, and allow for reasonable coordinated development of this large parcel into one cohesive project.

D. It is contemplated between the parties that the Conceptual Plan shall be a flexible plan in which the amount of any singular use may vary as the plan evolves at the sole discretion of REI, subject to the limitations on retail uses set forth in Paragraph 1 above.

E. REI and the City shall cooperate and keep each other informed in connection with REI's development of plans for the excavation and off-site disposal of certain portions of the previous landfill(s) on the Property, backfilling such areas, the creation of an engineered cap and methane collection system and other related matters contemplated under the due care plan to be reviewed and approved by the Michigan Department of Environmental Quality ("MDEQ"). The City and REI shall also cooperate in order to facilitate the expeditious approval (including the execution of any necessary permits or other documentation) by MDEQ and any other agencies having jurisdiction, of (i) the due care plan for the Property; (ii) a baseline environmental assessment for the Property; and (iii) a so-called "covenant not to sue", as permitted under MCL § 324.20133. REI shall provide the City with a detailed phasing and engineering plan regarding the proposed redevelopment of the landfill area(s) as part of its initial site plan submittal (or sooner, if practical), and REI agrees that the excavation, redevelopment and backfilling of the landfill areas will be completed in accordance with (i) the due care plan

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approved by the MDEQ and (ii) all other applicable laws and regulations prior to the City's issuance of building permits for vertical construction within the development; provided, however, REI shall be permitted to phase its development and construct and occupy buildings on the Property prior to completion of the excavation, redevelopment and backfilling of landfill areas so long as such phasing plan is approved by MDEQ and the City, and the excavation and backfilling of landfill is completed within ten (10) years from the commencement of such work. The City shall be kept informed as to work schedules and meetings with MDEQ so that the City may monitor site work in respect of the landfill areas and facilitate any necessary approvals and/or permits relating thereto. In connection therewith, the City agrees to issue all permits necessary for REI to utilize the so-called Rails to Trails Property bisecting the Property and adjacent Clinton River Trail property owned by the City, as well as Hamlin Road and/or Crooks Road as a haul route for the excavation and disposal of landfill materials and importing backfill onto the Property, and the City will further cooperate in order to secure any necessary approvals from MDNR relative to using the Rails to Trails Property and/or the Clinton River Trail for such purposes.

F. REI agrees to provide valuable in-kind design and construction management services relating to, and/or to construct, certain improvements (to be determined by the City) on the City's property depicted in *Exhibit F*, in order to enhance the City's parkland and to provide additional amenities to users and tenants of REI's Property. Such improvements will be owned by the City. The plans relating thereto shall be reviewed and approved by the City and the City shall, prior to REI's construction of such improvements, issue all necessary permits and approvals relating thereto, subject to

review and approval by City Council. The total cost of REI's services in respect of these improvements shall not exceed \$500,000.

G. REI shall install an internal integrated private or public road network at REI's election and pedestrian network similar to that depicted in the Conceptual Plan attached or such other variations as approved by the City with such changes as may be adapted and agreed upon in the final site plan.

H. The City acknowledges and agrees that it has no open space requirements for commercial, office and ORT projects that would be imposed on REI. The parties agree that the Conceptual Plan attached at Exhibit C represents a Conceptual Site Plan which is acceptable as to the general layout, types of uses, and intended use or uses which may either be combined into a larger singular use or uses (and with any specific categories of use or uses deleted), at REI's sole discretion and is a flexible Plan. The parties further agree that the Conceptual Plan being a flexible Plan allows in the aggregate a total of development of 2,000,000 gross square feet of leasable area of combined uses in any combination and without limiting vertical construction for uses allowed herein. Notwithstanding the foregoing, REI agrees that the gross leasable area of freestanding retail uses on the Property (i.e., excluding retail as an accessory use that is (i) located wholly within another principal use structure, such as an office, hotel, O-R-T building or the like, (ii) principally intended to serve the tenants or occupants of such principal use structure; (iii) has its primary access through either an atrium, lobby or corridor of the principal use; and (iv) not identified by prominent signage on the exterior of the principal use structure in which it is located)("Freestanding Retail") shall not exceed 500,000 square feet. Any retail use which does not meet the foregoing criteria shall be

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considered "Freestanding Retail" and included in the 500,000 square foot maximum set forth above. REI acknowledges that the character of Hamlin Road and that of any retail development fronting on Hamlin Road are of critical importance to the City of Rochester Hills. Accordingly, the gross leasable area of Freestanding Retail fronting on Hamlin Road within Development Zone B (as depicted on Exhibit C) shall be restricted to 75,000 square feet and shall be designed and located so as to mitigate off-site visual impact along Hamlin Road, whether through landscape screening, architectural controls or a combination thereof, such landscape screening and architectural controls to be reviewed in connection with the site plan approval process (and approval of the same shall not be unreasonably withheld, conditioned or delayed). In addition, if REI can demonstrate to the reasonable satisfaction of the City Council that additional retail development along Hamlin Road will be architecturally harmonious, properly screened and well-integrated into the balance of the development on the Property, then REI may be permitted to develop up to an additional 50,000 square feet of Freestanding Retail fronting on Hamlin Road, for a total of 125,000 square feet of gross leasable area. In addition, REI agrees that any "large format" retail use (defined as a retail user with a building footprint in excess of 120,000 square feet), will be located in Development Zone D (as depicted on Exhibit C), unless REI determines to instead locate office, ORT or hotel uses (or any combination thereof) in Development Zone D, in which case any large format retail use shall be located in the southern portion of Development Zone C.

I. In connection with the development plan for the Property, REI intends to acquire certain property from the Gabler Drainage District, as depicted on *Exhibit G*, and to transfer all or a portion of such property to Ajax Materials Corporation (or its

designee)(the "Ajax Relocation Property"). The City agrees that the Ajax Relocation Property may be used for all purposes permitted under the City's I-2 zoning classification, and further agrees to effectuate a tax parcel combination of the Ajax Relocation Property so that it is combined with the contiguous property to the east that is owned by Ajax Materials Corporation, which shall be accomplished within 10 days after written request therefor, notwithstanding any contrary requirements of the City's land division ordinance. To the extent site plan approval is required for the Ajax Relocation Property, such review and approval will be conducted administratively by City staff on an expedited basis.

9. APPROVALS / ADDITIONAL REQUIREMENTS.

The following additional regulations shall apply to the Property:

- (a) Setback Requirements. Because of the unique challenges associated with landfill excavation on the site, there will be no setback or buffer zone requirements, except as otherwise expressly provided in this Consent Judgment. To the extent setbacks or buffer zones are required hereunder and REI requires an adjustment thereof, they shall be administratively adjusted by the Mayor or his/her designee
- (b) Detention/Retention Areas. In order to enhance the aesthetic appearance of any detention/retention areas of the Property, REI may install an aerator in detention/retention ponds and other landscaping within the detention areas to be shown on the final Landscaping Plan. REI shall not install any landscaping that will impede the flow of drainage and the proper functioning of the detention/retention pond(s).
- (c) Storm Sewers. The design of the storm sewers and storm water detention/retention facilities within the proposed development shall comply with existing City of Rochester Hills and Oakland County Drain Commissioner's standards as of the date of this Consent Judgment. The City engineering standards shall apply to the construction and inspection of the storm sewers within the development.
- (d) Approvals; Procedure; Timing. REI intends to commence the development as soon as REI's due care plan, baseline environmental assessment and covenant not to sue are accepted (and/or executed as the case may be) by the MDEQ. This Judgment therefore constitutes approval of REI's Conceptual Site Plan for all or any of the mixed uses and/or any

combinations thereof. A delay in either REI's submittal of plans or the commencement of construction shall not cause or result in a change in any of the terms hereof, and the agreement hereunder, and the rights and obligations of each party hereto shall remain the same, and not be deemed to have expired. Any subsequent or modified site plan by REI which is substantially in conformity with **Exhibit C** and/or does not exceed the square footage limitations described herein, shall be submitted to the Planning Commission, which body shall have the right to make review and recommend approval or modification to the City Council. City Council's decision shall be given within 45 days of submission of a technically compliant site plan package to the Planning Commission (as determined by City staff in its reasonable judgment).

- (e) This Judgment shall constitute Conceptual Site Plan approval for the development and all permitted uses of the Property as reflected in the Conceptual Site Plan. All road and utility improvements for the Property and the storm drainage plans for the Property shall be subject to expedited review and approval as set forth herein by the City's Engineering Services utilizing ordinance standards in effect at the time of review and construction. All landscape plans pursuant to Paragraph 10 D shall be subject to review and approval by the City Council as part of the Site Plan submittal process as previously set forth. All minor changes or modifications can be approved by the Mayor or the Mayor's designee without requiring submittal to City Council. All final site plans, final condominium plans and/or final plats (as the case may be) shall be either approved or comments given thereon by City Council within 45 days of submission of a technically compliant submittal (as determined by City staff in its reasonable judgment).
- (f) REI shall adhere to the general plan reflected in the Conceptual Site Plan regarding the total land areas, landscaping, sidewalks, and road improvements and shall comply with all conditions of development as set forth in this Judgment. However, it is recognized that there will be modifications to the plans that are dependent on tenant needs, building sizes and shapes, uses, lot sizes and shapes and the like. Therefore, modifications to the Conceptual Site Plans, not inconsistent with the spirit of this Judgment, may be made without the necessity of amending this Judgment so long as REI and the City consent in writing to such modifications. Neither REI nor the City will unreasonably withhold approval of those modifications, the parties recognizing that this is a flexible Plan. All minor changes shall be made by the Mayor or Mayor's designee as set forth in Paragraph (k) of this Section.
- (g) In developing the Property, REI shall adhere to building codes, ordinances of the City; except as modified in this Judgment. However, dimensional variances may be requested by REI to vary the dimensional requirements of City ordinances and design standards pursuant to which shall be granted if within the spirit of this Judgment. The City Council shall replace the Zoning

Board of Appeals, Sign Board of Appeals and Planning Commission as the decision-making body on variance, special land use and site plan requests. It is understood that all provisions of this Judgment shall supercede all zoning ordinances in effect which conflict with the terms or conditions provided herein.

- (h) All mechanical equipment located on the rooftop or exterior of buildings shall be screened from adjacent public or private streets located off the Property.
- (i) Reasonable access shall be provided to all portions of all buildings on the Property by City Fire Department apparatus conforming to City fire lane requirements and as approved by the City Fire Department. All roads and driveways shall conform to City fire lane requirements.
- (j) REI may utilize sales and construction trailers until they have completed development and sale of all sites for each phase.
- (k) The Mayor, or such Department Director as the Mayor shall designate, or authorize minor, non-material changes to the concept plan and site plan without the need for approval from the City Council. Minor, non-material changes to the approved concept plan and/or approved site plan(s), may include, but are not limited to:
 - 1. Adjustments to and setbacks to address issues such as fire code, emergency access, site distance, site soil or environmental conditions where such change improves the overall design without increasing the building footprint;
 - 2. Make decisions as permitted for all Accessory Uses;
 - 3. Allow increased height for architectural features;
 - 4. Adjust the size of parking spaces provided the overall parking area meets the requirements for size of spaces.
 - 5. Permit shared or banked parking based upon a finding of sufficient parking and acceptable requirements to build additional parking if required;
 - 6. Make changes to landscape material design consistent with the overall intent.
 - 7. Make revisions to the Concept Plan which are in furtherance of the intent of Plan and which do not alter the basic concepts of the Plan.

10. STORM WATER, UTILITY AND INFRASTRUCTURE

A. REI shall connect to the City sanitary and storm sewer lines. The City shall reserve sufficient sanitary sewage, and storm water sewer capacity for REI's property and its contemplated development, however, if infrastructure improvements are necessary to provide sufficient sanitary sewage capacity, such improvements will be completed at REI's cost. The City and REI shall work together in good faith to minimize and/or defray the cost of any such infrastructure improvements. To the extent that access to City sewers and other utilities are required through easements owned by the City, or to which the City is entitled or may have access, including off site, REI shall be permitted to use the easements for the purpose of constructing and connection to the existing sanitary sewer lines and such other utilities as is contemplated for its development. If off site easements are required from third parties, the City shall acquire such easements, at REI's cost, and allow REI to connect to such sanitary and/or storm sewer lines and other utilities. It is contemplated that utilities shall be placed within the Right of Way of Hamlin Road. To the extent any lift or pump stations or any other improvements are required off-site, such shall be constructed by REI at its sole cost and expense in order to provide sufficient sanitary sewer capacity to serve REI's property, along the Hamlin Road frontage.

B. The development shall connect with the City water main. The City shall reserve sufficient water taps for such purpose and shall size all pipes and connections to be able to provide sufficient capacity for REI's property and its contemplated development. To the extent that access to City water mains and other utilities is required through easements owned by the City or to which the City is entitled, or may have access,

including off site, REI shall be permitted to use the easement and existing water lines and such other utilities in order to connect to such water lines or other utilities as is contemplated for its development. If off site easements are required from third parties, the City shall acquire such easements, at REI's cost, and allow REI to connect to such water lines.

C. All City utilities will be located in Hamlin Road. REI will be responsible for installation of all internal water mains and sewer utilities.

D. REI shall be given access and easement rights to the Gabler Drain or any drain or offsite easement for storm drainage. The City will cooperate with REI to obtain access and to acquire approximately 9.3 acres of property from the Gabler Drainage District (which property is adjacent to the Property), with the understanding that the Drain is under county jurisdiction.

11. GENERAL PROVISIONS

A. This Judgment is hereby deemed to include all Exhibits attached hereto, said Exhibits being incorporated herein and made a part hereof as fully and to the same extent as if the contents of the Exhibits were set out in their entirety in the body of this Judgment. All references to this Judgment are deemed to be a reference to the body of this Judgment and the Exhibits. This Judgment is binding upon and shall inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors, successors-in-interest, grantees and assigns without limiting the generality thereto including REI Brownstown LLC, Real Estate Interests Group, Inc., any of their affiliated entities and future owners and/or tenants of any Commercial/ Business/ Office/ Research Components; and further, the terms and conditions of this Judgment as the same may be

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amended from time to time, including without limitation uses permitted on the Property pursuant to this Judgment, shall be deemed to run with the land for the benefit of the Property only, and not for the benefit of any surrounding property.

Notwithstanding the foregoing, the term "REI" as used in this Agreement is limited to mean and include only the owner of the portion of the Property which is permitted to act or is required to act with respect to or in connection with the obligation, agreement, or covenant in question, and not a prior owner of such portion of the Property, and in the event of any transfer of title to any portion of the Property, the REI (and in the case of any subsequent transfers of conveyances, the then grantor), will automatically be released from and after such transfer or conveyance of any personal liability and responsibility for the performance of any obligations, agreements, covenants or indemnifications on the part of REI contained in this Judgment arising from work performed, or occurrences or events which occurred, after such transfer with respect to the portion of the Property so transferred or the acts or omissions of any such successor owner and such successor owner(s) shall be or become liable for the performance of any such obligations, agreements, covenants or indemnifications arising from work performed, or occurrences or events which occurred after such transfer. Whenever the consent or approval of REI is necessary or desirable under this Agreement, such consent or approval shall be required from REI and any successor owner of the Property impacted by such work or, in lieu of such successor owner, any association of owners established by REI or such successor owner.

B. Regardless of future Master Plan and/or zoning changes which may occur or affect the Property, the approvals and uses permitted hereunder shall not be deemed

in the future to be legal nonconforming uses, structures and/or distances, or legally nonconforming in any way, but rather hereby are, and shall be deemed principal permitted uses, structures and distances and in conformance with all present and future ordinances to the same extent as if such future zoning change had not occurred.

C. This Court shall retain jurisdiction in all matters relating to this case, including: to resolve all disputes and make such other orders and determinations as are necessary to effectuate the intent and spirit of this Judgment; to insure development is in accordance with the terms and intent of this Judgment; to accomplish the issuance of all necessary approvals and building and other permits which may be reasonably required for the development, installation and construction of all roads, utilities, structures of any kind and all other improvements as set forth on the attached Exhibits, as said Exhibits may be amended from time to time, with the approval of the parties; and to implement the Conceptual Plan and all amendments thereto and any Final Site Plan(s).

D. Any amendments or modifications made to this Judgment, subsequent to the date hereof, including, without limitation, the Exhibits attached hereto, shall be deemed a part of this Judgment, be incorporated herein by reference, shall run with the land, be binding upon the parties hereto and all successors and be subject to all other terms and conditions hereof including future tenants and residents of any Component or Phase. Any subsequent amendment hereto must be in writing, and either executed by all parties hereto, or their respective heirs, representatives, successors, successors-in-interest and assigns. In the event there is a conflict between the terms and conditions of this Judgment and the "Recitals and Preamble" to this Judgment, the terms and conditions of the numbered paragraphs of this Judgment shall control, as the parties

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intended to provide only general background information in the Recitals. Provided, however, all matters agreed to and/or consented to in the Recitals by the parties hereto shall be deemed as consented and/or agreed to for all purposes hereof.

E. To the extent that this Judgment conflicts with City ordinance requirements, including zoning, the terms of this Judgment and all terms shall control. In developing and using the Property, REI shall adhere to all current building codes, ordinances, and the Construction Standards of the City except as otherwise modified by the terms of this Judgment or which are contemplated herein.

F. The parties to this action represent to this Court that they have read this Judgment, have discussed it with counsel, understand the terms and conditions hereof, and further, hereby agree that this Judgment shall be recorded by REI with the Oakland County Register of Deeds.

G. Each person signing this Judgment on behalf of any party hereby represents and warrants that he/she is a duly authorized representative and agent of that respective party, and he/she has full authority to bind said party to all of the covenants, warranties, representations, terms and conditions of this Judgment.

H. Any clerical errors or mistakes in document or Exhibit description contained in this Judgment may be corrected by any of the parties, and all parties agree to cooperate in making such corrections in order to effectuate the intent of the parties in entering into this Judgment.

I. This Judgment may be executed by the parties in counterparts; pages containing original signatures shall be attached to the Judgment filed with the Court;

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photocopies of pages bearing signatures of parties hereto shall be deemed duplicate originals.

J. REI shall furnish the City Assessor with a legal description for each parcel (or condominium unit) for which REI wants to divide as a separate parcel or unit and obtain a separate tax bill and so long as REI records a declaration of easements and/or restrictions for ingress, egress and parking, or a Master Deed. REI may apply for any number of parcel divisions as may be permitted by the Michigan Land Division Act and the City Assessor shall provide a separate parcel identification number for each description or condominium unit. The City acknowledges that REI may develop any component (or portions thereof) as a platted subdivision or as a condominium project and record a master deed in connection therewith.

K. City agrees that notwithstanding that some of the buildings may be constructed on separate parcels, each building may initially be constructed as an unlimited area building in accordance with the Michigan Building Code, Section 507, and other applicable sections of the Building Code.

City Agrees that for the purpose of compliance with the requirements of said building code and any applicable zoning ordinance, separate parcels will be considered to be a part of the same lot and unlimited area buildings immediately adjoining each other will be considered to be a part of one overall unlimited area building.

Once initially constructed, each of such buildings may be maintained, repaired and replaced as a 2 C Unlimited Area Building in the manner in which each such building was originally constructed regardless if there is separate ownership of the buildings and parcels at any time and shall be considered as a single lot for such purposes.

Building separations for fire protection shall comply with the Michigan Building Code.

L. REI agrees that it will create and record covenants and restrictions affecting commercial properties that contain buildings located upon the separate sidwell numbers. The restrictions in the event of reconstruction shall provide that any building located upon such separate parcels shall be reconstructed to conform to the current construction codes and classification in effect if there is any damage or destruction. In the event that any of the commercial buildings located upon separate sidwell numbers are damaged or destroyed and there is a desire to reconstruct such building with substantially different dimensions than as initially constructed, then such building will have to conform to the City of Rochester Hills Building Code regulations in effect at that time. The building and use restrictions shall run with the land. Ownership of buildings or parcels will not affect the application of the building codes as provided herein.

M. If, following entry of this Consent Judgment, REI determines in its sole discretion not to acquire title to all or any of the parcels constituting the Property or otherwise determines the development is not feasible, REI shall have the right to terminate this Consent Judgment upon thirty (30) days' written notice to the City, in which case the parties' obligations hereunder shall terminate and the zoning of the parcels comprising the Property shall be automatically deemed to revert to the zoning classification in effect on the date hereof.

N. REI may acquire additional contiguous land (and for purposes hereof, "contiguous" shall include property separated from the Property by right of way or easements), and, in that event, this Consent Judgment shall be deemed to include such

additional contiguous land under the coverage of this Consent Judgment and within the definition of the "Property". Such additional property may be added upon written request to the City by REI, which consent shall not be unreasonably withheld, conditioned or delayed and this Consent Judgment shall be amended to include such property within fifteen (15) days of such request. Minor modifications to adjust legal descriptions and/or discrepancies, or to delete portions of the Property from coverage of this Judgment, shall be deemed a minor change, shall not require amendment of this Judgment and shall be accomplished administratively as set forth in Paragraph 9(k) above.

12. CONSTRUCTION PLANS

A. Submission, review and approval of the plans for the utilities, landscaping and related approvals and permit applications shall be performed as follows:

- (i) REI shall complete and submit the various construction drawings for the clearing, grading, sanitary sewer, water main, storm sewer and paving (the "Construction Drawings") to the City for review on a sequential or staggered order; so that the City can review the plans and approve or provide comments within 28 days of the submission of each plan and application provided that said plans comply with the City's rules and design standards or within such period give its written comments, REI shall be allowed to commence clearing and grading upon the Property prior to the submission and/or review of the balance of the construction or engineering plans, but not before issuance of a land improvement permit for the approved work. All resubmission and comments and approvals shall be within the same 28 day time period.
- (ii) The City shall promptly and diligently review the routing of the water, sanitary sewer and storm sewer drains for permit processing within 28 days of request provided REI has promptly and diligently submitted such Plans, and such Plans are received by the City in form required. Once REI has obtained approval of the Plans from all outside agencies, has obtained a Land Improvement Permit for the approved work from the City, and has concluded a pre-construction meeting with the City, REI may start construction of the public utilities. The City shall provide any written comments within such 28 day period for resubmission by REI if necessary. All resubmissions, comments and approvals shall be within the same period.

- (iii) The City shall process and review in good faith and with all due diligence any applications, plans, drawings, or site plans, with respect to the Property including, building plans, streets, roads, utilities, and landscaping provided REI has submitted those plans promptly and with due diligence and in good faith and the City shall have 28 days in which to either approve or give detailed written comments regarding its review. All resubmission and response and approval shall be within the same time period.
- (iv) The City shall approve building permits for models prior to the recording of any Master Deed provided plans are in compliance with the Rochester Hills City Building Code.
- (v) REI shall have the right to change the configuration of any building's size and shape at any time so long as the service roads, entries and exits, pedestrian paths, and utilities do not substantially change so long as the floor area of all structures does not exceed the floor area permitted by the Consent Judgment. REI shall obtain any necessary building permits and/or any administrative approvals necessary under this Judgment prior to making such changes.
- (vi) Public utilities necessary to serve the Property shall be reserved by REI and constructed within the easements and right of way dedicated by REI to the City, Road Commission, or other public agency with jurisdiction over the utility.
- (vii) So long as REI is acting with due diligence to construct improvements, the City shall not deny REI the right to open any facility or shall not deny building or occupancy permits for the reason that the highway improvements are not completed by the Road Commission for Oakland County or State, or MDOT, as long as safe and adequate ingress and egress for occupants, visitors and public safety and emergency vehicles is provided.
- (viii) REI shall be permitted to place monument signs in easement areas dedicated to the City for public areas along any loop road as depicted in a Site Plan, provided that such signs do not, in the City's reasonable judgment, impede or interfere with installation, operation, repair or maintenance of utilities located within the easements.
- (ix) REI, its servants, agents, employees and contractors, and all utilities, shall have the right to enter upon all dedicated easements, rights of way and lands conveyed to the City in order to construct, inspect, repair and replace improvements for which REI is permitted or is obligated including without limitation references to this Judgment shall be deemed to incorporate such reservation of rights by REI.

13. OBLIGATIONS OF THE CITY OF ROCHESTER HILLS.

A. The City shall vacate and abandon any unnecessary easements which are existing and which are required for the development of REI's Property

B. The City recognizes that the redevelopment of the Property may not be economically feasible without funding the landfill excavation and backfilling and associated brownfield activities through a public financing vehicle, which may include a combination of state, county and/or federal grants or bonds, some of which funding sources may require local participation. In connection therewith, REI and the City will work together in good faith to secure public financing in an amount sufficient to cover all eligible brownfield activities under the Act (including, without limitation, those activities more fully described in Paragraph 8.E. of this Judgment) and to permit the governmental agency(ies) involved to recover any costs advanced through tax increments generated by the project. However, the foregoing is not intended to commit or obligate the City to provide financing or issue bonds for the brownfield activities.

C. The City and REI shall grant to each other such easements as are necessary to effectuate the intent of the parties provided with respect to REI, such granted easements do not interfere with or prohibit or diminish the use of its property in any manner.

D. As described in Paragraph 5.H. above, the City shall use best efforts to cause a portion of the so-called "rails to trails" property owned by the City to be relocated in order to facilitate REI's development of the Property in accordance with Exhibit C, including securing any necessary approvals from the Michigan Department of Natural Resources and any other required consents as soon as reasonably possible..

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E. From time to time within ten (10) days of written request, the City shall confirm in writing to REI and such other parties as REI may specify in such written request (including, without limitation, its partners, lenders, purchasers and/or tenants of the Property) that REI is not in default of its obligations under this Consent Judgment, along with such other, similar matters as REI may reasonably request to be included in such confirmation.

RICHARD D. KUHN

CIRCUIT COURT JUDGE

THE UNDERSIGNED PARTIES HAVE HEREBY READ, UNDERSTAND, AGREE AND CONSENT TO THE FOREGOING AMENDED JUDGMENT AND ALL TERMS AND CONDITIONS STATED THEREIN. ALL SUCH PARTIES HEREBY REPRESENT THAT THEY HAVE OBTAINED ADVICE OF COUNSEL AND ARE CONSENTING TO THIS JUDGMENT FREELY AND VOLUNTARILY.

IN WITNESS WHEREOF, the undersigned, PAT SUMERVILLE, has set forth his/her hand and seal this 12 day of FEB, 2004.

WITNESSES:

CITY OF ROCHESTER HILLS, a Michigan municipal corporation

Christina Farnella
[Signature]

By: Pat Sumerville

Its: MAYOR

A TRUE COPY
[Illegible text]
Deputy

2/6/04

STATE OF MICHIGAN

Ss

COUNTY OF OAKLAND

On this 12th day of February, 2004, before me, a Notary Public in and for said County, personally appeared to me PAT SOMMERVILLE, Mayor of the City of Rochester Hills known to be the persons described in and who executed the above Amended Judgment, and acknowledged the same to be their free act and deed by authority given by the resolution of the City.

Nancy S. Peek
Notary Public, Oakland County, MI
My Commission Expires November 19, 2007

Nancy S. Peek
Oakland Notary Public
County, Michigan
My Commission Expires: 11-19-07

IN WITNESS WHEREOF, the undersigned REI has set forth its hand and seal on the day and date so indicated below.

WITNESSES:

REI BROWNSTOWN LLC
a Michigan limited liability company

Charles C. Nemlberg
[Signature]

By: HC Management, Inc., Manager

By: [Signature]
Jon M. Weaver

Its: VICE PRESIDENT

STATE OF MICHIGAN

Ss

COUNTY OF OAKLAND

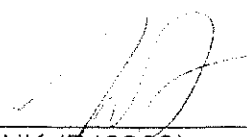
On this 12th day of February, 2004, before me, a Notary Public in and for said County, personally appeared Jon M. Weaver, ^{VICE} President of HC Management, Inc., a Michigan corporation and manager of REI Brownstown LLC, a Michigan limited liability company, on behalf of the company.

CHARLES C. NEMLSBERG
NOTARY PUBLIC OAKLAND CO, MI
MY COMMISSION EXPIRES Jan 3, 2008

Charles C. Nemlberg
Oakland Notary Public
County, Michigan
My Commission Expires: 1-3-08

WE, THE UNDERSIGNED COUNSEL FOR THE REI AND THE CITY, RESPECTIVELY, HEREBY STIPULATE TO THE ENTRY OF THE ABOVE AMENDED JUDGMENT, NOTICE OF ENTRY WAIVED:

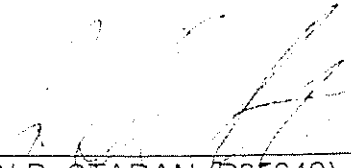
2/6/04



TODD M. FINK (P48962)
Attorney for REI BROWNSTOWN LLC
40900 Woodward Avenue, Suite 130
Bloomfield Hills, MI 48304
PH: (248) 540-8040

Dated: _____

2/6/04



JOHN D. STARAN (P35649)
BEIER HOWLETT, P.C.
Attorneys for Defendant
200 E. Long Lake Rd., Ste. 110
Bloomfield Hills, MI 48304-2328
(248) 645-9400

Dated: _____

2/12/2004

List of Exhibits:

- A. Property Description
- B. Depiction of M-59/Adams Road Interchange
- C. Conceptual Plan
- D. Buildable Area Site Study
- E. Legal Building Materials
- F. Depiction of Offsite Detention Area and Potential Location of Park Improvements
- G. Depiction of Gabler Drainage District Property and Ajax Relocation Property

Exhibit A

Property Description

Tax Id. Numbers: 15-29-151-012, 15-29-151-011, 15-29-151-008, 15-29-176-004 and 15-29-176-006.

Part of the North ½ of Section 29, T3N, R11E, City of Rochester Hills, Oakland County, Michigan, being more particularly described as commencing at the Northwest corner of said Section 29; thence S01°57'30"W 999.28 feet along the West line of said Section 29; thence N78°57'00"E 526.00 feet along the centerline of Hamlin Road (variable width) to the POINT OF BEGINNING;

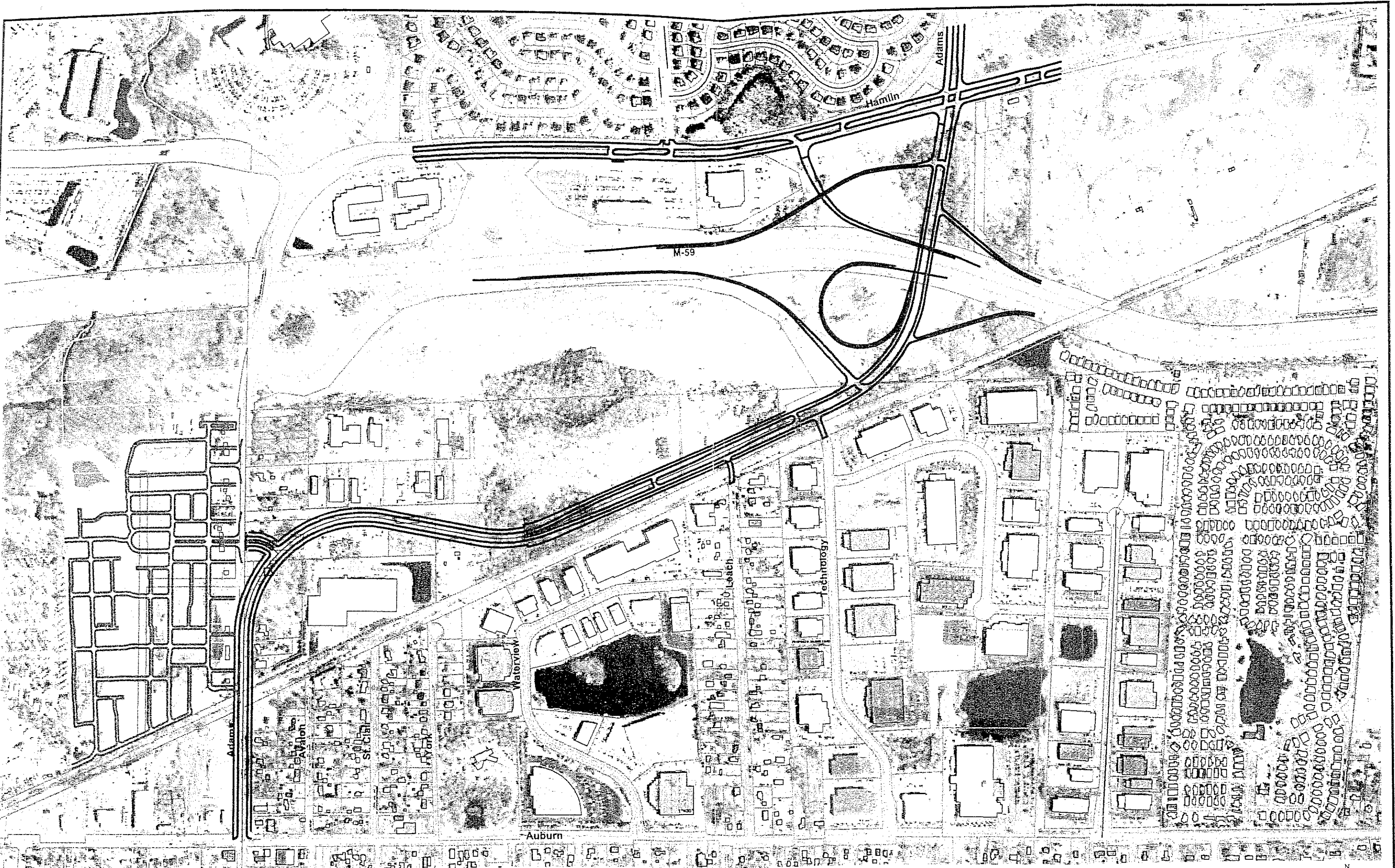
thence continuing N78°57'00"E 1101.60 feet along said centerline of Hamlin Road;
 thence S05°10'20"W 33.95 feet;
 thence N82°45'10"E 1212.17 feet along the South line of said Hamlin Road;
 thence S06°54'57"W 16.99 feet;
 thence N86°15'40"E 203.70 feet along the South line of said Hamlin Road;
 thence S79°16'03"E 142.81 feet;
 thence S06°54'57"W 1920.99 feet along the North-South ¼ line of said Section 29;
 thence S87°53'35"W 607.74 feet
 thence S07°20'42"W 47.23 feet;
 thence S88°14'39"W 292.09 feet along the North line of State Highway M-59;
 thence 900.82 feet along the arc of a circular curve to the right, having a radius of
 2094.83 feet, central angle 24°38'18", and long chord bearing N79°25'38"W
 893.90 feet, said arc being along the Northerly line of said M-59;
 thence N68°25'53"W 707.85 feet along the North line of State Highway M-59;
 thence N02°20'20"E 177.69 feet;
 thence N68°32'20"W 95.05 feet;
 thence N43°12'41"W 243.36 feet;
 thence S87°19'37"W 13.05 feet;
 thence N00°10'00"W 550.66 feet;
 thence N78°57'00"E 110.21 feet;
 thence N00°20'00"W 47.59 feet;
 thence N78°57'00"E 201.07 feet;
 thence N02°20'20"E 214.05 feet to the POINT OF BEGINNING.

A strip of land 66 feet in width across part of the Northwest ¼ of Section 29, T3N, R11E, described as follows: To find the point of beginning, commence at the Northwest corner of Section 29; thence S00°10'00"E along the West line of said Section a distance of 998.59 feet to the centerline of Hamlin Road; thence N76°50'00"E along said road centerline a distance of 137.52 feet to the place of beginning of this description; thence continuing N76°50'00"E along said road centerline a distance of 67.74 feet; thence S00°10'00"E a distance of 1082.70 feet to the Northerly Right of Way line of M-59 Highway; thence Westerly on a 00°59'24.8" curve to the left, with a radius of 4016.72 feet, with a chord bearing of N72°06'29"W, a distance of 69.42 feet; thence N00°10'00"W, a distance of 1045.94 feet to the place of beginning.

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Exhibit B

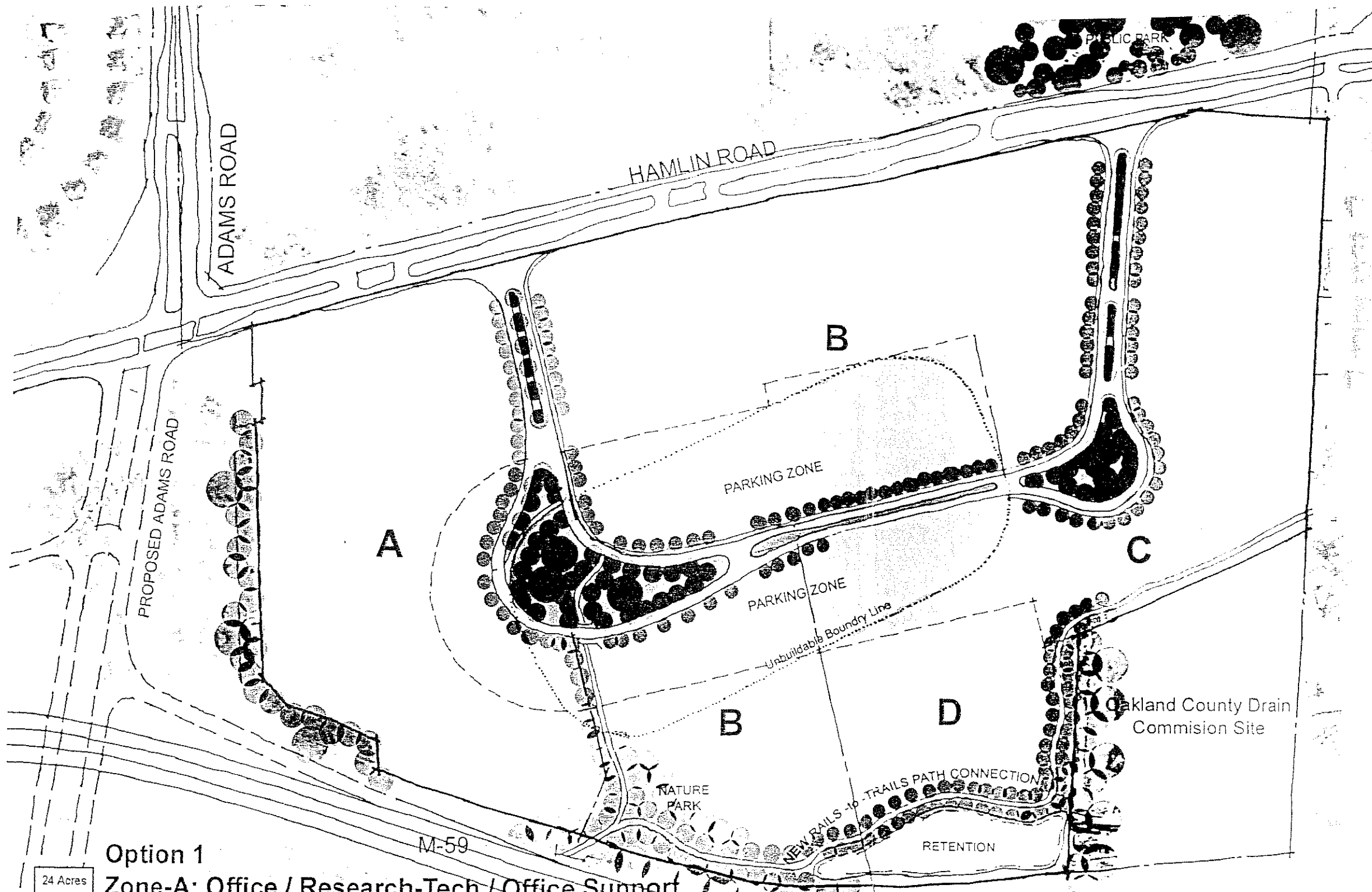
Depiction of M-59/Adams Road Interchange



PROPOSED ADAMS ROAD



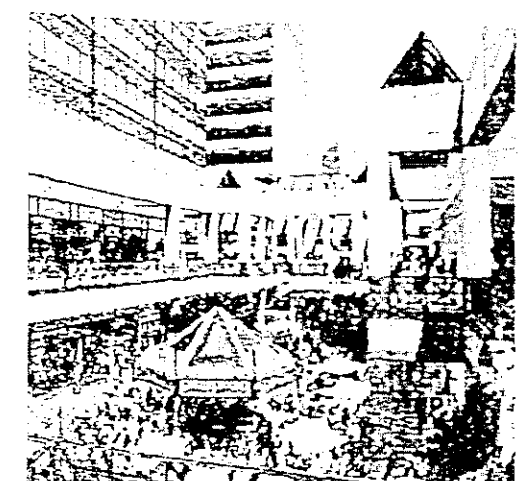
Exhibit C
Conceptual Plan



Option 1

- 24 Acres Zone-A: Office / Research-Tech / Office Support
- 33 Acres Zone-B: Office / Research-Tech / Retail Flex Zone
- 25 Acres Zone-C: Retail
- 13 Acres Zone-D: Office / Research-Tech / Retail Flex Zone

TOTAL: 95 Acres



CONCEPT IMAGES

rosselli

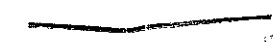
SA-2

February 04, 2004

PROPOSED MIXED USE
RETAIL / OFFICE / R & D

ADAMS / M-59 MIXED USE PARK
ROCHESTER HILLS

PROPOSED LAND USE



MICHIGAN

Exhibit D
Buildable Area Site Study

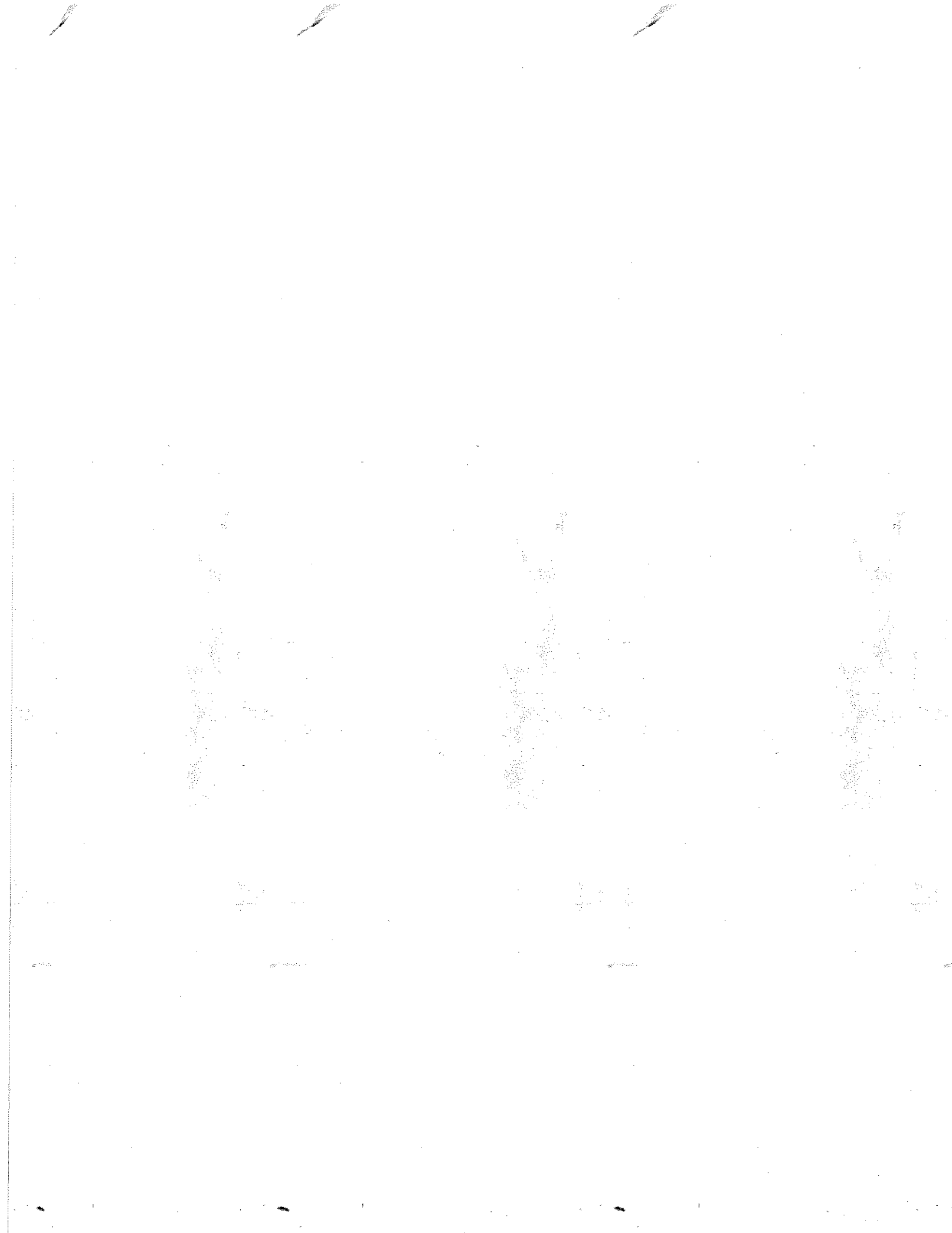


Exhibit E

Sample Building Materials

For Illustrative Purposes Only

Roofing: GAF Slateline; Asphalt Shingles, Slate Grey Blend
K-Metals, Metal Roof, Slate Blue, Hemlock Green

Walls: Brick A
Grand Blank Cement Products; 4 x 16 concrete brick half high smooth face
Color: LB/MB Blend with Natural Mortar

Brick B
Brick, half high smooth face; 4 x 16 concrete SED-blend with Natural Mortar

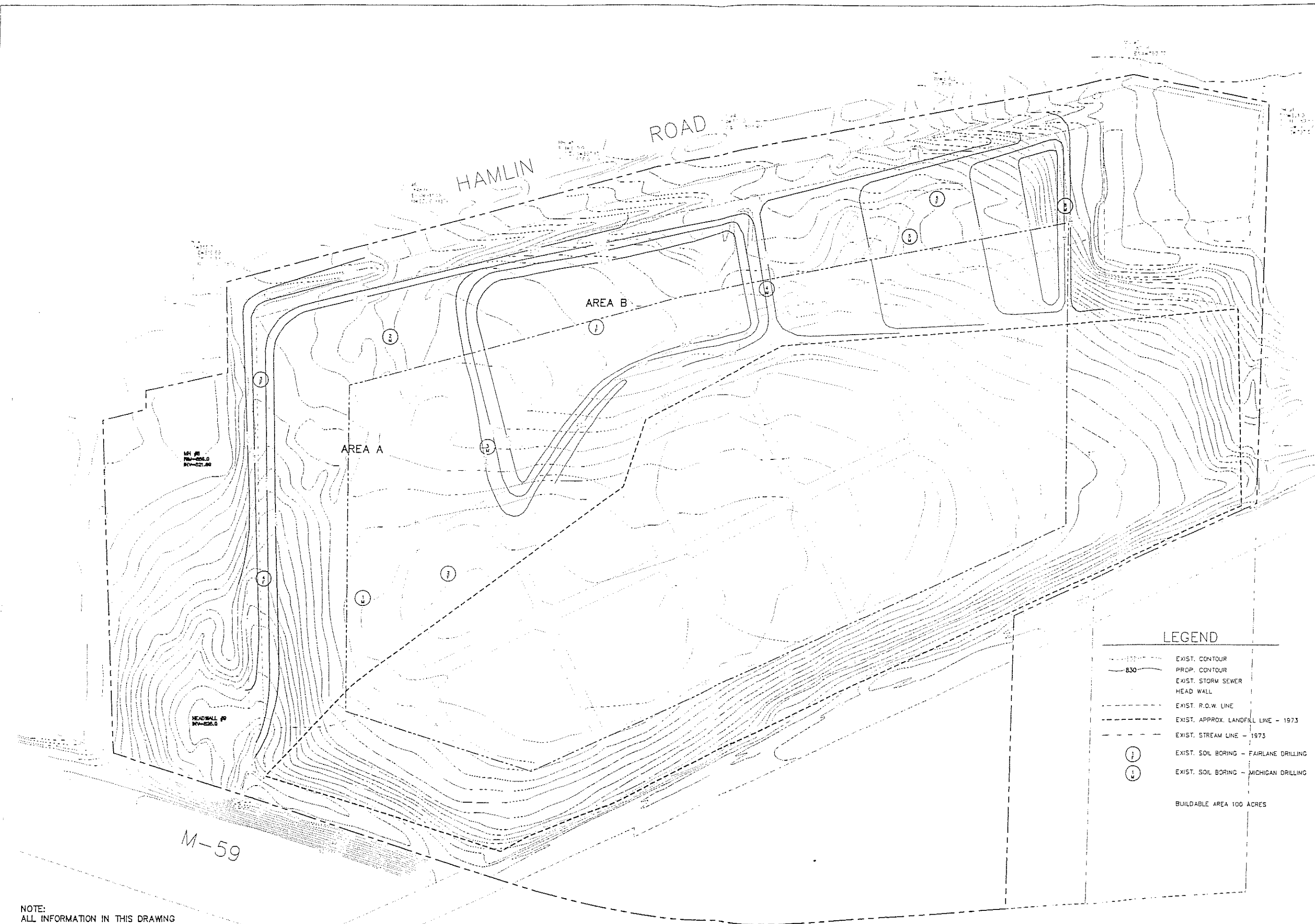
EIFS A
Dryvit - No. 115 Beach

EIFS B
Dryvit - No. 103 Natural White

Limestone A
Ariscraft; "Buff"

Limestone B
Ariscraft; "White"

Split Face Block
Grand Blank Cement, stained to match Brick "A" or Brick "B"



HAMLIN ROAD

LOT #8
794-056.0
874-021.00

HEADWALL #9
874-056.0

AREA A

AREA B

M-59

LEGEND

- EXIST. CONTOUR
- 830 — PROP. CONTOUR
- EXIST. STORM SEWER HEAD WALL
- EXIST. R.O.W. LINE
- EXIST. APPROX. LANDFILL LINE - 1973
- EXIST. STREAM LINE - 1973
- Ⓧ EXIST. SOIL BORING - FAIRLANE DRILLING
- Ⓨ EXIST. SOIL BORING - MICHIGAN DRILLING
- BUILDABLE AREA 100 ACRES

NOTE:
ALL INFORMATION IN THIS DRAWING
WAS TAKEN FROM BEST AVAILABLE
RECORDS AND HAS NOT BEEN FIELD



Exhibit F

Depiction of Offsite Detention Area and Potential Location of Park Improvements

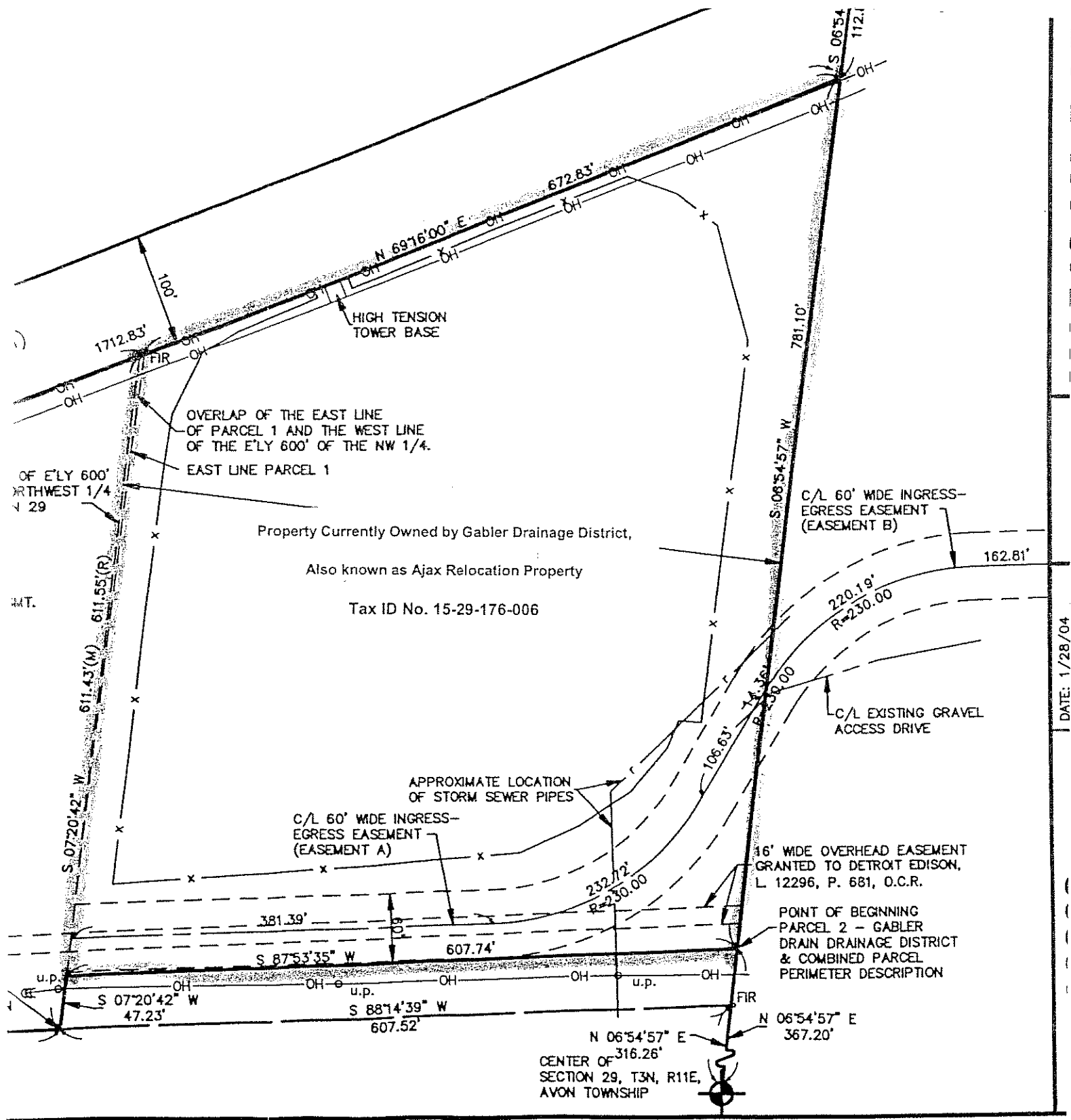


EXHIBIT F
DEPICTION OF POTENTIAL OFFSITE DETENTION AREA FOR POTENTIAL LOCATION OF PARK IMPROVEMENTS



Exhibit G

Depiction of Gabler Drainage District Property and Ajax Relocation Property



DATE: 1/28/04