

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

GRAND/SAKWA ACQUISITIONS, LLC,
a Michigan limited liability company,

Grand/Sakwa,

v

CITY OF ROCHESTER HILLS,
a municipal corporation,

Defendant.



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CONSENT JUDGMENT

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

APR 03 2003

PRESENT: HON.

JOHN J. McDONALD

Circuit Court Judge

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

RECITALS AND PREAMBLE

Grand/Sakwa Acquisitions, LLC, a Michigan limited liability company, hereinafter
referred to as "Grand/Sakwa" , for purposes hereof is the owner and/or controls certain

property located in the City of Rochester Hills (the "City"). The "Property" which is the subject of this lawsuit consists of approximately 107 acres of land which is described in **Exhibit A** attached, located adjacent to the planned realignment of Adams Road and new M-59/Adams Road interchange in the City of Rochester Hills, Oakland County, Michigan, as is more fully depicted in **Exhibit B** attached. Grand/Sakwa may acquire additional contiguous land, and, in that event, 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 ranging from office, research technology, "ORT", heavy industrial to RM-1 multiple family residential. The City, Grand/Sakwa, MDOT and Road Commission for Oakland County believe that realignment of the M-59 and Adams interchange will better service the City and surrounding areas to avoid congestion and facilitate future growth and development of the region. Grand/Sakwa and the City believe the realignment of M-59 and Adams Road will provide a unique opportunity for both the reasonable development of the Property and for the needs of the City, County and State and is consistent with the Economic Impact Evaluation prepared by LSL Planning, Inc. and Oakland County Department of Economic Development.

Grand/Sakwa 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.

This case was commenced by Grand/Sakwa for Declaratory Relief, Permanent Injunction, Mandamus, Superintending Control, Rezoning and Other Relief. The parties have engaged in extensive settlement discussions which have resulted in the terms and

conditions as set forth within this Consent Judgment. The parties agreed that the proposed mixed uses are compatible with surrounding developments in the City of Rochester Hills.

Further, the Property is unique. It is located adjacent to the major intersection of Adams 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 Grand/Sakwa'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 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 contain 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 contemplated receipt of land from Grand/Sakwa for "right of way" purposes in order to realign Adams Road, a goal and commitment of the City which has existed for over 15 years; and the ability for Grand/Sakwa to work with severe soil problems in the development of its property with the flexibility of uses as set forth herein. The parties

agree that conditions on the site and surrounding area require flexibility in terms of land uses and dimensional standards.

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 the Grand/Sakwa 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, Grand/Sakwa shall be permitted to develop a mixed used development consisting of the mixed use(s) provided herein with no greater than 800,000 square feet of ground floor building area (i.e., building "footprint" area). Grand/Sakwa may, in its sole discretion, decide to develop less, but not more than 800,000 square feet of gross ground floor area of commercial, light industrial, office, hotel, research and development, and of any of the land uses described in Paragraph 3, infra, in any combination. The foregoing limitation does not apply to vertical construction

as set forth herein which may be constructed within the height provisions contained in paragraph 3. Attached hereto is a Conceptual Plan, **Exhibit C**, which has attached various land use areas and concept plans which have been specified and which may be constructed at Grand/Sakwa's discretion, within certain areas where soils are suitable for development as provided herein labeled C-1, C-2, C-3 and C-4. The separate use areas are referred to as Components or Phases.

1. PERMITTED USES

The parties agree that a coordinated mixture of multiple family residential, commercial, large and small scale retail, restaurants, lodging, office, research office and/or light industrial 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, hypermarkets (grocery and discount department store in combination) and/or a home improvement center . Accessory drive through uses shall be permitted for the above types of uses.
- (b) Sit down, fast food or carryout restaurants, provided no more than four stand alone drive through restaurants may be permitted without additional approval of the City council. Any outdoor seating must be approved by the City council as part of the site plan approval.
- (c) Automotive maintenance and services uses such as fueling/gasoline stations/convenience marts, tire stores, oil change shops and auto parts, and auto body repair if contained within the property to the south of Adams described in Exhibit "D" attached, as a "Primary Use" and only as an Accessory Use for the remaining property described in Exhibit "A", of which the property described in Exhibit D is a part.
- (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-service laundries or 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) Automotive sales for new vehicles with used vehicles permitted only as an accessory use (no more than one such establishment).
- (h) Garden centers that include accessory open air sales of plant material, lawn furniture, playground equipment and similar goods.
- (i) Hotels and conference centers.
- (j) Professional Office buildings;
- (k) Medical offices including clinics, outpatient centers, urgent care and emergency care facilities.
- (l) Banks, credit unions, savings and loan associations and similar uses with drive-in facilities as an accessory use only.
- (m) City of Rochester Hills municipal uses and facilities.
- (n) Nursery schools and day care uses.
- (o) Multiple-family residential.
- (p) Any stand alone wireless communication facilities that meet City standards.
- (q) Research and technology or light industrial uses as permitted in the City's ORT Office-Research-Technology and I-1 Light Industrial Districts or other similar districts that may replace or supplement the zoning ordinance in effect at the time of this agreement.
- (r) Other uses as determined by the City council.
- (s) Accessory structures and uses customarily incidental to the uses permitted.
- (t) Parking structures.
- (u) Accessory Use or Structure, is defined for purposes herein, as a use or structure which is in conjunction with, and supportive of a Primary Use. For example, without limitation, a Walmart, Mejjers, or Home Depot having a fueling (gas) station/lubrication/tire service mini mart/ component which is an Accessory Use and structure to the Primary Use, for retail sale of merchandise.

2. PROHIBITED USES

Uses permitted within the City's various commercial (B 1-5), Office- Business (O-1), Office-Research-Technology (ORT) and Multiple Family (RM-1) 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) More than one auto sales establishment;
- (d) Kennels except where accessory to a permitted pet store or grooming establishment;
- (e) Mini-storage establishments;
- (f) more than four drive-through stand alone restaurants;
- (g) Adult regulated uses;
- (h) Bus passenger stations;
- (i) Auto body repair, except where an accessory use;
- (j) Funeral homes;
- (k) Race tracks;
- (l) Senior housing;
- (m) Stand-alone auto repair and maintenance facilities except on the property described in Exhibit "D" or if it is an Accessory Use; and
- (n) Schools, churches and public or governmental uses or facilities (other than City of Rochester Hills municipal uses and facilities).

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.

Multiple family buildings shall be restricted to 3 stories maximum, (i.e. 37-1/2 feet from grade); ORT, offices or hotels shall have a maximum height of six (6) stories feet. Parking structures shall not exceed four (4) stories 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. Setbacks.

Within the project shall be as follows, but shall be modified by the City council upon request from Grand/Sakwa and demonstration that soil conditions require a variation and that such modification shall not increase the overall size and intensity of the development:

Front yard: 75 feet from Adams Road (both existing and proposed realignment).

Side yard: 25 feet each side, 50 feet for office-research or light industrial uses or where abutting a residential uses. The side yard may be reduced to 10 feet for a corner of a building that abuts an internal drive shared with the adjacent use. The City council may allow a reduction on one side yard where an equal amount of additional setback is provided on the opposite side. No side yard set back shall be required where building walls are shared or abut. In the event of conflict between this paragraph and paragraph 11K, paragraph 11K shall control.

Rear yard and along M-59 frontage: 50 feet.

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 restaurants, twelve (12) spaces per 1000 square feet for fast food restaurants; or one (1) space per each three persons allowed as maximum occupancy by the fire department whichever is greater.
- (d) Gasoline service stations, 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) For residential dwellings, two (2) spaces per unit, driveway parking is included as visitor parking.
- (h) Given the potential for shared trips, the City will grant shared parking arrangements and other modification on a site by site basis.
- (i) 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.
- (j) Grand/Sakwa shall have the ability to bank parking, and have shared parking.
- (k) Parking shall be setback a minimum 25 feet along Adams 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 approved Landscape Plan. 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 shall 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 any residential uses, 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.

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 Grand/Sakwa, 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) Two (2) freestanding monument signs shall be provided along M-59 and One (1) monument sign on Adams Road as realigned. The design of the identification or entry sign shall be approved by the City Council, which approval shall not be unreasonably delayed or withheld.

(2) Wall signs shall be permitted for up to 10% of the first floor facade area along any wall (but not greater than 450 square feet) facing a public street, internal private road used by the public (not loading drives) and along M-59 and not more than two sides of any building. Wall signs may be placed on the top story or parapet, but not on the roof.

(3) A coordinated system of wayfinding signs shall be permitted throughout the project upon review and approval of a wayfinding sign plan.

(4) During construction, Grand/Sakwa may place two temporary signs along Adams Road and two temporary signs along M-59 advertising the project. The signs may not 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.

(5) The project sign package may be modified by agreement of the parties. The consent of the Grand/Sakwa and City shall not be unreasonably withheld.

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 within the site shall be a maximum 24 feet tall from the top of the base, unless the zoning ordinance or City Counsel permits a taller height, and then not to exceed 30 feet.

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. 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 shall utilize windows, canopies and/or awnings.
- (d) Building facades visible from Adams Road or M-59 shall be constructed similar in appearance to the front façade, but may be of a different material. Any loading areas visible from M-59 shall be screened from view through design, screen walls and/or landscaping.
- (e) Loading shall not be permitted in a front yard and overhead doors shall not face a public street, with the exception of internal service drives and the M-59 frontage, where loading areas and doors are permitted but shall be screened.
- (f) 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.
- (g) 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.

- (h) Grand/Sakwa shall provide and submit site elevations, landscape and sign package with the first Site Plan submitted.

7. MAINTENANCE

Grand/Sakwa 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.
- (b) Greenbelts, signs, lighting and safety paths within public rights-of-way or private roads.
- (c) Common areas.
- (d) The Grand/Sakwa or the developer of each component shall dedicate any required utility easements and street rights-of-way to the City, state 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

A. The "Conceptual Plan" depicts alternative uses and areas for parking of which are subject to change and modification as may be determined by the Grand/Sakwa 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 Grand/Sakwa.

E. Grand/Sakwa has agreed to dedicate and convey to the Road Commission for Oakland County (Road Commission) for realignment of Adams Road, certain portions of property described in **Exhibit F** and depicted in **Exhibit G**, which shall be released to it or the Road Commission for Oakland County upon (i) MDOT's unequivocal and binding commitment to construct the relocated M-59 / Adams Road interchange (the "Right-of-Way"); (ii) evidence that all funding from the State of Michigan including Build Michigan III Funds, and all contributions necessary from the City of Rochester Hills and Oakland County have been irrevocably approved and committed for such purpose and are on deposit; and (iii) all approvals have been obtained for the interchange. (iv) and Grand/Sakwa, the City, MDOT, Road Commission and Oakland County Drain Commissioner have entered into a binding agreement committing to the construction of the Right of Way and realignment of Adams Road and completion by a date certain to be included within the Agreement, ("The Development Agreement"). If any of MDOT, the City, Road Commission or Oakland County Drain Commissioner do not enter into such Development Agreement and shall not obtain necessary funding and approvals within sixty (60) days from date of entry of this Judgment, then either Grand/Sakwa or The City shall, have the right to terminate any obligations contained herein including the dedication

of the Right-of-Way to the City for realignment of Adams Road by Grand/Sakwa, at which time there shall be an amendment to this Consent Judgment terminating all rights and obligations hereunder of both parties. If Grand/Sakwa and the City agree in writing to extend any periods of time and to not exercise such right of termination, this Judgment and all obligations and rights hereunder shall continue as the parties hereto shall have agreed in writing including any agreed date certain. In the event that there is a material change in the proposed realignment of Adams Road by the Road Commission for Oakland County , MDOT, or the City, that in Grand/Sakwa's opinion is not acceptable, then Grand/Sakwa shall have the right to terminate all obligations and rights under this Judgment at its sole option, as provided above. The Deed of Conveyance shall have a right of reverter to Grand/Sakwa, and its successors and assigns in the event that the land is not used for Right of Way to realign Adams Road within the time specified in the Development Agreement.

The above-referenced Development Agreement shall, within the foregoing sixty (60) day period, be entered into by Grand/Sakwa who shall commit to the dedication of the land for the Right-Of-Way described herein for realignment of Adams Road subject to all conditions being met by MDOT, the City and the Road Commission. The Development Agreement once entered into shall confer upon this Court Jurisdiction for enforcement of all terms and conditions of such Agreement.

F. Grand/Sakwa shall agree to dedicate and convey its interest in the Right-of-Way to the Road Commission by quit claim deed in form acceptable to the County Road Commission to be executed and delivered upon Grand/Sakwa's receipt of MDOT, the City and Road Commission for Oakland County's unqualified and binding commitment to build

and construct the interchange in form acceptable to Grand/Sakwa pursuant to the Development Agreement and to realign Adams Road, with appropriate resolutions and confirmation of irrevocable funding as specified within the Development Agreement described in paragraph E within sixty (60) days from date of this Judgment. The Deed of the Right-of-Way to be delivered to the Road Commission shall be placed in escrow with the Phillip F. Greco Title Company upon entry of this Judgment to be released and delivered to the City/Road Commission immediately upon satisfaction of all preceding events listed in the Development Agreement and this Judgment. It is contemplated by the parties that the land conveyed shall be sufficient to accommodate the requirements of the City. Grand/Sakwa shall reserve to itself and for its servants, agents and contractors, within the Right of Way Deed, and for all utility companies, the right to install all necessary utilities within the easements and the right to enter upon the property for purpose of construction, maintenance, inspection, repair and replacement of any utilities placed within the easement and to access its property for installation of plantings and improvements.

G. Grand/Sakwa shall install an internal integrated private or public road network at Grand/Sakwa'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 has no open space requirements for commercial office, light industrial and ORT projects that would be imposed on Grand/Sakwa and for any multi family use all land area conveyed to the City or Oakland County, may be counted toward any landscaping on open space requirement, even if used for road improvements or other

public projects or cause the permanent removal of the landscaping. Any detention pond areas in an approved site plan which are aerated and hold water temporarily or permanent may also be counted toward any landscape or open space requirement for such purpose.

I. The parties agree that the conceptual Plan attached at Exhibit C, C1, C2, C3 and C4 represent 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 Grand/Sakwa'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 800,000 square feet of ground floor area of combined uses in any combination and without limiting vertical construction for uses allowed herein. For example, 6 story hotels, as permitted under paragraph 3.A. and allow for and contemplate the deletion of any particular use within such combination which is hereby accepted and agreed to by this Consent Judgment. The 800,000 ground floor area is not a limitation on the gross leaseable area permitted by vertical construction which may be constructed upon it.

J. The Development Agreement must provide for a final and binding commitment of MDOT, State of Michigan and Road Commission for funding and unqualified approval for the construction of the M-59 / Adams interchange and the commitment of the City and County to construct the realigned Adams Road simultaneously or such other extended period as Grand/Sakwa and the City have agreed.

9. APPROVALS / ADDITIONAL REQUIREMENTS.

The following additional regulations shall apply to the Property:

- (a) Wetlands. Wetlands, if any, that may be located upon the Property will not be regulated by the City and any wetlands shall be subject only to the jurisdiction of the MDEQ, if any.
- (b) Setback Requirements. In order to facilitate the creation of more extensive berms and landscaping within the development, all setback requirements shall be administratively adjusted by the Mayor or her designee to grant relief from severe soil conditions or practical difficulties of this site.
- (c) There shall be a permanent requirement that there be a 35 foot Minimum from Adams Road of any building and the realigned Adams Road, as to Parcel 15-30-326-006, being Exhibit F.
- (d) Detention/Retention Areas. In order to enhance the aesthetic appearance of any detention/retention areas of the Property, Grand/Sakwa may install an aerator in detention/retention ponds and other landscaping within the detention areas to be shown on the final Landscaping Plan. Grand/Sakwa shall not install any landscaping that will impede the flow of drainage and the proper functioning of the detention/retention pond(s).
- (e) 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.
- (f) Approvals; Procedure; Timing. Grand/Sakwa intends to commence the development as soon as the MDOT, City and Road Commission have irrevocably committed to construction of the interchange and Right of Way and realignment of Adams Road pursuant to the Development Agreement. This Judgment therefore constitutes approval of Grand/Sakwa's Conceptual Site Plan for all or any of the mixed uses and/or any combinations thereof. A delay in either Grand/Sakwa'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 Grand/Sakwa which is substantially in conformity with **Exhibit C** and/or does not exceed the ground floor area permitted herein, shall be submitted for approval to the City Council whose decision shall be given within 30 days of submission or any resubmission.
- (g) 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.

- (i) Grand/Sakwa 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 Grand/Sakwa and the City consent in writing to such modifications. Neither Grand/Sakwa 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 (o) of this Section.
- (j) In developing the Property, Grand/Sakwa shall adhere to building codes, ordinances of the City; except as modified in this Judgment. However, dimensional variances may be requested by Grand/Sakwa 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.
- (k) All mechanical equipment located on the rooftop or exterior of buildings shall be screened from adjacent public or private streets located off the Property.
- (l) 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.
- (m) Dimensional variances may be requested by Grand/Sakwa to vary from the strict dimensional requirements of City including those relating to sign standards pursuant to the terms of the City ordinances which shall be granted or denied by the Mayor or Mayor's designee, if in the reasonable judgment of the Mayor or Mayor's designee, there are practical difficulties that exist or are warranted within ten (10) business days after submission,

and if approved, shall not require any further City approval. If such variances requested are denied by the Mayor or Mayor's designee, then review of such dimensional variances shall take place with the City Council.

- (n) Grand/Sakwa may utilize sales and construction trailers until they have completed development and sale of all sites for each phase.
- (o) 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:
- (p) Minor, non-material changes to the concept plan and site plan, 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. Grand/Sakwa shall connect to the City sanitary and storm sewer lines. The City shall reserve sufficient sanitary sewage (up to a maximum 1.54 cfs), and storm water sewer capacity for such purpose and shall size all pipes and connections to be able to provide sufficient capacity for Grand/Sakwa's property and its contemplated development. 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, Grand/Sakwa 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, the City shall cooperate and acquire such other easements, at no cost to Grand/Sakwa, and allow Grand/Sakwa to connect to such sanitary storm sewer lines and other utilities. It is contemplated that utilities shall be placed within the Right of Way of Adams Road and the Realigned Adams Road. To the extent any lift or pump stations or any other improvements are required off site, such shall be constructed by the City at its sole cost and expense in order to provide sufficient sanitary sewer capacity to serve Grand/Sakwa's property, along the Adams Road frontage.

B. The development shall connect with the City water line. 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 Grand/Sakwa'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, Grand/Sakwa 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, the City shall acquire such easements, at no cost to Grand/Sakwa, and allow Grand/Sakwa to connect to such water lines.

C. All City utilities will be located in Adams Road. Grand/Sakwa will be responsible for installation of all internal water mains and sewer utilities.

D. Grand/Sakwa shall be given access and easement rights to the Nancy Dingelday Drain or any drain or offsite easement for storm drainage. The City will work with Grand/Sakwa to obtain access, with the understanding that the Drain is under county jurisdiction. The Development Agreement shall require the Oakland County Drain Commissioner to agree to grant an easement to Grand/Sakwa as a condition to Grand/Sakwa's dedication of right-of-way.

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 Grand/Sakwa Acquisitions L.L.C., Grand/Sakwa Properties L.L.C., Grand/Sakwa Adams L.L.C., Rochester Hills Corporate Center L.L.C. and future tenants of any Commercial/ Business/ Office/ Research Components and residents of any Residential Component; and further, the terms and conditions of this Judgment as the same may be 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.

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); and to enforce the commitments, and obligations of the parties for the dedication of right-of-way, construction, relocation, and funding of the M59 / Adams Road Interchange and Realignment of Adams Road.

D. This is a Judgment as to the entire dispute between the parties, including all issues set forth in Grand/Sakwa's Complaint, as amended, and all claims, costs and attorney fees are dismissed with prejudice. 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 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, Grand/Sakwa shall adhere to all current building codes, ordinances, and the Construction Standards of the City , in effect at time of site plan approval and construction 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 Grand/Sakwa 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; photocopies of pages bearing signatures of parties hereto shall be deemed duplicate originals.

J. Grand/Sakwa shall furnish the City Assessor with a legal description for each parcel (or condominium unit) for which Grand/Sakwa wants to divide as a separate parcel or unit and obtain a separate tax bill and so long as Grand/Sakwa records a declaration of easements and/or restrictions for ingress, egress and parking, or a Master Deed. Grand/Sakwa may apply for up to a maximum of 13 (plus two (2) eligible bonus splits at such time as the Collector Road from realigned Adams Road is constructed) parcels (or units) (or such higher or lower number of parcels or units 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 property conveyed for realignment of Adams Road shall not reduce the separate parcel identification numbers available to Grand/Sakwa. The City acknowledges that Grand/Sakwa 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.

L. Grand/Sakwa 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.

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) Grand/Sakwa 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 14 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, Grand/Sakwa 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 21 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 21 days of request provided Grand/Sakwa has promptly and diligently submitted such Plans, and such Plans are received by the City in form required. Once Grand/Sakwa 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, Grand/Sakwa may start construction of the public utilities. The City shall provide any written comments within such 21 day period for resubmission by Grand/Sakwa 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 Grand/Sakwa has submitted those plans promptly and with due diligence and in good faith and the City shall have 21 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) Grand/Sakwa 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. Grand/Sakwa 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 Grand/Sakwa and constructed within the easements and right of way dedicated by Grand/Sakwa to the City, Road Commission, or other public agency with jurisdiction over the utility.
- (vii) So long as Grand/Sakwa is acting with due diligence to construct improvements, the City shall not deny Grand/Sakwa 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) Grand/Sakwa 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 impede or interfere with installation, operation, repair or maintenance of utilities located within the easements.
- (ix) Grand/Sakwa, 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 Grand/Sakwa is permitted or is obligated including without limitation references to this Judgment shall be deemed to incorporate such reservation of rights by Grand/Sakwa.

13. OBLIGATIONS OF THE CITY OF ROCHESTER HILLS.

A. The City shall, upon entry of this Judgment and upon execution of the Development Agreement described in Section 8, paragraph E, commence to acquire all necessary properties to enable the realignment of Adams Road through eminent domain or otherwise, consistent with the approved realignment plan, at no cost or expense to Grand/Sakwa.

B. The City shall vacate and abandon any unnecessary easements which are existing and which are required for the development of Grand/Sakwa's Property

C. The City shall process and consider for approval a Brownfield Redevelopment Plan and District for the Property and/or by the City or County Brownfield Redevelopment Authority, if requested by Grand/Sakwa and if reasonably appropriate.

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

JOAN E. YOUNG

CIRCUIT COURT JUDGE

FOR JOHN J. McDONALD
CIRCUIT 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 Somerville, Mayor, has set forth his/her hand and seal this 2 day of April, 2003.

WITNESSES:

CITY OF ROCHESTER HILLS, a Michigan municipal body

Beverly A. Jasinski
Beverly A. Jasinski, City Clerk
Judy A. Biak
JUDY A. BIAK

By: Pat Somerville
Pat Somerville
Its: Mayor

STATE OF MICHIGAN

SS

COUNTY OF OAKLAND

On this 2 day of April, 2003, before me, a Notary Public in and for said County, personally appeared to me Pat Somerville, 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.

[Signature]
John D. Stanton
Oakland
Notary Public
County, Michigan
My Commission Expires: 10-30-2003

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

WITNESSES:

GRAND/SAKWA ACQUISITIONS, , LLC.,
a Michigan corporation

Melanie J. Santoy
Melanie J. Santoy
Joyce L. Pikulas
Joyce L. Pikulas

By: [Signature]
Gary R. Sakwa
Its: Authorized Representative

STATE OF MICHIGAN

SS

COUNTY OF Oakland

On this 2nd day of April, 2003, before me, a Notary Public in and for said County, personally appeared Gary R. Sakwa, member of Grand/Sakwa Acquisitions, LLC, a Michigan limited liability company, on behalf of the company.

JOYCE L. PIKULAS
NOTARY PUBLIC OAKLAND CO., MI
MY COMMISSION EXPIRES Feb 11, 2007

[Signature]
Oakland
Notary Public
County, Michigan
My Commission Expires: 2-11-07

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

Exhibits:

- A. Legal Description form 107a
- B. Depiction of Exhibit "A" (107a)
- C. Conceptual Plans
 - C-1
 - C-2
 - C-3
 - C-4
- D. Legal and depiction of parcel 5 of the realigned Adams Road
- E. Building Materials
- F. R.O.W. Legal
- G. R.O.W. Depicted
- H. Edison parcel

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