

for the actual physical improvements to these utilities as provided for in this Consent Judgment.

X. Fire Department Approval.

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

Y. Maintenance Agreement.

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

**2.3** Investigation and Remediation of Environmental Contamination/Methane

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

Protection Agency ("EPA") relative to the proposed environmental activities. The following work shall be performed prior to the issuance of any land improvement permits on the Property:

A. Eastern and Central Parcels:

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

all identified contaminants of concern including, but not limited to, PCBs, and methane. It is anticipated that this assessment will aid Plaintiffs in documenting "substantial environmental benefit" for justification of additional remedial funding from MDEQ/TIF. After all exposure pathways and receptors are assessed and the results of the assessments conducted above are evaluated, a regulatory compliant Due Care Plan must be designed.

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

With respect to the fenced area on the eastern portion of the Property, Plaintiffs shall undertake additional investigation and analyze the results of the same to formulate a plan which will remove as much of the contamination as economically feasible, as mutually

agreed to by the City and the Plaintiffs. In other words, in the fenced area, the remediation may involve removal of all soils, a combination of soil and debris removal with encapsulation in a smaller area, or complete encapsulation of the contaminated area, but only if complete encapsulation is the only economically feasible option, as mutually agreed to by the City and the Plaintiffs, and as approved by MDEQ and EPA.

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

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

B. Backyards of the Northern Subdivision

Based upon existing data collected by Plaintiffs, it appears that there may be soil contamination of the neighboring residences to the north of the Property. The source of this contamination is unknown at this time but is assumed to be related to the previous site activities and/or remediation efforts performed by others not party to this litigation. The City and its Consultant will work with each of the property owners having homes adjacent to the Property to the north, if they so choose, and after the homeowner agrees in writing to release the City from any and all claims related to the investigation, testing and/or contamination, the City will investigate the existence of contaminants, including PCB's, in their south back yard. Investigation and analysis will be conducted by the City's Environmental Consultant, with the reasonable costs of all testing, not to exceed \$20,000.00, to be paid by Plaintiffs. Plaintiffs' environmental consultant may split soil samples for independent testing and confirmation, and Plaintiffs shall also bear the cost of their consultant's time and split sample analysis cost. If contaminants are found exceeding the Residential Cleanup Criteria in any or all of the residential lots and/or abutting properties that may be maintained by a homeowners association, Plaintiffs, with the assistance of the City, shall work with each homeowner to develop a remediation plan, if requested by any of the property owners, that is to be as non-intrusive and non-disruptive as possible. Plaintiffs shall conduct necessary remedial activities. These activities may take the form of removal of the soil and sod materials in the back yard and replacement of the earth, grass and landscaping. The work shall be performed by the Plaintiffs with the City's Environmental Consultant in attendance. Up to \$150,000.00 of costs for the remedial activities shall be paid directly by the Plaintiffs. Under no circumstances will Plaintiffs be responsible to conduct remediation which exceeds the cost of \$150,000.00. The City shall have no

responsibility to conduct any remediation or pay any costs related to the remediation of the backyards. For verification of soil remediation purposes, if soil is removed from the yards, split samples shall be provided to the City's environmental consultant for testing and confirmation, and the City shall pay the cost of analyzing the split samples. Plaintiffs shall properly dispose of any excavated soils. Plaintiffs shall document all site activities, communications with the residents and public, and analytical results of samples collected for verification or remediation purposes. The cost of the remediation efforts shall be borne by Plaintiffs as provided for herein. The foregoing assumes that contaminants are near the surface. If contaminants are located deeper than two (2) feet below ground surface, Plaintiffs shall work with the property owners to develop a suitable remedy, with input from necessary regulatory authorities. Additional costs for remediation of deeper contaminants are not the responsibility of either Plaintiffs or the City. This obligation shall remain in effect for a period equal to the lesser of two (2) years from the date of entry of this Consent Judgment or the date that Plaintiffs have concluded all due care remedial actions below ground surface; however, those neighboring property owners who wish to engage in this activity, must notify the City of same, in writing, within one hundred twenty (120) days after entry of this Consent Judgment with the court, and notice provided to these residents. This provision is for the benefit of the individual property owners who may take advantage of this provision by making arrangements with the City to allow Plaintiffs direct access to their properties. Plaintiffs shall create an escrow fund with a recognized title company in the amount of One Hundred Fifty Thousand dollars (\$150,000.00). The fund shall be used to pay for the remediation undertaken pursuant to this paragraph. Any amount not expended at the end of the aforementioned period shall be refunded to the Plaintiffs. Notwithstanding the above, Plaintiff or City shall not be required to undertake the above remedial activities

unless they have obtained from the requesting residents, a written release of further liability from the requesting residents after completion of the obligations contained herein.

C. Baseline Environmental Assessment/Brownfield Work Plan

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

D. Methane

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

E. Eastern 9 Acre Parcel

Plaintiffs shall investigate the extent of PCB contaminated soils, and other contaminants of concern, through additional investigation, soil sampling and laboratory analysis in and around the fenced area. Plaintiffs shall determine appropriate testing,

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

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

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



- H. Management Plans for each engineered control (methane venting, soil or vegetative cover, pavement, water detention, etc.) must be completed and filed with the City.
- I. Plaintiffs shall submit an amended 381 Work Plan(s) consistent with the requirements of this Consent Judgment, to the MDEQ, and will submit the same to the City. Any amendment to the Brownfield Redevelopment Plan will incorporate additional costs as needed to meet the terms and intent of this Consent Judgment. The City will approve the Brownfield Plan(s) if they comply with all the requirements of this Consent Judgment. The 381 Work Plan(s) must be accepted by the City (which acceptance will not be delayed or unreasonably withheld) and approved by the MDEQ prior to Plaintiffs receiving site plan approval
- J. The parties shall cooperate and work together to seek the consent of the MDEQ to meet the intent of this Consent Judgment. However, in the event a 381 Work Plan is not accepted by the MDEQ, the 381 Work Plan will be amended to reflect activities which will be approved by the MDEQ. Notwithstanding any provisions above to the contrary, Plaintiffs shall only be required to perform remedial activities to the extent of the approval of the 381 Work Plan(s).
- K. The City shall have the discretion to determine the amount of tax increment financing available annually, and determine the period of time during which taxes may be captured, during its review and decision on the Brownfield Redevelopment Plan. However, notwithstanding the foregoing, the period of time to fully reimburse Plaintiffs for eligible expenses shall not exceed seven (7) years from the completion of all site improvements and all buildings comprising the Development. This seven-year time period is based upon the assumption that the remediation costs will be approximately \$3,500,000.00. Plaintiffs shall receive each year, at a minimum, seventy-five percent (75%) of the yearly tax increment.

In the event the costs to remediate exceed the amount of \$3,500,000.00, the parties shall negotiate in good faith an extension of the repayment period.

**2.4 Other Governmental Approvals**

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

**2.5 Other Applicable Laws**

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

**2.6 Variances**

Except as specifically provided in this Consent Judgment, no variances from the City's Zoning Ordinance or other codes or regulations may be applied for or granted for the development of the Property.