

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

VORH ASSOCIATES, LLC,
~~Aa~~ Delaware Limited Liability Company
and 400 ~~NORTH~~~~orth~~ ~~ADAMS~~~~dams~~, LLC, a Michigan
Limited Liability Company,

Plaintiffs,

vs

Case No. 96-530684-CH
Hon.

CITY OF ROCHESTER HILLS,
A Michigan Municipal Corporation,

Defendant.

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SECOND AMENDED CONSENT JUDGMENT

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

PRESENT: HONORABLE _____
CIRCUIT COURT JUDGE

I. RECITALS AND PREAMBLE

A. VORH Associates, LLC, a Delaware Limited Liability Company (“VORH”) is
the owner of approximately 23.379 acres of developed commercial and retail real estate and its
associated parking area located on the northeast quadrant of the intersection of Walton
Boulevard and Adams Road in the City of Rochester Hills, Oakland County, Michigan, as is

more fully described on **Ex. A** attached hereto and identified as City of Rochester Hills Tax identification number 15-08-351-005 (the "VORH² Property"). The VORH Property is presently comprehensively developed as "The Village of Rochester Hills" retail and commercial development and parking area (the "Village"). The VORH Property and the Village are presently developed and approved by the City of Rochester Hills pursuant to that Amended Consent Judgment dated May 30, 2001 in this Oakland County Circuit Court Case No. 96-530684-CH between Meadowbrook Associates, a Michigan Partnership, which is VORH's predecessor in interest, a third party Plaintiff known as Borman's Inc. and the City of Rochester Hills (the "Amended Consent Judgment").

B. 400 North Adams, LLC, a Michigan Limited Liability Company ("400 North") is the owner of approximately 9.852 acres of real estate located on Adams Road, just north of the VORH Property, in the City of Rochester Hills, Oakland County, Michigan, as is more fully described on **Ex. B** attached hereto and identified as City of Rochester Hills Tax identification number 15-08-303-035 (the "400 North Property"). The 400 North Property is presently developed adjacent to the VORH Property, in cohesive overall design with the Village, as an independent stand-alone 61,355 ground floor square feet two-story retail and commercial building and parking area that is presently being repurposed from a former department store use to an updated department store use. The 400 North Property is also developed and approved by the City of Rochester Hills pursuant to the Amended Consent Judgment.

C. The VORH Property and the 400 North Property are presently owned by common and affiliated parties.

D. Former Intervening Plaintiff Borman's Inc. is no longer in business since at least 2017 and the former Borman's Inc. parcel of real estate adjacent to the VORH Property and the Village is now owned by 400 North and is identical in identity to the 400 North Property.

E. The Amended Consent Judgment arose from litigation in this matter originally commenced in 1996 between the predecessors in interest to VORH and 400 North, together as Plaintiff and Intervening Plaintiff respectively, and the City of Rochester Hills, a Michigan Municipal Corporation (the "City"), as Defendant, regarding development and re-development of the VORH Property and the 400 North Property.

F. Negotiations between the former and current parties in this litigation resulted in an agreement whereby an urban town center style shopping center on the VORH Property and the 400 North Property, collectively, which comprises the Village, was approved with the terms and conditions of same provided in an April 14, 2000 Consent Judgment in this matter and later modified and approved with the terms and conditions provided in the Amended Consent Judgment.

G. VORH and 400 North have proposed to the City a collective revision to the approved site plan for development of the VORH Property, the Village and the 400 North Property whereby:

(i) the 400 North Property will be divided by the City pursuant to the Michigan Land Division Act, Public Act No. 288 of 1967 (MCL 560.101 et seq.) and the City of Rochester Hills Code of Ordinances at Chapter 122, Article II, Section 122-26 through 60 in the form and manner described at **Ex. C** so as to: (a) (a) create a resultant approximate .68757324 acre "Parcel A" to accommodate a 2226 square foot stand-alone Starbucks retail store with drive-through facility and traffic circulation and parking field ("Starbucks Parcel") and; (b) a resultant

approximate 9.1~~6492~~ acre “Parcel B” to accommodate redevelopment of the former department store use to an updated department store use and its traffic circulation and parking field intended to be operated by the Von Maur Corporation (“Von Maur Parcel”);

(ii) the 2226 square foot stand-alone Starbucks retail store with drive-through facility and traffic circulation and parking field site plan, signage and elevations on the Starbucks Parcel as depicted on **Exs. C, D and E** will be granted final site plan approval by the City in all respects including conditional land use approval, usage, parking requirements, signage and setbacks, subject only to customary and ordinary course City administrative construction related approvals and permits;

(iii) the current as-built site plan for the VORH Property will be deemed approved by the City in all respects including usage, parking requirements, signage and setbacks as depicted on **Ex. E**;

(iv) the as-built site plan for the stand-alone department retail store on the Von Maur Parcel as depicted on **Exs. C and E** will be deemed approved by the City in all respects including usage, traffic circulation, parking requirements, signage and setbacks; and

(v) VORH may construct and operate up to a total of 1,500 aggregate square feet of atrium style kiosks for promotional, hospitality, display, warming stations, retail and or food service purposes in any multiple combinations of atrium style kiosks and in any of the multiple locations at the Village shown on **Ex. E** (“Atrium Kiosks”) and as such VORH will be granted preliminary/conceptual site plan approval by the City in all respects for the Atrium Kiosks, including usage, subject only to customary and ordinary course City administrative final site plan, construction related approvals and permits.

H. The parties have conducted significant discussions and review of the proposed modifications and have reached an agreement whereby the proposed modifications set forth herein significantly improve the overall site plan approved in the Amended Consent Judgment and permit construction of the overall development in such a manner as will be a significant long-term benefit to the health, safety and welfare of the City as a whole and addresses the concerns of the City as well as the residential subdivisions to the north and east of the subject properties. This Second Amended Consent Judgment provides approval of a modified site plan for the overall development and establishes agreements necessary to enable the Plaintiffs to obtain building permits and any other needed approvals for such development in an orderly and expeditious manner.

E. This Second Amended Consent Judgment fully supersedes and replaces the Amended Consent Judgment which shall no longer be of any force and effect. This Second Amended Consent Judgment confirms the existing development in accordance with the Amended Consent Judgment and incorporates many of the requirements and agreements established in the Amended Consent Judgment to preserve the protections granted to the City in that document.

NOW, THEREFORE, in accordance with the consent and stipulations of the parties IT IS HEREBY ORDERED AND ADJUDGED that the Amended Consent Judgment heretofore entered is fully and completely superseded and replaced by this Second Amended Consent Judgment.

IT IS FURTHER ORDERED AND ADJUDGED as follows:

II. DEVELOPMENT

1. Land division approval pursuant to the Michigan Land Division Act, Public Act No. 288 of 1967 (MCL 560.101 et seq.) and the City of Rochester Hills Code of Ordinances at Chapter 122, Article II, Section 122-26 through 60, is hereby granted by the City in the form and manner described in the documents attached at **Ex. C**, so as to: (a) create an approximate resultant .68757324 acre “Parcel A” to accommodate a 2226 square foot stand-alone Starbucks retail store with drive-through facility and traffic circulation and parking field on the Starbucks Parcel and; (b) an approximate resultant 9.164912 acre “Parcel B” to accommodate redevelopment of the former department store use to an updated department store use intended to be operated by the Von Maur Corporation and its traffic circulation and parking field on the Von Maur Parcel (the “Land Division”). Vehicular access to the new Parcel A will be through Parcel B, and no new curb cuts or drives for direct access from Adams Road to new Parcel A shall be constructed or permitted. The City acknowledges that it has received from Plaintiffs all of the documents, applications, fees, surveys, legal descriptions and other information necessary to approve and complete the Land Division in the City’s ordinary course pursuant to the Michigan Land Division Act, Public Act No. 288 of 1967 (MCL 560.101 et seq.) and the City of Rochester Hills Code of Ordinances at Chapter 122, Section 122-26 through 60. The Land Division will be completed administratively by the City without the need for a separate public hearing before the City Council and the City will reasonably cooperate with Oakland County relative to the assignment of separate tax identification numbers to the Starbucks Parcel and the Von Maur Parcel by Oakland County. The Land Division will be completed by the City in all respects within 30 days of the entry of this Second Amended Consent Judgment, including the recording of proper evidence of the Land Division with the Oakland County Register of Deeds.

2. The 2226 square foot stand-alone Starbucks retail store with drive-through facility and traffic circulation and parking field, elevations, signage and site plan, including setbacks, on the Starbucks Parcel as depicted on **Exs. C, D and E** are granted final site plan approval by the City in all respects including conditional land use approval, usage, parking requirements, signage, traffic circulation and setbacks, subject only to future customary and ordinary course City administrative approvals, fees and permits related to the actual construction of the Starbucks retail store (“Starbucks Approval”). The City agrees that it has received from Plaintiffs all of the documents, applications, fees, surveys, drawings, elevations, legal descriptions and other information necessary to approve and complete the Starbucks Approval in the City’s ordinary course. The Starbucks Approval will be of full force and effect upon entry of this Second Amended Consent Judgment without the need for any further site plan, public hearing or other review according to the City’s ordinary site plan approval process. The City will process all future administrative final site plan approvals, fees and permits related to construction of the Starbucks retail store with drive-through facility and the Starbucks Approval in the ordinary course and without unreasonable denial or delay.

3. The current as-built site plan for the VORH Property and Village as depicted on **Ex. E** is deemed approved by the City in all respects including usage, parking requirements, signage, traffic circulation and setbacks (“VORH and Village Approval”). The City acknowledges that it has received from Plaintiffs all of the documents, applications, fees, surveys, drawings, elevations, legal descriptions and other information necessary to approve and complete the VORH and Village Approval in the City’s ordinary course. The VORH and Village Approval will be of full force and effect upon entry of this Second Amended Consent

Judgment without the need for any further site plan, public hearing or other review according to the City's ordinary site plan approval process.

4. The as-built site plan for the stand-alone department retail store on the Von Maur Parcel as depicted on **Exs. C and E**, and subject to the approved Land Division, is deemed approved by the City in all respects including usage, parking requirements, signage, traffic circulation and setbacks. ("Von Maur Approval"). The City agrees that it has received from Plaintiffs all of the documents, applications, fees, surveys, drawings, elevations, legal descriptions and other information necessary to approve and complete the Von Maur Approval in the City's ordinary course. The Von Maur Approval will be of full force and effect upon entry of this Second Amended Consent Judgment without the need for any further site plan, public hearing or other review according to the City's ordinary site plan approval process.

5. VORH may construct and operate the Atrium Kiosks for promotional, hospitality, display, warming stations, retail and food service purposes as shown at **Ex. E**. The exact location, size and total number of Atrium Kiosks shall be determined at the discretion of VORH subject to the restriction that the consolidated Atrium Kiosks shall not exceed an aggregate total of 1,500 square feet. The Atrium Kiosks are granted preliminary/conceptual site plan approval by the City in all respects, including usage, subject only to customary and ordinary course City administrative final site plan, construction-related approvals and permits.

6. Future development modifications to the collective documents, surveys, drawings, elevations and legal descriptions depicted at **Exs. A through E** are contemplated as possible by the parties and may be needed based on future tenant requirements of the VORH Parcel, the Von Maur Parcel and the Starbucks Parcel, which may include, for example, modifications to building sizes, shapes, signage and elevations and to parking areas and drives. Future

development modifications involving minor changes to the VORH Parcel, the Von Maur Parcel and the Starbucks Parcel shall be allowed administratively by City Staff without review by the City Planning Commission or City Council if Plaintiffs can demonstrate reasonably that said development modifications shall not affect the collective urban town center character of the VORH Parcel, the Von Maur Parcel and/or the Starbucks Parcel developments. Minor changes may include (a) reduction of the size of any building and/or sign; (b) movement of buildings, walks, and/or signs by not more than thirty (30) feet, so long as the total square footage of the shopping center is not increased; (c) plantings approved in the site plan landscape plan may be replaced by similar types of landscaping; (d) changes of building materials to an equal or higher quality; (e) changes in floor plans which do not alter the character of the use; and (f) internal rearrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design. Any modifications which, in City Staff's judgment, exceed the authority granted in this paragraph shall be submitted to the City Council for approval. For purposes of this provision, the parties agree that such development modifications or amendments shall not alter the basic intent as embodied in this Second Amended Consent Judgment. Plaintiffs shall not unreasonably request such a development modification or amendment, and the City shall not unreasonably deny or delay such a modification or amendment. Any future changes to the development or use of the Starbucks Parcel that are deemed by the City to be material changes in terms of size or height of building improvements; traffic circulation; expanded drive through facilities; enhanced lighting; enlargement of parking, loading, or maneuvering areas; or change to a higher intensity use shall require City Council approval.

7. This Second Amended Consent Judgment is binding upon the parties hereto, their respective heirs, personal representatives, successors, successors-in-interest, transferees, transferees-in-interest and assigns.

8. The terms and conditions of this Second Amended Consent Judgment as the same may be amended from time to time, exclusively by stipulation of the parties and order of the Court, shall be deemed to be appurtenant to and run with the subject land and be for the benefit of the VORH Parcel, the Von Maur Parcel and the Starbucks Parcel and the City and not for the benefit of any surrounding off-site properties.

9. This Second Amended Consent Judgment supersedes and replaces any and all prior inconsistent agreements between Plaintiffs and the City relative to the VORH Parcel, the Von Maur Parcel and the Starbucks Parcel, and any and all prior inconsistent Court orders or judgments of any nature relative to permitted development or uses of the VORH Parcel, the Von Maur Parcel and the Starbucks Parcel.

10. Regardless of future Master Plan and/or zoning changes which may occur or affect the VORH Parcel, the Von Maur Parcel and the Starbucks Parcel, the uses permitted hereunder shall not be deemed to be legal nonconforming uses, but rather permitted uses, subject to and in accordance with this Second Amended Consent Judgment.

11. Unless specifically waived, inconsistent or modified herein, Plaintiffs shall comply with all ordinances and standards of the City.

12. The parties to this action represent to this Court that they have read this Second Amended Consent Judgment, have discussed it with counsel, understand the terms and conditions hereof, and further, hereby agree that this Second Amended Consent Judgment, or an

affidavit executed by the parties providing notice of this Second Amended Consent Judgment, shall be recorded with the Oakland County Register of Deeds.

13. Each person signing this Second Amended Consent 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 Second Amended Consent Judgment.

14. All parties to this Second Amended Consent Judgment agree to act in good faith and without undue delay at all times in effectuating the executory terms of this Second Amended Consent Judgment.

15. A memorandum describing this Second Amended Consent Judgment shall be recorded with the Oakland County Register of Deeds to give public notice of this Second Amended Consent Judgment.

15. This Court shall maintain jurisdiction over the implementation and enforcement of this Second Amended Consent Judgment.

17. Subject to the continuing jurisdiction of the Court to ensure compliance with this Judgment, this Second Amended Consent Judgment resolves the last pending claim and closes the case.

CIRCUIT COURT JUDGE

WE THE UNDERSIGNED HEREBY STIPULATE TO THE ENTRY OF THE ABOVE AMENDED CONSENT JUDGMENT, HEREBY APPROVING SAME AS TO CONTENT AND FORM, NOTICE OF ENTRY WAIVED.

Richard E. Rassel (P57540)

Attorney for Plaintiffs

Dated: _____

John D. Staran (P35649)

Attorney for Defendant

Dated: _____

CITY OF ROCHESTER HILLS

By: _____

Bryan K. Barnett, Mayor

Dated: _____

~~Dated: _____~~

VORH ASSOCIATES, LLC,
a Delaware Limited Liability Company

By: _____

Bruce Aikens

Managing Member

Dated: _____

400 NORTH ADAMS, LLC,
a Michigan Limited Liability Company,

By: _____

Bruce Aikens

Managing Member

Dated: _____