

AGREEMENT FOR MAINTENANCE OF SEDIMENTATION BASIN

This AGREEMENT FOR MAINTENANCE OF SEDIMENTATION BASIN ("**Agreement**") is entered into this 7th day of May, 2007, by and between the CITY OF ROCHESTER HILLS, having offices at 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 (the "**City**"), and THE MARKETPLACE OF ROCHESTER HILLS LLC, a Michigan limited liability company, having offices at 28470 Thirteen Mile Road, Farmington Hills, Michigan 48334 ("**Marketplace**").

RECITALS

A. Marketplace owns the property described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**");

B. Marketplace has the right to develop the Property (together with additional property) pursuant to the terms of that certain Consent Judgment, entered on April 3, 2003, in that certain case between an affiliate of Marketplace, Grand/Sakwa Acquisitions, LLC, as Plaintiff, vs. the City, as Defendant, in the Circuit Court for the County of Oakland, State of Michigan, having Case No. 02-046199-AW, as reinstated and modified by the terms of that certain Stipulation and Order to Reinstate Consent Judgment of April 3, 2003 and for Amendment of Consent Judgment, entered on or about May 26, 2005, as further amended by that certain First Amendment to Consent Judgment, entered on May 26, 2005, and as further amended by that certain Order for Second Amendment to Consent Judgment, entered on November 22, 2005 (as so amended, and as may have been and/or may be further amended, the "**Consent Judgment**");

C. Marketplace's intended development of the Property provides for the installation and operation of a sedimentation basin in that portion of the Property more particularly described in **Exhibit "B"** attached hereto and made a part hereof (the "**Sedimentation Basin**"); and

D. Marketplace and the City agree that both parties will benefit from the proper use and maintenance of the Sedimentation Basin, and desire to enter into this Agreement to provide for the same.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Maintenance.** Marketplace shall be responsible for the proper maintenance, repair and replacement of the Sedimentation Basin. Proper maintenance of the Sedimentation Basin shall include, but not be limited to: (a) stabilization of the banks and slopes; (b) removal of trash, refuse and accumulated sediment on a reasonable periodic basis; (c) cleaning of stone filter systems; (d) replacement of filter fabrics; and (e) other maintenance that is reasonable and customary in order to facilitate or accomplish the intended function and purpose of the Sedimentation Basin.

2. **Action by the City.** In the event Marketplace, its successors, grantees or assigns neglects or fails to properly maintain the Sedimentation Basin in accordance with the terms hereof, the City shall notify Marketplace or its successors, grantees or assigns, in writing, which notice shall include a listing and detailed description of the specific maintenance deficiency cited by the City. In the event Marketplace, its successors, grantees or assigns do not dispute the claim of alleged maintenance deficiencies, Marketplace, its successors, grantees or assigns shall commence to cure such deficiencies within thirty (30) days after receipt of such notice, weather permitting, and thereafter diligently prosecute such cure until completion, weather permitting. In the event Marketplace, its successors, grantees or assigns dispute the claim of alleged maintenance

deficiencies, such dispute shall be resolved pursuant to the arbitration provision set forth in the Consent Judgment.

If Marketplace, its successors, grantees or assigns fails to commence and diligently prosecute curing any maintenance deficiencies sited by the City which is not disputed by Marketplace, its successors, grantees or assigns, within thirty (30) days after notice thereof, or if Marketplace fails to commence and diligently prosecute curing any maintenance deficiencies for which it is held responsible by the arbitrator within the time period established by the arbitrator, then the City may undertake and perform such maintenance deficiencies. The performance of such maintenance deficiencies by the City shall not be deemed a taking of the Sedimentation Basin or any portion of the Property, nor shall the City's actions be deemed to vest in the public any right to use the Sedimentation Basin or any portion of the Property. Notwithstanding the foregoing, in the event the City determines, in good faith, that an emergency condition exists that poses an imminent threat to public health, safety or general welfare, caused by or relating to the failure of Marketplace, its successors, grantees or assigns to properly maintain the Sedimentation Basin, the City shall have the right to take such action as is reasonable and appropriate to correct the maintenance deficiency causing such emergency condition. In the event the City exercises its rights hereunder to perform maintenance on the Sedimentation Basin, the City shall access the Sedimentation Basin via the access easement described in **Exhibit "C"** attached hereto and made a part hereof, which easement provides access from the adjacent public right-of-way of Marketplace Circle.

3. **Charges.** In the event the City cures any maintenance deficiencies in the Sedimentation Basin pursuant to the terms of this Agreement, the City shall have the right to charge the then current owner of the Sedimentation Basin for the reasonable costs of such corrective maintenance, plus ten percent (10%) of such costs as an administrative fee, which such charge shall be a lien on the Sedimentation Basin and shall be collectable and enforceable in the same manner general property taxes are collected and enforced.

4. **Notices.** Any notice required hereunder shall be sent by certified mail to the address for each party set forth above, or such other address as the party may notify the other party in writing.

5. **Successors and Assigns.** This Agreement shall be binding on the parties hereto, and their respective successors, grantees and assigns. The rights, obligations and responsibilities of the parties hereunder shall run with the Sedimentation Basin and shall bind all current and future owners of the Sedimentation Basin. Marketplace shall have the right to assign its rights and obligations hereunder, in whole or in part, to one or more future grantees or tenants to all or any portion(s) of the Property.

6. **Recording of Agreement.** This Agreement shall be recorded in the Oakland County Register of Deed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

THE MARKETPLACE OF ROCHESTER HILLS LLC, a Michigan limited liability company

By: _____
Gary Sakwa

Its: Authorized Representative

THE CITY OF ROCHESTER HILLS,
a _____

By: _____

Its: _____

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

On this 7th day of May, 2007, before me personally appeared Gary Sakwa, Authorized Representative of The Marketplace of Rochester Hills LLC, a Michigan limited liability company, who executed the foregoing instrument on behalf of said limited liability company.

CARLY BUCKLEY
Notary Public, State of Michigan
County of Wayne
My Commission Expires 08-04-2012
Acting in the county of Oakland

Carly Buckley
Notary Public
Wayne County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 8/4/2012

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

On this _____ day of May, 2007, before me personally appeared _____, _____ of the City of Rochester Hills, a Michigan limited liability company, who executed the foregoing instrument on behalf of said _____.

APPROVED AS TO FORM
J. Staron 5/14/07
ROCHESTER HILLS COUNSEL

Notary Public

County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

SEDIMENT BASIN ACCESS EASEMENT LEGAL DESCRIPTION

A 12 FOOT WIDE SEDIMENT BASIN ACCESS EASEMENT LOCATED IN PART OF THE NORTH 1/2 OF SECTION 30, T. 3 N., R. 11 E., CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS:

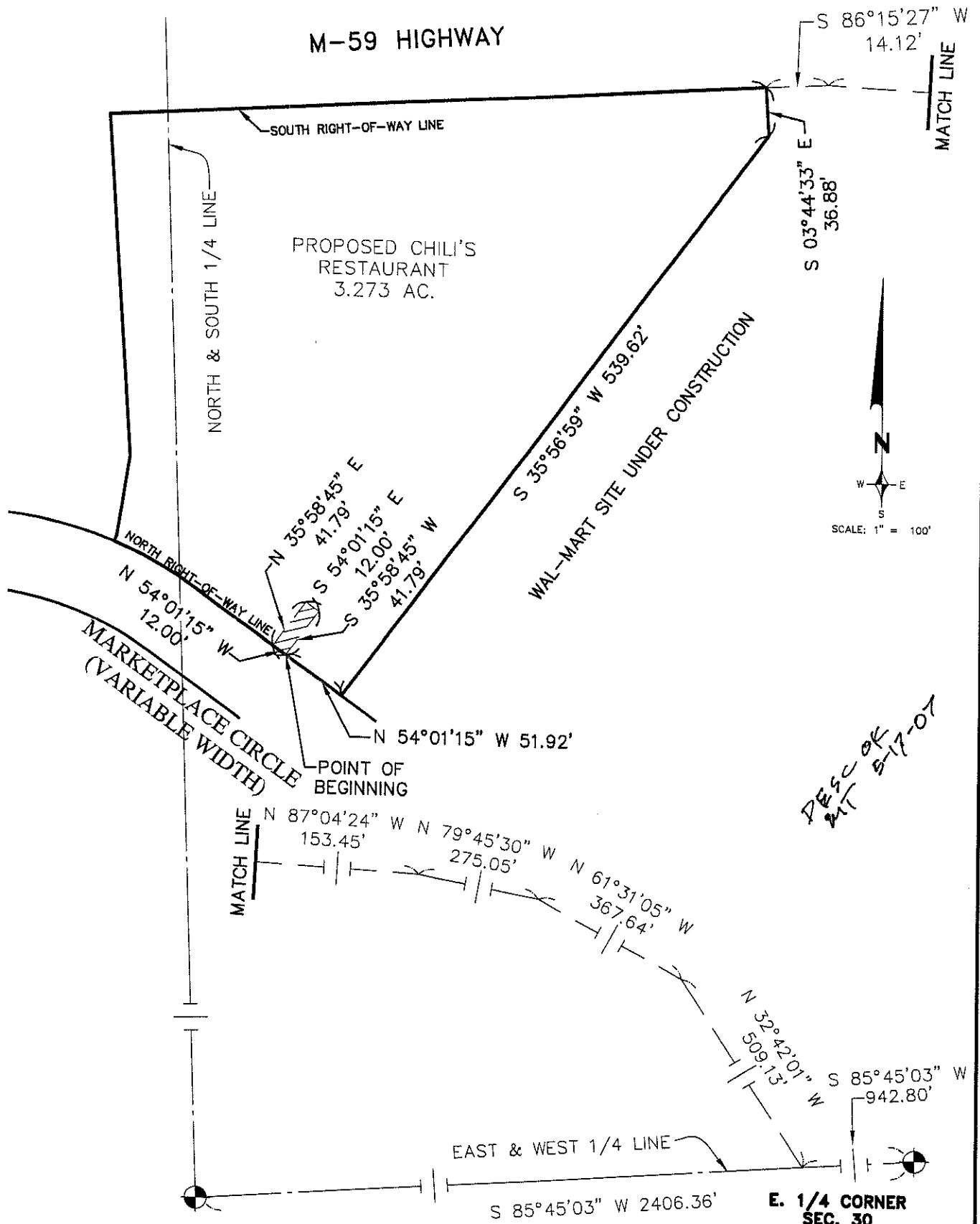
COMMENCING AT THE EAST 1/4 CORNER OF SECTION 30 AND PROCEEDING S. 85°45'03" W. 942.80 FEET ALONG THE EAST AND WEST 1/4 LINE OF SAID SECTION 30 AND THE FOLLOWING FIVE (5) COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY OF ADAMS ROAD EXIT RAMP FROM M-59 HIGHWAY: 1) N. 32°42'01" W. 509.13 FEET, 2) N. 61°31'05" W. 367.64 FEET, 3) N. 79°45'30" W. 275.05 FEET, 4) N. 87°04'24" W. 153.45 FEET, AND 5) S. 86°15'27" W. 14.12 FEET, AND S. 03°44'33" E. 36.88 FEET AND S. 35°56'59" W. 539.62 FEET TO THE NORTHERLY RIGHT-OF-WAY OF MARKETPLACE CIRCLE (VARIABLE WIDTH); THENCE ALONG SAID RIGHT-OF-WAY N. 54°01'15" W. 51.92 FEET TO THE POINT OF BEGINNING OF A 12 FOOT WIDE SEDIMENT BASIN ACCESS EASEMENT; THENCE FROM SAID POINT OF BEGINNING N. 54°01'15" W. 12.00 FEET ALONG SAID RIGHT-OF-WAY; THENCE N. 35°58'45" E. 41.79 FEET; THENCE S. 54°01'15" E. 12.00 FEET; THENCE S. 35°58'45" W. 41.79 FEET TO THE POINT OF BEGINNING.

*Desc OK
m T 5-17-07*

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REVISIONS			SEDIMENT BASIN EASEMENT DESCRIPTION		DATE	SCALE
ITEM	DATE	BY	ADAMS MARKETPLACE ROCHESTER HILLS, MI		5/4/07	HOR: 1" = N/A
PER CITY	5/18/07	SRB			FIELD BOOK NO.	
			<div style="font-size: 1.5em; font-weight: bold; margin: 0;">ZEIMET WOZNIAK</div> <div style="font-size: 0.8em; margin: 0;">& ASSOCIATES</div> <div style="font-size: 0.8em; margin: 0;">Civil Engineers & Land Surveyors</div> <div style="font-size: 0.7em; margin: 0;">40024 GRAND RIVER AVE, SUITE 100</div> <div style="font-size: 0.7em; margin: 0;">NOVI, MICHIGAN 48375</div> <div style="font-size: 0.7em; margin: 0;">P: (248) 442-1101 F: (248) 442-1241 www.zeimetwozniak.com</div>		DESIGNED BY	JOB NO.
					RAH	97144
					DRAWN BY	SHEET NO.
					SRB	2 OF 2

M-59 HIGHWAY



*DESC OF
WT
5-17-07*

CENTER OF SEC. 30
T. 3 N., R. 11 E.
CITY OF ROCHESTER HILLS
OAKLAND COUNTY, MI.
(S.C.I. FROM RECORDED
WITNESS TIES)
L.C.R.C. L. 14455,
P. 108, O.C.R.

E. 1/4 CORNER
SEC. 30
T. 3 N., R. 11 E.
CITY OF ROCHESTER HILLS
OAKLAND COUNTY, MI.
(FD CONC. MON. IN SWAMP)
L.C.R.C. LI. 7732,
PA. 489, O.C.R.

REVISIONS		
ITEM	DATE	BY
PER CITY	5/15/07	SRB

**SEDIMENT BASIN ACCESS EASEMENT
ADAMS MARKETPLACE
ROCHESTER HILLS, MI**

ZEIMET WOZNIAK
& ASSOCIATES
Civil Engineers & Land Surveyors
40024 GRAND RIVER AVE, SUITE 100
NOVI, MICHIGAN 48375
P: (248) 442-1101 F: (248) 442-1241 www.zeimetwozniak.com

DATE 5/4/07	SCALE HOR: 1" = 100' FIELD BOOK NO.
DESIGNED BY RAH	JOB NO. 97144
DRAWN BY SRB	SHEET NO. 1 OF 2

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