



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: June 29, 2006
SUBJECT: Restated and Amended Consent Judgment- K-Mart/ Sheffield

On May 9, 1973, a Consent Judgment was entered that covered the 113 acres in the Southeast quarter of Section 19, which was owned by Sheffield Development Company. Since that time, there were several divisions and transfers of property, which resulted in amendments to the original consent judgment on November 22, 1977, September 25, 1980, November 4, 1992, and December 10, 1998.

The last amendment (December 10, 1998) required the K-Mart Data Center to comply with the site plan that was attached to the Amendment to the Consent Judgment. Since that time, there have been some modifications to the ownership of the Property, and K-Mart needs to change to location of the satellite dish to relocate it closer to the building. This change requires a change to the site plan. Any modification to the site plan requires an amendment to the Consent Judgment, since it is incorporated into the Consent Judgment. This request for a fifth amendment provided City Administration with an excellent opportunity to restate the Consent Judgment, with all of the amendments, into a clearer and more concise document.

Most of the provisions in this Restated and Amended Consent Judgment are merely restatements of previous consent judgment provisions. The changes brought by the proposed 5th Amendment concern only the K-Mart Data Center property (Parcels F and G). There is a new site plan that has modified the location of the satellite dish, and this new site plan would be incorporated by reference into the Amended and Restated Consent Judgment.

The Planning Commission reviewed this item at their June 27, 2006 meeting, and have recommended approval.

If you have any questions concerning this proposed consent judgment, please let us know.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SHEFFIELD DEVELOPMENT COMPANY,
A Michigan Co-Partnership, Predecessor
To DIAMOND TROY JV, LLC, a Delaware
Limited Liability Company, GM EQUITIES
LLC, A Michigan Limited Liability Company,
And SHEFFIELD OFFICE L.P., a Delaware
Partnership, and K-MART CORPORATION, a
Michigan Corporation,

Plaintiffs,

Case No. 70-69246

Vs.

CITY OF TROY, a Michigan Municipal Corporation

Defendants.

_____ /

RESTATED AND AMENDED CONSENT JUDGMENT

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

PRESENT: HON. _____
CIRCUIT COURT JUDGE

This Restated and Amended Consent Judgment governs Property
(described in Exhibit A) in the City of Troy, and re-states and re-incorporates the
Original Judgment, entered May 9, 1973; as well as the Order Amending

Judgment, entered November 22, 1977; the Stipulation to Modify Judgment and Order, entered September 25, 1980; the Third Order Amending Judgment, entered on November 4, 1992; and the Consent Fourth Order Amending Judgment, entered on December 10, 1998. In addition, the Restated and Amended Judgment sets forth additional amendments that are stipulated to between the parties, which would be a fifth amendment to the Original Judgment. These provisions have been consolidated into one integral Restated and Amended Consent Judgment.

RECITALS

- A. On May 9, 1973, this Court entered a Consent Judgment (hereafter Original Judgment), placing limitations and conditions on real property (hereafter Property) that is located in the SE ¼ of Section 19 of the City of Troy, which was previously owned by SHEFFIELD DEVELOPMENT COMPANY, the original Plaintiff.
- B. The original Plaintiff in this case was SHEFFIELD DEVELOPMENT COMPANY, a Michigan Co-Partnership. The PRUDENTIAL INSURANCE COMPANY, a New Jersey corporation, became a successor in interest, and therefore a successor Plaintiff as of the Third Order Amending Judgment (November 4, 1992). WHC-SIX REAL ESTATE LIMITED PARTNERSHIP, a Delaware Limited partnership, and K-MART CORPORATION, a Michigan Corporation, became successors in interest, and therefore successor Plaintiffs, as of the Consent Fourth Order Amending Judgment (December 10, 1998). DIAMOND TROY JV, LLC, a

Delaware limited liability company, GM EQUITIES LLC, a Michigan limited liability company, and SHEFFIELD OFFICE L.P., a Delaware limited partnership, and K-MART CORPORATION, a Michigan Corporation, are now the successors in interest, and therefore successor Plaintiffs.

- C. The legal description of the Property covered by this Restated and Amended Consent Judgment is as follows:

A part of the SE ¼ of Section 19, T2N, R11E, City of Troy, Oakland County Michigan, Being more particularly described as follows:
Commencing at the East quarter corner of Section 19;
Thence S. 89° 49' 05" W. 1379.48 ft.; Thence S. 00° 16' 35" W. 615.18 ft.; Thence S. 89° 49' 05" W. 708.54 ft.; Thence N. 00° 21' 23" E. 142.59 ft.; Thence S. 89° 49' 05" W. 553.02 ft.; Thence S. 00° 21' 23" W. 2287.59 ft.; Thence N. 89° 30' 00" E. 1398.63 ft.; Thence N. 00° 01' 30" W. 1155.04 ft.; Thence N. 89° 30' 00" E. 1260.00 ft.; Thence N. 00° 01' 30" W. 370.28 ft.; Thence S. 89° 58' 30" W. 460.0 ft.; Thence N. 00° 01' 30" W. 500 ft.; Thence N. 89° 58' 30" E. 460.0 ft.; Thence N. 00° 01' 30" W. 720.0 ft. to the point of beginning. (hereafter "Property")

- D. The Property, which is approximately 113 acres, has been divided into separate parcels. Each parcel is governed by separate provisions, which are reincorporated in this Restated and Amended Consent Judgment.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiffs DIAMOND TROY JV, LLC, a Delaware limited liability company, GM EQUITIES LLC, a Michigan limited liability company, and SHEFFIELD OFFICE L.P., a Delaware limited partnership, and K-MART CORPORATION, a Michigan Corporation, are successors in interest to the original Plaintiff, SHEFFIELD DEVELOPMENT CO., and are substituted as the Plaintiffs in this case.

2. This Restated and Amended Consent Judgment shall replace the Original Judgment and all previous amendments, and shall constitute the Judgment of the Court in this case.
3. The Recitals in Paragraphs A thru D are hereby incorporated and made a part of this Restated and Amended Consent Judgment.

Provisions Concerning Parcel A

4. Parcel A of the Property, which totals approximately 54 acres, is legally described as:

A part of the S.E. ¼ of Section 19, T2N, R11E,
City of Troy, Oakland County, Michigan, being
More particularly described as follows:
Commencing at a point S. 89° 49' 05" W. 60.00 ft. from the
East ¼ corner of Section 19;
Thence S. 89° 49' 05" W. 1319.48 ft.;
Thence S. 00° 16' 35" W. 615.18 ft.;
Thence S. 89° 49' 05" W. 708.54 ft.;
Thence N. 00° 21' 23" E. 142.59 ft.;
Thence S. 89° 49' 05" W. 553.02 ft.;
Thence S. 00° 21' 23" W. 2185.58 ft.;
Thence N. 89° 30' 00" E. 360.04 ft.;
Thence N. 00° 21' 23" E. 1528.00 ft.;
Thence N. 65° 09' 05" E. 366.53 ft.;
Thence N. 89° 49' 05" E. 1495.00 ft.;
Thence N. 00° 01' 30" W. 256.43 ft.;
Thence N. 89° 58' 30" E. 400.00 ft.;
Thence N. 00° 01' 30" W. 719.84 ft. to the point of beginning;

(Depicted on the aerial and diagram, attached as Exhibit A)

5. Parcel A is hereby determined to be usable for all uses permitted in the R-1B (One Family Residential) Zoning Classification of the Zoning Ordinance of the City of Troy, and subject to the restrictions and limitations hereinafter contained, and subject to all other provisions of the

Zoning Ordinance of the City of Troy, all standards and regulations of the City of Troy, and all other applicable provisions of the Troy City Code.

6. Plaintiff is hereby permanently restrained and enjoined from using Parcel A for any uses not permitted in the R-1B (One Family Residential) Zoning Classification of the Zoning Ordinance of the City of Troy, and all other limitations and restrictions contained in this Restated and Amended Consent Judgment.
7. A minimum of ten (10) acres of primarily wooded land on Parcel A shall be dedicated as a community park area.

Provisions Concerning Parcel B

8. Parcel B of the Property, which totals approximately 7.96 acres, is legally described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT FROM S 1/4 COR, TH N 00-21-23 E 531.94 FT, TH S 89-38-37 E 439.04 FT, TH N 45-21-23 E 47.66 FT, TH S 00-21-23 W 55.08 FT, TH S 44-20-20 E 85.69 FT, TH S 89-38-37 E 154.00 FT, TH S 00-21-23 W 439.38 FT, TH S 89-30-00 W 687.09 FT TO BEG

(Depicted on the aerial and diagram, attached as Exhibit A)

9. Parcel B is usable for all the uses permitted in the O-M (Office Mid-Rise) Zoning Classification of the Zoning Ordinance of the City of Troy with the exception of westernmost portion of the Property, which is described below, which is:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT FROM S 1/4 COR, TH N 00-21-23 E 531.94 FT, TH S 89-38-37 E 234.37 FT, TH S 00-01-30 E 528.40 FT, TH S 89-30-00 W 237.91 FT TO BEG.

10. The above described portion of Parcel B (the westernmost portion) is hereby determined to be usable for all the uses permitted in the P-1 (Vehicular Parking) Zoning Classification of the Zoning Ordinance of the City of Troy. Plaintiff is hereby permanently restrained and enjoined from using that portion of Parcel B for any purposes not permitted in the P-1 (Vehicular Parking) Zoning Classification. No buildings shall be constructed on that westernmost portion of Parcel B, which shall be used solely for parking purposes, greenbelts and landscaping.

Provisions Concerning Parcel C

11. Parcel C of the Property, which totals approximately 5.81 acres, is legally described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 1047.13 FT FROM S 1/4 COR, TH N 00-21-23 E 439.38 FT, TH N 89-38-37 W 154.00 FT, TH N 44-20-20 W 85.69 FT, TH N 00-21-23 E 55.08 FT, TH N 45-21-23 E 86.15 FT, TH N 00-21-23 E 57.38 FT, TH S 89-38-37 E 146.00 FT, TH N 00-21-23 E 139.00 FT, TH S 89-38-37 E 262.76 FT, TH S 00-01-30 E 808.79 FT, TH S 89-30-00 W 260.82 FT TO BEG.

(Depicted on the aerial and diagram, attached as Exhibit A)

12. Parcel C is usable for all the uses permitted in the O-M (Office Mid-Rise) Zoning Classification of the Zoning Ordinance of the City of Troy.

Provisions Concerning Parcel D

13. Parcel D of the Property, which totals approximately 7.92 acres, is legally described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT & N 00-21-23 E 531.94 FT FROM S 1/4 COR, TH N 00-21-23 E 508.00 FT, TH S 89-38-37 E 431.50 FT, TH N 00-21-23 E 125.00 FT, TH S 89-37-38 E 439.98 FT, TH S 00-01-30 E 156.00 FT, TH S 89-38-37 E 104.95 FT, TH ALG CURVE CONCAVE ELY, RAD 285.00 FT, CHORD BEARS S 14-35-19 W 143.81 FT, DIST OF 145.38 FT, TH S 00-01-30 E 46.61 FT, TH N 89-38-37 W 262.76 FT, TH S 00-21-23 W 139 FT, TH N 89-38-37 W 146 FT, TH S 00-21-23 W 57.38 FT, TH S 45-21-23 W 133.81 FT, TH N 89-38-37 W 439.04 FT TO BEG.

(Depicted on the aerial and diagram, attached as Exhibit A)

14. Parcel D is usable for all the uses permitted in the O-M (Office Mid-Rise)

Zoning Classification of the Zoning Ordinance of the City of Troy with the exception of the westernmost portion of the Parcel, which is described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT & N 00-21-23 E 531.94 FT FROM S 1/4 COR, TH N 00-21-23 E 508.00 FT, TH S 89-38-37 E 230.98 FT TH S 00-01-30 E 508.14 FT, TH N 89-38-37 W 234.37 FT TO BEG.

15. The above described westernmost portion of Parcel D is hereby

determined to be usable for all the uses permitted in the P-1 (Vehicular Parking) Zoning Classification of the Zoning Ordinance of the City of Troy. Plaintiff is hereby permanently restrained and enjoined from using that portion of Parcel D for any purposes not permitted in the P-1 (Vehicular Parking) Zoning Classification. No buildings shall be constructed on that westernmost portion of Parcel D, which shall be used solely for parking purposes, greenbelts and landscaping.

16. To the extent that the parking, density, set backs, tax parcel assignments or tax split laws, rules, and regulations were satisfied prior to the transfer of the property into a separate Parcel D, and would be satisfied if the

property legally were consolidated, then the City would not enforce these restrictions against Plaintiffs or their successors and assigns on this Parcel.

Provisions Concerning Parcel E

17. Parcel E of the Property, which totals approximately 11.04 acres, is legally described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT & N 00-21-23 E 1039.94 FT FROM S 1/4 COR, TH N 00-21-23 E 488.06 FT, TH N 65-09-05 E 366.53 FT, TH N 89-49-05 E 536.38 FT, TH S 00-01-30 E 524.20 FT, TH N 89-38-37 W 439.98 FT, TH S 00-21-23 W 125.00 FT, TH N 89-38-37 W 431.50 FT TO BEG.

(Depicted on the aerial and diagram, attached as Exhibit A)

18. Parcel E is usable for all the uses permitted in the O-M (Office Mid-Rise) Zoning Classification of the Zoning Ordinance of the City of Troy with the exception of the westernmost and northernmost portion of the Parcel, which is described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT & N 00-21-23 E 1039.94 FT FROM S 1/4 COR, TH N 00-21-23 E 488.06 FT, TH N 65-09-05 E 366.53 FT, TH N 89-49-05 E 536.38 FT, TH S 00-01-30 E 100.00 FT, TH S 89-49-05 W 514.24 FT, TH S 65-09-05 W 140.01 FT, TH S 00-01-30 E 484.75 FT, TH N 89-38-37 W 230.98 FT TO BEG.

19. The above described westernmost and northernmost portion of Parcel E is hereby determined to be usable for all the uses permitted in the P-1 (Vehicular Parking) Zoning Classification of the Zoning Ordinance of the City of Troy. Plaintiff is hereby permanently restrained and enjoined from using that portion of Parcel E for any purposes not permitted in the P-1

(Vehicular Parking) Zoning Classification. No buildings shall be constructed on that westernmost and northernmost portion of Parcel E, which shall be used solely for parking purposes, greenbelts and landscaping.

20. The office building, at 3310 W. Big Beaver Rd. (225,889 square feet) was and is required to be at least 200 feet from the property line of the adjacent Beach-Wood Recreation Association, Inc. and 300 feet from Lot #55 (2331 Chelsea Court), and 325 feet from Lot # 34 (2207 Babcock Drive), which are in the Sheffield Manor Subdivision, in the City of Troy.

Provisions Concerning Parcel F

21. Parcel F of the Property, which totals approximately 4.61 acres, is legally described as:

Part of the Southeast $\frac{1}{4}$ of Section 19, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan being more particularly described as follows:

Beginning at a point which is North 00 degrees 21 minutes 23 seconds East 102.01 feet along the North and South $\frac{1}{4}$ line of Section 19, and North 89 degrees 30 minutes 00 seconds East, 360.04 feet and North 00 degrees 21 minutes 23 seconds East, 1008.94 feet and South 89 degrees 38 minutes 37 seconds East, 872.52 feet from the South $\frac{1}{4}$ corner of Section 19, Town 2 North, Range 11 East; Thence North 00 degrees 01 minutes 30 seconds West, 680.20 feet; thence North 89 degrees 49 minutes 05 seconds East, 327.00 feet; Thence South 00 degrees 01 minutes 30 seconds East 537.20 feet; Thence Southwesterly 275 .60 feet along a curve concave to the Southeast (radius of 285.00 feet, central angle of 55 degrees 24 minutes 21 seconds, long chord bears South 56 degrees 54 minutes 21 seconds West 264.99 feet); Thence North 89 degrees 38 minutes 37 seconds West, 104.94 feet to the point of beginning.

(Depicted on the aerial and diagram, attached as Exhibit A)

22. The 1998 Amendment to the Original Consent Judgment (now incorporated into this Restated and Amended Consent Judgment) required the building at 2240 Cunningham (hereafter referred to as the Data Center) on Parcel F to be at least 140 feet away from any residential lot line. Landscaping was required for the entire 140-foot setback area, with the exception that 30 parking spaces can be located within the setback area that would count towards the amount of parking required by the City for the Data Center development.
23. Plaintiffs were required by the 1998 amendments to the original consent judgment (now incorporated into this Restated and Amended Consent Judgment) to complete landscaping for Parcel F in accordance with the Planting Plan (with a revision date of October 30, 1998), which is attached as Exhibit C (3 pages).
24. Plaintiff was and is required; pursuant to the provisions of the 1998 amendments to the original consent judgment (now incorporated into this Restated and Amended Consent Judgment), to operate the building at the Data Center in a manner that shall never cause the noise level from the building to exceed 65 decibels at any residential lot line.
25. The 1998 amendments to the Consent Judgment (now incorporated into this Restated and Amended Consent Judgment) also requires all rooftop equipment for the building at the Data Center to be totally screened from view from all sides. In addition, the height of the screening elements shall be at least equal to the height of the equipment being screened. This

- screening was required to be in place prior to the issuance of occupancy permits for the building at the Data Center, and must remain intact.
26. Parcel F shall be developed only in accordance with the attached Site Plan, which is attached as Exhibit D, and is hereby approved.
27. Plaintiffs and/or their successors shall be entitled to develop a new curb cut from Cunningham Drive, to provide ingress and egress to Parcel F, in accordance with the attached Site Plan.
28. In accordance with the attached site plan, Plaintiffs and/or their successors shall not be required to provide more than 209 parking spaces on the Parcel to service the existing Data Center.
29. Plaintiffs shall be permitted to affix a satellite dish and generator to the property on Parcel F, in accordance with the Site Plan attached as Exhibit D.
30. Plaintiffs shall provide sufficient screening around the satellite dish and generator in a manner that is consistent with the terms of this Consent Judgment, as well as the City of Troy Ordinances, Development Standards, Rules and/or Regulations.
31. In accordance with the attached site plan, Plaintiffs and/or their successors shall not be required to provide landscaping on more than One Thousand Nine Hundred Ninety Four (1,994) square feet of land, which is located along the east-west boundary line behind the Data Center.

Provisions Concerning Parcel G

32. Parcel G of the Property, which totals approximately 11.81 acres, is legally described as:

Part of the Southeast $\frac{1}{4}$ of Section 19, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan being more particularly described as follows:

Beginning at a point which is North 00 degrees 21 minutes 23 seconds East 102.01 feet along the North and South $\frac{1}{4}$ line of Section 19, and North 89 degrees 30 minutes 00 seconds East, 360.04 feet and North 00 degrees 21 minutes 23 seconds East, 1008.94 feet and South 89 degrees 38 minutes 37 seconds East, 872.52 feet and North 00 degrees 01 minutes 30 seconds West, 680.20 feet and North 89 degrees 49 minutes 05 seconds East, 327.00 feet from the South $\frac{1}{4}$ corner of Section 19, Town 2 North, Range 11 East; thence North 89 degrees 49 minutes 05 seconds East, 631.62 feet; Thence South 00 degrees 01 minutes 30 seconds East, 88.57 feet; Thence North 89 degrees 58 minutes 30 seconds East 400 feet; Thence South 00 degrees 01 minutes 30 seconds East 440.77 feet; Thence South 89 degrees 30 minutes 00 seconds West 1007.36 feet; Thence Southwesterly 24.33 feet along a curve concave to the Southeast (radius of 285.00 feet, central angle of 04 degrees 53 minutes 29 seconds, long chord bears South 87 degrees 03 minutes 20 seconds West 24.32 feet); Thence North 00 degrees 01 minutes 30 seconds West, 537.20 feet to the point of beginning.

(Depicted on the aerial and diagram, attached as Exhibit A)

33. Parcel G includes the Parcel G-1 that was not subject to the original consent judgment, which was the southern portion of the Lutheran Church of the Master, adjacent to Coolidge Highway. Subsequently this land was combined with the properties that were part of the original consent judgment.

34. Parcel G-1 of the Property, which totals approximately 1.42 acres is legally described as:

T2N, R11E, SEC 19 PART OF SE 1/4 BEG AT PT DIST N 00-21-23 E 102.01 FT & N 89-30-00 E 360.04 FT & N 00-21-23 E 1528.00 FT & N 65-09-05 E 366.53 FT & N 89-49-05 E 1495.00 FT & S 00-01-30 E 88.57 FT FROM S 1/4 COR, TH N 89-58-30 E 400.00 FT, TH S 00-01-30 E 155.01 FT, TH S 89-58-30 W 400.00 FT, TH N 00-01-30 W 155.01 FT TO BEG.

(Depicted on the aerial and diagram, attached as Exhibit A)

35. Plaintiffs were required by the 1998 amendments to the original consent judgment (now incorporated into this Restated and Amended Consent Judgment) to complete landscaping for Parcel G in accordance with the Planting Plan (with a revision date of October 30, 1998), which is attached as Exhibit C (3 pages).
36. Plaintiffs were and are also required to maintain the landscaped and parking areas of Parcel F at the same level of maintenance as occurs on the Property to the south, which is known as the K-Mart headquarters building, located at 3100 W. Big Beaver Rd., Troy, MI.

Provisions Concerning Parcels B, C, D, E, F and G

37. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Plaintiff was and is required to comply with the Landscaping Plan (attached as Exhibit B) that buffers the Sheffield Office Development from the adjacent residential property. This landscaping was required to be installed in the first planting season following September 25, 1980, with replacements required for any plant that died within two years of the original installation, except as set forth in the paragraph below.

38. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: The Landscaping Plan (attached as Exhibit B), also required and requires Plaintiff to maintain in perpetuity the landscaping and planted materials erected on the berms that are required on the Landscaping Plan (Exhibit B), and which are owned by Plaintiff and serve as a buffer to the adjacent residential property, including Lot #34, Sheffield Manor Subdivision (2207 Babcock Drive); and Lot #55, Sheffield Manor Subdivision (2331 Chelsea Court). This perpetual maintenance requires replacement of any dead planted materials that are located on the berms.

39. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Plaintiff shall have an easement from Beach-Wood Recreation Association to allow Plaintiff or its successors or assigns to come on the property of Beach-Wood Recreation Association to perform the necessary landscaping installation and/or maintenance, as set forth in the preceding paragraph.

40. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Plaintiff agrees that if the neighboring residential property owners or their successors at 2207 Babcock Dr. and/or 2331 Chelsea Court, Troy, MI are required to initiate litigation to enforce the provisions of the required landscaping installation and maintenance, as set forth above, then Plaintiff

will reimburse the participating neighboring residential property owners in the amount of their actual reasonable attorney fees.

41. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Plaintiff also agreed to pay Beach-Wood Recreational Association the sum of \$18,000.00, to be held in escrow by Charles L. Burleigh, Jr.. This escrowed amount was to be used to pay the costs of landscaping the south berm located on the Beach-Wood Recreational Association property, in accordance with the Landscaping Plan (attached as Exhibit B). Any amount of the \$18,000 that was not necessary to complete the landscape improvements on the south berm was unrestricted.

42. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Plaintiff granted Beach-Wood Recreational Association an easement to maintain a fence on Plaintiff's property twelve (12) feet from the south edge (base) of the berm between Plaintiff's property and the Beach-Wood Property. This easement is provided to allow for grading, soil preparation, and seeding of the south face of the south berm located on the Beach Wood Recreational Associational property, and to provide light from one or more fixtures on a pole in the parking lot (the location of which could be determined by Plaintiff) of the Project to illuminate the bathhouse area of the Beach-Wood property for purposes of security.

43. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Pursuant to the original consent judgment the Plaintiffs were permitted to construct 850,000 square feet of office development.
44. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: There shall be a minimum of 3,000 parking spaces on Parcels B, C, D, E, F and G. These parking spaces shall conform to the layout standards of the City of Troy Zoning Ordinance.
45. In addition to the previously stated provisions regarding the individual parcels, the following provisions apply to Parcels B, C, D, E, F and G: Plaintiff and its successors have constructed 645,699 square feet of the original 850,000 feet office development allowance on Parcel B, C, D and E as follows: 3250 W. Big Beaver Rd. (149,134 square feet) on Parcel B; 3270 W. Big Beaver Rd. (110,140 square feet) on Parcel C; 3290 W. Big Beaver Rd. (160,536 square feet) on Parcel D; and 3310 W. Big Beaver Rd. (225,889 square feet) on Parcel E. In addition, pursuant to a revision in 1977, 225,000 feet of the original allowed gross square footage for office development was transferred to Parcels F and G, which results in a total amount of gross office square footage that would exceed the original consent judgment's allocation of 850,000 square feet if used. Of this amount, 89,158 square feet has been used for the construction of a Data Center on Parcel F, which was originally intended to serve the K-Mart

headquarters, which was located on the south side of Cunningham Drive, south of Parcels F and G.

Provisions Concerning Parcels F and G

46. In addition to the previously stated provisions regarding the individual and combined parcels, the following provisions apply specifically to Parcels F and G, and to the extent that the parking, density, set backs, tax parcel assignments or tax split laws, rules, and regulations were satisfied prior to the division of the Property into separate Parcels F and G, then the City would not enforce these restrictions against Plaintiff K-Mart or any of its successors and assigns.

47. In addition to the previously stated provisions regarding the individual parcels, Plaintiffs are also required to maintain the landscaped and parking areas of Parcel F and Parcel G at the same level of maintenance as occurs on the Property to the south, which is known as the K-Mart headquarters building, located at 3100 W. Big Beaver Rd., Troy, MI.

Dedications of Right of Way

48. Plaintiff has conveyed to the City of Troy, by virtue of a Quit Claim deed, the following Property:

- a. A strip of land one hundred feet (100) in width generally abutting the so-called Kresge office property and extending from Coolidge Road to Big Beaver Rd. Plaintiff has constructed, at its expense, a loop paved road on such

Property (Cunningham Drive), in accordance with surveys, plans and specifications approved by the City of Troy.

- b. A strip of land one hundred and two (102) feet wide for Big Beaver Road right of way, which is legally described as follows:

A part of the S.E. $\frac{1}{4}$ of Section 19, T2N, R11E, City of Troy, Oakland County, Michigan, being more particularly described as: Commencing at the South quarter corner of Section 19;
Thence N. $89^{\circ} 30' 00''$ E. 1398.63 ft.;
Thence N. $00^{\circ} 01' 30''$ W. 102.00 ft.;
Thence S. $89^{\circ} 30' 00''$ W. 1397.95 ft.;
Thence S. $00^{\circ} 21' 23''$ W. 102.01 ft. to the point of beginning.

(Contains 142,628 square feet or 3.27 acres)
(Depicted on the aerial and diagram, attached as Exhibit A-3)

- c. A strip of land seventeen (17) feet wide along Beach Road, which is legally described as follows:

A part of the S.E. $\frac{1}{4}$ of Section 19, T2N, R11E, City of Troy, Oakland County, Michigan, being more particularly described as: Commencing at a point N. $00^{\circ} 21' 23''$ E. 1282.10 ft. from the South quarter corner of Section 19;
Thence N. $00^{\circ} 21' 23''$ E. 1005.49 ft.;
Thence N. $89^{\circ} 49' 05''$ E. 17.00 ft.;
Thence S. $00^{\circ} 21' 23''$ W. 1005.65 ft.
Thence N. N. $89^{\circ} 38' 37''$ W. 17.00 ft. to the point of beginning.

(Contains 17,094 square feet or 0.39 acres)
(Depicted on the aerial and diagram, attached as Exhibit A-3)

49. Should the legal descriptions, dimensions and/or surveys contained in this

Restated and Amended Judgment and the Exhibits attached hereto

require correction in order to accomplish the purposes of this Restated and Amended Judgment, then this may be accomplished by the mutual agreement of the parties.

50. In order to effectuate the intent of this Restated and Amended Consent Judgment and to reconcile any differences of the parties that may occur during the performance of this Restated and Amended Consent Judgment, the Court shall retain jurisdiction of this cause.
51. The provisions of this Restated and Amended Consent Judgment shall be covenants running with the land, and shall be binding upon and inure to the benefit of the parties hereto, their officers, partners, employees, representatives, heirs, successors and assigns and all others acting under their direction and control.
52. This Restated and Amended Consent Judgment may be amended from time to time with the written consent of Plaintiff and the City.
53. Except as expressly restated in this Restated and Amended Consent Judgment, the Original Judgment and the subsequent amendments to the Original Judgment shall be of no further force or effect.
54. The rights and obligations of Plaintiff under this Restated and Amended Consent Judgment are assignable by Plaintiff and upon the sale of the Property, or upon the assignment of Plaintiff's rights and obligations under this Amended Consent Judgment and the City's receipt of the assumption of such assignee of the terms hereof, Plaintiff shall be automatically released of any obligations under this Amended Consent Judgment.

55. A certified copy of this Amended Consent Judgment shall be recorded with the Oakland County Register of Deeds, in regard to the Property described herein, and the Register of Deeds is directed to accept the same for recording.

Circuit Court Judge

Approved as to Form:

City of Troy



1 inch equals 400.0 feet

EXHIBIT A (Overall Parcel)

Date: May 2006

Beach

Coolidge

Overall Parcel
113 Acres
(The Parcel)

Big Beaver



Graphic Scale: 1"=400'

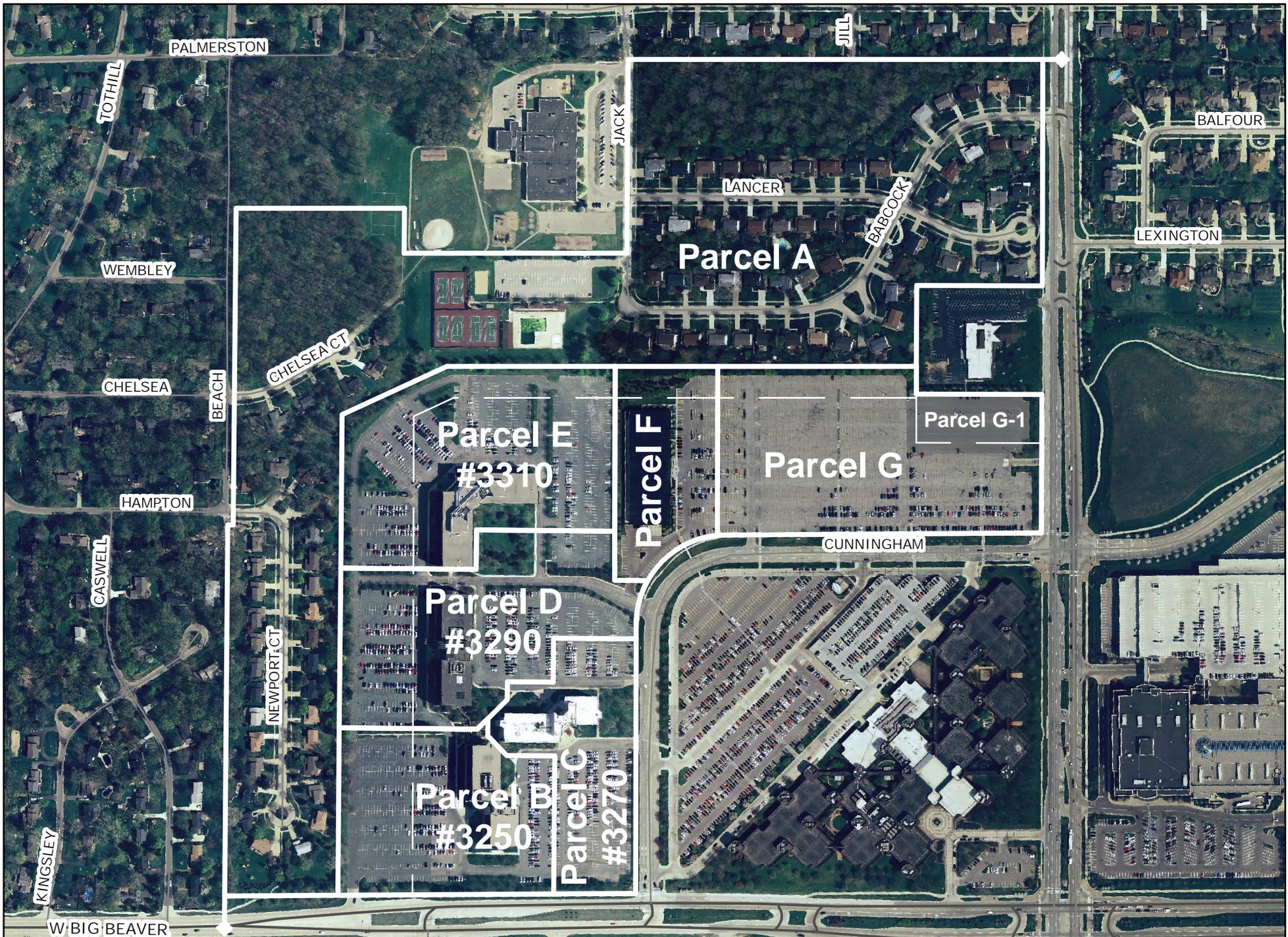


CITY OF TROY
OAKLAND COUNTY, MICHIGAN

EXHIBIT A
Overall Parcel

SCALE	DRAWN BY	CHECKED	FILE
HOR. 1"=400'	NAME GJB III	NAME	See Above
VER.	DATE 5-30-06	DATE	VIEW #1
DOCUMENT PREPARED BY George J. Ballard III LAND SURVEYOR		CONTRACT No.	SHEET No.
		STEVEN J. VANDETTE CITY ENGINEER	JOB No.

DATE	REV.



1 inch equals 400.0 feet

EXHIBIT A-1 (Individual Parcels)

Date: May 2006

Beach

E 1/4 Cor.
Sec. 19

Coolidge

Parcel A

Parcel E
•3310

Parcel F

Parcel G

Parcel G-1

Cunningham

Parcel D
•3290

Parcel C
•3270

Cunningham

Parcel B
•3250

Big Beaver

S 1/4 Cor.
Sec. 19



Graphic Scale: 1"=400'



CITY OF TROY
OAKLAND COUNTY, MICHIGAN

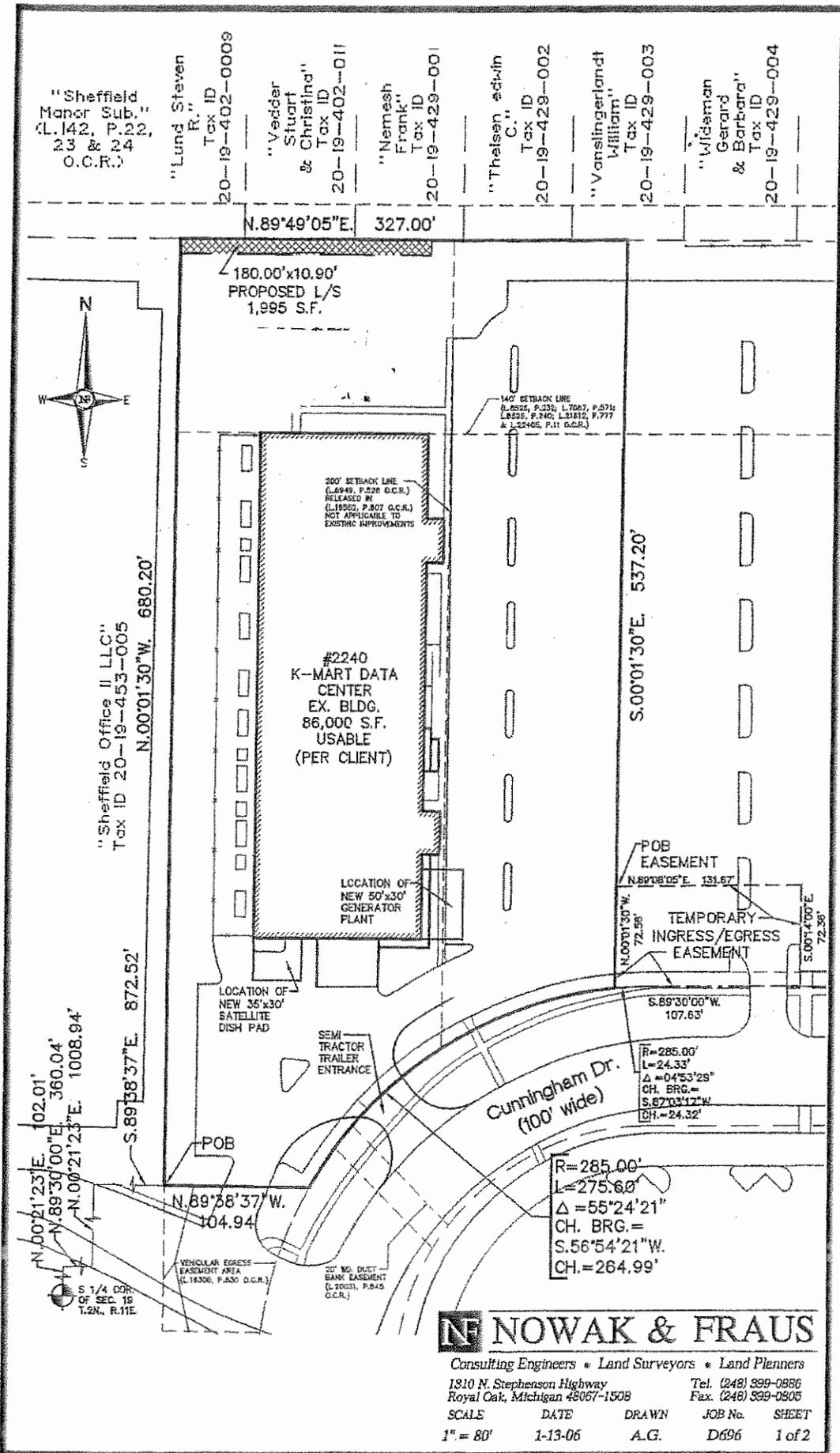
EXHIBIT A-1
Individual Parcels

SCALE	DRAWN BY	CHECKED	FILE
HOR. 1"=400'	NAME GJB III	NAME	See Above
VER.	DATE 5-30-06	DATE	VIEW #1
SHEET No.		JOB No.	
STEVEN J. VANDETTE			
CITY ENGINEER			

DOCUMENT PREPARED BY
George J. Ballard III
LAND SURVEYOR

CONTRACT No.

DATE REV.



NF NOWAK & FRAUS

Consulting Engineers • Land Surveyors • Land Planners

1810 N. Stephenson Highway
Royal Oak, Michigan 48067-1508

Tel. (248) 999-0886
Fax. (248) 999-0805

SCALE DATE DRAWN JOB No. SHEET
1" = 80' 1-13-06 A.G. D696 1 of 2

Exhibit D