



**TO:** Members of the Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
**DATE:** August 22, 2006  
**SUBJECT:** 5<sup>th</sup> Amendment to Consent Judgment-K-Mart/ Sheffield

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On May 9, 1973, a Consent Judgment was entered that covered the 113 acres in the Southeast quarter of Section 19 of the City of Troy. This property was owned by Sheffield Development Company at the time. Since 1973, there have been several divisions and transfers of property, which have resulted in amendments to the original consent judgment on November 22, 1977, September 25, 1980, November 4, 1992, and December 10, 1998. The December 10, 1998 allowed for the K-Mart Data Center.

At the time of the December 1998 amendment, the property was owned by K-Mart. Since that time, Diamond Troy JV has acquired the property. However, K-Mart (and its successors) have an agreement to purchase back the portion of the property where the K-Mart Data Center is currently located. This transaction will require a parcel split, and will also require the relocation of the satellite dish that services the Data Center.

In the 1998 amendment to the Consent Judgment, the site plan was incorporated by reference. The permitted location for the satellite dish is identified on this site plan. There needs to be a new amendment to the Consent Judgment at this time to allow the property split, and to modify the permitted location for the satellite dish, as well as to incorporate a new site plan that will govern the property.

The Planning Commission reviewed the revised site plan, and recommended approval. When the item was presented to the Planning Commission, it was presented as a full restatement of the consent judgment that incorporated all of its amendments. It was created in order to clarify the governing provisions for the property, and to reflect some of the subsequent parcel splits. The restatement also clearly identified each separate parcel by letter and map and aerial, and specified the restrictions that were applicable to each parcel. When the site plan was presented to the Planning Commission, it was an attachment to the proposed restatement. This was the document that was originally presented in the July 10, 2006 City Council agenda packet. However, the item was pulled from the Council agenda, after a last minute request of the attorney representing GM Equities. The attorney objected to the restatement of the judgment, and opined that it somehow expanded his client's responsibilities as a successor property owner.

Since all parties must agree to any amendments to a Consent Judgment, a more limited 5<sup>th</sup> Amendment to the Consent Judgment was prepared to address only the parcel that is on the north side of Cunningham, where the K-Mart Data Center is located. This 5<sup>th</sup> Amendment will allow the split of property, and will allow relocation of the satellite dish.

It is the recommendation of City Administration that the 5<sup>th</sup> Amendment to the Consent Judgment, as well as the revised site plan, be approved. As always, if you have any questions concerning the above, please let me know.

**STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT**

DIAMOND TROY JV, LLC, a Delaware limited liability company,  
GM EQUITIES LLC, a Michigan limited liability company,  
KMART CORPORATION, a Michigan corporation,  
and SHEFFIELD OFFICE II, L.L.C., a Delaware limited liability company,

Plaintiffs,

v

Case No. 70-69246

CITY OF TROY, a municipal corporation, its  
officers, employees and agents,

Defendants.

\_\_\_\_\_ /

**FIFTH ORDER AMENDING CONSENT JUDGMENT**

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

PRESENT: HON. \_\_\_\_\_  
CIRCUIT COURT JUDGE

DIAMOND TROY JV, L.L.C., GM EQUITIES L.L.C., KMART  
CORPORATION, SHEFFIELD OFFICE II L.L.C, and the CITY OF TROY consent to  
the entry of this Fifth Order Amending Consent Judgment ("Amendment").

## RECITALS

A. On May 9, 1973, this Court entered a "Consent Judgment" affecting certain property (the "Property"), described 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.

B. The original parties to the Consent Judgment were Sheffield Development Company, a Michigan co-partnership ("Sheffield"), and the City of Troy, a municipal corporation, its officers, employees and agents (the "City").

C. Kmart Corporation, a Michigan corporation ("Kmart"), purchased approximately 16.4 acres of the Property from Sheffield. This portion of the Property is designated as Parcel D-1, with Parcel Number 88-20-19-430-002. Parcel D-1 was later reconfigured to include 1.42 acres of land Kmart acquired from Lutheran Church of the Master, which was not part of the original consent judgment.

D. This Court entered an Order Amending Judgment on November 22, 1977, and Stipulation to Modify Judgment and Order on September 25, 1980, in order to clarify the respective rights of the parties and reflect certain changes occurring since the date of the Consent Judgment.

E. A Third Order Amending Judgment was entered by this Court on November 4, 1992, which reflected further changes occurring since the date of the Consent Judgment, and

substituted the Prudential Insurance Company of America, a New Jersey corporation ("Prudential"), Sheffield's successor in interest, as plaintiff in the place of Sheffield.

F. Prudential subsequently conveyed its land interests in the Property to WHC-SIX Real Estate Limited Partnership, a Delaware limited partnership ("WHC-SIX").

G. A Fourth Order Amending Judgment was entered by this Court on December 10, 1998, which reflected further changes occurring since the date of the Consent Judgment, and substituted WHC-SIX and Kmart, Prudential's successors in interest, as plaintiffs in that case.

H. WHC-SIX subsequently conveyed its land interests in the Property to Sheffield Office II L.L.C., a Delaware limited liability company ("Sheffield Office"). Kmart subsequently conveyed one of its two pieces of the Property to GM Equities, LLC ("Equities").

I. On or about June 7, 2005, Kmart and Diamond Troy JV, LLC ("Diamond") entered into a certain agreement, as amended, which, in part, provided that Kmart would convey to Diamond Parcel D- 1 and legally described in Exhibit "A", which was Kmart's only remaining land interest in the Property. Pursuant to the foregoing agreement, once Kmart conveyed Parcel D-1 to Diamond, Diamond would then divide Parcel D- 1 into Parcels D-1-A and D-1-B and reconvey Parcel D-1-B back to Kmart. The legal descriptions of Parcels D-1-A and D-1-B are described in Exhibit "C". The Kmart Data Center ("Data Center") is currently located on this Parcel D-1-B.

J. In order to effectuate the reconveyance of Parcel D-1-B to Kmart and otherwise satisfy the terms of the Consent Judgment, as amended, Diamond, on behalf of and with the permission of Kmart, hereby submits a proposed Revised Site Plan attached hereto as Exhibit B.

K. Sheffield Office is a successor in interest to certain parcels of the Property formerly owned by WHC-SIX and is hereby substituted as a plaintiff in this case.

L. Equities and Diamond are successors in interest of certain parcels of the Property formerly owned by Kmart and each are hereby substituted as a plaintiff in this case.

M. The parties desire to enter into this Amendment in order to allow Diamond to divide Parcel D- 1 into Parcels D-1-A and D-1-B and approve certain improvements shown on the Site Plan to be made by Kmart or its successors or affiliates on Parcel D-1-B, as more particularly described in this Amendment.

IT IS ORDERED AND ADJUDGED that the Consent Judgment is amended to add as Paragraph 12 the following:

12(a). That Sheffield Office is substituted for WHC-SIX as a successor in interest of those parcels formerly owned by WHC-SIX and a plaintiff in this case.

12(b). That Equities and Diamond are substituted for Kmart as successors in interest of those parcels formerly owned by Kmart and are each a plaintiff in this case.

12(c). The Revised Site Plan for Parcel D-1 is hereby approved by all the parties to this Consent Judgment.

12(d). Upon entry of this Amendment, Diamond may proceed to convey to Kmart Parcel D-1-B. Kmart and/or its successors or affiliates may improve Parcel D-1-B in accordance with the Revised Site Plan (Exhibit "B"), which is attached and incorporated by reference.

12(e). The Revised Site Plan, which is attached as Exhibit B and incorporated by reference, is approved by the City through the approval of this Amendment. The Revised Site Plan includes, but is not limited to the following:

- i) Curb Cut: The City has approved a new curb cut on Cunningham Drive, for the purpose of ingress and egress for Parcel D-1-B. This new curb cut shall be located in the spot that is depicted on the Revised Site Plan.

- ii) Parking: In accordance with the attached site plan, Plaintiffs and/or their successors shall not be required to provide more than 209 parking spaces on Parcel D-1-B to service the Data Center which is located on Parcel D-1-B and commonly known as 2240 Cunningham Drive.
- iii) Equipment: Kmart intends to affix a satellite dish and generator to Parcel D-1-B, in the location shown on the Revised Site Plan. Both the satellite dish and also the generator will be in compliance with local, state, and federal law, and will have screening around them. The screening shall be in a manner that is consistent with the City of Troy Ordinances, Development Standards, Rules and/or Regulations.
- iv) Landscaping Requirement: 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-Five (1,995) square feet of land, which is located along the east-west boundary line behind the “Data Center.”

12(f). Diamond and Kmart intend to enter into a temporary easement over an existing curb cut located on Cunningham Drive for purposes of ingress and egress for Parcel D-1-B as shown on the Site Plan, upon terms and conditions that are mutually acceptable to Diamond and Kmart, until the curb cut contemplated herein is completed.

12(g). The division of Parcel D-1 into Parcels D-1-A and D-1-B is hereby approved by all parties and the City shall provide for the assignment of a separate and distinct tax identification number for Parcel D-1-B, as legally described in this Amendment to the Consent Judgment.

12(h). The division of Parcel D-1 into Parcel D-1-A and D-1-B shall not result in greater parking, density, and set back requirements for each of the individual Parcels (D- 1-A and D- 1-B), than what was originally required for Parcel D- 1 (prior to the split) by this Consent Judgment, and/or City Ordinances, Development Standards, Rules and/or Regulations. In order to determine whether the parking, density, and set back requirements are met, the amount of parking, the density, and the set backs from each individual parcel (D- 1-A and D- 1-B) shall be consolidated.

12(i). This Amendment may be executed by the parties in counterparts.

IT IS FURTHER ORDERED AND ADJUDGED that, other than as provided herein, the remaining provisions of the Consent Judgment, as amended, shall continue in full force and effect.

IT IS FURTHER ORDERED AND ADJUDGED that, the terms hereof shall supercede any and all covenants, restrictions, agreements, understandings, whether oral or written, whether recorded or unrecorded, by and among the parties hereto or their predecessor or successors, or in any manner affecting only the parcel described herein as D-1, to the extent they are inconsistent with the Consent Judgment, as amended.

IT IS FURTHER ORDERED AND ADJUDGED that a certified copy of this Amendment to the Consent Judgment shall be recorded in the office of the Oakland County Register of Deeds and the Register of Deeds is hereby directed to accept the same for recording.

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CIRCUIT COURT JUDGE

Approved for entry:

SHEFFIELD OFFICE II, L.L.C., a Delaware limited liability company

By: CROW HOLDINGS MANAGERS, L.L.C., a Texas limited liability company,

Its: Manager

By: \_\_\_\_\_

Robert A. McClain

Vice President

GM EQUITIES LLC, a Michigan limited liability company

By: \_\_\_\_\_

Madhava Reddy

Managing Member

KMART CORPORATION, a Michigan corporation

By: \_\_\_\_\_

Jeffrey Stollenwerck

Vice President-Real Estate

DIAMOND TROY JV, LLC, a Delaware limited Liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF TROY, a Michigan Municipal Corporation

By: \_\_\_\_\_

Louise Schilling, Mayor

By: \_\_\_\_\_

Tonni Bartholomew, City Clerk

**EXHIBIT "A"**

**PARCEL D- 1**

A part of the S.E. ¼ of Section 19, T.2N, R.11E, City of Troy, Oakland County Michigan, being more particularly described as follows:

Beginning at a point which is N. 00° 21' 23" E. 102.01 ft. and N. 89° 30' 00" E. 360.04 ft. and N. 00° 21' 23" E. 1008.94 ft. and S. 89° 38' 37" E. 872.52 ft. from the South ¼ corner of Section 19; Thence N. 00° 01' 30" W. 680.20 ft.; Thence N. 89° 49' 05" E. 958.62 ft.; Thence S. 00° 01' 30" E. 88.57 ft.; Thence N. 89° 58' 30" E. 400.00 ft.; Thence S. 00° 01' 30" E. 440.77 ft.; Thence S. 89° 30' 00" W. 1007.36 ft.; Thence Southwesterly 299.93 ft. along the arc of a curve to the left (Radius of 285.00 ft., central angle of 60° 17' 48", long chord bears S 59° 21' 06" W. 286.28 ft.); Thence N. 89° 38' 37" W. 104.94 ft. to the point of beginning.

(Containing 715,389 square feet or 16.423 acres)



**EXHIBIT "B"**

**SITE PLAN**



**EXHIBIT "C"**

**PARCEL D- 1-A (Coolidge Road Parcel)**

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.

(Containing approximately 11.81 acres)

**PARCEL D- 1-B (K-Mart Data Center Parcel)**

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.

(Containing approximately 4.61 acres)



