

**TO:** Mayor and Members of City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Christopher J. Forsyth, Assistant City Attorney  
**DATE:** May 7, 2007  
**SUBJECT:** Hooters v. Troy – Proposed Consent Judgment

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Enclosed please find a consent judgment for your consideration. The approval of this proposed consent judgment would conclude the case that is pending at the Michigan Court of Appeals, which is an appeal of the Oakland County Circuit Court decision in favor of the City, which would otherwise likely be scheduled for oral argument in the fall of this year. In addition, the approval of this proposed consent judgment would also end the second, federal court lawsuit that was filed by Hooters. The resolution of these two cases would also mean that Hooters would not file an application to transfer their own on premises liquor license from the John R. store to the Rochester Road location. According to Hooters, this transfer request was allegedly motivated by the failure of the Troy City Council to act on the proposed January consent judgment at the regular city council meeting of April 16, 2007, as requested by the attorney for Hooters in the public comment portion of the agenda.

The procedural history of these cases may be helpful in your deliberations. In June of 2006, Hooters filed a complaint in Oakland County Circuit Court against the City. This complaint was filed shortly after City Council denied Hooters request to transfer a Class C (On Premises) Liquor License from the Wagon Wheel Saloon. Immediately after being served with this lawsuit, we filed a Motion, asking the Circuit Court to dismiss the complaint. At a July 26, 2006 court hearing, Oakland County Circuit Court Judge John J. McDonald ruled that the case should be dismissed, since local legislative bodies (such as the Troy City Council) are given extremely broad discretion in reviewing requests for new or transferred liquor licenses. Judge McDonald found that the City did not abuse its discretion in denying Hooters request for the liquor license transfer. The order dismissing the case was entered on July 28, 2006. Hooters appealed this decision on August 4, 2006, at the Michigan Court of Appeals. Hooters also filed a motion in the Michigan Court of Appeals, seeking immediate consideration and peremptory (immediate) reversal of Judge McDonald's opinion. In these motions, Hooters argued that Judge McDonald's ruling was so blatantly wrong that immediate reversal was necessary. On August 15<sup>th</sup>, the Court of Appeals issued an order denying its request for peremptory reversal, and the case remains pending at the Court of Appeals, with a likely oral argument date in Fall 2007.

Shortly after these two decisions in the state court proceeding, Hooters pulled a building permit for the renovations at the Rochester Road location. The renovations were complete, and Hooters was able to operate a restaurant as of November 1, 2006. However, the state law case was still pending as of that date, and therefore no liquor could be served without a liquor license. On November 2, 2006, Hooters served the City with a federal civil rights lawsuit in which Hooters repeated almost verbatim most of the allegations that were included in the state law complaint, which was still on appeal. In this complaint, Hooters sought damages in excess of one million dollars. We filed another immediate motion for dismissal and/or a stay of proceedings. On the January 8, 2007 City Council agenda, Council was presented with a proposed consent judgment that

would resolve the case. In the interim, the Court scheduled oral argument on our Motion to Dismiss, and Council deferred action on the proposed consent judgment until after the federal court judge issued his decision on our motion.

On February 28, 2007, Federal District Court Judge Julian Cook stayed all proceedings until the Michigan Court of Appeals ruled on the state court case. After this ruling, Hooters President Coby Brooks sent a letter addressed to Mayor Schilling, withdrawing any previously negotiated concessions. A second, and less favorable consent judgment was submitted for Council consideration in March. This settlement proposal would have essentially replaced the pole signs with wall signs, which would have exceeded the amount of wall signage that is otherwise allowed under the City of Troy ordinances. This March consent judgment was denied by City Council.

In the public comment portion of the regular City Council meeting, the attorney for Hooters indicated that they wanted the Troy City Council to act on the consent judgment proposal that was initially submitted to Council on January 8, 2007. However, since there were three members of Council absent at that meeting, and since it was not a regular agenda item, there was no vote on the proposed consent agenda at that time.

Thereafter, Hooters issued a press release, stating that the John R. Road location would be closed at the end of April. Hooters planned to file a second application with the Michigan Liquor Control Commission, seeking to transfer the on premises liquor license from one location (John R. Road) to another (Rochester Road). Since this is an intra-corporation transfer, the Michigan Liquor Control Commission (MLCC) Rules are slightly different. In this type of a transfer request, as opposed to a transfer from one licensee (Sign of the Beefcarver) to another (Hooters), local approval is not necessarily required for approval, but must be considered by the MLCC in making its final decision on the transfer request.

Since there are always risks inherent in litigation, and since Hooters was willing to sweeten the earlier settlement proposal, Council is being presented with a third consent judgment proposal (the May 2007 proposal). The terms of the new proposed consent judgment are as follows:

- Troy must approve the requested transfer of the Sign of the Beefcarver Class C Liquor license (Wagon Wheel) to Hooters of Troy.
- Upon approval of the requested transfer, Hooters would dismiss its appeal of the state court case, as well as dismiss its federal case against the City. Hooters would also forego any claims for damages, costs, or attorney fees from the City.
- Hooters would place the liquor license for the John R. Road location into escrow, and agrees to operate only one Hooters restaurant in the City of Troy.
- Hooters would permanently remove the pole sign that currently extends over the roof of the building, as well as the pole sign that is located in the parking lot to the east of the building, which is visible from Big Beaver Road.
- Hooters would be allowed to replace the pole sign near the east parking lot with up to two directional signs (entrance and exit signs), provided that each sign is no more than two square feet in size, and do not contain any logo or commercial message. The directional signs would also have to be erected near the northeastern most curb cut for the parking lot.

- Hooters would remove the outdoor seating (deck) located at the south side of the building.
- Hooters would close access to its parking lot from Henrietta.

Since this case has been handled in-house by the City Attorney's Office, there have not been any out of pocket legal expenses in defending the City. Although the City has prevailed in all decisions so far, there is always a risk that the Michigan Court of Appeals will ultimately reverse Oakland County Circuit Court Judge John McDonald. In addition, it is also possible that the MLCC could grant the transfer of the liquor license, even if the City were to object. For these reasons, Council may wish to approve the May consent judgment proposal, which guarantees reduced signage and removal of the outdoor seating/ deck area. These concessions limit the visibility of Hooters at Rochester and Big Beaver Roads, and protect the interests of the nearby residents, as well as the residential neighborhood near the now closed John R. road restaurant.

The attached consent judgment is attached for your consideration. It includes the site plan, since it depicts the location of signage and outdoor seating. The site plan will be incorporated by reference.

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HOOTERS OF TROY INC.,

Plaintiff,

v.

CASE NUMBER 06-CV- 14945  
HON. JULIAN A. COOK  
MAGIST. R. STEVEN WHALEN

CITY OF TROY,

Defendant.

\_\_\_\_\_/

EDWARD G. LENNON PLLC  
Edward G. Lennon (P42278)  
Attorney for Plaintiff  
HYMAN LIPPITT, P.C.  
Stephen McKenney (P65673)  
Co-Counsel for Plaintiff  
322 N. Old Woodward  
Birmingham, MI 48009  
248.723.1276

City of Troy – City Attorney’s Office  
Lori Grigg Bluhm (P46908)  
Christopher J. Forsyth (P63025)  
Attorney for Defendant  
500 W. Big Beaver Road  
Troy, MI 48084  
(248) 524-3320

\_\_\_\_\_ /

**JUDGMENT BY CONSENT**

At a session of said Court, held in the City of Detroit,  
Eastern District of Michigan on \_\_\_\_\_.

PRESENT: Hon. \_\_\_\_\_  
DISTRICT COURT JUDGE

HOOTERS OF TROY INC. and the CITY OF TROY consent to the entry  
of this Consent Judgment.

## RECITALS

1. Plaintiff, Hooters of Troy Inc. (“Hooters”), is a Georgia corporation and a wholly owned subsidiary of Hooters of America Inc., a Georgia corporation.

2. Plaintiff operated a Hooters restaurant located at 1686 John R Road in the City of Troy, Oakland County, Michigan. Plaintiff also currently holds a Class C liquor license for this restaurant.

3. On January 6, 2006, Plaintiff entered into an agreement with Sign of the Beefcarver, Inc. (“Beefcarver”) to purchase Beefcarver’s Class C and SDM Liquor Licenses and the requested Sunday Sales, Entertainment, and Outdoor Service permits, (collectively the “Liquor License”) which Beefcarver was using at a restaurant named the Wagon Wheel Saloon and which it operated at 2946-2950 Rochester Road in Troy. The Wagon Wheel Saloon closed on or about May 31, 2006.

4. In addition to the agreement to purchase the Liquor License, Plaintiff also agreed to the lease the property at 2946-2950 Rochester Road in which the Wagon Wheel Restaurant was located.

5. As required by the Michigan Liquor Control Code, MCL 436.1101 et. seq., Plaintiff submitted an application to the Michigan Liquor Control Commission, seeking a transfer of said Liquor License from Beefcarver to Hooters.

6. Pursuant to MCL 436.1501(2), such an application requires approval from the Troy City Council, the legislative body of the City of Troy. At

the June 19, 2006 regular City Council meeting, the Troy City Council denied Hooter's request to transfer the Liquor License from Beefcarver.

7. On June 27, 2006, Plaintiff filed a lawsuit in Oakland County Circuit Court. Plaintiff sought an order of superintending control approving the transfer of the Liquor License to Hooters. This case was dismissed by Oakland County Circuit Court Judge John McDonald. Plaintiff has appealed Judge McDonald's dismissal, and the case is pending oral argument in the Michigan Court of Appeals (Docket no. 272155).

8. On November 2, 2006, Plaintiff initiated this 42 U.S.C. § 1983 lawsuit against Defendant.

9. After extensive negotiation, the parties have reached a settlement of this §1983 lawsuit and the state court action. The parties agree that Troy City Council shall approve Plaintiff's application to transfer the Liquor License provided that Plaintiff complies with certain conditions that are further defined in this Consent Judgment. The parties also agree that this Consent Judgment shall be binding upon the parties, their successors and assigns.

10. The Court has reviewed the proposed Consent Judgment, and has verified that it currently possesses jurisdiction over this action, and has approved the form and substance of this Consent Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Consent Judgment shall constitute the final judgment of the Federal District Court, Eastern District of Michigan, and resolves all claims between the parties.

2. With the entry of this Consent Judgment by the Court, the Troy City Council approves Plaintiff's application to transfer the Liquor License from the Beefcarver to Hooters. After such time, the Troy City Clerk shall immediately forward a resolution of approval of the transfer to the Michigan Liquor Control Commission.
3. The City of Troy will reasonably cooperate and file such other additional or revised documents that reflect the above referenced approval, and as required by the Michigan Liquor Control Commission to complete or expedite the Liquor License transfer.
4. In consideration of the approval of the transfer of the Liquor License by the City of Troy, Plaintiff agrees to the following:
  - a. Plaintiff relinquishes any claim of damages against Defendant.
  - b. Plaintiff will dismiss with prejudice its claim of appeal filed with the Michigan Court of Appeals in the state court action, which is entitled *In Re Hooters of Troy Inc.*, Oakland County Circuit Court No. 06-75618 AS, Michigan Court of Appeals No. 272155.
  - c. Plaintiff will continue to cease its operation of a Hooters Restaurant at 1686 John R Road, and place its Class C liquor license for that location into escrow with the Michigan Liquor Control Commission. This Consent Judgment does not address any future transfer or sale of the John R. escrowed license, and any sale or transfer of said liquor license shall comply with the Michigan Liquor Control Code.

- d. Plaintiff shall be permitted to operate only one Hooters restaurant in Troy.
- e. Within thirty (30) days after the entry of this Consent Judgment, Plaintiff shall remove the two pole signs (collectively, "Pylon Signs F & G"), which were erected at this location. More specifically, the first pole sign Plaintiff shall remove is located a short distance from the restaurant, is in close proximity to the intersection of Rochester and Big Beaver Roads, and is the larger of the two pole signs. The second pole sign Plaintiff shall remove is located in close proximity to the northeast parking entrance to the restaurant, which also curb cuts on Big Beaver Road, and is the smaller of the two pole signs. These two pole signs are further described as F, SF Pylon, and G, DF Pylon, in the attached plan (Exh. A., incorporated by reference).
- f. Plaintiff shall be permitted to construct up to two directional signs from Big Beaver Road, which shall not exceed 2 square feet each, and which shall not contain any logos or other commercial message, and shall be limited to identifying the Entrance and Exit for the parking lot. These signs, if constructed, shall be located at the existing north easternmost curb cut of the parking lot.
- g. With the exception of the pole signs, which Plaintiff agrees to remove, and the directional signs, as referenced in Paragraph f, the amount and type of signage Plaintiff can maintain at 2946-2950 Rochester Road, is limited to that depicted in Exhibit A.

- h. Within thirty (30) days after the entry of this Consent Judgment, Plaintiff shall also remove the wood patio deck and all the outdoor seating located at the Hooters at 2946-2950 Rochester Road. The outdoor seating is located at the southeast corner of the restaurant and is described as “covered wood patio deck” in Exhibit A.
- i. Within thirty (30) days after the entry of this Consent Judgment, Plaintiff shall close access to its parking lot located at 2946-2950 Rochester Road address from Henrietta Avenue in a manner that is consistent with City of Troy ordinances and regulations.
- j. Plaintiff is permanently barred from seeking permission or any variances from the City of Troy to construct or erect additional signage at 2946-2950 Rochester Road, including but not limited to any special event signs as set forth in Chapter 85 of the City of Troy Ordinances.
- k. Plaintiff is also permanently barred from seeking permission or any variance from the City of Troy to construct or erect any outdoor seating at 2946-2950 Rochester Road. This does not preclude Plaintiff from applying for one (1) outdoor special event permit within a twelve (12) month period as set forth in Chapter 39, Section 41.16.00 of the City of Troy Ordinances.
- l. Plaintiff is further permanently barred from requesting an outdoor service permit from the Michigan Liquor Control Commission that allows for any outdoor seating at 2946-2950 Rochester Road. This

does not preclude Plaintiff from applying for a temporary outdoor service permit with the Michigan Liquor Control Commission as set forth in MI ADC R 436.1419 in conjunction with an outdoor special event permit as set forth in above paragraph k.

m. In the event Plaintiff fails to remove above described pole signs, remove the above described outdoor seating, or close access to its parking lot from Henrietta Avenue in manner consistent with City of Troy ordinances and regulations, at 2946-2950 Rochester Road, Defendant shall have the right to remove said pole signs, or remove said outdoor seating, or close said access, and charge all costs and expenses to Plaintiff. This does not preclude the parties from pursuing any other available relief under state or federal law for any violation of the terms of this Consent Judgment.

5. The parties agree to waive all costs and attorney fees incurred as result of the case.
6. By entry of this Consent Judgment, the parties, their agents, successors, assignees waive and discharge any and all claims that they may have against the other party, including its officials and employees, relating to the subject of this lawsuit.
7. In order to effectuate the intent of this Consent Judgment and to reconcile any differences of the parties that may arise in connection with the performance of this Consent Judgment, this Court shall retain jurisdiction of this action.

\_\_\_\_\_  
DISTRICT COURT JUDGE

Approved for entry:

HOOTERS OF TROY INC.

By: \_\_\_\_\_  
Coby G. Brooks, President

CITY OF TROY, a Michigan Municipal Corporation

By: \_\_\_\_\_  
Louise Schilling, Mayor

By: \_\_\_\_\_  
Tonni Bartholomew, City Clerk

Approved as to form:

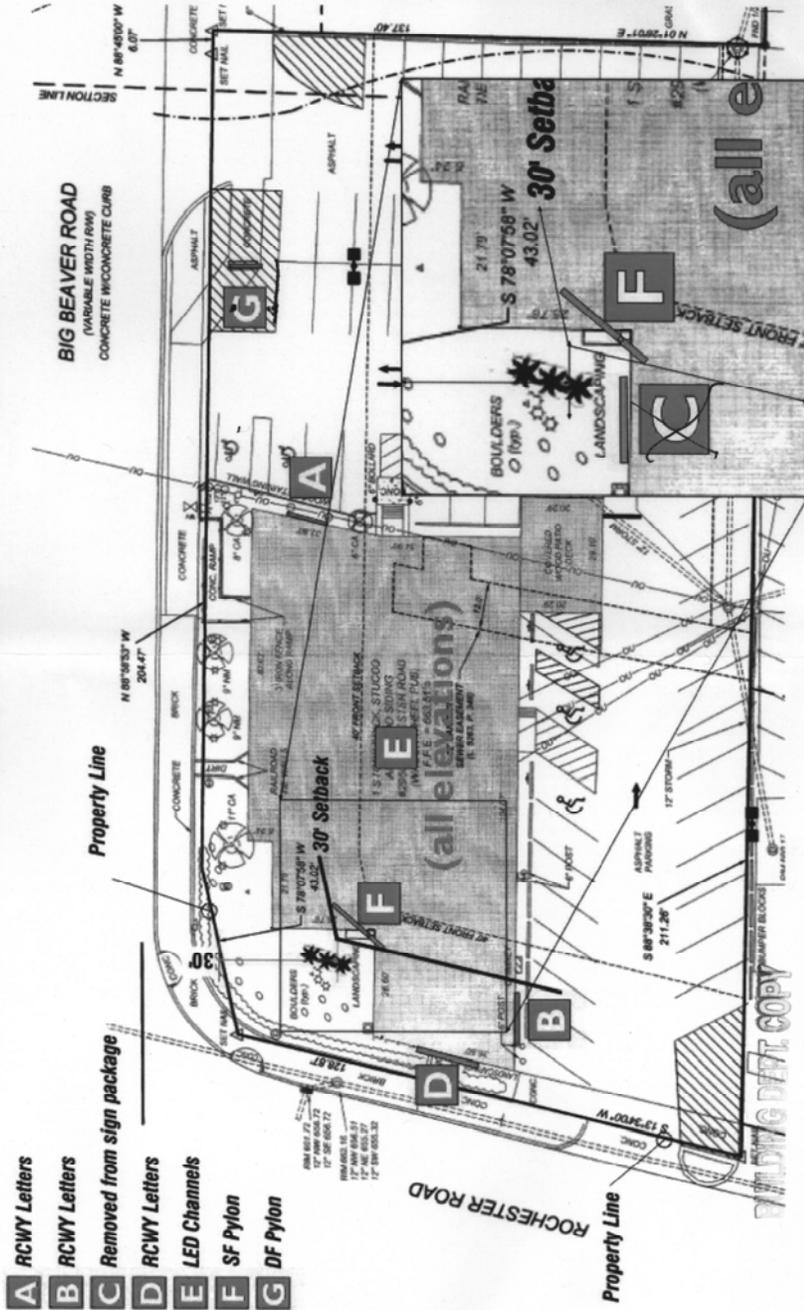
\_\_\_\_\_  
CITY OF TROY  
CITY ATTORNEY'S OFFICE  
By: LORI GRIGG BLUHM (P46908)  
CHRISTOPHER FORSYTH (P63025)  
Christopher J. Forsyth (P63025)  
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\_\_\_\_\_  
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Prepared by:

CITY OF TROY  
CITY ATTORNEY'S OFFICE  
By: s/Christopher J. Forsyth  
Lori Grigg Bluhm (P46908)  
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**EXHIBIT A**



- A** RCWY Letters
- B** RCWY Letters
- C** Removed from sign package
- D** RCWY Letters
- E** LED Channels
- F** SF Pylon
- G** DF Pylon

Scale: 1/32" = 1'

**Priority Sign** INC.

Corporate Headquarters:  
817 Riverfront Dr., Suite 200,  
Rochester, MN 55901  
PHONE: (507) 248-4898 FAX: (507) 248-0989

Regional Offices:  
Crystal Lake, IL Birmingham, AL  
Blacksburg, VA  
Minneapolis, MN

**Approval:**

L.D. # Artwork # Drawing #  
As Shown C21966pp

Designer: asl

Rev: add 30' dim (7/11/06)  
remove C, adjust pylons (8/3/06) asl

|  |   |
|--|---|
|  | X |
|  | X |

Location: **Troy, MI**

Address: **2950 Rochester Road**

Date: **07-07-06**

## AGREEMENT REGARDING LIQUOR LICENSE REQUEST

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the CITY OF TROY, MICHIGAN, a municipal corporation, with offices located at 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter known as "THE CITY", and HOOTERS OF TROY, INC., a Georgia corporation, with offices located at 1815 The Exchange, Atlanta, Georgia 30339, hereinafter known as "APPLICANT".

### RECITALS:

1. The City Council of THE CITY, for and in consideration of the following covenants and conditions, agrees to recommend to the Michigan Liquor Control Commission, approval of the transfer of ownership of the Class C license and permits now held by Sign of The Beefcarver, Inc. to the APPLICANT, located at 2946-2950 Rochester Road, Troy, Michigan 48084, Oakland County (hereinafter "APPLICATION")

2. In consideration of THE CITY'S recommendation for approval of the APPLICATION, APPLICANT hereby agrees that:

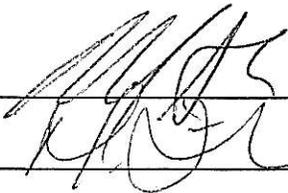
- (a) It has read and is aware of the provisions of the City of Troy Ordinances, Chapter Nos. 67, 68, 92 and Chapter No. 98 (effective 02/01/01), and agrees that it shall be deemed to have knowledge of any subsequent amendments to said Chapters which may become effective during the term of this Agreement.
- (b) It has read and is in receipt of copies of the provisions of the City of Troy, City Council Resolution No. 93-1028 regarding Entertainment Permits, and agrees that it shall be deemed to have knowledge of any subsequent amendments to the Resolution which may become effective during the term of this Agreement.
- (c) It agrees to observe and comply with all laws, statutes, ordinances, rules, regulations or resolutions of the United States government, State of Michigan, and the City of Troy, or any department or agency of the governmental entities, as well as the rules and regulations of the Michigan Liquor Control Commission as they pertain to the operation of a liquor license business in the City of Troy.
- (d) It agrees to immediately require all employees who serve/sell alcohol, to attend a recognized alcohol awareness program, and forward the names of each certified employee to the Troy Police Department. The alcohol awareness program must either be recognized by the Troy Police Department (i.e., TIPS, TAM, SERV SAFE Alcohol), or the program must be reviewed by the Troy Police Department to insure that the program is comparable to the recognized programs.

3. APPLICANT agrees that the recommendation of Approval agreed upon by the City Council is not a property right and is approved upon the express and continuing condition that no violation as set forth in paragraph 2 of this Agreement shall occur.

4. APPLICANT agrees that the recommendation of approval agreed upon by the City Council is approved upon the express and continuing condition that the physical characteristics (including, but not limited to the inside layout, building design and engineering, seating capacity, parking space allocations, fire exits, and other physical attributes); and also the nature and type of business intended to be conducted remain virtually the same.

5. APPLICANT agrees that upon a violation, after full investigation and an opportunity for said APPLICANT to be heard, upon a finding by the City Council that a violation as set forth in paragraph 2 of this Agreement has occurred, the City Council shall have just cause for revocation of said recommendation for approval.

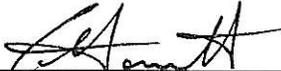
Witnesses:

  
\_\_\_\_\_

Applicant:

HOOTERS OF TROY, INC.

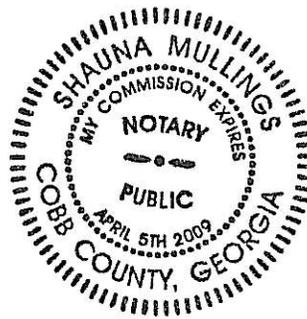
By: \_\_\_\_\_

  
Coby G. Brooks, President

Subscribed and sworn to before me  
this 31 day of March, 2006.

  
\_\_\_\_\_

Notary Public  
Cobb County, Georgia  
My commission expires: 4-5-2009



CITY OF TROY

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

Louise E. Schilling, Mayor

By: \_\_\_\_\_  
Tonni L. Bartholomew, Clerk

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public, Oakland County, Michigan  
My commission expires:

Blmfield.18796.60706.734623-1