

TO: Mayor and Members of City Council
FROM: Lori Grigg Bluhm, City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: May 16, 2007
SUBJECT: Hooters v. Troy – Proposed Consent Judgment

At the City Council meeting of May 14, 2007, Council was provided with a proposed Consent Judgment that could resolve the pending cases between the parties. In this May consent judgment, Hooters agreed to provide some concessions, in exchange for Council's agreement to transfer the liquor license. One of the concessions was to close the access from Hooters parking lot to Henrietta Avenue. Hooters did not specify how this closure would occur, and the consent judgment proposal required only that the closure be completed to provide some additional protections to the neighboring residential properties on Henrietta Avenue.

As you can see in the attached aerial photograph, the parking for the Ram's Horn Restaurant is sandwiched in between the parking lot for Hooters and Henrietta Avenue. At the May 14, 2007 meeting, the operator of the Ram's Horn Restaurant indicated that the proposed closure may violate the provisions of his lease with the Sign of the Beefcarver, which also owns the Hooters Restaurant property at Big Beaver and Rochester Road. Due to the short turn around time for this item, City Administration has not yet been provided with a copy of these lease provisions, and there are no access or parking restrictions or easements on file at the Oakland County Register of Deeds. However, even though the lease provisions have not yet been verified, we presume that there are shared parking provisions that benefit the Ram's Horn Restaurant. As such, Council may wish to reconsider the closure requirement.

The proposed closure was designed to provide some protections to the neighboring residential properties on Henrietta Avenue. With these concerns in mind, Hooters has agreed to an alternative proposal, which has been incorporated into the attached May 21, 2007 proposed consent judgment.

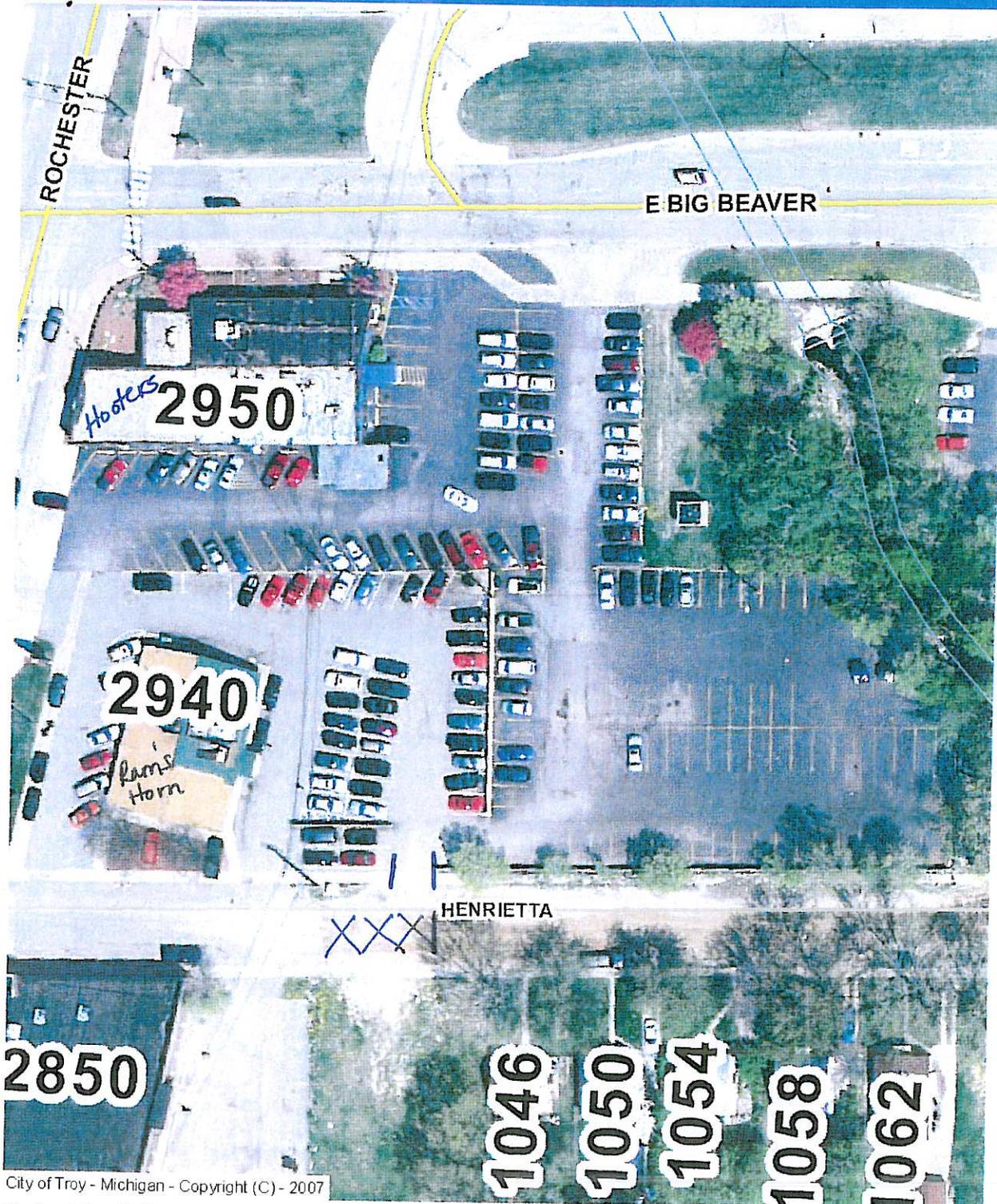
In addition to the other concessions contained in the consent judgment, such as removing the two pole signs and removing the outdoor seating, Hooters has also agreed to pay the City to re-grade and asphalt pave a portion of Henrietta Avenue near the entrance to Ram's Horn's parking lot. Hooters would also agree to pay the City for installation of appropriate signage directing traffic away from the residential housing located on Henrietta. By requiring Hooters to pay for paving this section of Henrietta, this protects the interests of the residents by eliminating the noise and dust that would have been generated by increased traffic on a gravel road. This concession also protects the interests of Ram's Horn in that its customers will continue to access its rear parking.

The attached May 21, 2007 consent judgment is attached for your consideration. It includes the site plan (depicting location of pole signs and outdoor seating) and aerial photography of the portion of Henrietta to be paved. The site plan and aerial photography will be incorporated by reference. The May 14, 2007 proposal is also included for your consideration.

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



Geographical Information Systems Online



City of Troy - Michigan - Copyright (C) - 2007

Note: The information provided by this application has been compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. It is not a legally recorded map survey. Users of this data are hereby notified that the source information represented should be consulted for verification.

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 place in escrow the amount of \$5000, which shall be used to pay for the City’s cost of re-grading and asphalt paving a portion of Henrietta Avenue, and also to pay for the installation of appropriate signage directing traffic away from the residential homes on Henrietta Avenue. Specifically, Plaintiff shall pay the cost to re-grade and asphalt pave the portion of Henrietta Avenue that begins at the current eastern end of the existing asphalt paving on Henrietta Avenue, and extends approximately 80 feet to the east, at the easternmost edge of the eastern driveway entrance to the Ram’s Horn Restaurant parking lot (described in Exhibit B, which is incorporated by reference). The amount to be paid by Plaintiff under this paragraph shall not exceed the \$5,000 that is placed in escrow, and shall be based on the actual cost, as submitted by Troy.
- 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, and remove the above described outdoor seating at 2946-2950 Rochester Road, Defendant shall have the right to remove said pole signs, or remove said outdoor seating, 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.

- n. In the event Plaintiff fails to pay for the re-grading, asphalt paving, and sign installation as described in Paragraph i, the City of Troy shall have the right to present to the escrow agent the cost incurred by the City for re-grading, asphalt paving, and sign installation for payment.
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)
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320

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

Prepared by:

CITY OF TROY
CITY ATTORNEY'S OFFICE
By: s/Christopher J. Forsyth
Lori Grigg Bluhm (P46908)
Christopher J. Forsyth (P63025)
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320
c.forsyth@ci.troy.mi.us

EXHIBIT B



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

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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.

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

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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.
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- 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:

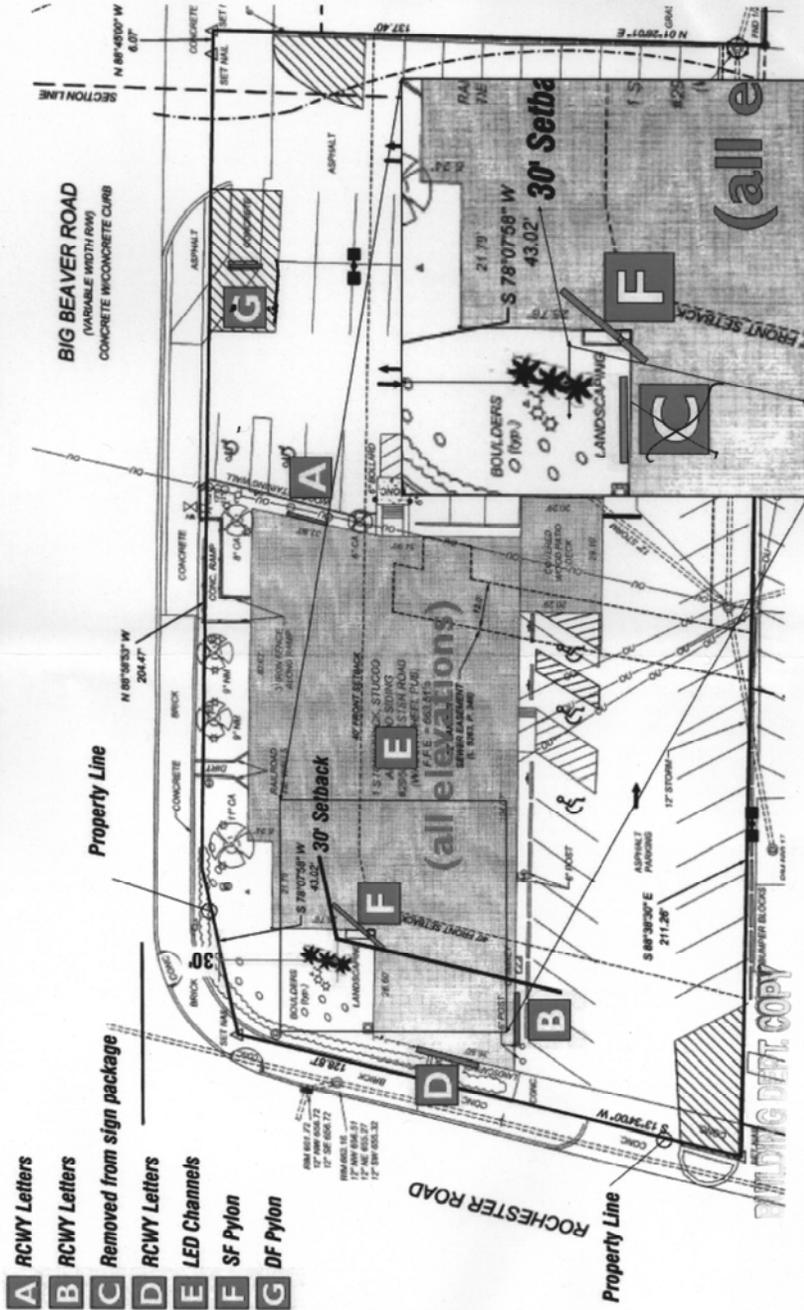
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322 N. Old Woodward
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Prepared by:

CITY OF TROY
CITY ATTORNEY'S OFFICE
By: s/Christopher J. Forsyth
Lori Grigg Bluhm (P46908)
Christopher J. Forsyth (P63025)
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320
c.forsyth@ci.troy.mi.us

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,
Cape Canaveral, FL 32910
PHONE: (321) 244-4999 FAX: (321) 244-0999

Regional Offices:
Cape Coral, FL Birmingham, AL
Blacksburg, VA
Minneapolis, MN

Designer: asl

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

	X
	X
	X

Location: Troy, MI

Address: 2950 Rochester Road

Date: 07-07-06

Approval:

L.D. # Artwork # Drawing #

As Shown C21966pp

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:

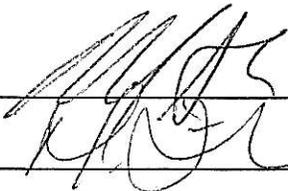
- (a) It has read and is aware of the provisions of the City of Troy Ordinances, Chapter Nos. 67, 68, 92 and Chapter No. 98 (effective 02/01/01), and agrees that it shall be deemed to have knowledge of any subsequent amendments to said Chapters which may become effective during the term of this Agreement.
- (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.

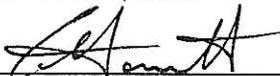
5. APPLICANT agrees that upon a violation, after full investigation and an opportunity for said APPLICANT to be heard, upon a finding by the City Council that a violation as set forth in paragraph 2 of this Agreement has occurred, the City Council shall have just cause for revocation of said recommendation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

Witnesses:



Applicant:

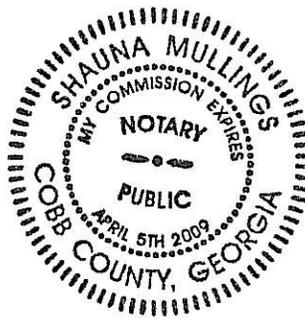
HOOTERS OF TROY, INC.

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