

TO: Mayor and Members of Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: October 11, 2007
SUBJECT: Sixth Amendment to Consent Judgment for The Pavilions of Troy

There is a 1973 Consent Judgment that governs 113 acres north of Big Beaver and west of Coolidge Highway. At that time, the property was owned by Sheffield Development Company, and the Consent Judgment allowed the Sheffield Office Complex to be constructed, as well as the residential subdivisions to the north of the office complex. The Consent Judgment also controls the 11.83 acre Parcel I of the proposed Pavilions of Troy Concept Development Plan. If Council approves the Pavilions of Troy CDP and PUD Agreement, then the Consent Judgment needs to be amended to allow development on Parcel I that is consistent with the approved CDP. An amendment is required, since the consent judgment allows office uses, as opposed to the residential uses that are proposed for the buffer area in the Pavilions of Troy CDP.

A proposed Sixth Amendment to the Consent Judgment is attached for your review. This Amendment is included on the October 15, 2007 City Council agenda, to coincide with Council's consideration of the Pavilions of Troy PUD proposal. The proposed Consent Judgment has not yet been presented to the other owners of the original 113 acre site, including GM Equities LLC, Kmart Corporation (now Sears), and Sheffield Office II, LLC., since it would be premature to present this Consent Judgment to them unless and until Council had acted on the PUD Proposal. Upon review of this proposed amendment, these owners may have non-substantive changes to the text. For example, Kmart Corporation is named as one of the Owners of the Property, but Kmart is now owned by Sears. In order to expedite the process, and to allow for these non-substantive changes, Council could pass a resolution approving the Sixth Amendment to the Consent Judgment, and authorizing the City Attorney to execute the document after all necessary parties have executed it, provided that the document is not substantively changed. It is not anticipated that there will be substantive changes to the document, especially since the majority of the parcel is already developed. However, if there are any substantive changes, then a revised document will be presented to City Council for their review and approval.

As always, if you have any questions, please let us 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
Hon. Steven N. Andrews

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

Defendants.

_____ /

SIXTH ORDER AMENDING CONSENT JUDGMENT

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

On _____

Before The Hon. _____

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

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 was formerly designated as Parcel D-1, identified by 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.(See attached Exhibit A)

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, 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.

J. A Fifth Order Amending the Consent Judgment was entered by this Court on November 28, 2006, which permitted Diamond to divide Parcel D-1 into Parcels D-1-A and D-1-B and which approved certain improvements shown on the Site Plan to be made by Kmart or its successors or affiliates on Parcel D-1-B.

K. Parcel D-1A, (11.81 acres and part of Tax ID No. 20-19-430-002), is legally described as follows:

Commencing at the Southeast Corner of Section 19, T2N, R11E, City of Troy, Oakland County, Michigan; thence N00°01’30”W 1240.08 feet along the East line of said Section 19; thence S89°30’00”W 60.00 feet for a PLACE OF BEGINNING; thence S89°30’00”W 1007.36 feet along the North right-of-way line of Cunningham Drive (100.00 feet wide); thence continuing 24.33 feet along the arc of a 285.00 foot radius

circular curve to the left, with a central angle of $04^{\circ}53'29''$, having a chord which bears $S87^{\circ}03'17''W$ 24.32 feet along the North right-of-way line of said Cunningham Drive; thence $N00^{\circ}01'30''W$ 537.20 feet; thence $N89^{\circ}49'05''E$ 631.62 feet along the South line of "Sheffield Manor Subdivision" as recorded in Liber 142, Pages 22-24, Oakland County Records; thence $S00^{\circ}01'30''E$ 88.57 feet; thence $N89^{\circ}58'30''E$ 400 feet; thence $S00^{\circ}01'30''E$ 440.77 feet along the West right-of-way line of Coolidge Highway (120.00 feet wide) to the Place of Beginning, containing 11.81 acres of land, more or less. Being subject to easements, conditions, exceptions and restrictions of record, if any.

L. Parcel D-1A is also described as Parcel I of a Planned Unit Development, named The Pavilions of Troy, which was requested by Diamond, and approved by the Troy City Council after a public hearing on October 15, 2007. This Planned Unit Development also includes 28.18 acres of property (Parcel II), which is not subject to this Consent Judgment, as Amended. This Planned Unit Development is a mixed use development, and is set forth in the approved PUD Agreement, which is recorded with the Oakland County Register of Deeds. A copy of the fully executed PUD Agreement is attached hereto as Exhibit "B."

M. The parties desire to enter into this Amendment in order to allow Diamond to develop Parcel D-1-A in accordance with the approved CDP and the PUD Agreement.

IT IS ORDERED AND ADJUDGED that the Consent Judgment is amended as follows:

1. Diamond is entitled to develop Parcel D-1A in accordance with the approved CDP and the PUD Agreement for The Pavilions of Troy, as may be amended from time to time, which is attached as Exhibit B. Amendments to or modification of the PUD Agreement shall not require further Court approval or otherwise require an amendment to the Consent Judgment.
2. In the event any term or provision of this Consent Judgment, as amended, which is inconsistent with, or contrary or supplemental to the approved PUD Agreement

for the Pavilions of Troy, the PUD Agreement shall control and such terms or provisions as they apply to Parcel D-1A are superceded, and shall be null and void.

3. Equities, Sheffield Office and Kmart shall no longer have any rights over Parcel D-1A for parking, access or otherwise pursuant to the Consent Judgment. To the extent that this Consent Judgment, as amended, required parking spaces on Parcel D-1A to support the uses of Parcels B, C, and D-1-B, those provisions are vacated. The current amount of parking on these parcels is deemed sufficient to support the current uses within the current structures.

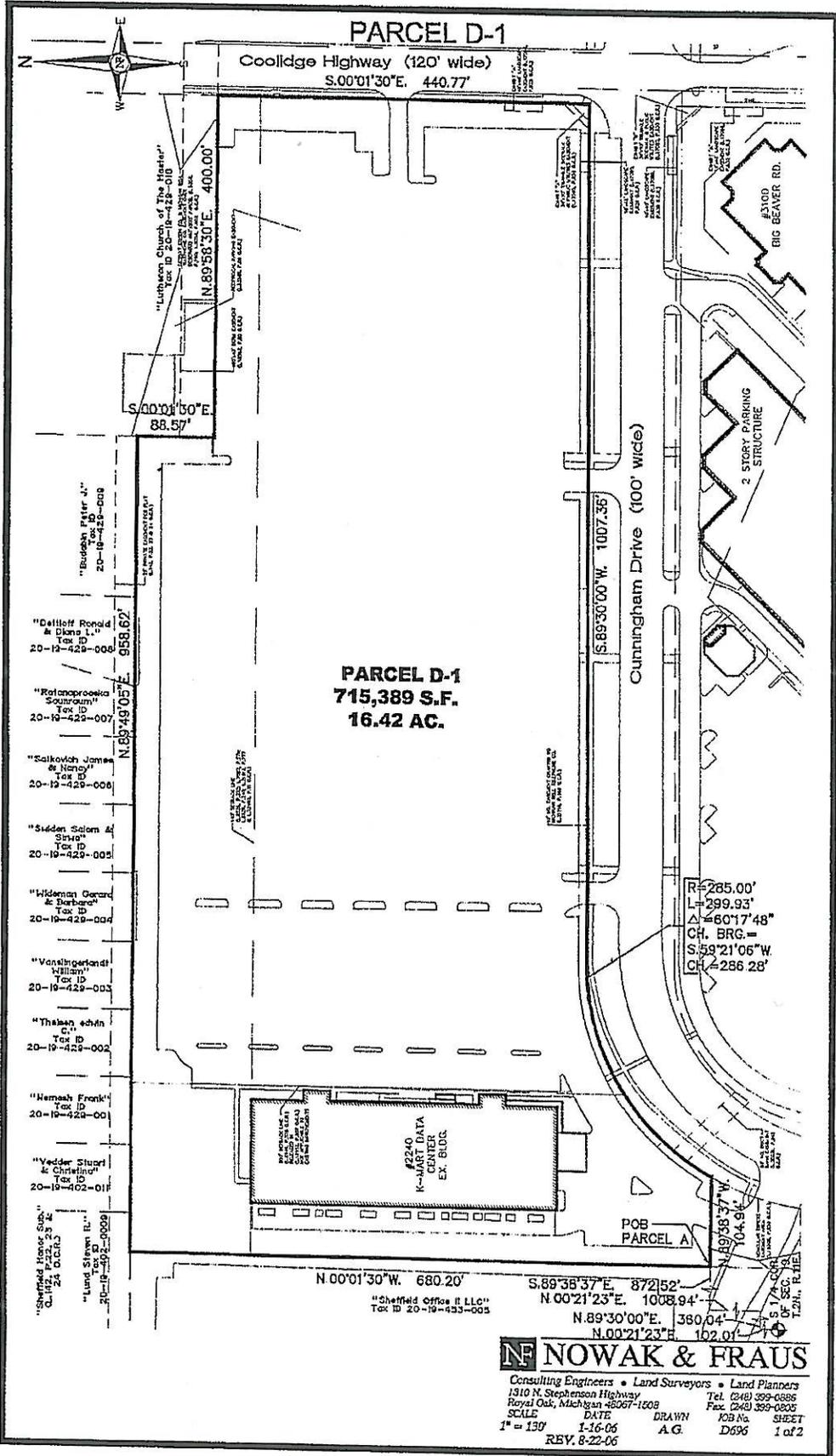
IT IS FURTHER ORDERED AND ADJUDGED that, other than as provided herein, the remaining provisions of the Consent Judgment, as amended, shall continue in full force and effect.

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 the Property.

IT IS FURTHER ORDERED AND ADJUDGED that a certified copy of this Sixth Order Amending 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.

Circuit Court Judge

Exhibit A



PARCEL D-1

Coolidge Highway (120' wide)
S.00°01'30"E. 440.77'

PARCEL D-1
715,389 S.F.
16.42 AC.

Cunningham Drive (100' wide)

R=285.00'
L=299.93'
Δ=60°17'48"
CH. BRG.=
S.59°21'06"W
CH.=286.28'

#2240
K-MART DATA
CENTER
EX. BLDG.

POB
PARCEL A

"Lutheran Church of The Healer"
Tax ID 20-18-428-010
#3100
BIG BEAVER RD.

"Boudish Peter J."
Tax ID 20-18-428-008

"Dellon Ronald & Diane L."
Tax ID 20-18-428-006

"Rotanoproska Szymanski"
Tax ID 20-18-428-007

"Salkovich James & Nancy"
Tax ID 20-18-428-008

"Studen Salam & Steve"
Tax ID 20-18-428-002

"Wideman Gerard & Barbara"
Tax ID 20-18-428-006

"Vanshigerland Military"
Tax ID 20-18-428-003

"Thalson Edwin C."
Tax ID 20-18-428-002

"Hemash Frank"
Tax ID 20-18-428-001

"Vedder Stuart & Christine"
Tax ID 20-18-402-011

"Sheffield Honor Sub."
C. 112, P. 23, 24 & 25
D. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25
Tax ID 20-18-402-009

N.00°01'30"W. 680.20'

"Sheffield Office II LLC"
Tax ID 20-18-433-005

S.89°38'37"E. 872.52'

N.00°21'23"E. 1008.94'

N.89°30'00"E. 380.04'

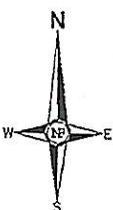
N.00°21'23"E. 102.01'

NOWAK & FRAUS

Consulting Engineers • Land Surveyors • Land Planners
1310 N. Stephenson Highway
Royal Oak, Michigan 48067-1008
Tel. (248) 399-6886
Fax. (248) 399-0805
SCALE DATE DRAWN A.G. D696 1 of 2
1" = 130' 1-16-06 REV. 8-22-06

PARCEL D-1-B

"Sheffield Manor Sub" (L. 142, P. 22, 23 & 24 O.C.R.)
 "Lund Staven R." Tax ID 20-19-402-0003
 "Vedder Stuart & Christina" Tax ID 20-19-402-0111
 "Nemesh Frank" Tax ID 20-19-429-0011
 "Theisen edwin C." Tax ID 20-19-429-002
 "Vanslingerlandt William" Tax ID 20-19-429-003
 "Wiseman Gerard & Barbara" Tax ID 20-19-429-004



N.89°49'05"E. 327.00'

180.00'x10.90'
 PROPOSED L/S
 1,995 S.F.

PARCEL D-1-B
200,867 S.F.
4.61 AC.

200 SETBACK LINE
 (L. 292, P. 23 O.C.R.)
 RELEASED BY
 (L. 1922, P. 807 O.C.R.)
 NOT APPLICABLE TO
 EXISTING IMPROVEMENTS

140' SETBACK LINE
 (L. 2624, P. 232; L. 7087, P. 371;
 L. 2525, P. 242; L. 21812, P. 777
 & L. 22405, P. 11 O.C.R.)

#2240
 K-MART DATA
 CENTER
 EX. BLDG.
 86,000 S.F.
 USABLE
 (PER CLIENT)

LOCATION OF
 NEW 50'x30'
 GENERATOR
 PLANT

LOCATION OF
 NEW 35'x30'
 SATELLITE
 DISH PAD

SEMI
 TRACTOR
 TRAILER
 ENTRANCE

POB
 EASEMENT
 N.89°08'05"E. 131.87'

TEMPORARY
 INGRESS/EGRESS
 EASEMENT

S.69°30'00"W.
 107.63'

Cunningham Dr.
 (100' wide)

R=285.00'
 L=275.60'
 $\Delta = 55^{\circ}24'21''$
 CH. BRG. =
 S.56°54'21"W.
 CH.=264.99'

N.00°21'23"E. 102.01'
 N.89°30'00"E. 360.04'
 N.00°21'23"E. 1008.94'
 S.89°58'37"E. 872.52'
 N.00°01'30"W. 680.20'

N.89°58'37"W.
 104.94'

VEHICULAR EGRESS
 EASEMENT AREA
 (L. 19304, P. 830 O.C.R.)

20' W.D. DUCT
 BANK EASEMENT
 (L. 20031, P. 843
 O.C.R.)

N.00°1'30"W.
 72.56'

S.00°14'00"E.
 72.36'

NF NOWAK & FRAUS

Consulting Engineers • Land Surveyors • Land Planners
 1310 N. Stephenson Highway Royal Oak, Michigan 48067-1508
 Tel. (248) 399-0886 Fax. (248) 399-0805
 SCALE 1" = 80' DATE 1-13-06 DRAWN A.G. JOB No. D696 SHEET 1 of 2
 REV. 8-22-06