



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm , City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: September 29, 2009
SUBJECT: Amendment of Consent Judgment- The Pavilions of Troy

Simultaneous with City Council's October 15, 2007 approval of The Pavilions of Troy Planned Unit Development (PUD), there was also an authorization to amend the 1973 consent judgment that governs 113 acres at the northwest corner of Big Beaver and Coolidge Roads (Sheffield Development v. Troy Consent Judgment, Case Number 70-69246). This amendment was necessary, since it expressly provided that the approved PUD supercedes the consent judgment as to the PUD property only. All other property is still governed by the terms of the consent judgment, as amended. The simultaneous approval did not allow for all other parties to the consent judgment to approve the amendment. Based on this, the resolution "approved the document as to substance," and authorized our office to execute a "substantively similar document, as soon as the document has been executed by the other parties to the Consent Judgment." (Resolution 2007-10-296).

Hunter Richardson of Richardson Development Group and his attorneys, Rick Rattner and Mike Benoit of Williams Williams Rattner & Plunkett, P.C. have continued to negotiate with the other property owners that are subject to the consent judgment, and as a result of this negotiation, there are some minor revisions to this version. One revision is to include the updated information regarding property transfers. Another revision is to treat each parcel separately for parking or access purposes. This allows for a property owner to request a parking deviation through the City's normal channels, without going through the cumbersome process of amending the consent judgment. This modification is intended to facilitate implementation of concepts found in the Big Beaver Corridor Study. Time is of the essence in this matter, since one of the property owners intends to seek a parking deviation. In addition, this consent judgment needs to be amended in order to proceed with the PUD process, and the prospective purchaser of the PUD property, Grand Sakwa, is also interested in getting this matter finalized as quickly as possible.

Since it has been almost two years, this amendment is being brought back for your review and anticipated approval. Upon information and belief, all property owners subject to this consent judgment have given tentative approval. Although we generally obtain all signatures before presenting the proposed amendment to City Council, it may be difficult to obtain some of the signatures from people located out of state, and it may not be possible to obtain all signatures prior to the October 5, 2009 City Council meeting. Therefore, we are again proposing a resolution, similar to the resolution approved in 2007, which requests the City Council's approval of the Sixth Order Amending Consent Judgment, and authorizes us to execute the document on behalf of the City after all other signatures are affixed.

Please let us know if you have any questions regarding this matter.

**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 OWNER, LLC, a Delaware limited liability company,

Plaintiffs,

v

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

Defendants.

Case No. 70-69246
Hon. Steven N. Andrews

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 OWNER, LLC 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 15 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. The Third

Order Amending Judgment also established Parcel D-2, which is an approximately 5.815 acre parcel of property. At the time of the entry of the Third Order, Parcel D-2 was owned by Prudential and subsequently conveyed to Kmart.

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 its interest in Parcel D-2 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. Diamond conveyed Parcel D-1-B to Kmart in November, 2007.

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. In December of 2007, Sheffield Office conveyed the portion of the Property identified on Exhibit “B” attached hereto as the “Sheffield Parcel” to Sheffield Owner, LLC, a Delaware limited liability company (“Sheffield Owner”).

L. As a result of the modifications to the Consent Judgment and the other conveyances referenced in Paragraphs B. through J. above, as of the date hereof, the Property is configured as depicted on Exhibit “B” attached hereto and made a part hereof. The Parcels identified on Exhibit B are currently owned as follows:

- (i) The portion of the Property identified as “Parcel D-1-A” is currently owned by Diamond.
- (ii) The portion of the Property identified as “Parcel D-1-B” is currently owned by Kmart.
- (iii) The portion of the Property identified as “Parcel D-2” is currently owned by Equities.
- (iv) The portion of the Property identified as the “Sheffield Parcel” consists of three separate parcels of property, all currently owned by Sheffield Owner.

The Sheffield Parcel, Parcel D-1-A, Parcel D-1-B and Parcel D-2 as described in this Sixth Order Amending Consent Judgment, collectively, comprise all of Parcel B, Parcel C and Parcel D, as identified in this original Consent Judgment.

M. Parcel D-1-A 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 (identified in the PUD Agreement as 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 "C." As used in this Sixth Order Amending Consent Judgment, the term "PUD Agreement" shall mean the PUD Agreement attached hereto as Exhibit C, as may be amended from time to time; and the term "Consent Judgment" shall mean this Consent Judgment, as amended.

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

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

1. Diamond is entitled to develop Parcel D-1-A in accordance with the approved PUD Agreement for The Pavilions of Troy, as may be amended from time to time, which is attached as Exhibit C. 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, 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-1-A, are superseded, and shall be null and void.
3. Equities, Sheffield Office and Kmart shall no longer have any rights over Parcel D-1-A for parking, access or otherwise pursuant to the Consent Judgment.
Diamond shall no longer have any rights over the Sheffield Parcel, Parcel D-2 and Parcel D-1-B 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-1-A to support the uses of the Sheffield Parcel, Parcel D-2 and/or Parcel D-1-B, those provisions are vacated.

4. The current amount of parking on each of the three parcels which comprise the Sheffield Parcel, Parcel D-2 and Parcel D-1-B is deemed sufficient to support the current uses within the current structures, nothing in this Order shall be construed to create an insufficiency in the amount of parking, and the owner(s) of any of the parcels which comprise the Sheffield Parcel, Parcel D-2 and/or Parcel D-1-B may, without further amending this Consent Judgment, seek to obtain from the City a parking deviation in the ordinary course.
5. Subject to the terms of this Consent Judgment, the Zoning Ordinance for the City of Troy (“Zoning Ordinance”) in effect as of the date of the entry of this Amendment shall be the zoning ordinance applicable to the Property, notwithstanding any future amendment(s) to said Zoning Ordinance.

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 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, including, without limitation, the restrictions contained in the Warranty Deed recorded at Liber 6949, Page 528, Oakland County Records, that in any manner affect the development of the Property consistent with the terms and

conditions set forth in the PUD Agreement, are hereby deemed terminated and of no further force or effect.

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

THE UNDERSIGNED PARTIES HAVE HEREBY READ, UNDERSTAND, AGREE AND CONSENT TO THE FOREGOING SIXTH ORDER AMENDING CONSENT JUDGMENT AND ALL TERMS AND CONDITIONS STATED THEREIN. ALL SUCH PARTIES HEREBY REPRESENT THAT THEY HAVE OBTAINED ADVICE OF COUNSEL AND ARE CONSENTING TO THIS JUDGMENT FREELY AND VOLUNTARILY.

DIAMOND TROY JV, LLC, a Delaware limited liability company

GM EQUITIES, LLC, a Michigan limited liability company

By: _____

By: _____

Its: _____

Its: _____

SHEFFIELD OWNER, LLC, a Delaware limited liability company

CITY OF TROY

By: _____

By: _____
Louise E. Schilling, Mayor

Its: _____

By: _____
Tonni L. Bartholomew, Clerk

KMART CORPORATION, a Michigan corporation

By: _____

Its: _____

WE, THE UNDERSIGNED COUNSEL FOR THE PLAINTIFFS AND DEFENDANT RESPECTIVELY, HEREBY STIPULATE TO THE ENTRY OF THE ABOVE SIXTH ORDER AMENDING CONSENT JUDGMENT, NOTICE OF ENTRY WAIVED:

WILLIAMS, WILLIAMS,
RATTNER & PLUNKETT, P.C.

JOHN G. COUTILISH, P.C.

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