

Commission Letter #219-10  
Commission Meeting: 8/9/2010

RE: Development Agreement – 815 E. Farnum (Whittier School Site)

August 5, 2010

The Honorable Mayor  
and  
Members of City Commission

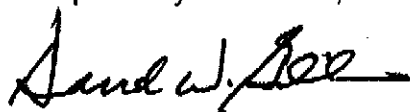
On July 13, 2010, the Planning Commission granted a request from the School District of the City of Royal Oak for special land use approval involving the division of property at 815 E. Farnum Avenue (the former site of Whittier Elementary School) into seven individual parcels for residential use. At the same meeting, the Planning Commission approved a proposed site plan for the related special redevelopment project, subject to series of contingencies. One of those contingencies was City Commission approval of the proposed land division; another was approval of a development agreement for the project.

On August 9, 2010, the City Commission is scheduled to hold the public hearing on the land division. City Assessor James Geiermann has provided the Commission with a separate Letter in regards to that hearing. Assuming that the Commission chooses to approve the land division and authorize the special redevelopment project, a proposed Development Agreement is attached for the Commission's review and approval. If this Agreement is acceptable, the following resolution would be appropriate:

BE IT RESOLVED, that the City Commission hereby approves the proposed Development Agreement with the School District of the City of Royal Oak for 815 East Farnum Avenue.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute the Development Agreement on behalf of the City.

Respectfully submitted,



David W. Gillam  
City Attorney

cc: Donald E. Johnson, City Manager  
Melanie Halas, City Clerk  
Timothy E. Thwing, Director of Planning

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (“Development Agreement”), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **City of Royal Oak**, a Michigan municipal corporation with offices at 211 Williams Street, Royal Oak, Michigan 48068 (the “City”), and **The School District of the City of Royal Oak**, a Michigan general powers school district with offices at 1123 Lexington Boulevard, Royal Oak, Michigan 48073-2438 (the “School District”)(collectively the “Parties”).

### **ARTICLE 1** **RECITALS**

1.1 The School District currently owns the property comprising approximately 3.58+/- acres at 815 East Farnum, located on the west side of North Alexander Avenue between Baldwin Road and East Farnum Avenue (the “Development Parcel”). The legal description for the Development Parcel is attached as **Exhibit A**. The Development Parcel is to be developed as a Special Redevelopment Project consistent with this Development Agreement, all Laws and City Ordinances. The successors and assigns of the School District, including all future purchasers, lessors, developers, end users and occupants of any and all of the Development Parcel shall be bound by the terms and conditions of this Development Agreement.

1.2 The School District intends to sell the approximately .92+/- acre portion of the Development Parcel (hereinafter referred to as the “Residential Component”), as depicted in the Project Plan attached hereto as **Exhibit B** (the “Project Plan”), to purchasers for residential development of that portion of the Development Parcel in accordance with the Project Plan (individually a “Residential Purchaser” and collectively the “Residential Purchasers”).

1.3 The School District will retain the approximately 2.66+/- acre portion of the Development Parcel, as depicted in the Project Plan, to be maintained as vacant open space, but may be sold in the future to a third-party purchaser (the “Vacant Land Component”).

1.4 The School District has submitted the Project Plan prepared by Nowak & Fraus for the Development Parcel identifying the Components (as defined in Article 5 below) of the Development Parcel, which was accepted by the City for potential review and approval in accordance with all applicable Laws and City Ordinances. The Development Parcel is to be developed into and maintained only for the use(s) set forth in Section 3.4 of this Development Agreement. Any change to the approved Project Plan shall require review and approval by the City.

1.6 The School District is requesting approval of this Development Agreement in accordance with Section 770-87 of the City of Royal Oak Zoning Ordinance, Special Redevelopment Projects, which requires the execution of a development agreement containing the basic terms and provisions of the approval, a clarification of the mutual understanding of the parties with regard to the lawfulness of the development approval, and any conditions imposed.

1.7 The Royal Oak Planning Commission, at its July 13, 2010 regular meeting, considered the Special Redevelopment Project and Developer’s Project Plan for the

Development Parcel and recommended approval with those contingencies attached as **Exhibit C** (the "Contingencies").

1.8 The City and School District wish to establish the terms and conditions under which the Development Parcel will be developed, owned and maintained by the School District, its successors and assigns.

**NOW, THEREFORE**, for and in consideration of the approval of the Special Redevelopment Project pursuant to City Ordinances, the development of the Development Parcel, and the mutual covenants and agreements of the Parties contained herein, the receipt, adequacy and sufficiency of which is hereby acknowledged, the City and School District agree to this Development Agreement in its entirety as follows:

## **ARTICLE 2** **DEFINITIONS AND COVENANTS**

In addition to certain terms defined in other sections of this Development Agreement, the City and School District agree that the following definitions and covenants shall apply to this Development Agreement:

2.1 "City Ordinances" means all ordinances, enactments, rules, regulations and policies of the City, including, but not limited to, zoning and land use ordinances and requirements (specifically including the zoning ordinance for the Project); building codes, ordinances, uses and requirements; safety and health ordinances and requirements; site plan and building plan review and approval guidelines, procedures, requirements and conditions; ordinances, rules and regulations governing utilities, roads, curb cuts, site improvements, sidewalks, lighting and similar improvements; ordinances and rules assessing tap-in fees, connection charges, use fees, and any other fees, charges and expenses; and police, safety and traffic rules and regulations.

2.2 "Development Agreement" means this Development Agreement by and among the City and School District.

2.3 "Development Parcel" means the parcel that is subject to the Special Redevelopment Project, the legal description for which is attached as **Exhibit A**.

2.4 "Effective Date" means the date set forth at the top of this Development Agreement.

2.5 "Improvements" means any improvement(s) which may be constructed from time to time on the Development Parcel including but not limited to, roads, driveways and walkways, utilities, storm water systems, buildings, and landscaping and rights-of-way improvements, which Improvements shall be constructed in accordance with all Laws and City Ordinances.

2.6 "Laws" means all laws, statutes, orders, ordinances, codes, rules, regulations or standards of any federal, state, city or similar governmental agency or authority having jurisdiction thereof, including, without limitation, building and use codes and requirements,

Americans with Disabilities Act, handicap and similar legislation, safety and health laws and requirements, and environmental laws.

2.7 "Party" or "Parties" means either the City, the School District, or the City and the School District.

2.8 "Person" means an individual, corporation, partnership (either general or limited), trust, limited liability company, limited liability partnership, entity or other form of organization, or one or more of them, as the context may require.

2.9 "Project Plan" means the drawings and plans attached as **Exhibit B** as revised to satisfy any and all conditions imposed by the City Commission.

2.10 "Special Redevelopment Project" means the designation of the Development Parcel as a Special Redevelopment Project pursuant to the City Ordinance provisions and development of the Development Parcel in accordance with this Development Agreement, the Project Plan and in compliance with all Laws and City Ordinances.

2.11 "Transfer" or "Transferred" means the sale, exchange, assignment, conveyance, exchange, transfer, or other disposition in one or more transactions or events, directly or indirectly, of the legal or beneficial interest in all or any part of (a) the School District's interest in the Development Parcel, or (b) this Development Agreement or any beneficial interest therein. The School District may sell or lease or otherwise convey all or part of the Development Parcel to a Residential Purchaser(s), or any other person or entity who agrees in writing to abide by the terms and conditions of this Development Agreement and the Project Plan (a "Permitted Transferee"), which shall not be prohibited by this Development Agreement.

### **ARTICLE 3** **DESCRIPTION OF PROJECT**

3.1 **Project Description.** The Project involves the development of the Development Parcel as contained in the Project Plan and attached as **Exhibit B**. The Project shall be constructed in compliance with the approved Project Plan and owned, operated, maintained and used in compliance with the Development Agreement and any and all Laws and City Ordinances.

3.2 **Development Parcel.** The property described in **Exhibit A**.

3.3 **Project Plan.** The Project is depicted in the Project Plan attached as **Exhibit B**, which was part of the Planning Commission and City Commission approval. The School District shall, or shall cause the Residential Purchaser(s) or Permitted Transferees to, prepare and submit final construction documents consistent with the Project Plan for each Component and necessary to comply with all applicable Laws and City Ordinances.

3.4 **Permitted Uses.** The Development Parcel is to be developed into and maintained only for the following use(s), provided that any change to the approved Project Plan shall require review and approval by the Royal Oak City Commission:

3.4.1 A Residential Component limited to six (6) Single-Family Residential Lots, depicted as Parcels 2 through 7 on **Exhibit B**, attached hereto; and

3.4.2 A Vacant Land Component consisting of vacant open space, depicted as Parcel 1 on **Exhibit B**, attached hereto (each Home, the Residential Component, and the Vacant Land Component may hereinafter be referred to as a "Component" and collectively the "Components").

#### **ARTICLE 4** **GENERAL PROVISIONS**

4.1 **The City's Representations and Warranties.** The City hereby makes the following representations and warranties to the School District, which representations and warranties shall be true and correct as of the date hereof, shall be deemed to have been renewed and restated as of the Effective Date of this Development Agreement.

4.1.1 **Authority.** The City has the authority to enter into this Development Agreement and to perform and carry out all obligations, covenants and provisions hereof. The City's authority shall be evidenced by appropriate resolutions.

4.1.2 **Zoning Compliance.** The Development Agreement complies with the requirements of City Ordinances, including Section 770-87 of the City's Zoning Ordinance, Special Redevelopment Projects.

4.1.3 **Sole Body.** The City Commission is the sole and appropriate municipal body to enter into the Development Agreement with the School District.

4.1.4 **Timely Review of Plans.** The City will provide timely review, and approval, if appropriate, of the plans and documents of the Project Plan, and all amendments and additional matters submitted by the School District, its successors and assigns, to achieve the purposes of this Development Agreement.

4.1.5 **Land Use.** The intended land use(s) is permissible under the City's Zoning Ordinance.

4.1.6 **Use Approval.** The uses approved by the City Commission shall be valid for as long as the School District, the Residential Purchaser(s), Permitted Transferees, or their successors or assigns, utilize the Development Parcel for the approved use(s) pursuant to this Development Agreement and the Project Plan.

4.1.7 **Restraints.** Neither the execution nor delivery of this Development Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or

governmental entity, the City's Charter, or any agreement to which the City is a party or by which it is bound.

4.1.8 Disclosure. No representation or warranty by the City, or any statement or certificate furnished to the School District pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

4.1.9 Litigation. The City has no notice of and there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect the City or its principals from carrying out the covenants and promises made herein.

4.2 **School District Representations and Warranties**. The School District hereby makes the following representations and warranties to the City, which representations and warranties shall be true and correct as of the date hereof, shall be deemed to have been renewed and restated as of the effective date of this Development Agreement, and shall survive and shall continue as long as the obligations of the School District under this Development Agreement:

4.2.1 Organization. The School District is duly organized and validly existing, in good standing under the laws of the State of Michigan and has all requisite power and authority to own and operate its assets and properties, to carry on its business as now being conducted, and to enter into and perform the terms of the Development Agreement.

4.2.2 Authorization. The execution and delivery of this Development Agreement and consummation of the transactions contemplated hereby have been duly authorized by the School District.

4.2.3 Restraints. Neither the execution nor delivery of this Development Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, the School District's organizational documents, or any agreement to which the School District is a party or by which either of them is bound.

4.2.4 Disclosure. No representation or warranty by the School District, or any statement or certificate furnished to the City pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

4.2.5 Litigation. The School District does not have any notice of and, to the best of its present knowledge, there is no pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or

instrumentality thereof which would affect the School District from carrying out the covenants and promises made herein.

4.3. **Additional Matters.** The School District shall, or shall cause the appropriate Residential Purchaser(s) or Permitted Transferees of the respective Component to, prepare and submit any and all documents and drawings necessary to obtain all permits for the development pursuant to the Project Plan to the City (including all appropriate departments) in order to obtain the approval of all appropriate City departments.

4.4. **Future Development of the Vacant Land Component.** Should the School District sell or otherwise convey all or a portion of the Vacant Land Component of the Project Plan for development of the Vacant Land Component, such development shall require a new site plan in accordance with the requirements of the City and/or Laws and City Ordinances, and either an amendment to this Development Agreement, or a new agreement, between only the Permitted Transferee and the City, and any such requirements/obligations imposed by the City shall be the obligation of the Permitted Transferee.

## **ARTICLE 5**

### **DEVELOPMENT AND CONSTRUCTION OF THE PROJECT**

5.1 **Construction of Improvements.** This Section of the Development Agreement describes the process and submittal information required for the development and construction of each Component of the Project Plan, which may be constructed and developed in separate, distinct and independent phases. The Parties anticipate that the Residential Purchaser(s) and/or Permitted Transferees will submit applications to the City for approval of construction documents and other information required by City Ordinances for development of their respective Component of the Development Parcel. Development which complies in all respects to this Development Agreement, the Project Plan and City Ordinances shall be entitled to be approved at the conclusion of the applicable review procedure of the City. The Project shall be completed by the construction and development of the following Components:

5.1.1 **Residential Component.** The Residential Component of the Development Parcel shall be completed in its entirety as the market allows for the development and sale of single-family homes. Notwithstanding the foregoing, each individual Single-Family Residential Lot (each a "Home") of the Residential Component, including the site work for, and construction of, that Home, shall be completed in accordance with the requirements of the City's Building Department, applicable Laws and City Ordinances.

5.1.2 **Vacant Land Component.** The Vacant Land Component of the Development Parcel shall be maintained as vacant open space, but may be sold or otherwise conveyed in the future for development to a third-party purchaser, or developed by the School District.

5.2 **Coordination of Components.** In view of the right to develop the Development Parcel in separate Components, respective site plans, condominium plans and engineering plans, as applicable, shall be reviewed by the City to ensure that all Component Improvements within said Component are provided for, so that each Component is capable of standing on its own for all purposes, with the assumption that future development phases of Components may not be completed for the foreseeable future thereafter.

5.3 **Construction Contracts.** Upon written request, the School District shall, or shall cause the Residential Purchasers or Permitted Transferees to, provide the City with full and complete copies of all construction contracts for the improvements for each Component of the Development Parcel.

5.4 **Construction of Component Improvements.** For each Component, the Residential Purchasers or the Permitted Transferees shall obtain all permits, licenses and approvals required by the Laws and City Ordinances for the construction of that Component of the Project Plan and complete the construction of each Component of the Project in accordance with this Development Agreement. The Residential Purchasers or the Permitted Transferees shall perform such construction in a good and workmanlike manner in compliance with City Ordinances. The appropriate Residential Purchasers or the Permitted Transferees shall pay all filing fees, inspection, and other fees and expenses, and post all bonds, letters of credit or other assurances as required by City Ordinances relative to their respective Component.

5.5 **Certificate of Occupancy.** The City shall not be obligated and the School District acknowledges and agrees that the City has no obligation under any circumstances to issue any temporary or permanent certificate of occupancy for the construction or improvement of or permit occupancy of any building or improvements unless and until the work has been completed in accordance with the requirements of this Development Agreement, provided, the City will issue a temporary certificate of occupancy under the following circumstances: (a) the construction of a Component or Home in the Project is substantially completed and (b) the requirements in the City Ordinances for the issuance of a temporary certificate of occupancy are satisfied. Upon completion of a Component or Home within the Project pursuant to the Project Plan, the City will issue a permanent certificate of occupancy. The remedy of the right to withhold the issuance of any temporary or permanent certificate of occupancy or to permit occupancy of buildings or improvements shall be in addition to and not in substitution for all remedies available to the City under this Development Agreement.

5.6 **Maintenance of Remaining Rights-of-Way Improvements.** The School District shall cause the Residential Purchasers or the Permitted Transferees to construct, maintain, repair and replace its respective portions of all improvements in compliance with the Project Plan, this Agreement and all applicable laws and City Ordinances.

5.7 **Survival.** The School District acknowledges and agrees that all of the obligations of the School District under this Development Agreement survive and shall be covenants running with the land and binding upon the School District, its successors and assigns for the benefit of the City and the respective successors and assigns. Any party acquiring an interest in the Development Parcel shall be bound by the covenants and obligations of this Development Agreement applicable to the respective Component, or portion thereof, which they acquire.

**ARTICLE 6**  
**EVENTS OF DEFAULT AND REMEDIES**

6.1 **Default by School District.** Each of the following shall constitute an Event of Default of the School District, the Residential Purchaser(s) or Permitted Transferees under this Development Agreement:

6.1.1 The School District's, the Residential Purchaser(s)' or Permitted Transferees' failure to perform any of its obligations under this Development Agreement, which remain uncured for a period of thirty (30) days following written notice by the City, unless the default cannot be cured through the exercise of good faith and due diligence (including the expenditure of necessary funds), in which event the School District, the Residential Purchaser(s) or Permitted Transferees shall be entitled to an additional period of time to cure as reasonably determined by the City, but in no event beyond ninety (90) days, provided and so long as the School District, the Residential Purchaser(s) or Permitted Transferees have diligently commenced the cure within such thirty (30) day period, completion of the cure within the thirty (30) days was not avoidable by the exercise of due diligence and the School District, the Residential Purchasers or Permitted Transferees continue to prosecute the cure with due diligence and in good faith until cured.

6.2 **Default Remedies of the City.** Upon an occurrence of an Event of Default of the School District, or the Residential Purchaser(s) or Permitted Transferees, which remains uncured, after notice and failure to cure pursuant to this Development Agreement, the City shall be entitled to the rights and remedies available at law or in equity, provided however, should an Event of Default occur as to a particular Component or Home of the Development Parcel, including, but not limited to, a variation in the use of a Component or Home from that which is permitted under this Development Agreement, such default or Event of Default shall not effect any other Component or Home of the Development Parcel and the City shall not take any action which would adversely effect or encumber any other Component or Home of the Development Parcel.

6.3 **Default by the City.** Each of the following shall constitute an Event of Default of the City under this Development Agreement:

6.3.1 The City's failure to perform any of its obligations under this Development Agreement, which remain uncured for a period of thirty (30) days following written notice by the School District, the Residential Purchaser(s) or Permitted Transferees, unless the default cannot be cured through the exercise of good faith and due diligence (including the expenditure of necessary funds), in which event the City shall be entitled to an additional period of time to cure as reasonably determined by the School District, the Residential Purchasers or Permitted Transferees, but in no event beyond ninety (90) days, provided and so long as the City has diligently commenced the cure within such thirty (30) day period, completion of the cure within the thirty (30) days was not avoidable by the exercise of due diligence and the City continues to prosecute the cure with due diligence and in good faith until cured.

6.4 **Default Remedies of the School District, the Residential Purchaser(s) and Permitted Transferees.** Upon an occurrence of an Event of Default by the City, which remains uncured, after notice and failure to cure pursuant to this Development Agreement, the School District, the Residential Purchaser(s) or Permitted Transferees shall be entitled to the rights and remedies available at law or in equity.

6.5 **Non-Liability of Individuals.** No City official, officer, employee, board member, council member, elected or appointed official, attorneys, consultants, advisors, agents and representatives, shall be personally liable to the School District for any default or breach by the City of any obligation under this Development Agreement or in any manner arising out of the performance of this Development Agreement by any party or the Project. Conversely, no School District official, officer, employee, board member, council member, elected or appointed official, attorneys, consultants, advisors, agents and representatives, shall be personally liable to the City for any default or breach by the School District of any obligation under this Development Agreement or in any manner arising out of the performance of this Development Agreement by any Party or the Project.

## **ARTICLE 7** **NOTICES**

All notices, consents, approvals, requests and other communications, herein collectively called "Notices," required or permitted under this Development Agreement shall be given in writing, signed by an authorized representative of the City or the School District and mailed by certified or registered mail, return receipt requested, personally delivered, sent by overnight courier or sent by facsimile transmission to a party as follows:

To City:                      City Clerk  
   City of Royal Oak  
   211 Williams Street  
   P.O. Box 64  
   Royal Oak, Michigan 48068  
   Tel: (248) 246-3200  
   Fax: (248) 246-3002

With a Copy to:            City Manager  
   City of Royal Oak  
   211 Williams Street  
   P.O. Box 64  
   Royal Oak, Michigan 48068  
   Tel: (248) 246-3200  
   Fax: (248) 246-3002

   City Attorney  
   City of Royal Oak  
   211 Williams Street  
   P.O. Box 64  
   Royal Oak Michigan 48068  
   Tel: (248) 246-3240

Fax: (248) 246-3003

To School District: School District of the City of Royal Oak  
Attention: Superintendent  
1123 Lexington Boulevard  
Royal Oak, Michigan 48073-2438

With a Copy to: Dana L. Abrahams, Esq.  
Clark Hill PLC  
151 S. Old Woodward Avenue, Suite 200  
Birmingham, Michigan 48009  
Tel: (248) 988-5840  
Fax: (248) 988-1828

All such notices, certificates or other communications shall be deemed served upon the date of personal delivery, the day after delivery to a recognized overnight courier, the date of the transmission by facsimile or other electronic means is verified or two days after mailing by registered or certified mail. Any party may by notice given under this Development Agreement designate any further or different addresses or recipients to which subsequent notices, certificates or communications hereunder shall be sent.

## **ARTICLE 8** **MISCELLANEOUS**

8.1 **Duration.** This Development Agreement shall be effective upon execution by the City and the School District and shall continue in full force and effect in all respects until the Development Agreement is terminated by the City pursuant to a default by the School District, as defined herein above, or as is otherwise agreed in writing by the Parties.

8.2 **Entire Agreement.** This Development Agreement and the attached exhibits set forth all of the covenants, agreements, stipulations, promises, conditions and understandings between the School District and the City concerning the Project Plan. Neither the City, nor its respective board and commission members, elected and appointed officials, employees and volunteers, attorneys, consultants, advisors, agents and representatives, and boards, commissions and authorities, have made any covenant, agreement, stipulation, promise, condition or understanding, warranty or representation, either oral or written, other than set forth herein.

8.3 **Amendment.** This Development Agreement shall not be modified, altered or amended except by written agreement duly executed by the School District and City as authorized by the City Commission.

8.4 **Third-Party Beneficiaries.** No term or provision of this Development Agreement is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except the Residential Purchaser(s) and Permitted Transferees.

8.5 **Invalidity of Particular Provision.** The invalidity of any article, section, subsection, clause or provision of this Development Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof which shall remain valid and be enforced to the fullest extent permitted by law.

8.6 **Captions.** The captions in this Development Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Development Agreement nor in any way shall affect this Development Agreement or the construction of any provision hereof.

8.7 **Waivers.** A Party may not waive any default, condition, promise, obligation or requirement applicable to the other Party hereunder, unless such waiver is in writing signed by an authorized representative of such Party and expressly stated to constitute such waiver. Such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation or requirement in any past or future instance. No failure by the City or School District to insist upon strict performance of any covenant, agreement, term or condition of this Development Agreement or to the exercise any right or remedy in the event of default, shall constitute a waiver of any such default of such covenant, agreement, term or condition.

8.8 **Conflicts.** In the event of any conflict between this Development Agreement and any agreement attached as an exhibit, or any other document executed pursuant to or in furtherance of this Development Agreement or the Project, this Development Agreement shall control, unless such other agreement is signed by the City and expressly provides to the contrary.

8.9 **Recording.** This Development Agreement shall be recorded by the School District with the Oakland County Register of Deeds as soon as is practical after execution. The City, the School District, the Residential Purchaser(s) and Permitted Transferees may, acting together by an approved writing signed by all parties, terminate this Development Agreement by recording a Notice of Termination with the Oakland County Register of Deeds, at the expense of the City.

8.10 **Cumulative Remedies.** The rights and remedies of the City set forth in this Development Agreement are not exclusive and are in addition to all other rights and remedies provided by law or in equity.

8.11 **Governing Law.** This Development Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Michigan. The School District agrees, consents and submits to the personal jurisdiction of any competent court of jurisdiction in Oakland County, Michigan for any action brought against it arising out of this Development Agreement. The School District also agrees not to commence any action against the City because of any matter whatsoever arising out of, or relating to, the validity, construction, interpretation and enforcement of this Development Agreement, in any courts other than those in the County of Oakland, State of Michigan.

8.12 **Successors and Assigns.** The covenants, conditions and agreements in this Development Agreement shall be binding upon and inure to the benefit of the School District,

the Residential Purchaser(s), Permitted Transferees, and the City, their respective legal representatives, successors and assigns.

8.13 **Legal Fees.** In the event any Party commences litigation or other action to enforce such Party's rights or the other Party's obligations under this Development Agreement, the Prevailing Party shall be entitled to recover reasonable attorney fees, witness fees, expert fees, costs and expenses in connection therewith. Prevailing Party shall mean the Party who obtains an order of enforcement, similar remedy or a judgment or award against the other Party or in the event of a counterclaim or cross claim, a judgment which exceeds any claim, counterclaim, judgment or award of the other Party.

8.14 **Joint Drafting.** This Development Agreement has been negotiated by the parties and each Party has joined in and contributed to the drafting of this Development Agreement. Accordingly, there shall be no presumption favoring or burdening any one or more of the parties hereto based upon draftsmanship.

8.15 **Counterparts.** This Development Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the City and the School District by and through their duly authorized representatives, have executed this Development Agreement as of the day and year first above written.

**The City of Royal Oak,**  
a Michigan municipal corporation

By: \_\_\_\_\_  
James Ellison, Mayor

and

By: \_\_\_\_\_  
Melanie Halas, City Clerk

**The School District of the City of Royal Oak,**  
a Michigan municipal corporation

By: \_\_\_\_\_  
Dr. Thomas L. Moline, Superintendent

**EXHIBIT A**

(Legal Description)

LOT 2 EXCEPT THAT PART RE-PLATTED, ALSO ALL OF VACATED MOONLIGHT AVENUE ADJACENT TO THE SAME OF "BALDWIN'S REPLAT OF THE WEST PART OF LOT 2 FOREST PARK SUB'D" AS RECORDED IN LIBER 82, PAGE 29 OF PLATS, O.C.R., OF THE N.E. 1/4 OF THE S.W. 1/4 OF SECTION 15, T.1N.,R.11E, CITY OF ROYAL OAK, OAKLAND COUNTY, MICHIGAN, ALSO LOTS 399, 400 AND 401 OF "TOWAR PARK SUB'D" AS RECORDED IN LIBER 19, PAGE 3 OF PLATS, O.C.R. OF PART OF THE S.E. 1/4 SECTION 15, T1N.,R.11E ROYAL OAK TWP (NOW CITY OF ROYAL OAK) OAKLAND COUNTY, MICHIGAN, ALSO LOTS 127 TO 130 INCLUSIVE OF "PERKINS PARK SUBDIVISION" AS RECORDED IN LIBER 23, PAGE 13 OF PLATS, O.C.R. OF A PART OF THE S.E. 1/4 OF SECTION 15, T1N.,R.11E, ROYAL OAK TWP (NOW CITY OF ROYAL OAK), OAKLAND COUNTY, MICHIGAN.

THE ABOVE DESCRIBED LAND IN THE CITY OF ROYAL OAK, OAKLAND COUNTY, MICHIGAN IS ALSO MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTH 1/4 CORNER OF SECTION 15, T1N.,R.11E, THENCE N01°04'43"E 1517.31 FEET ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION 15 TO THE POINT OF BEGINNING, SAID POINT LIES ON THE NORTH R.O.W. LINE OF FARNUM AVENUE (55' WIDE); THENCE ALONG SAID NORTH R.O.W. LINE OF FARNUM AVENUE N88°33'42"W 370.98 FEET TO THE S.W. CORNER OF LOT 2; THENCE N02°28'49"E 316.00 FEET TO THE N.W. CORNER OF LOT 2 SAID POINT LIES ON THE SOUTH R.O.W. LINE OF BALDWIN AVENUE (50' WIDE); THENCE ALONG SAID SOUTH R.O.W. LINE OF BALDWIN AVENUE S88°34'04"E 489.25 FEET TO THE N.E. CORNER OF LOT 401, SAID POINT LIES ON THE WEST R.O.W. LINE OF ALEXANDER AVENUE (50' WIDE); THENCE ALONG SAID WEST R.O.W. LINE OF ALEXANDER AVENUE S01°04'43"W 316.01 FEET TO THE S.E. CORNER OF LOT 130; THENCE N88°33'42"W 126.00 FEET TO THE POINT OF BEGINNING.

SIDWELL #25-15-332-047

**EXHIBIT B**

(Project Plan)



**PROJECT**  
 Royal Oak School District  
 Parcel 815 East Paramount

**CLIENT**  
 Royal Oak School District  
 1125 Ludington Blvd  
 Royal Oak, MI 48073  
 Contact: G. Ambers (Lead)  
 248-633-6700 Fax

**PROJECT LOCATION**  
 Part of the SW 1/4  
 of Section 15  
 T11N, R10E, E23E,  
 City of Farm Lake,  
 Oakland County, Michigan

**REMARKS**  
 Boundary / Topographic /  
 Tree Survey



**DATE**  
 05/16/2016

**DRAWN BY**  
 D. MacCubbery

**DESIGNED BY**  
 K. Blomquist

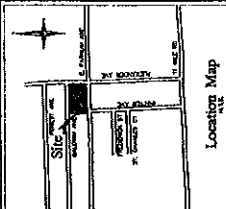
**DATE**  
 May 6, 2016

**SCALE**  
 1" = 30'

**DATE PLOTTED**  
 05/16/2016

**PROJECT NO.**  
 16026

**SHEET NO.**  
 1 of 2



**LEGAL DESCRIPTION - Parcel 3**  
 Parcel 3 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 4**  
 Parcel 4 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 5**  
 Parcel 5 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 6**  
 Parcel 6 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 7**  
 Parcel 7 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 8**  
 Parcel 8 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 9**  
 Parcel 9 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.

**LEGAL DESCRIPTION - Parcel 10**  
 Parcel 10 is a portion of the SW 1/4 of Section 15, Township 11 North, Range 10 East, and East 23rd East, City of Farm Lake, Oakland County, Michigan, as shown on the attached plat.



**BOUNDARY NOTE**  
 The boundary between Parcel 1 and Parcel 2 is shown as a dashed line. The boundary between Parcel 1 and Parcel 3 is shown as a solid line. The boundary between Parcel 1 and Parcel 4 is shown as a solid line. The boundary between Parcel 1 and Parcel 5 is shown as a solid line. The boundary between Parcel 1 and Parcel 6 is shown as a solid line. The boundary between Parcel 1 and Parcel 7 is shown as a solid line. The boundary between Parcel 1 and Parcel 8 is shown as a solid line. The boundary between Parcel 1 and Parcel 9 is shown as a solid line. The boundary between Parcel 1 and Parcel 10 is shown as a solid line.

**BOUNDARY NOTE**  
 The boundary between Parcel 2 and Parcel 3 is shown as a dashed line. The boundary between Parcel 2 and Parcel 4 is shown as a solid line. The boundary between Parcel 2 and Parcel 5 is shown as a solid line. The boundary between Parcel 2 and Parcel 6 is shown as a solid line. The boundary between Parcel 2 and Parcel 7 is shown as a solid line. The boundary between Parcel 2 and Parcel 8 is shown as a solid line. The boundary between Parcel 2 and Parcel 9 is shown as a solid line. The boundary between Parcel 2 and Parcel 10 is shown as a solid line.

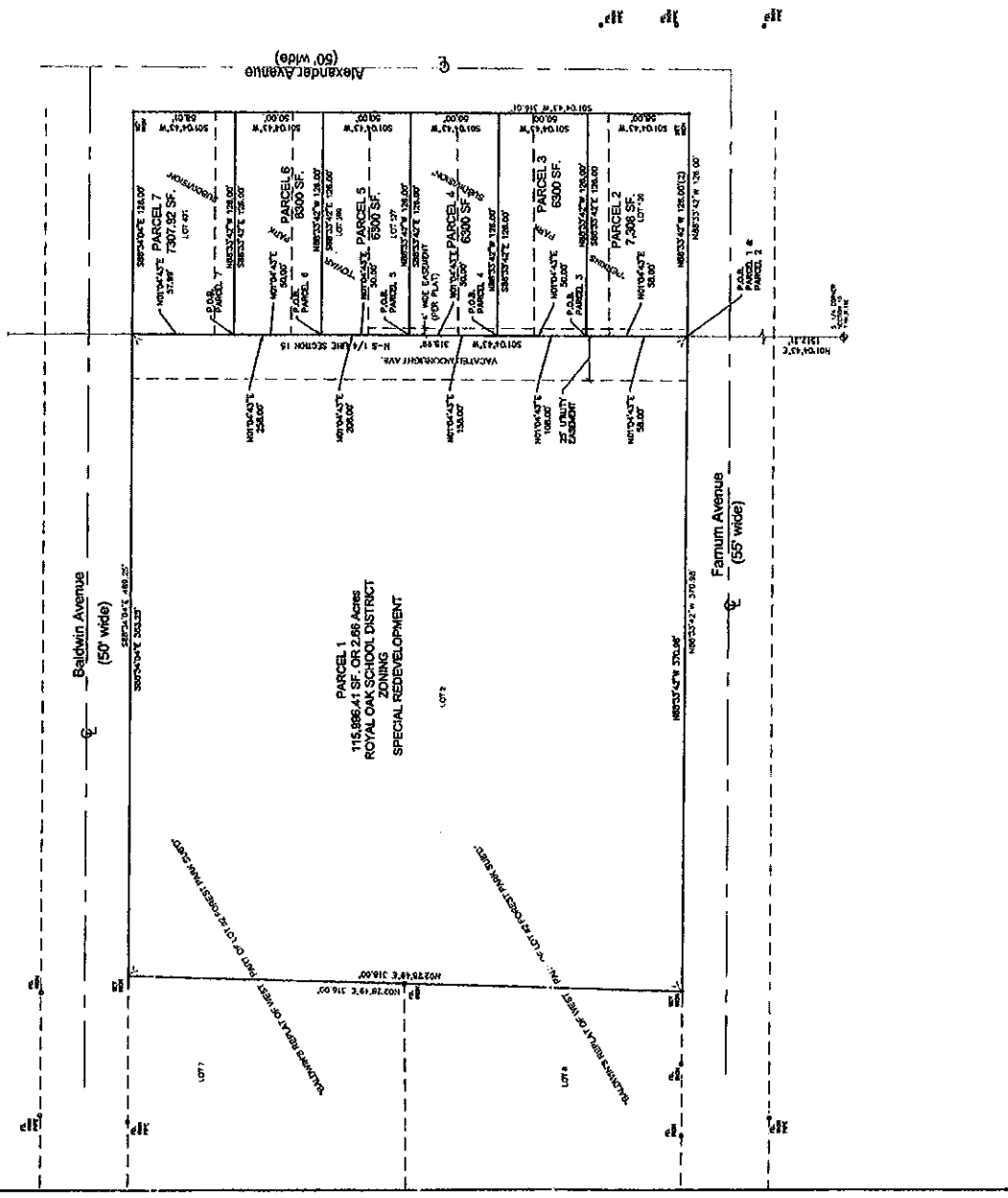
**BOUNDARY NOTE**  
 The boundary between Parcel 3 and Parcel 4 is shown as a dashed line. The boundary between Parcel 3 and Parcel 5 is shown as a solid line. The boundary between Parcel 3 and Parcel 6 is shown as a solid line. The boundary between Parcel 3 and Parcel 7 is shown as a solid line. The boundary between Parcel 3 and Parcel 8 is shown as a solid line. The boundary between Parcel 3 and Parcel 9 is shown as a solid line. The boundary between Parcel 3 and Parcel 10 is shown as a solid line.

**BOUNDARY NOTE**  
 The boundary between Parcel 4 and Parcel 5 is shown as a dashed line. The boundary between Parcel 4 and Parcel 6 is shown as a solid line. The boundary between Parcel 4 and Parcel 7 is shown as a solid line. The boundary between Parcel 4 and Parcel 8 is shown as a solid line. The boundary between Parcel 4 and Parcel 9 is shown as a solid line. The boundary between Parcel 4 and Parcel 10 is shown as a solid line.

**BOUNDARY NOTE**  
 The boundary between Parcel 5 and Parcel 6 is shown as a dashed line. The boundary between Parcel 5 and Parcel 7 is shown as a solid line. The boundary between Parcel 5 and Parcel 8 is shown as a solid line. The boundary between Parcel 5 and Parcel 9 is shown as a solid line. The boundary between Parcel 5 and Parcel 10 is shown as a solid line.

**BOUNDARY NOTE**  
 The boundary between Parcel 6 and Parcel 7 is shown as a dashed line. The boundary between Parcel 6 and Parcel 8 is shown as a solid line. The boundary between Parcel 6 and Parcel 9 is shown as a solid line. The boundary between Parcel 6 and Parcel 10 is shown as a solid line.

**BOUNDARY NOTE**  
 The boundary between Parcel 7 and Parcel 8 is shown as a dashed line. The boundary between Parcel 7 and Parcel 9 is shown as a solid line. The boundary between Parcel 7 and Parcel 10 is shown as a solid line.





**PROJECT**  
 Royal Oak School District  
 Parcel 812 East Parramatta

**CLIENT**  
 Royal Oak School District  
 1121 Lexington Blvd  
 Columbus, GA, Anderson Land  
 248.625.5400, Phone  
 248.435.8170, Fax

**PROPERTY LOCATION**  
 Parcel 812, 24-24-14  
 of Section 13  
 T. 1 North, R. 11 East,  
 City of Royal Oak,  
 Oakland County, Michigan

**SHEET**  
 Boundary / Topographic /  
 Title Survey



Call before you dig  
 Call 811

**REVISIONS**  
 NO. DATE BY  
 1 11/15/11 J.M.

**DESIGNED BY**  
 D. MacGregor

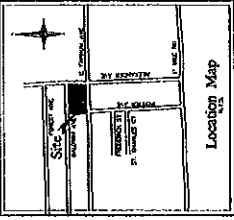
**APPROVED BY**  
 E. Nazzari

**DATE**  
 11/15/11

**SCALE**  
 1" = 30'

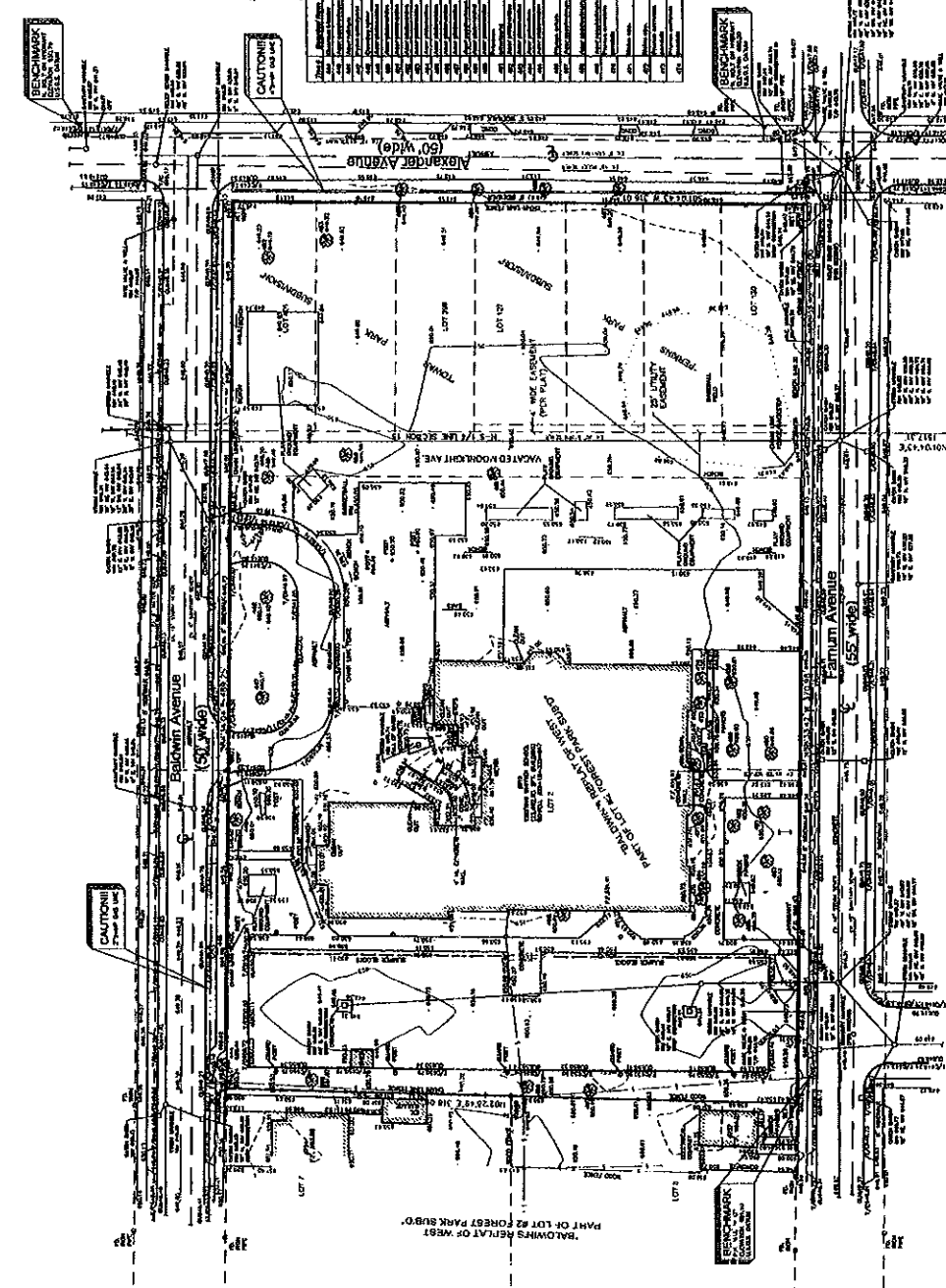
**SHEET NO.**  
 E606

**2 of 2**



**PROPERTY DATA**

Lot No.	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)
1	10,000	10,000	10,000	10,000
2	10,000	10,000	10,000	10,000
3	10,000	10,000	10,000	10,000
4	10,000	10,000	10,000	10,000
5	10,000	10,000	10,000	10,000
6	10,000	10,000	10,000	10,000
7	10,000	10,000	10,000	10,000
8	10,000	10,000	10,000	10,000
9	10,000	10,000	10,000	10,000
10	10,000	10,000	10,000	10,000
11	10,000	10,000	10,000	10,000
12	10,000	10,000	10,000	10,000
13	10,000	10,000	10,000	10,000
14	10,000	10,000	10,000	10,000
15	10,000	10,000	10,000	10,000
16	10,000	10,000	10,000	10,000
17	10,000	10,000	10,000	10,000
18	10,000	10,000	10,000	10,000
19	10,000	10,000	10,000	10,000
20	10,000	10,000	10,000	10,000
21	10,000	10,000	10,000	10,000
22	10,000	10,000	10,000	10,000
23	10,000	10,000	10,000	10,000
24	10,000	10,000	10,000	10,000
25	10,000	10,000	10,000	10,000
26	10,000	10,000	10,000	10,000
27	10,000	10,000	10,000	10,000
28	10,000	10,000	10,000	10,000
29	10,000	10,000	10,000	10,000
30	10,000	10,000	10,000	10,000
31	10,000	10,000	10,000	10,000
32	10,000	10,000	10,000	10,000
33	10,000	10,000	10,000	10,000
34	10,000	10,000	10,000	10,000
35	10,000	10,000	10,000	10,000
36	10,000	10,000	10,000	10,000
37	10,000	10,000	10,000	10,000
38	10,000	10,000	10,000	10,000
39	10,000	10,000	10,000	10,000
40	10,000	10,000	10,000	10,000
41	10,000	10,000	10,000	10,000
42	10,000	10,000	10,000	10,000
43	10,000	10,000	10,000	10,000
44	10,000	10,000	10,000	10,000
45	10,000	10,000	10,000	10,000
46	10,000	10,000	10,000	10,000
47	10,000	10,000	10,000	10,000
48	10,000	10,000	10,000	10,000
49	10,000	10,000	10,000	10,000
50	10,000	10,000	10,000	10,000



**CERTIFICATE OF SURVEY**  
 THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1967 AND THE RULES AND REGULATIONS THEREUNDER.

**FLOOD HAZARD NOTE**  
 THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1967 AND THE RULES AND REGULATIONS THEREUNDER.

**BOUNDARY NOTE**  
 THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1967 AND THE RULES AND REGULATIONS THEREUNDER.

**TOPOGRAPHIC SURVEY NOTES**  
 THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1967 AND THE RULES AND REGULATIONS THEREUNDER.

**LEGAL DESCRIPTION**  
 THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1967 AND THE RULES AND REGULATIONS THEREUNDER.

**LEGAL DESCRIPTION**  
 THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1967 AND THE RULES AND REGULATIONS THEREUNDER.

**CAUTION!**  
 Please see note on page 2.

**CAUTION!**  
 Please see note on page 2.

**CAUTION!**  
 Please see note on page 2.

PART OF LOT #2 WEST PARK SUBD.

**EXHIBIT C**

(Planning Commission Contingencies)

6649149.3 22050/118534



**MEMORANDUM**  
Planning Department

211 Williams St.  
P.O. Box 64  
Royal Oak, MI 48068  
Phone: (248) 246-3280  
Fax: (248) 246-3005  
www.ci.royal-oak.mi.us

DATE: July 14, 2010

TO: FILE / PETITIONER(S)

FROM: Planning Department

SUBJECT: **SP-10-07-06 – SPECIAL LAND USE & SITE PLAN TO DIVIDE FORMER ELEMENTARY SCHOOL SITE INTO INDIVIDUAL PARCELS FOR RESIDENTIAL USE (Whittier Elementary School) at 815 E. Farnum Ave. (parcel no. 25-15-332-047)**  
Royal Oak Public Schools, Petitioners & Owners  
Nowak & Fraus, Surveyors

---

The Planning Commission, at its meeting on July 13, 2010, **APPROVED** a **special land use permit** to divide a former elementary school site into seven (7) individual parcels for residential use (Whittier Elementary School) as a special redevelopment project at **815 East Farnum Ave.** (parcel no. 25-15-332-047).

At that same meeting, the Planning Commission **APPROVED SP-10-07-06**, a site plan for a special redevelopment project to divide a former elementary school site into seven (7) individual parcels for residential use (Whittier Elementary School) at **815 East Farnum Ave.** (parcel no. 25-15-332-047), with the following **contingencies**:

1. City Commission approval of the proposed land division.
2. Preparation and execution of a development agreement by the City Attorney for the proposed special redevelopment project and land division.
3. All future use of each individual parcel must be a permitted use as listed under §770-34 (B) of the Zoning Ordinance.
4. All principal structures shall comply with the required standards of §770-23 (A), §770-24, and §770-34 (D) of the Zoning Ordinance. All accessory structures shall comply with the required standards of §770-22 (A) of the Zoning Ordinance.
5. All improvements to the public right-of-way shall be in accordance with the specifications and standards of the City Engineer.
6. The site plan shall meet all other Code and Ordinance requirements, as determined by the Building Official and City Engineer, **prior** to issuance of **any** building permit.

Plans cannot be submitted for building permits until all of the contingencies have been addressed and included as part of the plan(s).

Respectfully,



Timothy E. Thwing, Director  
Planning Department

cc: G. Anders Linell, Royal Oak School District  
Ryan J. Johnson, Nowak & Fraus  
Kevin M. Nalu, Clark Hill, PLC