

CITY of NOVI CITY COUNCIL

Agenda Item 1
January 25, 2010

SUBJECT: Consideration to approve Second Amendment to SDO Agreement for Hummer of Novi, N/K/A Cadillac of Novi, located at the northeast corner of Grand River Avenue and Meadowbrook Road, to authorize the replacement of the existing Hummer dealership with a Cadillac dealership.

SUBMITTING DEPARTMENT: Community Development *Buss*

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

This property was originally developed under a Gateway District Special Development Option (SDO) Agreement between the City and Hummer of Novi approved by the City Council on June 21, 2004. The original SDO Agreement contemplates a full automobile dealership facility supporting the sale and servicing of GM Hummer franchise vehicles only. The buildings and other improvements now located on the property were constructed under that original agreement. On November 14, 2007, the parties amended the original Agreement to allow the owner/developer to sell non-Hummer used vehicles, and to grant the right to park one such vehicle in front of the building on the eastern-most display pad.

The owner/developer has informed the City that, due to changes in the automobile industry, its franchise with GM is being converted to a Cadillac franchise. The City is being asked to consider a Second Amendment to SDO Agreement that allows and reflects that change. The attached proposed agreement authorizes the conversion of the Hummer brand franchise to a Cadillac brand franchise, and allows the owner/developer to conduct the operations of a typical Cadillac dealership—including the sales and servicing of automobiles, both new and used, which could include Hummer vehicles. There are no limitations on the parking of vehicles on the display pads proposed in the attached amended agreement.

The attached proposed Second Amendment also allows alternative signage, which is largely similar to the existing Hummer dealership signage, but includes some additional Cadillac “crests” on certain areas of the building. Recall that under the SDO, the ZBA does not have jurisdiction to address sign variances, which would need to be part of this approval, if allowed.

The original SDO Agreement contemplates that changes to the agreement be undertaken after review and recommendation of the Planning Commission in the manner of the original approval. Because of the timing of the conversion, that review is not possible, but as a practical matter nothing about the physical development of the site is proposed to change in any event. The attached Second Amendment therefore also contains a change to the original SDO Agreement stating that the amendment to allow for a change in vehicle brands can be done with Council approval alone.

RECOMMENDED ACTION:

Approve Second Amendment to SDO Agreement for Hummer of Novi, N/K/A Cadillac of Novi, located at the northeast corner of Grand River Avenue and Meadowbrook Road, to authorize the replacement of the existing Hummer dealership with a Cadillac dealership.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

1361972

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

January 13, 2010

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secretwardle.com

Charles Boulard,
Community Development Director
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Re: *Second Amendment to SDO Agreement—Hummer/Cadillac of Novi*
Our File No. 55142 NOV

Dear Mr. Boulard:

Attached is a *draft* of the proposed “Second Amendment to SDO Agreement” intended to address the fact that General Motors has sold or otherwise discontinued the Hummer brand and the Owner/Developer of the property where the Hummer dealership is currently located has been granted a Cadillac dealership by General Motors.

The document is fairly straightforward. After some recitals to indicate how we have gotten to the position we are in, the document simply states that the existing agreement is amended such that the property is to be used, as developed, for a Cadillac dealership—i.e., for all related elements of a typical Cadillac dealership, including the sales and service of new and used vehicles (without designation of brand).

The other significant change is to Article XIV, subsection E of the existing agreement, the provision that talks about any change to the agreement going through the full land use approval process—application, plan, public hearing at the Planning Commission, etc. Obviously, the timing on this change from Hummer to Cadillac is more immediate than that process contemplates. As I indicated recently to Ms. McBeth, there is no specific amendment process detailed in the Gateway section of the zoning ordinance. Technically, then, the requirement to go through the full land use process is found only in the original SDO agreement. The proposed language in the attached amendment is a narrow tailoring of that language, essentially indicating that any changes other than a change to the brand of vehicles sold from the property must go through that land use approval process.

Mr. Charles Boulard

January 13, 2010

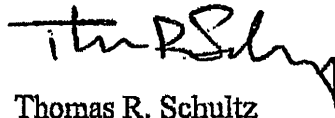
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The intention in this document is to make clear that it only addresses the kinds of vehicles sold and serviced from the property—no building or site improvements, façade improvements, or the like.

Once you and your staff have reviewed the document, I will forward it onto Mr. Quinn.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz

TRS/jes

Enclosure

cc: Clay Pearson, City Manager
Pam Antil, Assistant City Manager
Maryanne Cornelius, City Clerk
Barb McBeth, Deputy Community Development Director

1359417

SECOND AMENDMENT TO SDO AGREEMENT

HUMMER OF NOVI **(N/K/A CADILLAC OF NOVI)**

AGREEMENT, dated this ____ day of January, 2010, by and between the City of Novi, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (the “**City**”), and Gardan, LLC, whose address is 28100 W. Telegraph Road, Southfield, Michigan 48034 (the “**Owner**”); and Hummer of Novi, d/b/a Cadillac of Novi, whose address is 41350 Grand River Avenue, Novi, Michigan 48375 (the “**Developer**”).

RECITALS:

- I. Owner, Developer, and the City previously entered into a Special Development Option (SDO) Agreement (the “Original SDO Agreement”) in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a Hummer auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.
- II. The Original SDO Agreement states in Article I, “General Project Description,” that “The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles.” Article III of the Agreement, entitled “Uses Permitted,” states that “uses permitted within the project shall consist of a new and used car sales room, show room, and office, and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the site plan.”
- III. The Original SDO Agreement attached and incorporated a Conceptual Plan that states “The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”
- IV. On November 14, 2007, the parties entered into a “First Amendment to SDO Agreement,” pursuant to which the Owner/Developer was permitted to park and store

used non-Hummer vehicles on the premises in the parking lot areas designated on the Conceptual Plan and the site plan for parking and storage. The Owner/Developer was also permitted to park or store non-Hummer used vehicles on the eastern most “pad” depicted on the plans along the road frontage of Grand River Avenue. The First Amendment to the SDO Agreement specified that it amended the Original SDO Agreement only with respect to sale and parking of used non-Hummer vehicles, and that in all other respects the Original SDO Agreement remain unchanged.

- V. Owner and Developer have represented to the City that, due to the changes in the national automobile industry, it is necessary for Owner/Developer to convert the site for the sale of Cadillac brand vehicles, for which Owner/Developer has recently been awarded a Cadillac franchise to replace the Hummer franchise at this location. Owner/Developer has asked that the City amend the Original SDO Agreement by way of this Second Amendment to SDO Agreement in order to allow the Owner/Developer to sell new Cadillac vehicles instead of new Hummer vehicles.
- VI. The City Council has agreed to allow this change to the Original SDO Agreement, given the current state of the auto industry locally, the appropriateness of the proposed dealership for the Novi area, and the contemplation that the site will remain largely unchanged from the standpoint of its physical development at this time, and any future improvements would be subject to further review and approval.
- VII. As a result of this Second Amendment, it is the parties’ intention that the property will be used as a Cadillac dealership, with no limitations on the sale or storage on-site of non-Cadillac vehicles, which may include Hummer vehicles.

NOW, THEREFORE, IT IS AGREED as follows:

- 1. Owner/Developer shall be permitted to convert the property to a Cadillac dealership. Article I, “General Project Description,” of the Original SDO Agreement is hereby amended to provide that the Project as currently developed may be used for an automobile dealership facility that supports the sale and servicing of Cadillac vehicles. Article III of the Agreement, entitled “Uses Permitted,” is hereby amended to reflect that uses permitted within the existing facility shall consist of a new and used car sales room, show room, and office and for service and parts and accessory sales related thereto, with outdoor space for the exclusive sale of new or used vehicles as consistent with a typical Cadillac dealership.
- 2. Any references to the “Conceptual Plan” in the Original SDO Agreement shall be considered to include references to Cadillac brand vehicles, as well as other new and used vehicles consistent with the typical use of a Cadillac dealership.
- 3. All of the existing signs on the property may be converted from “Hummer” signs to “Cadillac” signs, provided that the signs shall be of no greater size than the currently existing signs, and further provided that appropriate permits are secured by Owner/Developer for quality, permanent signs. In addition to those existing signs,

Owner/Developer shall be permitted to place two small Cadillac “crests,” in the areas along Meadowbrook Road as shown, and of the size shown, on the drawings attached as Exhibit B and incorporated herein.

4. Article XIV, “General Provisions,” subparagraph E is hereby amended to read as follows:

This Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement, in the event Owner desires to propose an amendment, an application shall be made to the City Planning Department, who shall process the application in the same manner called for in the Zoning Ordinance for an original application, with any required public hearings, and notification of the public to follow then existing City procedures; provided, however, that where the amendment relates to the brand or nature of the vehicles to be sold from the premises, the land use approval process shall not be required, and only the agreement of the City Council, in a form approved by the City Council, shall be required.

5. Owner/Developer expressly acknowledges that, other than making the above-described necessary amendments to allow the Hummer dealership to be converted to a Cadillac dealership, to be operated for the uses and purposes of a typical Cadillac dealership, there are no other amendments to the Original SDO Agreement authorized in this Second Amendment to SDO Agreement. In all other respects and for all other purposes, the Original SDO Agreement shall remain unchanged and in full force and effect.
6. This Second Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns, and transferees, and an affidavit providing notice of this Agreement, or the Agreement itself, may be recorded by either party with the office of the Oakland County Register of Deeds.
7. This Second Amendment to SDO Agreement may be signed in counterparts.

WITNESSES:

OWNER:

GARDAN, LLC

BY:
ITS:

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

On this ____ day of _____, 2010, before me appeared _____, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

Notary Public

WITNESSES:

DEVELOPER:

**HUMMER OF NOVI D/B/A
CADILLAC OF NOVI**

BY:
ITS:

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

On this ____ day of _____, 2010, before me appeared _____, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

Notary Public

WITNESSES:

CITY OF NOVI

BY: David B. Landry, Mayor

BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

On this ___ day of _____, 2010, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

Notary Public

1359372

EXHIBIT A

Parcel Description

A part of the NW 1/4 of Section 24; T 1 N, R 8 E, City of Novi, Oakland County, Michigan, being more particularly described as follows:

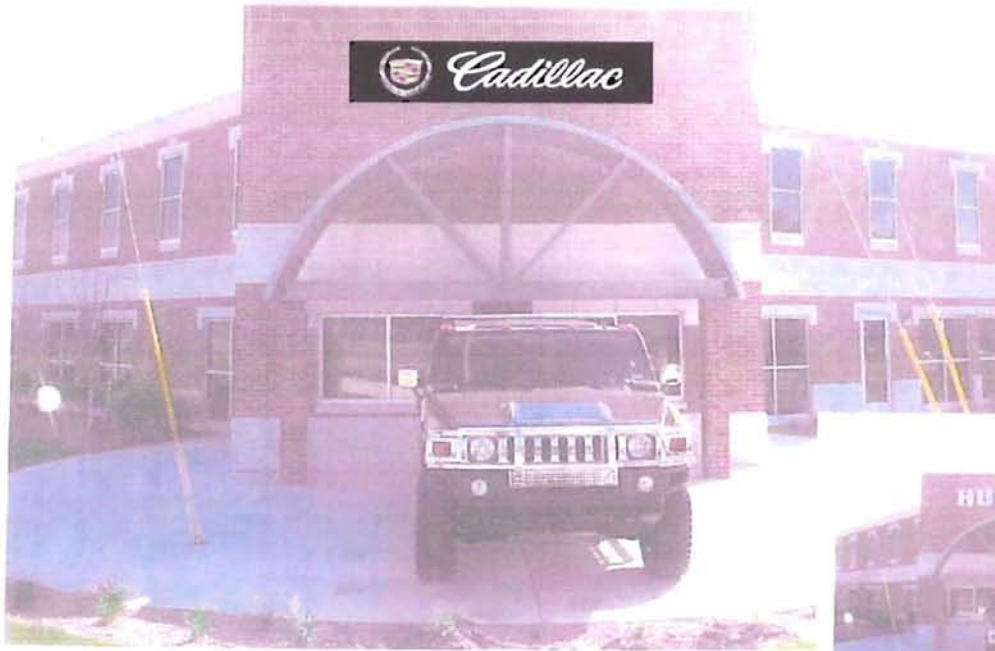
Beginning at a point located S 02° 34' 41" E. 721.49 feet along the west line of Section 24 (nominal centerline of Meadowbrook Road) and N. 87° 43' 33" E. 60.00 feet and S. 02° 34' 41" E. 517.70 feet along the easterly right-of-way line of Meadowbrook Road (120 feet wide) from the NW corner of Section 24; thence S. 73° 34' 41" E. 456.49 feet; thence S. 02° 34' 41" E. 678.32 feet; thence N. 73° 33' 43" W. 456.53 feet along the northerly right-of-way line of Grand River Avenue; thence N. 02° 34' 41" W. 678.18 feet along the easterly right-of-way line of Meadowbrook Road to the point of beginning. Containing 6.721 acres and being subject to all easements of record.

Parcel Identification No. 50-22-24-100-051

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EXHIBIT B

Item #1: Wall Signs



Southwest Elevation



Existing Sign @ Site



East Elevation



Existing Sign @ Site

FILE: Cadillac of Novi

SITE ADDRESS: 41350 Grand River, Novi, MI

TOTAL SQ. FT. ALLOWED:

TOTAL SIGN AREA:

DATE: 12.14.09

CLIENT APPROVAL:

DATE:

phillips SIGN & LIGHTING inc.

Designs are Property of Phillips Sign & Lighting, Inc., Attempts to Duplicate Art without written consent may result in Legal Repercussions.

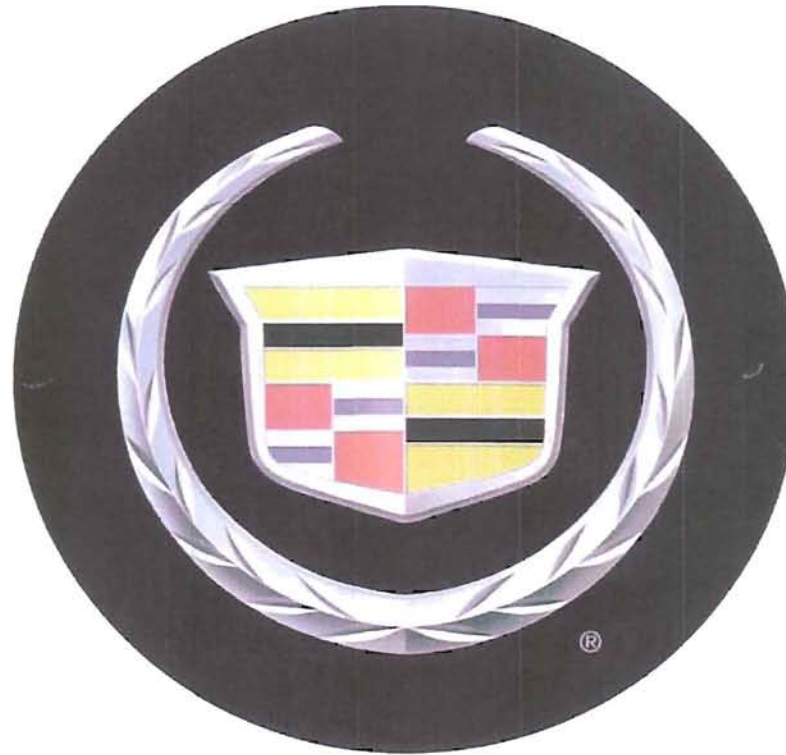
Item #3: Wall Sign

Qty: 2

49 in

36 in

47 in 33 in



FILE: Cadillac of Novi

SITE ADDRESS: 41350 Grand River, Novi, MI

TOTAL SQ. FT. ALLOWED:

TOTAL SIGN AREA: 16 sq. ft (each)

DATE: 12.15.09

CLIENT APPROVAL:

DATE:

phillips SIGN & LIGHTING INC.

Designs are Property of Phillips Sign & Lighting, Inc., Attempts to Duplicate Art without written consent may result in Legal Repercussions.

Item #3: Wall Sign

Location A



Location B



FILE: Cadillac of Novi

SITE ADDRESS: 41350 Grand River, Novi, MI

TOTAL SQ. FT. ALLOWED:

TOTAL SIGN AREA: 16 sq. ft.

DATE: 12.15.09

CLIENT APPROVAL:

DATE:

phillips SIGN & LIGHTING INC.

Designs are Property of Phillips Sign & Lighting, Inc.. Attempts to Duplicate Art without written consent may result in Legal Repercussions.

Item #1: Wall Signs

25 7/8 in 11 ft 7 in
81 3/4 in

30 in 24 in



Southwest Elevation

29 sq. ft.

29 1/8 in 14 ft 2 in
98 in

34 in 27 in



East Elevation

40 sq. ft.

FILE: Cadillac of Novi

SITE ADDRESS: 41350 Grand River, Novi, MI

TOTAL SQ. FT. ALLOWED:

TOTAL SIGN AREA:

DATE: 12.14.09rev.K-1.19.10

CLIENT APPROVAL:

DATE:

phillips SIGN & LIGHTING INC.

Item #5



FILE: Cadillac of Novi

SITE ADDRESS: 41350 Grand River, Novi, MI

TOTAL SQ. FT. ALLOWED:

TOTAL SIGN AREA: 6.5 sq. ft. (each)

DATE: 1.15.10

CLIENT APPROVAL:

DATE:

phillips SIGN & LIGHTING INC.

Designs are Property of Phillips Sign & Lighting, Inc., Attempts to Duplicate Art without written consent may result in Legal Repercussions.

1-15-10

Item #5: Wall Sign
Qty: 2

31 1/2 in

25 in

30 in 23 in



FILE: Cadillac of Novi

SITE ADDRESS: 41350 Grand River, Novi, MI

TOTAL SQ. FT. ALLOWED:

TOTAL SIGN AREA: 6.5 sq. ft (each)

DATE: 12.15.09rev.K-1.15.10

CLIENT APPROVAL:

DATE:

phillips SIGN & LIGHTING INC.

1.15.10