



## CITY COUNCIL ACTION REPORT

DATE: August 28, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services  
Mark F. Miller, Planning Director

SUBJECT: Public Hearing – Concept Development Plan Approval – Big Beaver Place Planned Unit Development (PUD 8), North side of Big Beaver, East of John R, Section 24 – Currently Zoned R-1D (One Family Residential) District

### Background:

- The Planning Commission recommended Concept Development Plan Approval of PUD 8 at the June 12, 2007 Regular meeting.
- The project consists of 23 two-story townhomes in four buildings, including two-car garages. Two clustered retail buildings and one separate building for a deli and coffee shop are also proposed.
- Richard Carlisle of Carlisle/Wortman Associates, Inc., the City's Planning Consultant, prepared a report summarizing the project and recommends Concept Development Plan Approval.
- The proposed PUD meets the Eligibility requirements of Section 35.30.00 of the City of Troy Zoning Ordinance.
- The proposed PUD meets the Standards for Approval of Section 35.70.03 of the City of Troy Zoning Ordinance.
- The Development Agreement will be presented for the Public Hearing.

### Financial Considerations:

- There are no financial considerations for this item.

Legal Considerations:

- City Council has the authority to act on this application.

Policy Considerations:

- The item is consistent with City Council Goal I (Enhance the livability and safety of the community), Goal III (Retain and attract investment while encouraging redevelopment), and Goal V (Maintain relevance of public infrastructure to meet changing public needs).

Options:

- City Council can approve the application for Concept Development Plan Approval.
- City Council can approve the application for Concept Development Plan Approval with conditions.
- City Council can deny the application for Concept Development Plan Approval.

Approved as to Form and Legality:

\_\_\_\_\_  
Lori Grigg Bluhm, City Attorney

Attachments:

1. Maps.
2. Report prepared by Carlisle/Wortman Associates, Inc., dated June 6, 2007.
3. Planning Commission Minutes from the June 12, 2007 Regular meeting.
4. Public comments.
5. Concept Development Plan.

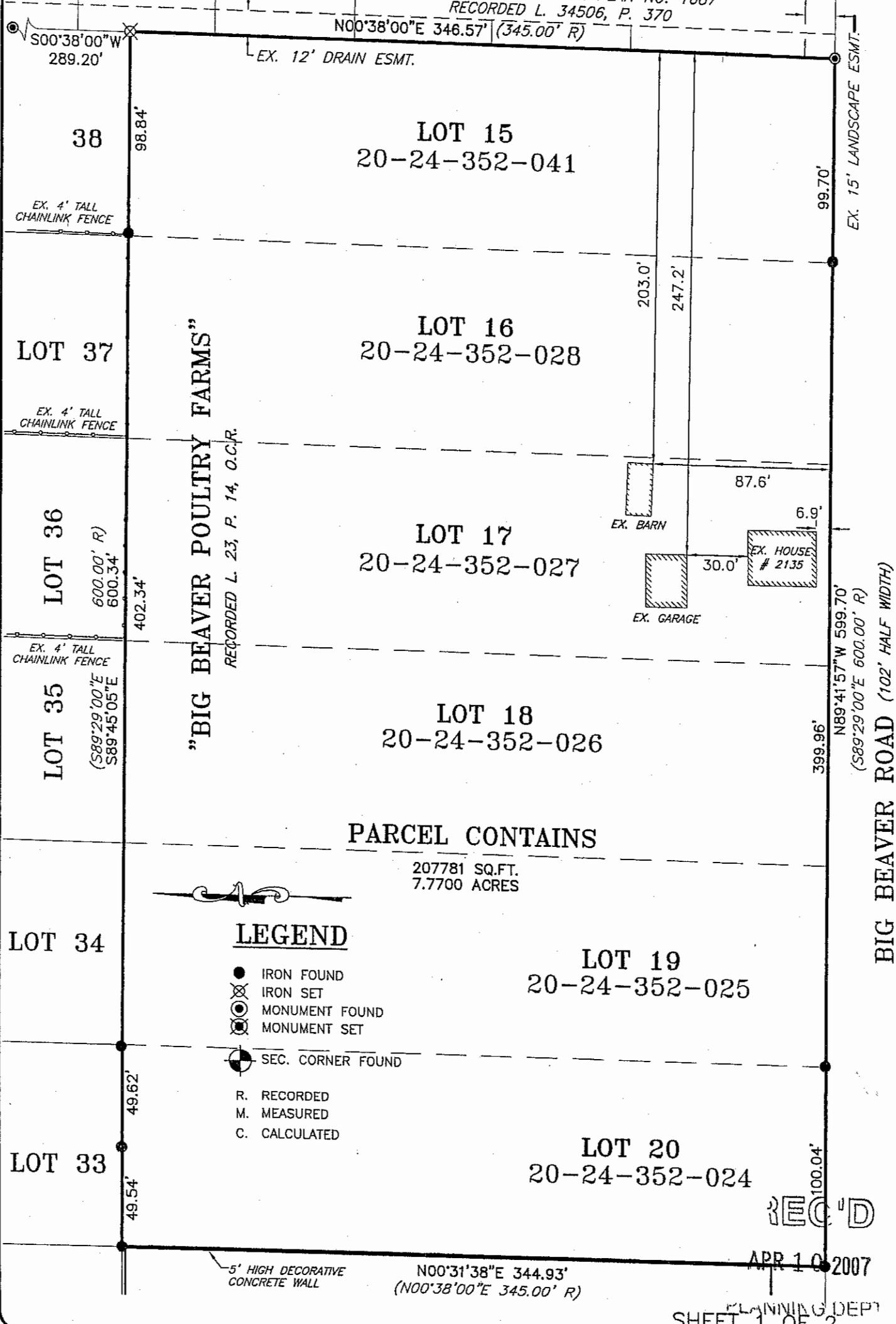
Prepared by RBS/MFM

cc: Applicant  
File /PUD 8  
Richard Carlisle, Carlisle/Wortman Associates, Inc.

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# CERTIFICATE OF SURVEY

"RHODE ISLAND ESTATES SITE CONDOMINIUMS SUBDIVISION PLAN NO. 1687"  
RECORDED L. 34506, P. 370



PARCEL CONTAINS

207781 SQ.FT.  
7.7700 ACRES

## LEGEND

- IRON FOUND
- ⊗ IRON SET
- ⊙ MONUMENT FOUND
- ⊗ MONUMENT SET
- ⊙ SEC. CORNER FOUND

- R. RECORDED
- M. MEASURED
- C. CALCULATED

RECORDED

APR 10 2007

PLANNING DEPT  
SHEET 1 OF 2

CLIENT  
BIG BEAVER PLACE

PROJECT NO. 06-640  
DATE 04-10-07

SCALE 1" = 80'

DRAWN BY \_\_\_\_\_ CHECKED BY \_\_\_\_\_



**FAZAL KHAN & ASSOCIATES, INC.**  
**CIVIL ENGINEERS & LAND SURVEYORS**

43279 SCHOENHERR STERLING HEIGHTS, MI 48313  
PHONE (508) 290 0000 FAX (508) 290 0001

04-10-07 RLH

06-640 LOTS 15-16-17-18-19-20 BIG BEAVER POULTRY FARMS BIG BEAVER PLACE BOUNDARY

DESCRIPTION OF PROPERTY (FROM RECORD)

LOTS 15-16-17-18-19-20, "BIG BEAVER POULTRY FARMS", PART OF THE SW1/4 OF SECTION 24, T2N, R11E, CITY OF TROY, OAKLAND COUNTY, MICHIGAN, RECORDED IN LIBER 23 OF PLATS, PAGE 14, OAKLAND COUNTY RECORDS, EXCEPT THE SOUTH 69 FEET TAKEN FOR BIG BEAVER ROAD. CONTAINING 207781 SQUARE FEET OR 4.7700 ACRES, MORE OR LESS.

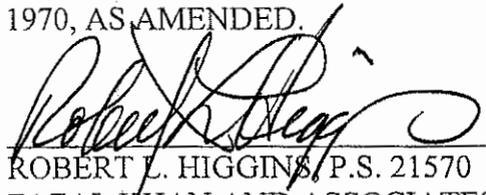
SUBJECT TO RESTRICTIONS, RESERVATIONS AND EASEMENTS, IF ANY.

ALSO KNOWN AS SIDWELL NO. 20-24-352-041, 20-24-352-028, 20-24-352-027, 20-24-352-026, 20-24-352-025 AND 20-24-352-024.

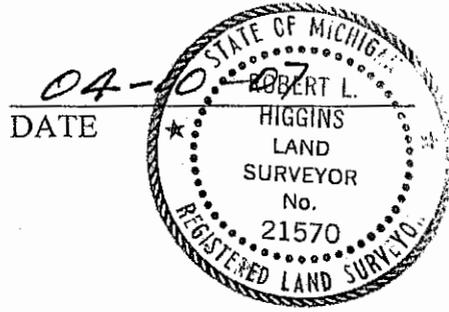
CERTIFIED TO:

BIG BEAVER PLACE, LLC  
48593 HAYES ROAD  
SHELBY TOWNSHIP, MICHIGAN 48315  
1-313-585-1345

I HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE SURVEY; THAT THIS DRAWING IS A CORRECT REPRESENTATION OF ALL THE EXTERIOR BOUNDARIES OF THE LAND SURVEYED; THAT SAID SURVEY WAS PERFORMED WITH AN ERROR OF CLOSURE OF 1 IN 5000; THAT THIS SURVEY COMPLIES WITH THE REQUIREMENTS OF SECTION 3, ACT NO. 132, P.A. OF 1970, AS AMENDED.



ROBERT L. HIGGINS, P.S. 21570  
FAZAL KHAN AND ASSOCIATES, INC.  
43279 SCHOENHERR ROAD  
STERLING HEIGHTS, MICHIGAN 48313  
1-586-739-8007



BEARING DATA ORIGINATES FROM THE WEST LINE OF "RHODE ISLAND ESTATES SITE CONDOMINIUM SUBDIVISION PLAN NO. 1687", RECORDED IN LIBER 34506, PAGE 370, OAKLAND COUNTY RECORDS.

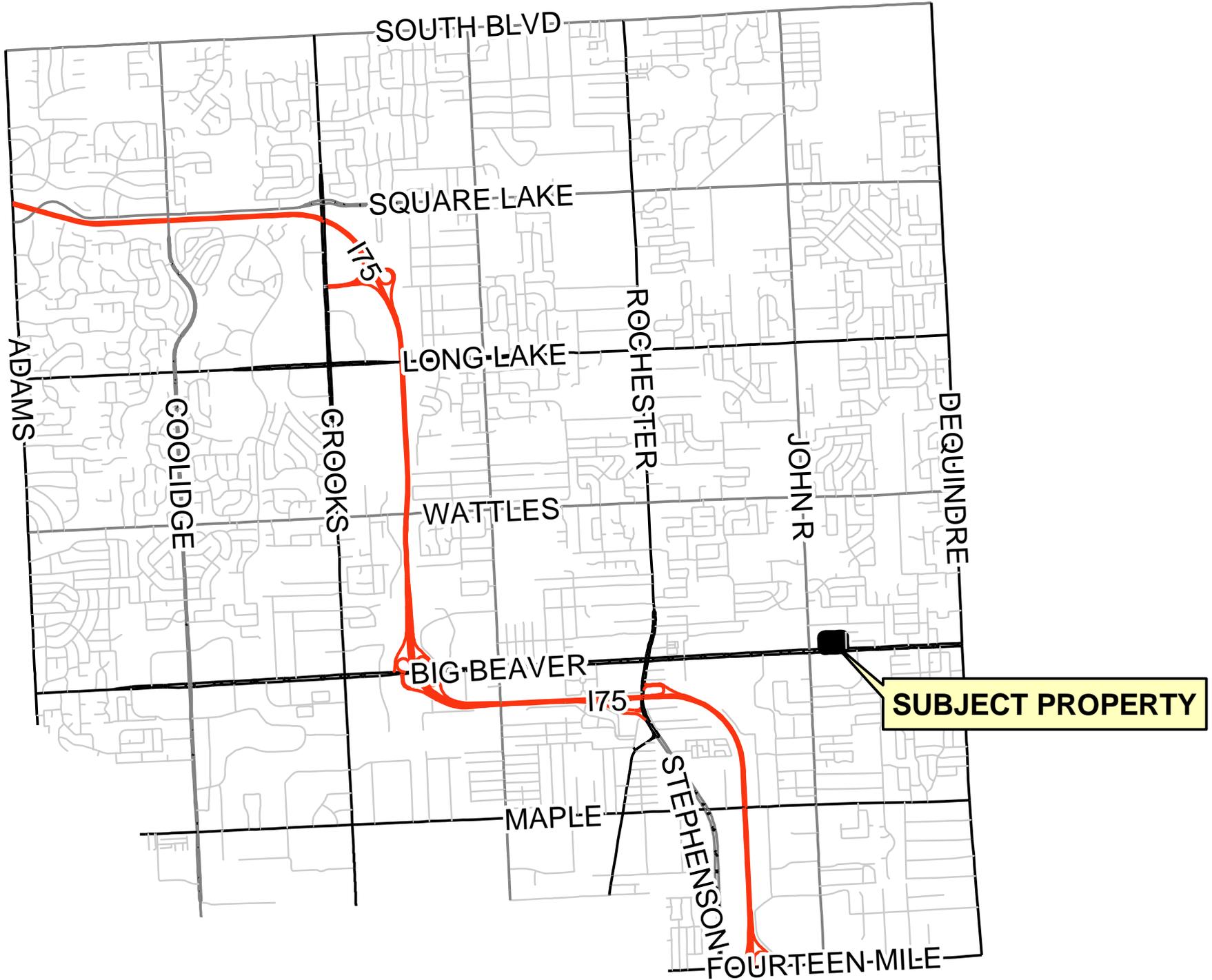
THIS PROPERTY LIES WITHIN AN AREA DESIGNATED AS ZONE X (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2 % ANNUAL CHANCE FLOODPLAIN) AS DEPICTED BY THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 260180 0553 F, DATED SEPTEMBER 29, 2006, PROVIDED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

CLIENT	PROJECT NO. 06-640	
BIG BEAVER PLACE	DATE 04-10-07	
SCALE	DRAWN BY	CHECKED BY



**FAZAL KHAN & ASSOCIATES, INC.**  
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43279 SCHOENHERR STERLING HEIGHTS, MI 48313  
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# CITY OF TROY



PLANNED UNIT DEVELOPMENT REQUEST  
PROPOSED BIG BEAVER PLACE  
N SIDE OF BIG BEAVER, E OF JOHN R  
SEC. 24 (P.U.D. #8)

JOHN R

ORPINGTON

WYANDOTTE

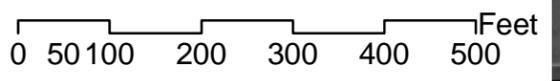
DOMINIQUE

CEDAR KNOLL

E BIG BEAVER

SUBJECT PROPERTY

ROUNDTREE



PLANNED UNIT DEVELOPMENT REQUEST  
PROPOSED BIG BEAVER PLACE  
N SIDE OF BIG BEAVER, E OF JOHN R  
SEC. 24 (P.U.D. #8)

R-EG

ORPINGTON

RHODE ISLAND

B-2

CJ-31

WYANDOTTE

R-1E

P-1

B-1

DOMINIQUE

CJ-16

CJ-22

CJ-22

CEDAR KNOLL

O-1

JOHN R

E BIG BEAVER

SUBJECT PROPERTY

CJ-17

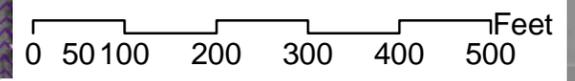
B-3

CJ-22

ROUNDREE

RM-1

M-1





**CARLISLE/WORTMAN ASSOCIATES, INC.**

*Community Planners /Landscape Architects*

605 S. Main, Suite 1  
Ann Arbor, MI 48104  
734-662-2200  
fax 734-662-1935

6401 Citation Drive, Suite E  
Clarkston, MI 48346  
248-625-8480  
fax 248-625-8455

Date: March 27, 2007  
Rev: April 19, 2007  
Rev: June 6, 2007

## **Planned Unit Development/Site Plan Review For City of Troy, Michigan**

### **GENERAL INFORMATION**

**Applicant:** Stefano Mularoni  
Big Beaver Place, LLC  
48593 Hayes Road  
Shelby Township, MI 48315

**Project Name:** Big Beaver Place PUD

**Plan Date:** March 9, 2007

**Latest Revision:** May 23, 2007

**Location:** East of John R Road, on the north side of Big Beaver Road.

**Zoning:** R-1E, One Family Residential District

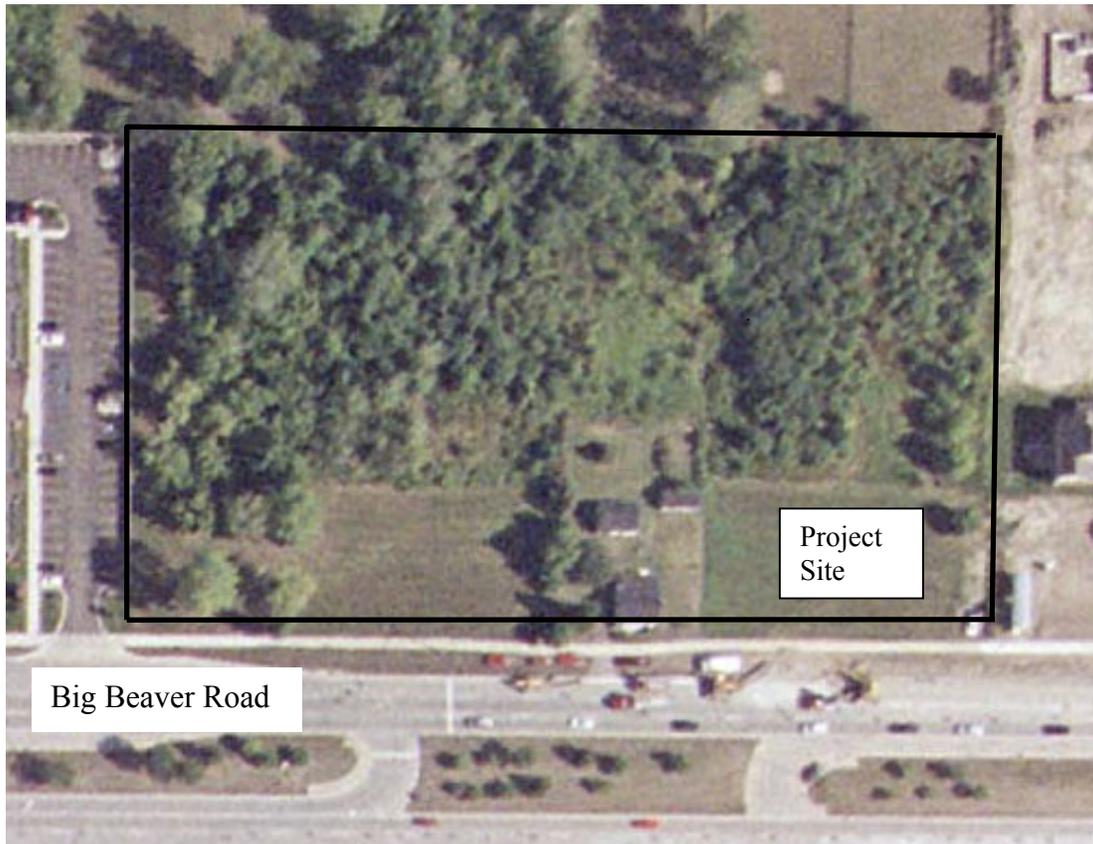
**Action Requested:** Planning Commission review and recommendation to the City Council for approval of a Concept Development Plan as established in Section 35.50.

**Required Information:** Deficiencies noted.

### **PROJECT AND SITE DESCRIPTION**

The applicant proposes a mixed use Planned Unit Development. The project has been assembled from six parcels and constitutes 4.77 acres. Three buildings will be demolished to accommodate this proposal. The project consists of 23 two-story townhomes in four buildings, with each unit

being approximately 1,800 square feet, including a two-car garage. Two clustered retail buildings (6,400 s.f. and 9,600 s.f.), and one separate building for a deli and coffee shop (3,500 s.f.) are also proposed. A few changes have been made to this concept in comparison to the previous submission. The most significant changes include the configuration of the coffee shop/deli, size of patio areas, circulation/parking changes, and the configuration of the detention pond.



## NEIGHBORING ZONING AND LAND USE

- North:** Properties to the north of this site are zoned R-1E, One Family Residential. They are also used for single-family purposes, but are relatively large compared to other residential properties in the area.
- South:** Big Beaver Road is at the southern boundary of the site. The zoning of the properties across Big Beaver Road are controlled by court order. Current uses include office and industrial buildings.
- East:** Zoning to the east of the site is also R-1E, One Family Residential. While the use of these properties is single-family, the lots are significantly smaller than the residential lots located north of the site.

**West:** The land directly to the west is zoned per court order, and used for an office building. Properties at the northeast intersection of Big Beaver Road and John R Road include B-2, Community Business, and B-3, General Business zoning designations, with various commercial uses such as a daycare, gas station, paint store, and service center.

*Items to be Addressed: None*

## **MASTER PLAN**

The subject property is currently Master Planned for Medium Density Residential use. The surrounding Master Land Use Plan designations are as follows:

**North:** Low Density Residential

**South:** (Across Big Beaver Road) Research Industrial

**East:** Medium Density Residential

**West:** Local Service Area

In the Master Plan, medium density residential use is defined as 5-10 dwelling units per acre, and includes a variety of housing forms such as duplexes, townhouses, and apartments. The proposed townhomes and associated parking/pavement are located on approximately 2.75 acres of land, resulting in a density of approximately 8.33 units per acre. The proposed residential uses for this property also meet some of the residential development policies stated in the Master Plan. The Townhomes are compatible with the adjacent residential uses, and they provide a different type of housing (vs. single-family detached) for residents. The alternative townhome residential type also supports the Big Beaver Corridor Study. And, mixing housing with retail and adjacent office uses will help promote walking, create a lively neighborhood, and knit new development with existing residential uses.

While the proposed commercial buildings are inconsistent with the Master Plan designations for this property, the proposed commercial uses do extend to the east a pattern of commercial from the John R Road and Big Beaver Road intersection and are consistent with the Big Beaver Corridor Study. Therefore, it is our opinion that the project meets the requirements of Sec. 35.40.00 regarding consistency with applicable corridor or subarea plans and recent development trends in the area.

*Items to be Addressed: None.*

## **NATURAL RESOURCES**

The applicant provided an environmental analysis with the previous plan submission.

**Topography:** The topography is flat to very gently sloping from northwest to the east.

**Trees:** The existing vegetation on site was evaluated by an environmental consultant. His report states that the site is covered by thick shrubs and a few trees. The shrubs are common buckthorn, multiflora rose (both exotic invasive species), and gray dogwood. The trees are short in height (under 45 feet), and are green ash, boxelder, cottonwood, elm, and apple species. No mature or natural woods were observed. The applicant states that the entire site will be cleared, and new open space will be created and landscaped. We would agree that this is acceptable since the vegetation is of relative low quality.

**Wetlands:** Based on the City's Natural Features Map, there are no existing wetlands on this site. However, the environmental evaluation states that there were two wetland areas on the property: one being approximately 5 feet x 90 feet (or 450 s.f.), and another being 870 s.f. Neither of these wetland areas meets MDEQ criteria as regulated wetlands.

*Items to be Addressed: None.*

## **TRAFFIC IMPACT**

A traffic analysis was conducted to determine the impact of the proposed development on traffic on Big Beaver Road and its intersection with John R Road. The analysis states that no improvements are required for the public road system as a result of this development.

*Items to be Addressed: None.*

## **ESSENTIAL FACILITIES AND SERVICES**

### Water and Sewer

The site will connect to existing water and sewer within the right-of-way of Big Beaver Road.

### Stormwater Management

A conceptual stormwater system is shown on the plans that include both above- and below-ground stormwater facilities. Where feasible, stormwater will be directed to bioswales along the east, north and west boundaries, which will infiltrate stormwater and uptake runoff by plants. The bioswales will be planted with wetland and upland native shrubs and herbaceous species. All bio-swales will have underdrains. The swale to the east will outlet to an existing stormwater pipe on the adjacent property. The swales on the north and west will outlet to the proposed site stormwater system and eventually the central detention pond. The pond will outlet to the existing stormwater system along Big Beaver Road.

We support the use of infiltration devices in the stormwater management design. The detention pond configuration has been modified in this plan set from a more organic shape to a rectilinear shape. Could the applicant clarify the reason behind this change?

*Items to be Addressed: Configuration of detention.*

## **PUD STANDARDS**

The Zoning Ordinance sets forth criteria in Section 35.30.00 for consideration of a project as a PUD. We have also evaluated the proposal in light of the Big Beaver Corridor Study. We have the following comments:

Section 35.30.00, A. *The applicant has demonstrated that they are legally permitted to execute a binding agreement over the parcels in the development.*

Section 35.30.00, B.: The applicant shall demonstrate that through the use of the PUD option, the development will accomplish a sufficient number of the following objectives, as are reasonably applicable to the site, providing:

1. A mixture of land uses that would otherwise not be permitted without the use of the PUD, provided that other objectives of this Article are also met.

*The proposal provides a mixture of land uses that would otherwise not be permitted in the underlying zoning category, or in any other single zoning category.*

2. A public improvement or public facility (e.g. recreational, transportation, safety and security) which will enhance, add to or replace those provided by public entities, thereby furthering the public health, safety and welfare.

*The site plan includes a pedestrian network, increased landscaping, and a large central water feature.*

3. A recognizable and material benefit to the ultimate users of the project and to the community, where such benefit would otherwise be infeasible or unlikely to be achieved absent these regulations.

*Applying a PUD mixed use concept to this parcel allows for commercial development along Big Beaver Road, and attached single-family units behind. This arrangement buffers the residential units from the noise and traffic of the roadway, and places higher-density residential units along the rear of the property, providing a transition between the commercial development and the residential lots behind the project site. This walkable, integrated design would be difficult to arrange using conventional zoning techniques.*

4. Long term protection and preservation of natural resources, natural features, and historic and cultural resources, of a significant quantity and/or quality in need of protection or preservation, and which would otherwise be unfeasible or unlikely to be achieved absent these regulations.

*We are aware of no such features on the subject site.*

5. A compatible mixture of open space, landscaped areas, and/or pedestrian amenities.

*The proposed plan in the residential portion of the site includes a large open space area that serves as a water feature and stormwater detention/retention pond, as well as*

*landscaping/buffer areas around the boundaries of the site. The commercial portion of the property proposes a plaza area (3,760 s.f.) between the two retail buildings, and a water feature and 1,600 s.f. plaza along the boulevard entrance. While landscaped areas used for storm drainage purposes may be countable for a portion of required landscape area, this area may not exceed more than 5 percent of the overall site area. A calculation for the amount of open space is provided on the site plan (Sheet 2), and states that the proposal provides 25 percent (1.20 acres of open space), not including areas used for stormwater management. We feel this meets with the requirements of Section 39.70.04 and are satisfied that the proposed open space is optimally located to provide the best possible transition to adjacent development.*

6. Appropriate land use transitions between the PUD and surrounding properties.

*As noted above, the project places higher-density residential units along the rear of the property, providing a transition between the commercial development and the residential lots behind the project site.*

7. Design features and techniques, such as green building and low impact design, which will promote and encourage energy conservation and sustainable development.

*The proposal provides for several environmental quality objectives, such as environmental protection through stormwater quality, open space through the water feature and pedestrian plazas near the retail buildings, and pedestrian facilities that connect the development to retail uses, encouraging users to experience the site on foot.*

8. Innovative and creative site and building designs, solutions and materials.

*The incorporation of a central water feature and the mix of proposed land uses represent an innovative and creative site plan which will provide an amenity to potential visitors to the area. More detailed architectural renderings were provided in this submission, showing the variety of construction materials and site furnishings proposed for the development. These details better convey the architectural intent of the townhomes, and describe a residential opportunity not readily available in the City.*

9. The desirable qualities of a dynamic urban environment that is compact, designed to human scale, and exhibits contextual integration of buildings and city spaces.

*The proposed site design uses stormwater runoff as an amenity in the central pond and open space feature, and places residents in close proximity to commercial and office uses, encouraging walking. These benefits are also consistent with the goals of the Big Beaver Corridor Study.*

10. The PUD will reasonably mitigate impacts to the transportation system and enhance non-motorized facilities and amenities.

*The site does include a comprehensive pedestrian pathway network throughout the site which provides excellent non-motorized access from one use to another. Also, based on the information provided, it does not appear that the proposal will alleviate current traffic congestion on adjacent roadways. However, it also won't significantly add to existing traffic conditions.*

11. For the appropriate assembly, use, redevelopment, replacement and/or improvement of existing sites that are occupied by obsolete uses and/or structures;

*This proposal will redevelop properties that currently include a one-family residence. While we do not know whether the specific single family home is obsolete, it is unlikely this site would be viable for new single family development.*

12. A complementary variety of housing types that are in harmony with adjacent uses;

*The attached single-family portion of this project will provide an alternative type of housing within the City. The proposed residential buildings are limited in height (two story) and are designed and located to most appropriately remain in harmony with the adjacent subdivision*

13. A reduction of the impact of a non-conformity or removal of an obsolete building or structure.

*As we have indicated, it is unlikely this site would be viable for new single family development; we are not aware of any non-conformities on the site.*

14. A development consistent with and meeting the intent of this Article; and will promote the intent of the plan meeting the requirements of the Municipal Planning Act or the intent of any applicable corridor or sub-area plans. If conditions have changed since the plan, or any applicable corridor or sub-area plans, were adopted, the uses shall be consistent with recent development trends in the area.

*As noted earlier in this review, the commercial portion of this project does not meet the goals of the Master Plan. However, the project is consistent with a pattern of commercial from the John R Road and Big Beaver Road intersection and the Big Beaver Corridor Study.*

15. Includes all necessary information and specifications with respect to structures, heights, setbacks, density, parking, circulation, landscaping, amenities and other design and layout features, exhibiting a due regard for the relationship of the development to the surrounding properties and uses thereon, as well as to the relationship between the various elements within the proposed Planned Unit Development. In determining whether these relationships have been appropriately addressed, consideration shall be given to the following:

- A. The bulk, placement, and materials of construction of the proposed structures and other site improvements.

*Basic information with regard to building materials has been provided on the conceptual floor plan and elevation drawings.*

- B. The location and screening of vehicular circulation and parking areas in relation to surrounding properties and the other elements of the development.

*The vehicular parking and circulation areas and preliminary screening measures are adequately described on the site and landscape plans.*

- C. The location and screening of outdoor storage, loading areas, outdoor activity or work areas, and mechanical equipment.

*A proposed loading area has been added to the site plan. An analysis of parking and loading is provided later in this review. The location and screening of any mechanical equipment have not been provided. Please clarify.*

- D. The hours of operation of the proposed uses.

*The applicant has provided a list of potential tenants. In addition, the proposed hours of operation for each use has been added to Sheet 2. While the actual hours of operation will be finalized once the spaces have been leased, the proposed hours are, in our opinion, reasonable given the nature of each building use.*

- E. The location, amount, type and intensity of landscaping, and other site amenities.

*While specific material quantities have not been provided at this time, a conceptual landscaping plan showing initial landscaping designs has been provided.*

16. Parking shall be provided in order to properly serve the total range of uses within the Planned Unit Development. The sharing of parking among the various uses within a Planned Unit Development may be permitted. The applicant shall provide justification to the satisfaction of the City that the shared parking proposed is sufficient for the development and will not impair the functioning of the development, and will not have a negative effect on traffic flow within the development and/or on properties adjacent to the development.

*The number of parking spaces has been reduced by four (4) spaces in this submission. However, we still consider that the amount of proposed parking is adequate. Each of the proposed one-family attached residential units has a 2 car attached garage, and sufficient parking has been provided for the proposed non-residential uses. A complete parking analysis is provided in later section of this review.*

17. Innovative methods of stormwater management that enhance water quality shall be considered in the design of the stormwater system.

*The applicant has proposed an innovative stormwater management system that promotes infiltration and improved water quality. Key features include bio-swales with natural contours and native wetland and emergent plant species, and a detention/retention pond as a site amenity.*

18. The proposed Planned Unit Development shall be in compliance with all applicable Federal, State and local laws and ordinances, and shall coordinate with existing public facilities.

*The applicant must demonstrate throughout the process that the proposal meets with all applicable Federal, State and local laws and ordinances. We defer to the City Engineer with regard to the site's coordination with existing public facilities.*

*Items to be Addressed: Clarify screening of mechanical equipment.*

## **AREA, WIDTH, HEIGHT, SETBACKS**

The underlying zoning for the entire site is R-1E, One-Family Residential.

Front yard setbacks shown on the plans to the commercial properties range between 40 feet and 59 feet, measured from the road right-of-way. (Note that the coffee shop/deli building has been pushed back from the street by five (5) feet compared to the previous submission.) The existing office building to the west is setback 53 feet, and the single-family home to the east is setback 50 feet. The Big Beaver Corridor Study states that buildings should be sited based on the district in which it is placed. This property lies within the Single Family Residential district in the Corridor Plan.

To the extent possible, the setbacks for all three proposed buildings are relatively consistent, and are coordinated with the existing buildings along the corridor (50 foot setback). The proposed height of the retail buildings meets the recommendations for height in this Corridor district.

Appropriate setbacks are provided for the proposed one-family attached residential structures. In addition, the building heights (2 stories) conform to the lower heights called for in this Big Beaver district.

*Items to be Addressed: None.*

## **PARKING, LOADING**

The plans meet the overall parking requirements. For the attached one-family residential units, 2 parking spaces per unit are required. The site plan provides 46 spaces within garages. This meets the required number of spaces. An additional 9 spaces are provided on the street for visitor parking.

Information about the seating capacity of the coffee shop/deli has been provided on Sheet 2. One space is required for every 2 persons within seating capacity of the establishment. The coffee shop will have 20 seats, while the deli will have 30 seats, for a total of 50 seats (or 25 spaces). In addition, one space is required for each employee for each 10 seats of seating capacity, or one for each 35 s.f. of dining area, whichever is greater. The applicant calculated this requirement using seating capacity, resulting in 5 additional parking spaces. Total required parking spaces equals 30 spaces for the coffee shop/deli.

Seventeen (17) spaces are shown adjacent to the coffee shop/deli, and an additional 13 spaces are shown along the western boundary, behind the townhouses. In addition, the coffee shop has a drive-thru window. This facility requires nine stacking spaces, which have also been added to the plans.

The remaining retail portion of the development requires 1 space per each 200 s.f. of gross floor area, or 80 spaces ( $16,000/200 = 80$ ). The plans provide parking in the front, rear and side of the

retail buildings equaling 58 spaces (which was reduced from 60 spaces in the previous submission). An additional 15 spaces (increased from 13 spaces) are shown behind the townhouses to the east.

A loading area has been designated behind the retail building to the east.

*Items to be Addressed: None.*

## **SITE ACCESS AND CIRCULATION**

Two access points are proposed to service this development. The main access is a boulevard drive to the residential units, and a secondary access is proposed to the east. Parking serving the retail building is proposed via a service lane. As requested, the applicant has eliminated the two most easterly spaces for safety purposes.

The easterly entrance drive has been reconfigured slightly to clarify that it is an “entrance-only” drive. The boulevard section has also been extended north to provide a resting place for pedestrians that are crossing the boulevard.

We defer to the City Traffic Engineer for further comment on traffic and circulation issues.

*Items to be Addressed: None.*

## **SAFETY PATHS/SIDEWALKS**

Proposed amenities allow pedestrian access between the residential and commercial uses of the property.

*Items to be Addressed: None.*

## **LANDSCAPING**

An amended landscape plan has been provided with this submission. The plan shows landscaping around the site’s perimeter, at the water feature, and interspersed throughout the retail uses. A finalized landscape plan is not required at this time in the site plan review process. However, we have the following comments:

**Composition:** The mix of plant types provided in the preliminary plan selection is appropriate. The applicant is proposing a range of species throughout the site.

**Existing**

**Vegetation:** As mentioned above, the applicant states that they will clear the site of existing vegetation. Due to the mix of existing species, we would consider this to be appropriate.

**Greenbelt:** A 19 foot wide greenbelt area is proposed along Big Beaver Road within the road right-of-way. The Big Beaver Corridor Study encourages the use of vegetation to separate pedestrians from vehicular traffic along the Corridor. The Study also calls for planting large shade trees along the street. Twenty-two (22) shade trees are proposed between the roadway and the sidewalk along Big Beaver Road.

**Residential**

**Screening:** Section 39.10 of the ordinance requires that a 6 foot high wall be provided for those sides of a conventional commercial district when abutting a residential district. Given that the immediate use proposed along the east boundary within the PUD is attached one-family residential, we do not believe a wall is warranted, and that the proposed landscaping is preferable.

**Site**

**Landscaping:** Developments requesting PUD approval shall provide substantially more open space area than required for typical developments within the underlying zoning district. As noted in the PUD section, a calculation for the amount of open space and landscaping was provided, stating that the proposed development is 25% (or 1.20 acres) open space and landscaping. (Also refer to comment #5 under the *PUD Standards* section of this review.)

**Other:** Use of native herbaceous plantings in the bio-swales will require appropriate seed bed preparation, weed control as the plants are established, and maintenance to ensure that the plantings thrive and stay attractive. Additional details of how the applicant proposes to accomplish these tasks will need to be provided.

*Items to be Addressed: Details of herbaceous planting installation and maintenance.*

**LIGHTING**

A lighting plan has not been provided as part of this submission, but will be required at the time of final site plan review.

*Items to be Addressed: Lighting information must be provided at the time of final site plan consideration.*

## SIGNS

Information about proposed signs has not been provided as part of this submission.

*Items to be Addressed:* Signage information must be provided at the time of final site plan consideration.

## FLOOR PLANS AND ELEVATIONS

A rendering, elevations, and floor plans have been provided of the commercial and one-family attached residential buildings.

*Items to be Addressed:* None.

## RECOMMENDATIONS

The plan provides many positive aspects that couldn't be achieved without applying the PUD option. The PUD concept locates appropriate uses across the site to transition from the Big Beaver corridor to the adjacent one-family residential area. The commercial buildings provide space for local businesses and complement the other commercial uses along Big Beaver Road. The one-family attached residential use provides a comfortable transition between the commercial and single-family homes, and coordinates with the City's Mater Plan and Big Beaver Corridor Study.

Because of the revisions shown in this plan submission, it is our opinion that this project meets the requirements of the Zoning Ordinance and the intent of the Planned Unit Development option. Therefore, we recommend that Planning Commission recommend approval of the Concept Development Plan to the City Council.

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CARLISLE/WORTMAN ASSOCIATES, INC.



Richard K. Carlisle, PCP

# 225-02-2701

cc: Big Beaver Place, LLC, 48593 Hayes Road, Shelby Township, MI 48315  
Fazal Khan & Associates, Inc., 43279 Schoenherr Road, Sterling Heights, MI 48313

6. PUBLIC HEARING – PLANNED UNIT DEVELOPMENT (P.U.D. #8) – Proposed Big Beaver Place, North side of Big Beaver, East of John R, Section 24, Currently Zoned R-1E (One Family Residential) District

Mr. Miller indicated City Management concurs with the recommendation of Carlisle/Wortman Associates, Inc.

Richard Carlisle of Carlisle/Wortman Associates, Inc., provided an updated report on the proposed development and indicated there are no outstanding issues. Mr. Carlisle recommends approval of the Concept Development Plan.

A discussion followed on the internal traffic circulation. Concerns with egress and a designated “No ‘U’ Turn” sign were discussed.

Norman Hyman of 38500 Woodward Avenue, Bloomfield Hills, was present to represent the petitioner. He introduced project team members Carol Thurber of Fazal Khan & Associates, Paul Landry of Landry + Newman Architects, and Stefano Mularoni, developer. Mr. Hyman said the revisions made to the internal traffic pattern were a result of a consensus of their traffic consultant and the City’s Traffic Engineer.

Ms. Thurber said three traffic pattern alternatives were discussed at an April Planning Commission study session, and the plan reflects the direction given by the members, as well as a consensus reached by the City’s Traffic Engineer and the project traffic consultant. She also addressed the deceleration lane as relates to the Oakland County Road Commission (OCRC).

Mr. Landry provided a rendering of the proposed development. He addressed the configurations of the retail building and pond and provided details on the building materials.

PUBLIC HEARING OPENED

Mike Dunaj of 2100 Orpington, Troy, was present. Mr. Dunaj spoke in opposition of the proposed development. He addressed the commercial use near residential and existing retail vacancies.

Victor DeFlorio of 3609 Cedar Brook, Rochester Hills, was present. Mr. DeFlorio developed Rhode Island Estates, a residential development located east of the subject proposal. He addressed the difference in development concepts between the proposed development and Rhode Island Estates. Mr. DeFlorio said residents are concerned with privacy, property values, traffic and density.

PUBLIC HEARING CLOSED

Ms. Troshynski commented favorably on the amount of landscape buffer proposed for the development, especially to the east to buffer the proposed parking from the back yards of those residents in Rhode Island Estates. She said getting that information out to the neighbors might result in a better understanding of the development.

Mr. Strat commended the developer on the project, but noted he is not pleased with the internal traffic circulation.

Mr. Vleck emphasized the developer's intent to provide 25% open space. He indicated the petitioner might consider additional buffering, such as a fence, in the final stage of site plan review.

Mr. Littman said initially he was not comfortable with the fit of the proposed development in the neighborhood, and has gradually grown to appreciate it. He indicated the critical point for him is the buffering between the two developments, and encouraged communication between the developer and neighbors.

**Resolution # PC-2007-06-102**

Moved by: Littman

Seconded by: Kerwin

**WHEREAS**, the Planning Commission reviewed a Concept Development Plan for a Planned Unit Development, pursuant to Article 35.50.01, as requested by Big Beaver Place, LLC for the Big Beaver Place Planned Unit Development (PUD 8), located on the north side of Big Beaver Road and east side of John R Road, Section 24, within the R-1E zoning district, being approximately 4.77 acres in size; and

**WHEREAS**, the City's Planning Consultant Richard Carlisle of Carlisle/Wortman Associates, Inc. prepared a memorandum dated June 6, 2007 that recommends Concept Development Plan Approval of Big Beaver Place Planned Unit Development; and

**WHEREAS**, the proposed PUD meets the Eligibility Requirements set forth in Article 35.30.00; and

**BE IT FINALLY RESOLVED**, that the Planning Commission recommends that Concept Development Plan Approval for Big Beaver Place Preliminary Planned Unit Development be granted.

Yes: All present (9)

**MOTION CARRIED**

Chair Schultz briefly addressed the procedure for the City Council public hearing.



## DeFlorio Homes, Inc.

*Specializing in Custom Homes*

3609 Cedar Brook • Rochester Hills, MI 48309  
Office: (248) 299-4317 • Cell: (248) 231-1057

June 6, 2007

Troy Planning Commission  
City of Troy  
500 W. Big Beaver Road  
Troy, MI 48084

**RE: PUD Proposal North Side of Big Beaver just West of John R**

Dear Planning Commission,

This letter is on behalf of my development just east of the subject proposal and the current residents of Rhode Island Estates.

I recently reviewed the proposal at the Planning Department and found the layout to be very interesting. The renderings projected attached modern condominiums incorporated with retail stores and both a coffee and deli outlet. This concept for the use of existing residential zoning is counter to what the city's vision was when Rhode Island Estates was being tabled. At that time, I was told that Rhode Island Estates needed to blend in with the existing neighborhoods. In fact, a condition for approval was to provide connectivity with the existing neighborhoods. Sidewalks were required between Rhode Island Estates and Orpington to the north.

The intention to now introduce retail to what was considered master planned residential will have a dramatic effect on the tranquil neighborhood Troy Planning originally approved. I feel we need to protect to existing families in Rhode Island Estates who chose invest into a quiet Troy neighborhood because they knew their development would be nestled among other housing.

Having a parking lot for these stores 50-60 feet off their rear yards greatly changes their concept of how they anticipated their backyard lifestyle. Also, the buffering between the first six lots and this commercial setting does not provide adequate privacy.

Please consider the property values of these residents and the ability for resale of these homes very closely before drastically altering earlier vision approved by both the Planning Commission and City Counsel.

Sincerely,

Victor DeFlorio

DeFlorio Homes, Inc.

REC'D

JUN - 7 2007

**BIG BEAVER PLACE**

**STATE OF MICHIGAN / COUNTY OF OAKLAND**

**CITY OF TROY**

**DEVELOPMENT AGREEMENT**

**FOR**

**“BIG BEAVER PLACE”**

**PLANNED UNIT DEVELOPMENT**

This Development Agreement (“Agreement”), dated \_\_\_\_\_, 2007, is entered into by and between **BIG BEAVER PLACE, LLC**, a Michigan limited liability company, the address of which is 48593 Hayes Road, Shelby Township, Michigan 48315, referred to herein as the “Developer”, and the **CITY OF TROY**, a Michigan municipal corporation, having its principal offices at 500 West Big Beaver Road, Troy, Michigan 48084 (“City”).

**RECITALS:**

**A.** Developer is the owner of certain real property located in the City of Troy, Oakland County, Michigan, consisting of 6 parcels and containing approximately 4.77 acres, as more particularly described on **Exhibit “A”** attached hereto (the “Property”).

**B.** Developer shall follow all required steps, per City Ordinance, Article VI, to effect a description change combining all parcels into one (1) parcel. The City agrees to process the description change, and request a new Parcel identification Number from Oakland County when all Ordinance requirements are met.

**C.** Developer has petitioned for an amendment to the City's Zoning Ordinance granting a rezoning of the Property to Planned Unit Development ("PUD"), the Development to be known as "Big Beaver Place", sometimes also referred to herein as the "Development" or the "Planned Unit Development". Developer has received Conceptual Development Plan Agreement approval from City Council for the rezoning of the Property to PUD as required by Article XXXV of the City's Zoning Ordinance, and approval of a Conceptual P.U.D. Site Plan, a copy of which is hereto attached as Exhibit B.

**D.** In connection with the grant of rezoning of the Property to PUD, Section 35.50.00 of the City's Zoning Ordinance requires the submissions of a Planned Unit Development Agreement which incorporates conceptual site plans, conceptual landscaping plans and other documents enumerated as PUD Documents, as defined below and which requires the approval of those documents by City Council as part of the grant of rezoning of the Property to PUD. As part of Conceptual Development Plan approval, Developer has offered and agreed to proceed with the undertakings described in the PUD Documents which Developer and the City agree were necessary and roughly proportional to the burden imposed in order to (i) ensure that the public services and facilities affected by the Development will be capable of accommodating increased services and facility loads caused by the Development, (ii) protect the natural environment and conserve natural resources, (iii) ensure compatibility with adjacent uses of land, (iv) promote use of the Property in a socially and economically desirable manner and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3101, *et. seq.* and Chapter 39, Article XXXV of the City of Troy Zoning Ordinance.

**E.** For the purpose of confirming the rights, obligations and restrictions in connection with the development to be undertaken on the Property, once City Council has enacted an Amendment to the Zoning Ordinance rezoning the Property to the Planned Unit Development and approved this Agreement, conceptual site plans, conceptual landscaping plans and the other PUD Documents, the effective date of the rezoning and this Agreement shall be the date on which City Council approves this Agreement. After the agreement granting rezoning is effective, the Planning Director shall take what actions are necessary to correct the Zoning Map to show the rezoning of the property this Agreement shall be binding upon the City, the Developer, the owners of any portion of the Property including condominium units, if applicable; and tenants within the Development; and all the association(s) established, and all successors and assigns and shall run with the land.

**F.** The Developer reserves the right to convert all or portions of the Property as a condominium development at any time in its discretion.

**NOW, THEREFORE**, as an integral part of the grant of the rezoning of the Property to “Big Beaver Place” Planned Unit Development, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I**

### **GENERAL TERMS**

1.1 This Agreement including all PUD Documents, whether conceptual, preliminary or final, shall run with the land. Reference in this Agreement or any PUD Documents to “Developer” shall include Developer’s successors and assigns. Any reference to owners, property owners, or Associations or Condominiums shall include their successors and assigns. It is the intent of the City and Developer to put all future owners of the Property or parties in interest on notice of the rights, obligations and restrictions contained herein by recording this Agreement with the Oakland County Register of Deeds. Any termination of an ownership interest shall not nullify or void this Agreement. The terms and conditions of this Agreement shall be considered “Deed Restrictions” binding upon all Developers and any successors or assigns of the Property.

1.2 The Project shall be developed and improved in accordance with the following, which shall be referred to herein as the “PUD Documents”:

- A. Chapter 39, ARTICLE XXXV of the City’s Zoning Ordinance, and amendments, if any.
- B. This PUD Agreement.
- C. The Conceptual P.U.D. Application date stamped “Received” by the City of Troy Planning Department on August 9, 2007.
- D. The following full-sized plans, date stamped “Received” by the City of Troy Planning Department on August 1, 2007:

	Cover Sheet
Sheet 1	Boundary and Topographic Survey
Sheet 2	Conceptual P.U.D. Site Plan (referred to as Preliminary P.U.D. site Plan)
Sheet 3	Conceptual Grading and Stormwater Management Plan (Referred to as Preliminary Grading and Stormwater Management Plan)
Sheet P-1	Landscape and Planting Plan
Sheet P-2	Pedestrian Circulation Plan
Sheet P-3	Details
Sheet A-101	Conceptual Floor Plans
Sheet A-102	Conceptual Floor Plans and Elevations

- E. The resolution in the official minutes of the meeting at which the City Council approved the Planned Unit Development, including any and all conditions of the approval contained therein.
- F. An Affidavit of Property Ownership to be recorded with the Oakland County Register of Deeds prior to commencement of construction and prior to the sale of any portion of the Project, containing the legal description of the entire Property; specifying the date of approval of the Planned Unit Development rezoning, and declaring that all future development of the Property has been authorized, restricted and required to be carried out in accordance with this Agreement and the Ordinance amendment granting rezoning to Planned United Development.
- G. The Preliminary Development Plan, when it is approved by City Council.

Engineering Plans have not been submitted with this Agreement. It is understood by all parties and it is part of this Agreement that Engineering Plans, acceptable to the City Engineer, must be compliant with this Agreement, the City of Troy ordinances and development standards, and state and federal law and shall be submitted at the time of the request for Final Site Plan approval for such Phase.

1.3 The Ordinance amendment granting Big Beaver Place Planned Unit Development reclassifies the zoning of the Property to PUD and constitutes the land use authorization for the Property, and all use and improvement of the Property shall be in substantial conformity with such Ordinance and the PUD Documents referenced herein.

## **ARTICLE II**

### **DEVELOPER'S RIGHTS, OBLIGATIONS AND PROPERTY RESTRICTIONS**

2.1 Developer shall have the right to develop and use the Property in accordance with the PUD Documents and the Zoning Ordinance in effect at the time of the Conceptual PUD Approval. Any changes to the Conceptual P.U.D. Site Plan or the Final Site Plan shall be approved in accordance with the City's Zoning Ordinance. Provided, however, that minor modifications resulting from engineering considerations or site conditions may be approved by the Director of Building and Zoning.

2.2 "Big Beaver Place" is being proposed to be developed utilizing the City of Troy's Planned Unit Development (PUD) Ordinance for a mixed-use commercial, retail, and residential development. The Development will enable the redevelopment of the obsolete six (6) parcels of land located on the north side of Big Beaver Road, east of John R. Road. Big Beaver Place will provide attractive and viable uses. The Development will provide the residents of the City of Troy with a mixed-use development with new commercial, retail, and residential opportunities.

2.3 Developer shall develop the Property substantially in accordance with the PUD Documents. Failure to develop the Property substantially in accordance with the PUD Documents shall constitute a deficiency under this Agreement.

2.4 The uses permitted at Big Beaver Place are depicted on the Conceptual P.U.D. Site Plan recommended for approval by Planning Commission on June 12, 2007, and City Council on \_\_\_\_\_, 2007, prepared by Fazal Khan & Associates, Inc. date stamped "Received" by City of Troy Planning Department on August 1, 2007. The two retail buildings shall not exceed a combined area of 16,000 square feet; the separate commercial building shall not exceed 3,500 square feet in area, and may be used for a deli and coffee shop or similar commercial uses. The residential component shall consist of no more than 23 townhouses, not exceeding two stories in height, with each unit having an area of approximately 1,800 square feet and a two-car garage. The uses permitted under this PUD are also uses permitted in the B-2, RM-1 Commercial, and RM-3 Zoning Districts of the City of Troy Zoning Ordinance. To the extent otherwise provided in the PUD documents, all uses in the regulations for the B-2, RM-2 and RM-3 Zoning Districts are allowed. In the event that there is any conflict between the City's Ordinances and this PUD Agreement, the terms and conditions of this PUD Agreement shall prevail.

2.5 List of Conditions Offered in Exchange for PUD Consideration. Developer or its successors or its assigns shall cause to be installed landscaping and an irrigation system on the Property in accordance with the Landscaping Plans. The Conceptual P.U.D. Site Plan includes landscape features above the requirements as outlined in the City Ordinance, and including bio-swales with under drains, planted with wetland and upland native shrubs and herbaceous species, and an attractive detention pond/water feature. The pond and open area is centrally located so that it can be enjoyed by all the users on the Property. The public benefit provided by Developer includes the elimination of existing under-development as well as the assemblage of properties to create a consistent development that provides a logical transition with the surrounding properties. The Development promotes and is consistent with the redevelopment goals of the Big Beaver Corridor Study and incorporates and implements numerous goals and strategies of the Big Beaver Corridor Study. The objectives of the PUD provide a higher quality of development than could be achieved under conventional zoning. The façade quality and pedestrian amenities exceed Ordinance requirements and accomplish safe and efficient site circulation connectivity. The development plan provides a large open space and landscaped area which exceeds the requirements of the City, and a workable integrated design.

2.6 Developer shall maintain all common areas, storm water drainage and retention facilities, landscaped areas, parking areas and sidewalks in good working order and appearance. Developer may establish an Association or Associations to assume the maintenance obligations set forth in this Article II, this Planned Unit Development Agreement and otherwise, in which event the Association or Associations shall succeed to the Developer's obligations for those portions of the Property defined in the instrument establishing each Association, and Developer shall be relieved of all obligations and liability with respect thereto.

2.7 Developer or an Association or Associations shall perform its landscaping maintenance obligations under Article II, this Planned Unit Development Agreement and

otherwise, such that the landscaping and related improvements are maintained in a neat and orderly appearance, substantially free from refuse and debris and, weather permitting, Developer or the Association or Associations shall promptly replace any dead or dying plants and shrubs, but in no event later than the end of the then-current planting season.

2.8 In the event Developer conveys all or any portion of the Property, it shall establish restrictions on the Property providing that all portions of the Property shall have full egress and ingress for both vehicular and pedestrian use and for egress and ingress to Big Beaver, and full access of the common areas for utility installation, construction, repair, and maintenance affecting and placed upon the Property, which may provide for shared participation in the cost of maintenance and repair. Developer may, however, designate specific parking areas for use by specific components of the Development.

2.9 The Property contains three structures which Developer intends to demolish. The City will grant any permits required for such purpose, which shall be subject to the requirements set forth below in this section. Developer shall comply with all State statutes and City Ordinances regarding demolition. In connection with the demolition of such structures, Developer shall engage a demolition contractor to remove any asbestos and/or asbestos contaminated materials contained within such structures(s) prior to performing its demolition activities. Any asbestos shall be removed in accordance with an action plan prepared by Developer's contractor, which action plan shall include the following: prior to the removal of any asbestos and/or asbestos contaminated materials, such contractor shall notify the Michigan Department of Environmental Quality that the contractor intends to commence demolition activities involving a structure(s) which contains asbestos; Developer's contractor shall use trained asbestos abatement/removal technicians. All asbestos materials, if any, which are removed from the site shall be sent to a Type II landfill and, in connection with the transportation of such materials to the landfill, appropriate shipping manifests shall be obtained and a third-party monitoring company shall be engaged to monitor the transportation of asbestos contaminated materials to such landfill. Demolition of structures will commence/resume following completion of asbestos removal activities. During the demolition process, the site will be sprayed with water to minimize airborne particles. Following completion of the demolition activities, the City shall inspect the site prior to the performance of backfilling and grading activities. When the City has approved the site, which approval shall not be unreasonably withheld, the site will then be graded and seeded to prevent soil erosion.

2.10 Developer shall comply with the City Code and Ordinances and Engineering Standards not inconsistent with this Agreements, make any necessary application for permits, and obtain any necessary permits for the use of construction trailers and for lease and advertising signs.

### **ARTICLE III**

#### **PUBLIC IMPROVEMENTS**

3.1 Water and Sanitary Sewer Systems. Developer shall, at its sole expense, construct and install improvements and/or connections tying into the municipal water and

sewage systems, including any required water hydrants. Such improvements shall be designed and constructed in accordance with the Final Site Plan, the PUD Documents, approved engineering construction plans, applicable City, County and State standards, codes, regulations, ordinances and laws. Such water and sanitary sewer service facilities, including any on-site and off-site facilities, extensions and easements to reach the area to be served, shall be provided by and at the sole expense of the Developer, and shall be completed, approved and dedicated to the City, as requested by the City in its discretion, to the extent necessary to fully service all proposed and existing facilities, structures and uses within the Development to be served thereby. No building shall be issued a Certificate of Occupancy until that building is served by water and sanitary sewer improvements according to applicable laws, ordinances, codes, regulations and standards in effect at the time the Certificate of Occupancy for the building is applied for. The City may require that the Developer post security in the form of cash or check or certificate of deposit or irrevocable letter of credit issued by an institution doing business in Oakland County, under a separate agreement in an amount equal to the cost of construction, or a performance bond in an amount equal to the cost of construction plus ten (10%) percent, as specified in a bona fide contract for construction of such water and sanitary sewer system improvements, which estimate shall be approved by the City Engineer, together with an agreement with the City, approved by the City Attorney, authorizing the City, at its option, to install the water system and/or sanitary sewer system if Developer has failed to do so within the time specified in this Agreement. If such deposit is approved and made, all building permits shall be issued for construction of buildings and improvements. If Developer fails to fulfill its obligation, then the City shall provide thirty (30) days prior written notice to cure. If a Developer has commenced performance to cure, it shall be given such further reasonable time to complete such cure. All performance bonds, if elected in lieu of letter of credit, shall be issued by institutions licensed and admitted to do business in the State of Michigan. Building permits for any building to be served by the water and sanitary system facilities improvements shall be issued upon the posting of the above security and execution of such agreement prior to installation or construction of such sewer and water installations. Developer shall assume all risks associated with any non-availability of water and/or sanitary sewers to serve the structures within the Development, including without limitation, uninhabitable buildings and fire protection risks, and shall release, indemnify and hold harmless the City from and against any claims arising by reason of any such non-availability except for damages that are directly proximately caused by the City's acts or omissions or the gross negligence of the City. Developer shall, upon completion of installation and testing of the public water and sanitary sewer improvements for each building, convey and dedicate all interest in such facilities to the City by providing and executing documents and title work in accordance with all applicable City ordinances and requirements. Thereafter, the City shall assume all liability and obligation for such utilities dedicated.

3.2 Storm Water Drainage. The Developer, at its sole expense, shall construct and maintain a storm water and retention and/or detention system for the Development, which system shall include the improvements provided in this Agreement, and shall be installed in accordance with the PUD Documents, the approved engineering construction plans, and all applicable ordinances, laws, codes, standards and regulations. All drainage improvements necessary to serve the Development shall be completed and approved prior to issuance of any Certificate of Occupancy. The City may require the Developer to post security in the form of cash or check or

certificate of deposit or irrevocable letter of credit issued by an institution doing business in Oakland County, in a separate agreement approved by the City in an amount equal to the estimated cost of installation, or a performance bond in an amount equal to the cost of construction plus ten (10%) percent, as specified in a bona fide contract for installation of such drainage improvements approved by the City Engineer, together with an agreement with the City, approved by the City Attorney, authorizing the City to, at its option, install the drainage improvements in question if the Developer has failed to do so at the expiration or revocation of building permit(s) after construction has commenced. All performance bonds, if any, shall be issued by institutions licensed and admitted to do business in the State of Michigan. Building permits shall be issued upon the posting of such security and execution of such agreement.

All construction, repair, maintenance and replacement of the storm drainage and retention/detention system which are Developer's responsibility, as described in this Section, shall be the sole obligation of the Developer and its successors and assigns. During the development of the Property, the Developer or its successors or assigns shall be obligated to maintain the storm drainage and retention and/or detention system and facilities in a fully operational condition.

3.3 Streets, Boulevards, Sidewalks, Drives, Entryways and Parking Lots. All drives, entryways, sidewalks, non-motorized paths and parking areas within the Development shall be designed, situated and constructed in accordance with the PUD Documents and all requirements and applicable ordinances of the City not inconsistent with this Agreement, and the approved engineering construction plans. All internal drives, entryways, sidewalks, and parking areas will be private except as otherwise setout herein. The construction drawings for drives shall be approved prior to issuance of building permits for the construction of any building or structure to be served thereby or to benefit therefrom. The City may require the Developer to post security in the form of cash or check or certificates of deposit or irrevocable letter of credit issued by an institution doing business in Oakland County, in a separate agreement approved by the City in an amount equal to the estimated cost of the construction, or a performance bond in an amount equal to the cost of construction plus ten (10%) percent, as specified in a bona fide contract for construction of all such improvements, approved by the City Engineer, together with an agreement approved by the City Attorney authorizing the City to, at its option, install the improvements in question if the Developer has failed to do so after thirty (30) days prior notice. Developer shall be given such additional time as is reasonable to effectuate a cure if it has timely commenced a cure. All performance bonds shall be issued by institutions licensed and admitted to do business in the State of Michigan. Building permits shall be issued for any building in the Development upon posting the security for the amounts as set forth above. Developer shall install and maintain an adequate gravel surface base as determined by the City Engineer for all entranceways and internal drive areas to provide for access for construction traffic, City personnel, emergency and fire fighting equipment for such specific site and prior to construction of a final base course. The aforementioned agreement for completion shall provide that the paving of all areas referenced in this paragraph shall be completed and approved (including topcoat and parking lot striping) prior to the issuance of more than ninety-five (95%) percent of any Certificates of Occupancy for buildings within the Development, but in any event such paving shall be completed within two (2) years of issuance of the first building permit for a building.

The internal drives, entranceways, sidewalks and parking areas shall be designed and constructed to the standards of the City, except for deviations approved by the City Engineer.

Developer, its successors and assigns, shall be responsible for maintenance and repair of the drives, entranceways, sidewalks, and parking areas for each building site during the period of construction, and shall also keep streets abutting the Development free from debris and repair any damage to the streets abutting the Development (subject to City of Troy requirements) caused by construction activities on or for the Property or the Development and use of abutting streets for construction purposes. If the Developer fails, after thirty (30) days prior written notice and failure to cure, to maintain and repair the drives, entranceways, parking areas and abutting streets as required by this Paragraph, the City may issue stop work orders and/or withhold issuance of further approvals, permits and occupancy certificates for the Development until such failure is cured. At all times, during and after completion of construction, Developer, its successor and assigns, shall cause all internal drives, entranceways and parking areas to be maintained, repaired and kept in an unimpeded, unobstructed, safe and passable condition at all times to allow for the free flow and circulation of traffic throughout the Development, except for temporary closures or obstruction due to repairs or snow. Subject to Paragraph 3.4 below, the responsibility and obligation for such ongoing maintenance and repair shall be that of the Developer, its successors and assigns.

3.4 Developer shall have the right to assign its maintenance obligations under this Agreement to an Association or Associations and to any successors and assigns including any successor developer or owner of a portion of the Development. Upon the assignment to and assumption by an Association or any successor developer or owner of any of Developer's maintenance obligations, as set out in this Agreement and otherwise, Developer shall have no further obligations or liability with respect thereto. All successors and assigns of Developer shall agree to be bound by the obligations for common area maintenance under the PUD Agreement.

3.5 For purposes of maintenance obligations set forth in this Paragraph, the term "maintenance," "maintain" and "maintained" shall mean and include regular inspections.

## **ARTICLE IV**

### **THE CITY'S RIGHTS AND OBLIGATIONS**

4.1 The City, in each instance, shall provide by written thirty (30) day notice to Developer with a time period in which to cure any deficiencies under this Agreement, which shall be no less than or no longer than such longer reasonable period of time as may be required if Developer, its successors, assigns, Association and/or owner(s) have commenced to cure and are expeditiously proceeding to satisfy such condition.

If, following the expiration of the period set forth to cure any deficiencies above, such deficiencies have not been cured, the City shall thereupon have the power and authority, but not the obligation, to take any of the following actions, in addition to any actions authorized under City ordinance and/or State law:

A. Demand that the non-performance, deficiency or obligation be fulfilled, performed or completed, before Developer assigns its obligations to an Association and set a specific date to complete the performance which may not be less than thirty (30) days prior written notice, and the City may then proceed under Paragraph 4.1(B) to fulfill the obligation or correct the deficiency.

B. Enter upon the Property, or cause its agents or contractors to enter upon the Property and perform such obligation or take such corrective measures as reasonably found by the City Council to be appropriate. In addition to any financial assurance given to ensure completion of the improvements, the additional costs and expense of making and financing such action by the City, including without limitation notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of twenty-five (25%) percent of the total of all such costs and expenses incurred shall be paid by Developer within thirty (30) days of a billing to Developer.

C. The City may initiate legal action for the enforcement of any of the provisions, requirements, and obligations set forth in the PUD Documents.

D. The City may issue a stop work order as to any building or improvement affected and may deny the issuance of any requested building permit or Certificate of Occupancy for such building or improvement regardless of whether the Developer is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the defaulting building improvement until cured.

E. The City may assess a lien against an individual property owner on a pro-rata basis.

4.2 In the event that the City utilizes the proceeds of a financial assurance given to ensure completion or maintenance of improvements, at any time throughout the period of development and construction of any part of the Development, the City, its contractors, representatives, consultants and agents, shall be permitted, and are hereby granted authority, to enter upon all or any portion of the Property for the purpose of inspecting and/or completing the respective improvements, and for the purposes of inspecting for compliance with and enforcement of the PUD Documents.

4.3 To the extent the PUD Documents deviate from the City of Troy Development Standards, Zoning Ordinances, or other City ordinances, or any amendments thereto, the PUD Documents shall control in all respects, including all land uses and approvals set forth and/or allowed pursuant to the PUD. All improvements constructed in accordance with the PUD Documents shall be deemed to be conforming under the Zoning Ordinance and in compliance with all ordinances of the City for all times and purposes and shall run with the land.

4.4 A portion of the property that is included in this Proposed Planned Unit Development is restricted by an Amended and Restated Consent Judgment dated July 29, 2003, which amends the original consent judgment dated January 7, 1992. According to paragraph 9 of this Amended and Restated Consent Judgment, the zoning for Lot 20 of the Big Beaver

Poultry Farms Subdivision “shall be either: (i) the zoning of and uses of Lot 15 (owned by the City of Troy as of the time of the original judgment), as elected by Troy; or (ii) R-1E, single-family residential”. The approval of the Proposed Big Beaver Place PUD Agreement and Conceptual Site Plan by the Troy City Council would satisfy this provision, to the extent that both Lots 15 and 20 would be rezoned to the same PUD zoning classification.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

5.1 This Agreement may not be modified, replaced, amended or terminated without the prior written consent of the parties to this Agreement. Developer and any successor developers and property owners shall have the right to delegate its (their) rights and obligations under this Agreement to an Association as set out in this Agreement. Until rights and responsibilities under this Agreement are transferred to such Association, Developer and the City shall be entitled to modify, replace, amend or terminate this Agreement, without requiring the consent of any other person or entity whatsoever, regardless of whether such person has any interest in the Property, including owners, mortgages of co-owners, and others. After the rights and obligations under this Agreement are transferred to an Association or any successor developer, only the Association or Associations, the successor developers and property owners, and the City shall be entitled to modify, replace, amend or terminate this Agreement.

5.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

5.3 Where there is a question with regard to applicable regulations for a particular aspect of the Development, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the PUD Documents which apply, the City in the reasonable exercise of its discretion, shall determine the regulations of the City’s Ordinances that are applicable, provided such determination is not inconsistent with the nature and intent of the PUD Documents nor increase such obligations.

5.4 The terms of the PUD Documents, including this Agreement, have been negotiated by the undersigned parties and such documentation represents the product of the joint efforts and agreement of the Developer and the City. Developer and the City fully accept and agree to the final terms, conditions, requirements and obligations of the PUD Documents, and shall not be permitted in the future to claim that the effect of these PUD Documents results in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of any of the PUD Documents causes an inverse condemnation or taking of all or a portion of the Property. Furthermore, it is agreed that the improvements and undertakings set forth in the PUD Documents are necessary and roughly proportional to the burden imposed in order to ensure that services and facilities affected by the Planned Unit Development will be capable of accommodating increased services and facility loads, traffic and storm water drainage caused by the development thereof, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially and economically desirable manner, and to achieve other legitimate objectives authorized under the

Michigan Zoning Enabling Act, MCL 125.3101, *et seq.* It is further agreed and acknowledged hereby that all of such improvements are substantially related to the burdens to be created by the development contemplated hereby, and all such improvements and the requirements and regulations of the Property under the PUD Documents and Zoning Ordinance, without exception, are clearly and substantially related to the City's legitimate interests in protecting the public health, safety and general welfare.

5.5 Developer, its successors and assigns, shall comply as is applicable with the following:

A. Signage for the commercial and retail components shall comply with the Sign Ordinance requirements for B districts. Signage for the residential facility shall comply with Sign Ordinance requirements for the R-M district.

B. Elevations for the commercial retail buildings shall be consistent with the elevations which have heretofore been submitted to the Planning Commission and City Council. Furthermore, the elevations shall be brought back to the Planning Commission and City Council for review prior to granting of building permits.

C. Rooftop mechanical equipment shall be fully screened with materials that are architecturally consistent with the building elevations.

5.6 Any notice provided for in this Agreement shall be in writing, addressed to the party to whom notice is given at the address set out at the beginning of this Agreement, or to such other address as one party gives to the other by notice, and deposited in the United States Mails, postage prepaid.

5.7 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

5.8 This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors and assigns.

THIS AGREEMENT was executed by the respective parties on the date specified with the notarization with their name, and shall take effect on the date of adoption by the Troy City Council of the Zoning Ordinance amendment granting rezoning of the Property to Big Beaver Place Planned Unit Development.

**IN WITNESS WHEREOF**, Developer has caused this Development Agreement to be executed the day and year first above written.



