



## CITY COUNCIL ACTION REPORT

DATE: December 9, 2008

TO: Phillip L. Nelson, City Manager

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

SUBJECT: City Council Public Hearing – Concept Development Plan Approval – BBK Mixed Use Project – Northeast corner of Big Beaver and Kilmer, Section 22, Currently Zoned O-1 (Low Rise Office) and R-1E (One Family Residential) District

### Background:

- The applicant proposes a mixed-use development on the 2.553-acre parcel. The project includes 14 residential units and 19,226 gross square feet of retail. The applicant proposes sustainable elements such as a green roof system on the retail component.
- The Planning Commission recommended Concept Development Plan Approval of PUD 10 at the November 11, 2008 Regular meeting.
- Richard Carlisle of Carlisle/Wortman Associates, Inc., the City's Planning Consultant, prepared a report summarizing the project and recommending Concept Development Plan Approval.
- The proposed PUD meets the Standards for Approval of Section 35.30.00 of the City of Troy Zoning Ordinance.
- The attached report was presented to the Planning Commission at the November 11, 2008 Regular meeting.

### Financial Considerations:

- There are no financial considerations for this item.

### Legal Considerations:

- City Council has the authority to act on this application.
- Concept Development Plan Approval will have the effect of rezoning the subject parcel to PUD 10.

Policy Considerations:

- The application is consistent with the following “Outcome Statements” as established at the July 1, 2008 Special Council meeting:
  - II. Troy adds value to properties through maintenance or upgrades of infrastructure and quality of life venues.
  - III. Troy is rebuilding for a healthy economy reflecting the values of a unique community in a changing and interconnected world.

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 November 6, 2008.
3. Traffic Impact Study Review prepared by OHM, dated November 5, 2008.
4. Traffic Impact Study Review prepared by OHM, dated October 22, 2008.
5. Planning Commission Minutes from the November 11, 2008 Regular meeting.
6. BBK PUD Conceptual Development Plan.
7. PUD Development Agreement.

Prepared by RBS/MFM

cc: Applicant  
Richard Carlisle/CWA  
File /PUD 10

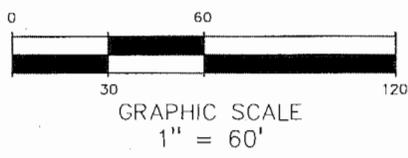
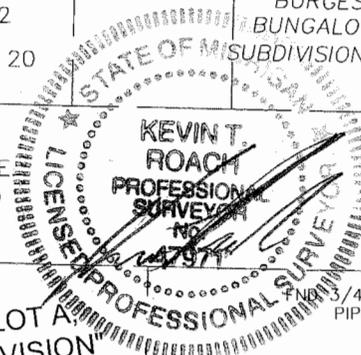
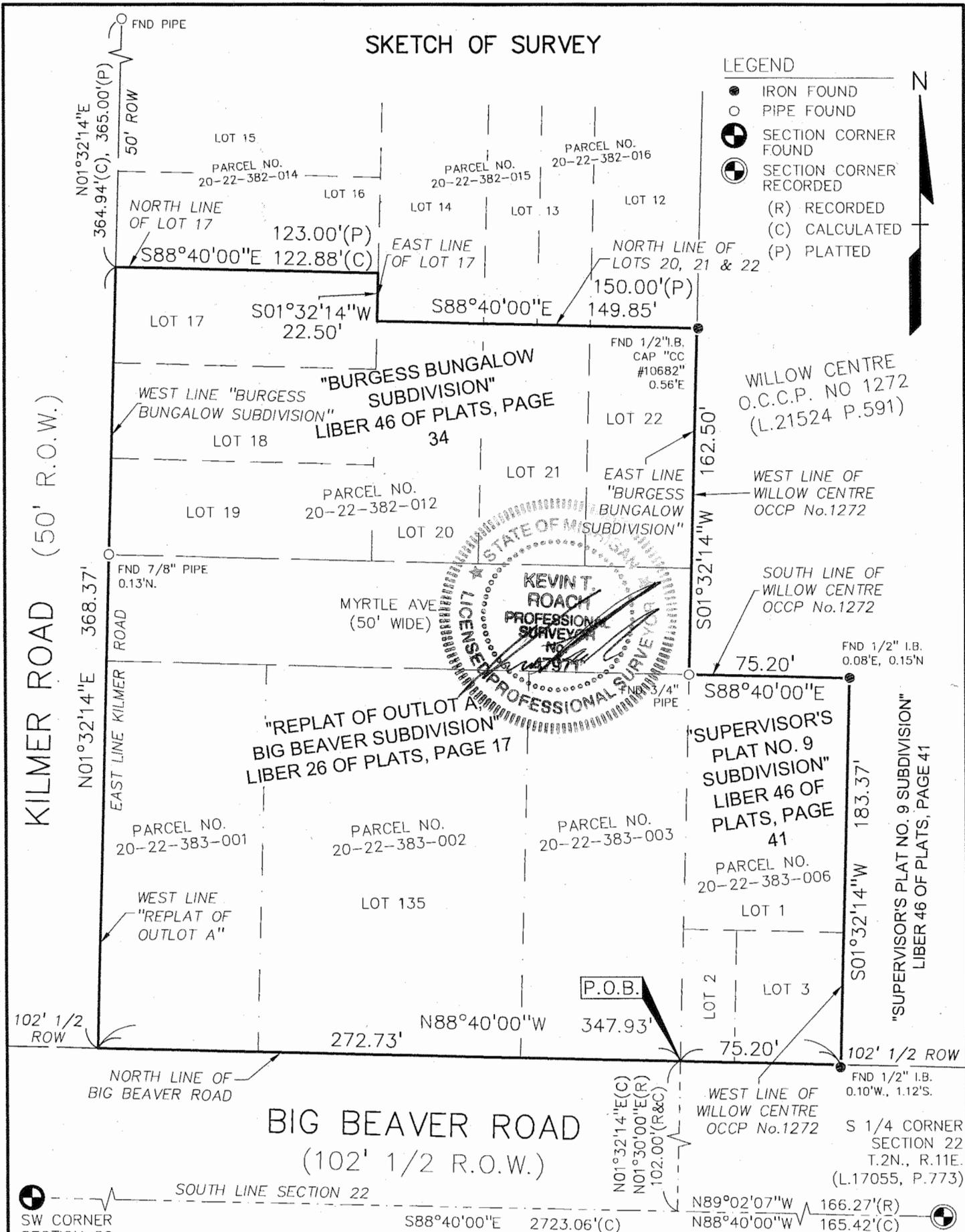
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# SKETCH OF SURVEY

## LEGEND

- IRON FOUND
- PIPE FOUND
- ⊕ SECTION CORNER FOUND
- ⊙ SECTION CORNER RECORDED
- (R) RECORDED
- (C) CALCULATED
- (P) PLATTED

N



PROFESSIONAL  
ENGINEERING  
ASSOCIATES

2430 Rochester Ct. Suite 100  
Troy, MI 48083-1872  
(248) 689-9090

CLIENT: <b>T.H. MARSH CONSTRUCTION CO.</b> 12725 STARK ROAD LIVONIA, MI., 48150	SCALE: 1" = 60'	JOB No: 2007101
	DATE: 5-14-08	DWG. No: 1 of 2

LEGAL DESCRIPTIONS

**SKETCH OF SURVEY**

TAX PARCEL NO. 20-22-383-001

THE WEST 75 FEET OF THE SOUTH 253 FEET OF LOT 135, REPLAT OF OUT LOT A OF BIG BEAVER SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 26, PAGE 17 OF PLATS, OAKLAND COUNTY RECORDS, EXCEPT THE SOUTH 69 FEET TAKEN FOR BIG BEAVER ROAD.

TAX PARCEL NO. 20-22-383-002

THE EAST 123 FEET OF THE WEST 198 FEET OF THE SOUTH 253 FEET OF LOT 135, REPLAT OF OUT LOT A OF BIG BEAVER SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 26, PAGE 17 OF PLATS, OAKLAND COUNTY RECORDS, EXCEPT THE SOUTH 69 FEET TAKEN FOR BIG BEAVER ROAD.

TAX PARCEL NO. 20-22-383-003

THE EAST 75 FEET OF THE SOUTH 253 FEET OF LOT 135, REPLAT OF OUT LOT A OF BIG BEAVER SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 26, PAGE 17 OF PLATS, OAKLAND COUNTY RECORDS, EXCEPT THE SOUTH 69 FEET TAKEN FOR BIG BEAVER ROAD.

TAX PARCEL NO. 20-22-383-006

PART OF LOTS 1, 2 AND 3, SUPERVISORS PLAT NO 9, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 46, PAGE 41 OF PLATS, OAKLAND COUNTY RECORDS, DESCRIBED AS BEGINNING AT POINT DISTANT N89°02'07"W, 166.27 FEET AND N01°30'00"E, 102 FEET FROM THE SOUTH 1/4 CORNER; THENCE S89°02'07"E, 75.16 FEET; THENCE N01°32'14"E, 184.49 FEET; THENCE N88°46'20"W, 75.28 FEET; THENCE S01°30'00"W, 184.83 FEET TO THE BEGINNING.

TAX PARCEL NO. 20-22-382-012

LOTS 17, 18, 19, 20, 21 AND 22, BURGESS BUNGALOW SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 46, PAGE 34 OF PLATS, OAKLAND COUNTY RECORDS.

LEGAL DESCRIPTION

(As Surveyed by Professional Engineering Associates)

OVERALL PARCEL

Part of the Southwest 1/4 of Section 22, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan, being more particularly described as: Commencing at the South 1/4 Corner of said Section 22; thence along the south line of said Section 22, N88°40'00"W, 165.42 feet; thence N01°32'14"E, 102.00 feet to the North line of Big Beaver Road (102 foot half width) and the Point of Beginning; thence along said north line, N88°40'00"W, 272.73 feet to the west line of "Replat of Outlot A, Big Beaver Subdivision", as recorded in Liber 26 of Plats, Page 17; thence along said west line and the west line of "Burgess Bungalow Subdivision", as recorded in Liber 46 of Plats, Page 34, said line also being the east line of Kilmer Road (50 foot width), N01°32'14"E, 368.37 feet to the north line of Lot 17; thence along said north line S88°40'00"E, 122.88 feet to the east line of Lot 17; thence along said east line, S01°32'14"W, 22.50 feet to the north line of Lot 20; thence along the north lines of Lot 20, 21 and 22, S88°40'00"E, 149.85 feet to the east line of the aforementioned subdivision, said line also being the west line of "Willow Centre" O.C.C.P. No. 1272, as recorded in Liber 21524, Page 591; thence along said lines S01°32'14"W, 162.50 feet to the south line of said condominium; thence along said south line, S88°40'00"E, 75.20 feet to the west line of said condominium; thence along said west line, S01°32'14"W, 183.37 feet to the aforementioned north line of Big Beaver Road; thence along said north line, N88°40'00"W, 75.20 feet to the Point of Beginning. Containing 2.546 acres of land, more or less.



I, Kevin T. Roach, a Licensed Land Surveyor in the State of Michigan, certify that I have surveyed the parcel(s) of land hereon described; that are no encroachments except as shown; that the field error of closure is 1 part in 20,000. The seller of this property is required to record this instrument at the time of sale.

*[Handwritten Signature]*

Kevin T. Roach, P.S. 47971

PROFESSIONAL ENGINEERING ASSOCIATES	
2430 Rochester Ct. Suite 100 Troy, MI 48083-1872 (248) 689-9090	

CLIENT: T.H. MARSH CONSTRUCTION CO. 12725 STARK ROAD LIVONIA, MI., 48150	SCALE: 1"= 60'	JOB No: 2007101
	DATE: 5-14-08	DWG. No: 2 of 2



PLANNED UNIT DEVELOPMENT REQUEST  
PROPOSED BIG BEAVER & KILMER DEVELOPMENT  
NE CORNER F BIG BEAVER & KILMER  
SEC. 22 (PUD 010)



TALBOT

LANGSTON

KILMER

SUBJECT SITE

E BIG BEAVER

CHARTER



PLANNED UNIT DEVELOPMENT REQUEST  
PROPOSED BIG BEAVER & KILMER DEVELOPMENT  
NE CORNER F BIG BEAVER & KILMER  
SEC. 22 (PUD 010)

R-1E

TALBOT

KILMER

LANGSTON

SUBJECT SITE

O-M

O-1

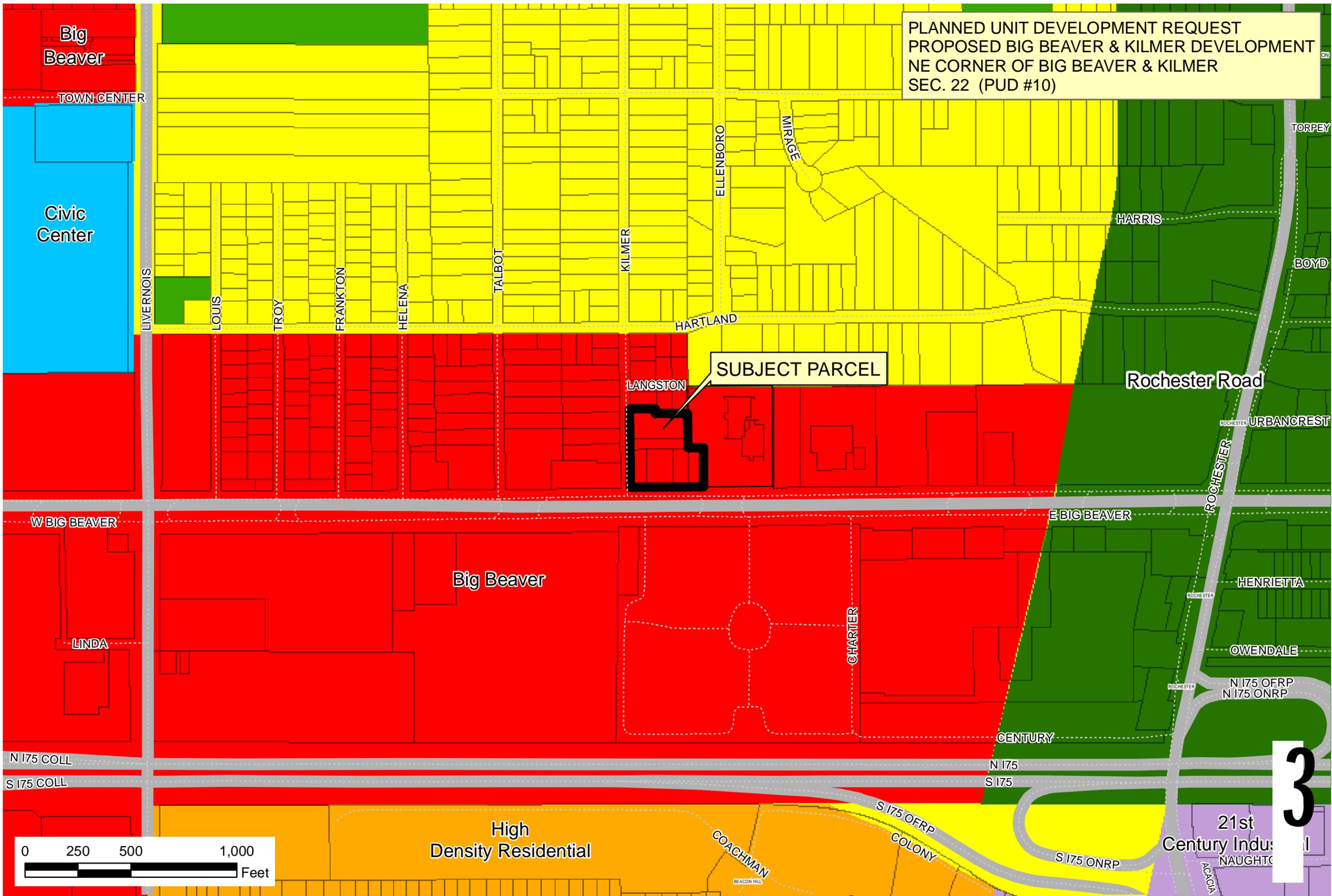
E BIG BEAVER

RM-1

CHARTER



PLANNED UNIT DEVELOPMENT REQUEST  
PROPOSED BIG BEAVER & KILMER DEVELOPMENT  
NE CORNER OF BIG BEAVER & KILMER  
SEC. 22 (PUD #10)



SUBJECT PARCEL

LANGSTON

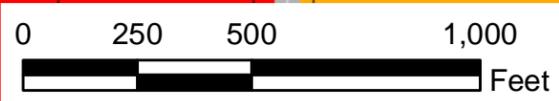
Rochester Road

Big Beaver

High Density Residential

21st Century Industrial

3





**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: September 18, 2008

Rev.: October 27, 2008

Rev.: November 6, 2008

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

### **GENERAL INFORMATION**

<b>Applicant</b>	Landus Development
<b>Project Name:</b>	BBK Mixed Use Development PUD
<b>Plan Date:</b>	November 4, 2008
<b>Location:</b>	Northeast corner of Kilmer Road and Big Beaver Road
<b>Zoning:</b>	O-1, Low Rise Office and R1-E, Single Family Residential (a small section is a current right-of-way for Myrtle Avenue)
<b>Action Requested:</b>	<p>Planning Commission review and recommendation to the City Council for approval of the Concept Development Plan. The procedure for review and approval of a PUD is a three-step process:</p> <ul style="list-style-type: none"><li>• The first step is an application for and approval of a Concept Development Plan, along with a Development Agreement. The Concept Development Plan and Development Agreement are approved by the City Council following recommendation of the Planning Commission. Such action, if and when approved, shall confer upon the applicant approval of the Concept Development Plan and shall rezone the property to PUD in accordance with the terms and conditions of the Concept Development Plan approval.</li><li>• The second step of the review and approval process is application for and approval of a Preliminary Development Plan (preliminary site plan) for the entire project, or for any one or more phases of the project. City Council shall have</li></ul>

the final authority to approve and grant Preliminary Development Plan approvals, following a recommendation by the Planning Commission.

- The third step of the review and approval process is the review and approval of a Final Development Plan (final site plan) for the entire project, or for any one or more phases of the project, and the issuance of building permits. Final Development Plans for Planned Unit Developments are submitted to the Planning Department for administrative review, and the Planning Department, with the recommendation of other appropriate City Departments, has final authority for approval of such Final Development Plans.

**Required Information:** Provided.

## **PROJECT, SITE DESCRIPTION, AND CONCEPT PLAN**

We are in receipt of a revised application for a proposed Planned Unit Development (PUD) that includes 18,699 square feet of retail space in 3 buildings and 14 residential units of approximately 1,600 square feet in area. The 2.553 acre site is currently occupied by a vacant single-family home. The project is proposed in two phases, which are proposed for construction simultaneously.

We have reviewed conceptual submittals for this project on four previous occasions; the most recent review was in a letter dated October 27, 2008. Since that submittal, the applicant has met with the Planning Commission and City of Troy staff and consultants to resolve a series of remaining issues. The revisions include, but are not limited to, the following:

- The south drive on Kilmer Road has been turned into an exit only driveway.
- Outdoor seating between the retail buildings has been reconfigured and brought forward.
- All sheets have been updated to ensure consistency throughout.
- Eleven of the residential units have been revised in design to include 2-car garages, increasing the site's overall parking by 11 spaces.
- Clarification has been provided which ensures that the areas labeled "flex room" and optional office/retail spaces attached to units 11 and 12 will not be used for true public-access live/work units.
- Left turn only has been eliminated from both Kilmer driveways.
- The "chicane" south of Retail Building C has been softened to allow for improved alignment.
- The drive-through exit lane at Retail Building C has been altered to improve circulation.
- The outdoor seating near Retail Building C has been reconfigured.

The underlying zoning of the subject site would not permit the retail portion of the project or the attached residential portion of the project. The project would also require a series of deviations from the dimensional and parking requirements of the underlying zoning. Given these proposed use and dimensional deviations, the applicant has elected to pursue PUD approval for this project.

*Items to be Addressed: None.*

## **NEIGHBORING ZONING AND LAND USE**

The site is made up of a collection of parcels having two different zoning classifications. The 1.47 acres facing Big Beaver Road are zoned O-1, while the 0.77 acres along the north boundary of the site are zoned R-1E. A 50-foot wide strip between these two portions of the site is reserved as right-of-way for Myrtle Avenue. The residential area to the north is zoned R-1E, while property to the west and east are zoned O-1 and a mix of O-1 and R-1E. To the south across Big Beaver Road are O-M, RM-1, and O-1 districts.

Nearby land uses include a collection of office uses, retail establishments, and single family residential.

*Items to be Addressed: None*

## **MASTER PLAN**

The site is located at the northeast intersection of Big Beaver and is within the “Offices East” district of the Big Beaver Corridor Plan and is within the Big Beaver Corridor district in the Troy 2008 Master Plan.

In general, the primary focus of the Office East District with the Corridor Study is to promote general office uses along the frontage with residential uses transitioning to adjoining neighborhoods. The other key aspects of the Corridor relevant to this area include building height of 2-3 stories, locating buildings closer to the street, and encouraging pedestrianism.

The collection of uses that are proposed would be complementary to and would strengthen the overall office community in this area in that it would provide for a number of new housing types for potential workers who would like to live in a more urban situation, and would provide nearby restaurant and retail opportunities for workers.

The uses and character of Big Beaver Corridor district in the Troy 2008 Master Plan are driven by the recommendations of the Big Beaver Corridor Study and subsequent efforts of the Planning Commission to create new zoning techniques to implement those recommendations. The mixed-use nature of this project and the attention the applicant has given to pedestrian amenities, outdoor dining, innovative architectural design, interaction between the retail units and the streetscape through large glazed areas are elements specific to this project that are directly mentioned as desirable elements within the Big Beaver Corridor district in the Master Plan.

The applicant's desire to build this development to a green standard is a further example of this project's degree of compliance with the Troy 2008 Master Plan, which strongly encourages the incorporation of green design elements in new projects.

*Items to be Addressed: None.*

## **PUD STANDARDS**

The PUD provisions of the Zoning Ordinance are found in article XXXV. Criteria are set forth in Section 35.30.00 for consideration of a PUD project as a PUD. The following are our comments:

Section 35.30.00, A. The proposed development shall be applied for by a person or entity that has the legal right to execute a binding agreement concerning all process on the development.

*The submittal states that Landus Development, the applicant, is the owner of the property.*

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 project includes a mix of uses. The existing O-1 zoning along the south portion of the site is "... designed to accommodate office uses, office sales uses, and certain basic personal services. These districts are mapped typically in major shopping center locations related to the activity of the larger establishments generating greater volumes of vehicular and pedestrian traffic." The O-1 classification would permit some service-oriented uses specifically selected to serve an office environment. The proposed general retail and potential restaurant uses would not be permitted under the O-1 classification.*

*The existing R-1E classification is intended to "...to be the most restrictive of the residential Districts as to use. The intent is to provide for environmentally sound areas of predominantly low-density, single family detached dwellings, through the varying of lot sizes and the development options which will accommodate a broad spectrum of house sizes and designs appealing to the widest spectrum of the population." The existing classification would not permit the compact, attached single family residential dwellings at the density proposed by the applicant.*

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 proposed project does not constitute a public facility dedicated towards recreation transportation, safety or security. It does, however, integrate public spaces with outdoor cafes and water fountains that will allow users and residents of the property to gather in outdoor spaces which will enhance the health, safety, and welfare of those individuals.*

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.

*This project includes a collection of restaurant uses, retail spaces, and an under-represented type of residential unit in Troy. This compact project with a mix of uses will allow for a higher density residential project to be served by adjacent retail uses. This is especially true given the project's walkable design, easy access, and integrated public common areas. Without the PUD option, this compact mix of compatible uses would not be possible.*

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.

*The site is currently undeveloped, with the exception of an existing single family home. The site does not have rare or critical natural features. Given the proposed density and sensitive green building approach, the development would improve site conditions, especially when contrasted against the likely conditions that would occur under conventional zoning.*

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

*The project would improve on the existing conditions in this regard and does include small pockets of open space and landscaped areas. While it does not provide a great deal of open space, it does make effective use of the remaining open areas for stormwater management and for landscape features.*

*The project does include a useful pedestrian network, and allows for effective, safe pedestrian access between the residential and retail components.*

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

*The project would reside between the Big Beaver Road corridor and an existing single family residential area. The project includes a mix of uses which are situated so as to separate the primary retail uses along Big Beaver from the single family neighborhood, locating a collection of townhomes in the transitional area. Given the small size of this project and the proximity of the adjacent single family neighborhood, we feel this project successfully provides for an appropriate land use transition.*

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

*The project narrative and conceptual plan indicates that the project intends to promote*

*green building techniques and low impact design. The narrative indicates that designers will seek LEED Certification or “sustainable design implementation or certification.” While it is unclear what other certification the project may choose to pursue, the limited detail provided in the conceptual building elevations and floor plan drawings reveal that the applicant intends to incorporate a series of green design elements which may contribute to towards LEED certification including:*

- *Energy star roofing membrane*
- *Operable clerestory windows*
- *Rooftop gardens*
- *Sun shading overhangs*
- *Bioswales*
- *“Green” paving in certain parking areas*

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

*The proposed PUD includes a compact, integrated collection of structures that maximizes the use of the property and allows for residents and visitors to access a series of goods or services within one project. The walkable character and provision of outdoor seating and decorative fountains add to the character of the site. The inclusion of contemporary townhomes in the project help to expand the housing types available in the City of Troy and will represent an alternative housing choice for new families, retirees, or homebuyers looking for entry-level or small-floor plan housing in a unique urban setting.*

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.

*This project does have a strong emphasis on street activity, mixed use, and pedestrians. It is designed to create an alternative living environment and expand the scope of traditional “strip” retail. It includes a compact collection of uses with integrated public areas and extensive pedestrian amenities between the various project components.*

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

*Please refer to the section of this report entitled “Site Access and Circulation.”*

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

*This project will be redeveloping what is mostly vacant with a single vacant structure. While the project does not necessarily allow for the positive redevelopment of an obsolete structure, it is appropriately using a small site along a major urban corridor.*

12. A complementary variety of housing types that are in harmony with adjacent uses;  
*While the proposed housing is at a far greater density than the adjacent residential uses to the north, it does provide an alternative, but complementary single family attached housing product which provides an effective transition between the Big Beaver Corridor and existing residential area.*
  
13. A reduction of the impact of a non-conformity or removal of an obsolete building or structure.  
*Please refer to comment #11 above.*
  
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 mentioned earlier, the proposed uses are not the primary target of the Master Plan or the Big Beaver Corridor Study, but the collection of uses that are proposed would be complementary to and would strengthen the overall office community in this area in that it would provide for a number of new housing types for potential workers who would like to live in a more urban situation, and would provide nearby restaurant and retail opportunities for workers.*
  
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.  
*The site plan includes conceptual drawings of the proposed buildings, but detailed drawings that adequately describe materials of construction have not yet been provided.*
  
  - B. The location and screening of vehicular circulation and parking areas in relation to surrounding properties and the other elements of the development.

*The project incorporates parking all around its perimeter. Two rows of parking are situated along Big Beaver Road. We support the incorporation of shared parking to reduce new surface parking and encourage infill development.*

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

*Typical screening measures are shown on the site plan. Dumpster pads and loading and unloading areas are integrated throughout the project in accessible but unobtrusive areas.*

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

*The retail and restaurant uses typically have hours running until mid to late evening. The residences would allow for activity 24 hours a day.*

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

*The submittal adequately describes the conceptual landscaping plan.*

- 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.

*Please refer to the section of this report entitled Parking and Loading. The project relies heavily on shared parking to meet anticipated demand.*

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

*As indicated earlier, the project does include bioswales and a rain garden. The inclusion of "green" pavers in the project will also reduce the rate of stormwater runoff.*

- 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.

*On the basis of the information provided all applicable laws and ordinances will be observed.*

**Items to be Addressed: None**

**AREA, WIDTH, HEIGHT, SETBACKS**

The site plan includes a small table titled “Zoning Information” on Sheet A-101. This table provides dimensional requirements for the O-1 portion of the property, for the R1-E portion of the property, and for the right-of-way portion of the property.

Physical standards relating to matters such as building height, bulk, density, parking and setbacks will be determined based upon the specific PUD plan presented. The dimensional requirements for the underlying zoning and the proposed dimensions are as follows:

	<u>Required:</u>	<u>Provided:</u>
<i>Lot Area</i>	N/A	2.553 acres
<b>Setbacks</b>		
<i>Big Beaver Frontage</i>	30 feet (O-1 District)	75 feet (retail building C), 76 feet (A and B)
<i>Kilmer Frontage</i>	20 feet (O-1 portion), 25 feet (R-1E portion)	<b>Approximately 6 feet from residential porches in R-1E portion and 10 feet from retail building A in the O-1 portion</b>
<i>East Boundary</i>	20 feet (O-1 portion), 25 feet (R-1E portion)	<b>Approximately 10 feet for retail building C, 0 feet for residential unit 4</b>
<i>North Boundary</i>	25 feet (side yard setback) for the R-1E district	<b>10 feet for residential unit 1</b>
<b>Building Height</b>	Minimum of 3 stories for 80 percent of the project; setback requirements are tiered for building higher than 30 feet.	36 feet for the residential portion and 31.5 feet for the retail portion

*Items to be Addressed: None.*

**PARKING, LOADING**

The project is dependent upon a shared parking arrangement with the neighboring project. For the retail portion of the project, 42 of the provided spaces are created through shared parking. Since the last submittal, the applicant has increased the number of provided spaces by expanding 11 of the residential garages to accommodate a second car. This will reduce the demand on visitor parking for primary residents’ second vehicles.

Given that parking for the proposed project cannot be met on the site due to constraints in the site’s area, the applicant intends to utilize shared parking for the project. An agreement for the shared parking has been obtained, and has been provided. The applicant’s submittal does

provide sufficient documentation to illustrate that the proposed shared parking would not impact the adjacent office complex to the point that it would reduce the sites ability to accommodate the existing office center and Bahama Breeze restaurant.

The application reveals the following information about parking for the proposed project:

Required under conventional zoning for proposed uses:

- Phase 1: Retail.  $18,685/200 = 93.4$  (94) required spaces
- Phase 2: 14 residences with 2 spaces each = 28 required spaces

Provided:

- Retail: 74 spaces provided on-site and 42 spaces provided in shared parking
- Residential: 25 garage and 16 visitor spaces, provided on-site and on-street along Kilmer Road.

The clarification that the residential units will not contain live/work style space eliminates our previous concerns over the potential for increased demand. We do suggest that the development agreement include strict provisions on the flex room and optional office/retail spaces connected to units 11 and 12 to prohibit public traffic to these units, a limitation on deliveries, or other measures meant to preempt potential parking and circulation concerns.

***Items to be Addressed:** Include provisions in the development agreement to prohibit public traffic to the flex spaces within the residential units and the optional spaces attached to units 11 and 12, a limitation on deliveries, or other measures meant to preempt potential parking and circulation concerns.*

## **SITE ACCESS AND CIRCULATION**

Following the last Planning Commission discussion with the applicant, City of Troy staff members and consultants met with the applicant and discussed the site circulation concerns raised by the previous OHM review and Planning Commissioners. In response to the original OHM concerns, a series of changes have been made to the site plan and OHM has issued a new letter stating that they largely support the applicant's revised plan.

In order to reduce the potential conflicts associated with the southern-most driveway on Kilmer Road, the design has been changed to an exit only driveway. This approach will permit vehicles to exit the west portion of the lot if they are unable to find a parking space or leave the development when finished with their stay. The exit only design will restrict the ability of vehicles to enter the site from Kilmer while reducing concerns over safety and circulation on site. Emergency vehicles will be able to access to site via this driveway as well.

The north driveway on Kilmer has been restored to a two way design, to ensure that visitors to the site that live north of the project can access their neighborhood without travelling back to Big Beaver Road.

The formerly abrupt chicane south of Retail Building C has been redesigned, along with the drive-through exit lanes, to enhance safety and circulation in this critical entry point to the project.

After careful review of the turning templates provided by the applicant, the Fire Department has no objection to the maneuvering lane design for the north portion of the project. Further, given that the applicant has agreed not to permit businesses within the residential units, we are no longer as concerned with access for large delivery vehicles. The turning templates suggest that in a worst-case scenario, delivery trucks could potentially access the units if necessary for moving, etc. It is our understanding that the applicant would agree to certain restrictions on large vehicles, the presence of businesses in the residential units, and other measures within the development agreement that would reduce the potential conflicts in this area of the site.

*Items to be Addressed: None.*

## **ESSENTIAL SERVICES**

The application includes a summary of proposed utility connections. The applicant intends to connect the site to the existing 10 inch water main and sewer lines on Big Beaver Road and provide a loop around the site. The site plan also includes a series of stormwater management elements, including bioswale, a rain garden, roof vegetation, and underground detention systems. We defer to the City Engineer in this regard.

*Items to be Addressed: Consult with City Engineer with regard to water and sewer service.*

## **RECOMMENDATIONS**

We believe the compact, integrated design and complementary mix of uses included in this project would benefit the Big Beaver Corridor and the City of Troy. The PUD option allows the City to permit a compact, higher-density project that incorporates a mix of retail and residential uses that would be highly beneficial in this office and research dominated area by providing alternative dwelling options and nearby services.

The majority of our issues raised in our previous review have been addressed by the applicant and discussions with the Planning Commission, City Staff, and consultants have resulted in alterations that continue to improve the plan. The incorporation of 11 additional spaces within the residential unit garages will significantly improve the parking situation and we support the applicant's proposed changes with regard to site circulation.

Given these positive changes and our conclusion that the project does qualify as a Planned Unit Development, we recommend that the Planning Commission recommend to the City Council that the proposed PUD concept plan be approved, conditioned on the applicant agreeing to include provisions in the development agreement to prohibit public traffic to the flex spaces within the residential units and the optional spaces attached to units 11 and 12, a limitation on deliveries, or other measures meant to preempt potential parking and circulation concerns.

CARLISLE/WORTMAN ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "R K Carlisle". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Richard K. Carlisle, PCP

# 225-02-2603

RKC: zb

November 5, 2008



Mr. William Huotari, PE  
Deputy City Engineer  
City of Troy  
500 W. Big Beaver Road  
Troy, MI 48084

Subject: Review of BBK Mixed-Use Development (Site Plan and Traffic Assessment Report)  
OHM JN: 0128-08-0020

Dear Mr. Huotari:

Based on information provided at the October 30, 2008 Planning Department Team Meeting for the BBK Mixed-Use Development we understand that the majority of comments from our October 22, 2008 letter have been superseded by previously made agreements between City Planners and the Development Team.

Coming out of the October 30 meeting, we requested the developer to revise the following items on the site plan:

- Revise the south drive along Kilmer Road to provide for "exit only" operation.
- Revise the sharp chicane along the east-west parking aisle closest to Big Beaver Road to provide more of a gradual shift.
- Remove the "left-turn only" restriction at the drives along Kilmer Road.

These concerns have been addressed with this submittal. Please contact me if you have any questions.

Sincerely,  
Orchard Hiltz & McCliment, Inc.

A handwritten signature in black ink, appearing to read "S. Loveland", is written over the typed name.

Steven M. Loveland, PE, PTOE

October 22, 2008



Mr. William Huotari, PE  
Deputy City Engineer  
City of Troy  
500 W. Big Beaver Road  
Troy, MI 48084

Subject: Review of BBK Mixed-Use Development (Site Plan and Traffic Assessment Report)  
OHM JN: 0128-08-0020

Dear Mr. Huotari:

As requested, we have reviewed the BBK Mixed-Use Development traffic assessment report and site plan for traffic related issues. The following comments are offered:

**Traffic Impact Assessment Review**

Based on the current site plan we agree with the conclusions provided in the assessment.

- The BBK Mixed-Use development will not adversely impact traffic in the immediate area of the development.
- The proposal to share 42 parking spaces located in the Willow Centre parking lot is justified based upon the full leasing potential of the center and the full occupancy of the BBK property.

However, there are a few items that should be considered:

- The first Kilmer Road access point is proposed to be located approximately 65 feet north of Big Beaver Road. According to the Michigan Access Management Guidebook, the desirable corner clearance is 115'. This corresponds to the location of the existing driveway for the office building on the west side of Kilmer.
- From the Michigan Access Management Guidebook, the Guideline for Unsignalized Driveway Spacing (Table 3-5) indicates a value of 350' for a 45 mph road. The proposed driveway spacing is 290' and 190' between driveway and Kilmer Road.
- The report indicates that the site will generate less than 100 peak hour trips, while trip generation calculations indicate otherwise.
- The document indicates that a background growth rate would not be appropriate, but later states that a 1.6% growth rate was applied. The figures do not apply the 1.6% growth rate.

With revisions to site layout, including number and location of driveways, the traffic assessment document will need to be revised.

**Site Plan Review**

The proposed site plan has a number of inconsistencies with the *Big Beaver Corridor Study*.

- This site is located in the "Office East" portion of the corridor, with the intended building use of office and residential. The site plan proposes retail and residential.
- The Driveway Access section of the Corridor Study notes existing problems in the vicinity of this site. The problems include too many driveways, need for east-west cross access, and driveways too close to intersections. This site will add to these problems with the addition of another improperly spaced drive along Big Beaver Road and the driveway to Kilmer Road spaced too closely to Big Beaver Road.

The following comments are provided regarding the site layout:

- We recommend eliminating the proposed driveway along Big Beaver Road. Cross access to the existing driveway along Big Beaver Road plus the driveways along Kilmer Road provide more than adequate access to the site.
- Further, if the site is redesigned we would recommend only providing one driveway along Kilmer Road that would align with the existing driveway along the west side of Kilmer Road. Vehicles entering this drive could access both the residential and retail portions of the site.
- The proposed left-turn only exits at both drives along Kilmer Road will be very hard to enforce and the turn restrictions should be removed from the plan. If there is a potential for citizens from the neighborhood to the north to patronize the retail portions of this site, then right turns should not be prohibited. In restricting right-turns, traffic will unnecessarily have to enter Big Beaver Road to access northbound Kilmer Road.
- The east-west parking aisle closest to Big Beaver Road should be directly aligned with the Willow Centre parking aisle, and avoid the sharp chicane or shift in alignment that draws it closer to Big Beaver. Otherwise, the drive-thru exit from Retail "C" and the parking aisle curves will need to be revised. The current configuration provides for unsafe driving conditions due to the sharp curves transitioning between alignments and the location of the drive-thru exit relative to the curves. At a minimum, the left-turn only exit from the drive-thru should be further channelized to help drivers make the left-turn. Also, the curb line at the drive-thru exit will need to be shaved back to provide a more gradual shift along the parking aisle than accomplished with the curves currently shown.

Please contact me if you have any questions regarding our findings.

Sincerely,  
Orchard Hiltz & McCliment, Inc.



Steven M. Loveland, PE, PTOE

## **PLANNED UNIT DEVELOPMENT**

12. **PLANNED UNIT DEVELOPMENT (PUD 10)** – Proposed Big Beaver and Kilmer Planned Unit Development, Northeast Corner of Big Beaver and Kilmer, Section 22, Currently Zoned O-1 (Low Rise Office) and R-1E (One Family Residential) Districts

Zak Branigan of Carlisle Wortman Associates reported on the recent revisions of the proposed PUD development. It is their recommendation that the Planning Commission recommends to the City Council that the proposed PUD Concept Development Plan be approved, conditioned on the applicant agreeing to include provisions in the development agreement to prohibit public traffic to the flex spaces within the residential units and the optional spaces attached to units 11 and 12, a limitation on deliveries, or other measures meant to preempt potential parking and circulation concerns.

The petitioner, Ryan Marsh of Landus Development, 32121 Woodward Avenue, Royal Oak, was present. Mr. Marsh addressed the neighborhood support, executed lease and viability of the project. He asked the Commission's support and recommendation of the proposed Concept Development Plan.

There was brief discussion relating to deceleration lane, traffic management, storm water management and landscaping.

Chair Schultz opened the floor for public comment.

There was no one present who wished to speak.

Chair Schultz closed the floor for public comment.

### **Resolution # PC-2008-11-136**

Moved by: Tagle  
Seconded by: Strat

**WHEREAS**, The Planning Commission reviewed a Concept Development Plan for a Planned Unit Development, pursuant to Article 35.50.01, as requested by Landus Development for the BBK Mixed-Use Development Planned Unit Development (PUD 10), located on the northeast corner of Big Beaver and Kilmer, located in Section 22, within the O-1 and R-1E zoning districts, being approximately 2.546 acres in size; and

**WHEREAS**, The City's Planning Consultant Richard Carlisle of Carlisle/Wortman Associates, Inc. prepared a memorandum dated November 6, 2008 that recommends Concept Development Plan approval of BBK Mixed-Use Development Planned Unit Development; and

**WHEREAS**, The proposed PUD meets the Standards for Approval set forth in Article 35.30.00; and

**BE IT FINALLY RESOLVED**, That the Planning Commission recommends to City Council that Concept Development Plan Approval for BBK Mixed-Use Development Planned Unit Development be granted.

Yes: All present (6)  
Absent: Maxwell, Vleck, Wright

**MOTION CARRIED**

**KILMER PLAZA**

**STATE OF MICHIGAN / COUNTY OF OAKLAND**

**CITY OF TROY**

**DEVELOPMENT AGREEMENT**

**FOR**

**“KILMER PLAZA”**

**PLANNED UNIT DEVELOPMENT**

This Development Agreement (“Agreement”), dated December \_\_, 2008, is entered into by and between MARSH BBK-TROY, LLC, a Michigan limited liability company, the address of which is 300 Balmoral Centre, 32121 Woodward Avenue, Royal Oak, Michigan 48073, 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, County of Oakland, State of Michigan, consisting of 2 parcels and containing approximately 2.55 acres, as more particularly described on Exhibit “A” attached hereto (the “Property”). Developer also has an easement interest in the adjoining Willow Centre Complex, which is further described in Article II of this agreement.

B. 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 “Kilmer Plaza”, sometimes also referred to herein as the “Development” or the “Planned Unit Development”. Developer has received Conceptual Development Plan 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 Site Plan, a copy of which is hereto attached as Exhibit B.

C. In connection with the grant of rezoning of the Property to PUD, Section 35.80.00 of the City’s Zoning Ordinance requires the submission of a Planned Unit Development Agreement executed by the Developer which incorporates conceptual site plans, conceptual landscaping plans and other documents enumerated as PUD Documents, as defined below, and which requires approval by City Council of those documents 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.

D. 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, 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 and as of the effective date, 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.

**NOW, THEREFORE**, as an integral part of the grant of the rezoning of the Property to “Kilmer Plaza” 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” voluntarily entered into and 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 Development Plan (referred to as, CDP, bound in a three ring binder and date stamped “Received” by the City of Troy Planning Department on December 9, 2008).

D. The following full-sized plans, date stamped “Received” by the City of Troy Planning Department on November 21, 2008:

Sheet A-101	Architectural/Composite Plan – Proposed New Work
Sheet C-1	Boundary and Topographical Survey
Sheet C-2	Preliminary Site Plan
Sheet C-4	Preliminary Utility Plan
Sheet C-5	Preliminary Truck Access Plan
Sheet L-1	Preliminary Landscape Plan
Sheet L-2	Preliminary Landscape Plan
Sheet L-3	Landscape Plan-Bio Swales
Sheet L-4	Landscape Details
Sheet L-5	Landscape Specifications
Sheet L-6	Landscape Specifications

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 United 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 (PDP), when it is approved by City Council.

1.3 Upon City Council approval, the PUD Documents shall be considered as an ordinance amendment, granting Kilmer Plaza Planned Unit Development reclassifying the zoning of the Property to PUD. The approved PUD Documents constitute the land use authorization for the

Property, and all use and improvement of the Property shall be in substantial conformity 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 Chapter 39, Article XXXV of the City’s Zoning Ordinance in effect at the time of the Conceptual PUD Approval. Any changes to the CDP, PDP, and Final Development Plan (FDP), PUD 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 Planning Director .

2.2 “Kilmer Plaza” 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 under-utilized two (2) parcels of land and a section of abandoned right of way located on the corner of Big Beaver and Kilmer Roads. The Development will provide the residents of the City of Troy with a mixed-use development with new commercial, retail, and residential opportunities. The public benefit provided by Developer includes the demolition or removal of a vacant one story duplex, and 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, which has been incorporated in the City’s recently adopted Master Plan. The objectives of the CDP provide a higher quality of development than could be achieved under conventional zoning. The façade design and pedestrian amenities exceed City of Troy Ordinance requirements and accomplish safe and efficient site circulation connectivity.

2.3 The Property contains one (1) structure, a vacant one story duplex, which the Developer shall demolish or move. The City will grant any permits required for demolition, as long as said demolition meets City’s requirements Developer shall comply with all State statutes, City ordinances, and City Development Standards regarding demolition.

2.4 The uses permitted at Kilmer Plaza are depicted on the CDP recommended for approval by Planning Commission on November 11, 2008, and approved by City Council on \_\_\_\_\_, 2008, prepared by Niagara Murano Architecture and date stamped “Received” by the City of Troy Planning Department on December 9, 2008. The uses permitted under the CDP are also uses permitted in the B-2 and RM-1 zoning districts, of the City of Troy Zoning Ordinance. However, no commercial, office, or other non residential uses shall be allowed within the areas designated for residential uses.

Developer shall be permitted to develop the retail and residential uses for the Property in two different components. Although the retail component is also identified as Phase 1, and the residential component as Phase 2 in the PUD Documents, Kilmer PUD is not being developed in phases as that term is commonly understood. Instead, Developer shall be allowed to develop the retail component first, and the residential component next, as sales occur, provided however, Developer installs or constructs the landscaping amenities and other public improvements for the entire Property prior to or simultaneously with the building of the retail component, and as further set forth in this

Agreement. The retail component shall include the following three (3) structures: a 9,607 gross square feet retail building identified on the submitted plans as Building A, a 7,202 gross square feet building identified on the submitted plans as Building B, and a 1800 gross square feet stand alone drive thru fast food style restaurant, identified as Building C. Developer agrees to completely build the retail component by constructing Buildings A, B, and C together and simultaneously. The residential component shall consist of four (4) 3-story buildings, comprised of up to fourteen (14) total residential units on the north portion of the Property. The estimated time of completion for the retail component is October 2009, and the estimated time of completion for the residential component is October 2011; provided, however, the Parties hereby acknowledge such times for completion are merely estimates and in no event shall Developer be in default of this Agreement for failure to complete either component of the development prior to such estimated date of completion.

## 2.5 List of Conditions Offered in Exchange for PUD Consideration.

A. 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 as set forth in sheets L1 through L6. The landscape features include, but is not limited to: berms, trees, hedges, a manicured greenspace, rain-gardens, bioswales, open space, site features including fountains and sculptures, a six (6) foot decorative masonry wall and walkable common areas. Developer shall cause to install substantially all of the landscaping as depicted on sheets L1 through L6 for the entire property (retail and residential components inclusive) prior to or simultaneously with the construction of the retail component. At a minimum, Developer shall install the complete landscaping for the retail component, and perimeter landscaping for the remainder of the residential component, including construction of the six (6) foot masonry wall and installation of landscaping features on the three adjoining residential properties to the north of the proposed Kilmer PUD, and as depicted in sheet L-2. Prior to PDP approval, Developer shall deliver to the City, to be reviewed and approved by the City Attorney, executed perpetual easement agreements by and between the Developer and the three adjoining residential property owners, which easements shall allow Developer and or Developer's Successors and Assigns to install and maintain the landscape amenities depicted in sheet L-2 on the adjoining residential properties.

B. Developer shall design the retail component incorporating sustainable design techniques, acceptable to the City, and after review by a LEED Accredited Professional on behalf of the City, which achieve the intent of those originally referred to in the CDP, including at a minimum:

- 1) Energy star roofing membrane (or other technique to reduce heat island effect, such as, but not limited to, a vegetated roof or other roofing product with a Solar Reflectance Index [SRI] rating of 78 or higher if designed at less than a 2:12 grade);
- 2) Operable clerestory windows (designed as part of a natural ventilation and daylighting strategy, or other elements designed to use natural light and ventilation);
- 3) Sun shading overhangs (used to effectively reduce cooling load in summer months while allowing for an increase in solar gain to naturally partially heat indoor spaces when the sun's angle is lower. The use of light shelves is also permissible if they achieve the same effect);
- 4) "Green" paving in certain parking areas (to reduce stormwater runoff and reduce heat island effect, or other similar measures accomplishing the same effect)

C. Developer shall install six (6) parallel parking spaces along Kilmer Avenue as depicted in the CDP. Developer shall install the six (6) parallel parking spaces for the entire property (retail and residential components inclusive) prior to, or simultaneously with, the construction of the Retail Component. Developer shall also maintain shared parking with the neighboring Willow Centre Complex. More Specifically, a portion of the parking area for the Development is available to Developer pursuant to a Perpetual Easement Agreement executed by and between Developer and Shouneyia Properties, LLC, a Michigan limited liability company, dated October 22, 2008, and recorded on October 22, 2008, in Liber 40674, Page 439, Oakland County Records (“Easement Agreement”). Pursuant to the Agreement, 44 of the parking spaces for the Development are located on the property commonly referred to as the Willow Centre (as more particularly described in the Easement Agreement). In addition to parking, the Easement Agreement provides cross access easements for the benefit of both the Development and the Willow Centre for ingress and egress across all of the entranceways, driveways and walkways for both properties. Pursuant to the terms of the Easement Agreement, the rights to use the parking spaces and the cross access are permanent and perpetual and cannot be terminated.

2.6 Developer shall provide financial assurances satisfactory to the City for completion and preservation of all on-site and off-site improvements of the Development described above in Section 2.5, including but not limited to, landscaping, landscaping amenities, common areas, bioswales, sculptures, fountains, green paving and any other improvements within or for the Development. Such financial securities shall be in the form of cash or check or certificate of deposit or irrevocable bank letter of credit issued by institutions licensed and admitted to do business in the State of Michigan in an amount equal to the cost of construction for such improvements, or a performance bond in an amount equal to the cost of construction of such improvements plus ten (10%) percent, as specified in a bona fide contract for construction of such improvements, which estimate shall be approved by the City Engineer (which approval shall not be unreasonably withheld, conditioned or delayed), together with an agreement with the City, approved by the City Attorney (which approval shall not be unreasonably withheld, conditioned or delayed), authorizing the City, at its option, to install the amenities listed in Section 2.5 if Developer has failed to do so within the time specified in this Agreement.

2.7 Developer shall maintain all common areas, storm water drainage and retention facilities, landscaped areas, parking areas and sidewalks in good working order and appearance, including but not limited to eradicating and controlling all weeds, trimming or pruning all trees, hedges, and other landscaping, and cutting any lawn or grass or open space. Developer may establish an association or associations as successor to Developer to assume the maintenance obligations set forth in this Article II, in which event the association or associations shall succeed to the Developer’s obligations, as set out in the Planned Unit Development Agreement and otherwise, 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.

2.8 Developer or an association or associations, as successor to Developer shall perform its landscaping maintenance obligations under Article II of this agreement 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.

2.9 In the event Developer conveys all or any portion of the Property, Developer 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 Kilmer, 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.

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

2.11 If the Developer should determine to sell transfer, or lease parts of the retail component in the form of a business condominium, Developer shall submit to the Troy City Attorney the proposed Master Deed and Bylaws for the Project (collectively the "Master Deed") for review and approval. If the Master Deed satisfies the requirements of this Development Agreement and other applicable City ordinances, then approval of the sale or lease shall not be unreasonably withheld, conditioned or delayed. The Master Deed shall acknowledge that each unit owner and the Condominium Association (the "Association") identified therein will be bound by the terms and provisions of this Agreement. The Master Deed shall comply with all statutes of the State of Michigan and City Ordinances and be recorded with the Oakland County Register of Deeds after the effective date of the amendment of the zoning ordinance to rezone the Property to PUD.

The Master Deed shall obligate the Association to maintain the general common elements of the retail component, as more particularly set forth in the Master Deed, in good working order and appearance, including, without limitation, storm water drainage and retention facilities, private roadways, landscaping, parking areas, sidewalks, common structures and facilities, and common areas or elements. In addition, the Master Deed shall provide that the Project is controlled by the PUD Documents. The Master Deed shall also contain provisions for the performance of Developer's maintenance obligations under this Agreement and the PUD Documents. Each unit owner in the Project shall be a member of the Association, as applicable, at all times during the term of ownership and, and subject to the assessments of the Association. The Association shall be authorized to perform the functions and duties delegated and assigned under the Master Deed. The Master Deed shall prohibit exterior modification of the units within the Project which are in conflict with the PUD Documents.

2.12 Developer proposes to develop the PUD on lots 17 through 22 of the Burgess Bungalow Subdivision Plat, Lot 135 of Replat of Outlot A of Big Beaver Subdivision, and Lots 1,2,3 of Supervisor's Plat No. 9,. Developer shall file an application with the City to request a vacation of Myrtle Avenue, which is a public right-of-way located in the Burgess Bungalow Subdivision Plat prior to seeking FDP approval of the PUD. Developer shall further cause an amendment to the plats conforming to State of Michigan requirements, if so required. Developer shall deliver written confirmation to the Planning Director that the plats have been amended prior to seeking FDP approval of the PUD In the event Myrtle Avenue is not vacated or Developer is unable to obtain plat amendments, if so required, Developer shall have the right to terminate this Agreement and Developer shall have no further obligations hereunder.

## **ARTICLE III**

### **PUBLIC IMPROVEMENTS**

3.1 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 FDP, 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 at its discretion, to the extent necessary to fully service all proposed and existing facilities, structures and uses for the entire Property. No building for the retail component or residential component shall be issued any Certificate of Occupancy until the entire Property is served by water and sanitary sewer improvements according to applicable laws, ordinances, codes, regulations and standards in effect at the time any 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 bank 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 (which approval shall not be unreasonably withheld, conditioned or delayed), together with an agreement with the City, approved by the City Attorney (which approval shall not be unreasonably withheld, conditioned or delayed), 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 The Developer, at its sole expense, shall construct and maintain a storm water and retention and/or detention system for the entire 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 for any building. 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 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 (which approval shall not be unreasonably withheld, conditioned or delayed), together with an agreement with the City, approved by the City Attorney (which approval shall not be unreasonably withheld, conditioned or delayed), 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 All drives, entryways, sidewalks, non-motorized paths and parking areas within the entire 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 shall be designed and constructed to the standards of the City, except for deviations approved by the City Engineer, and will be private except as otherwise setout herein. The construction drawings for all drives for the entire property 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 (which approval shall not be unreasonably withheld, conditioned or delayed) 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 (which approval shall not be unreasonably withheld, conditioned or delayed), together with an agreement approved by the City Attorney (which approval shall not be unreasonably withheld, conditioned or delayed) 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 of 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, and parking 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 any Certificates of Occupancy for buildings within the Development, but in any event such paving for the Development shall be completed within two (2) years of issuance of the first building permit for a building.

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 In the event Developer fails to meet any of its obligations under this Agreement, the City, in each instance, shall provide Developer with written notice of such deficiency and Developer shall have thirty (30) days to cure such deficiency unless Developer commences to cure such deficiency within such thirty (30) day period. In the event Developer commences to cure such deficiency in accordance with this paragraph, such thirty day period shall be extended at the City's reasonable determination for such period of time as necessary to cure such deficiency so long as Developer continually and diligently attempts to cure such deficiency.

In the event Developer fails to cure any deficiency in the time set forth in the paragraph above, 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 ten (10%) 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.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

5.1 This Agreement may not be modified, replaced, amended or terminated without the prior written consent of the City or Developer. 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-1, B-2, and B-3 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 as approved by the Director of Building and Zoning.

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 and Conceptual Development Plan Approval to Kilmer Plaza Planned Unit Development and;

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

**DEVELOPER:**

**MARSH BBK-TROY, LLC**  
**a Michigan limited liability company**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of BIG BEAVER/KILMER DEVELOPMENT, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_  
Print Name:  
Notary Public, \_\_\_\_\_ County, Michigan  
My Commission Expires:

**CITY:**

**CITY OF TROY,  
a Michigan municipal corporation**

By: \_\_\_\_\_

Louise Schilling

Dated:

Its: Mayor

By: \_\_\_\_\_

Tonni Bartholomew

Dated:

Its: City Clerk

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by Louise Schilling, Mayor, and Tonni Bartholomew, City Clerk, of the City of Troy, a Michigan municipal corporation, on behalf of the Corporation.

\_\_\_\_\_  
Print Name:  
Notary Public, \_\_\_\_\_ County, Michigan  
My Commission Expires:  
Acting in the County of

**DRAFTED BY:**

Erik S. Prater, esq.  
Bodman LLP  
201 West Big Beaver Road  
Troy, MI 48084

**WHEN RECORDED RETURN TO:**

Tonni Bartholomew, City Clerk  
City of Troy  
500 West Big Beaver Road  
Troy, MI 48084

Additional documents  
are included with Council's agenda packets  
and available for viewing at the  
City Clerk's Office and the Troy Public Library