



CITY COUNCIL ACTION REPORT

DATE: December 10, 2008

TO: Phillip L. Nelson, City Manager

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

SUBJECT: Agreement of Understanding – The Village at Big Beaver Planned Unit Development (PUD 7), located at the southwest corner of Big Beaver and John R, Section 26

Background:

- City Council granted Final PUD Approval of PUD 7 at the June 18, 2007 Regular meeting.
- The project was approved to be constructed in two phases. Phase I included 62,545 square feet of retail stores and other commercial uses, located at the intersection of Big Beaver Road and John R Road and also fronting on Big Beaver Road. Phase II included a senior living facility to the south along John R Road with 120 independent living units and 80 assisted living units.
- A Temporary Certificate of Occupancy was issued by the Building Department, and the CVS is operating. Developer SAAAM-TROY, LLC has requested that the City grant a Final Certificate of Occupancy for the CVS Pharmacy.
- Phase II is not developed and Sunrise Development terminated its involvement with the developer and its Michigan office. The only Phase I use that has been constructed is the stand-alone 12,900 square foot CVS Pharmacy at the corner of Big Beaver and John R.
- Developer SAAAM-TROY LLC completed all Phase I improvements required under the PUD and Development Agreement, except for the following:
 1. Corner plaza feature;
 2. Big Beaver pedestrian plaza;
 3. Paving of parking area for retail buildings A, B, C and the “Bank”;
 4. Landscape for the remaining retail parking area;
 5. Big Beaver Road improvements;
 6. Pedestrian lighting along Big Beaver Road, John R, and the entry boulevard;
 7. Parking area lighting for the retail buildings which have not yet been constructed;
 8. Signalization improvements at the westerly most driveway entrance;
 9. Installation of 225’ section of sanitary sewer from manhole “G” to manhole “H” and monitoring manholes and 6” diameter service leads to retail A and the “Bank.”

- The developer proposes execution of the attached Agreement of Understanding, which will be executed by the developer and City. This will authorize the City Building Department to issue a Final Certificate of Occupancy to CVS Pharmacy.
- The Agreement designates the CVS Pharmacy component of the PUD as Phase 1 and the remaining retail components as Phase I(a). The developer remains responsible for completion of all of the proposed Phase I and Phase I(a) improvements. These responsibilities are listed in the attached Agreement of Understanding.

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 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 Agreement of Understanding.
- City Council can approve the Agreement of Understanding with modifications.
- City Council can deny the Agreement of Understanding.

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

Attachments:

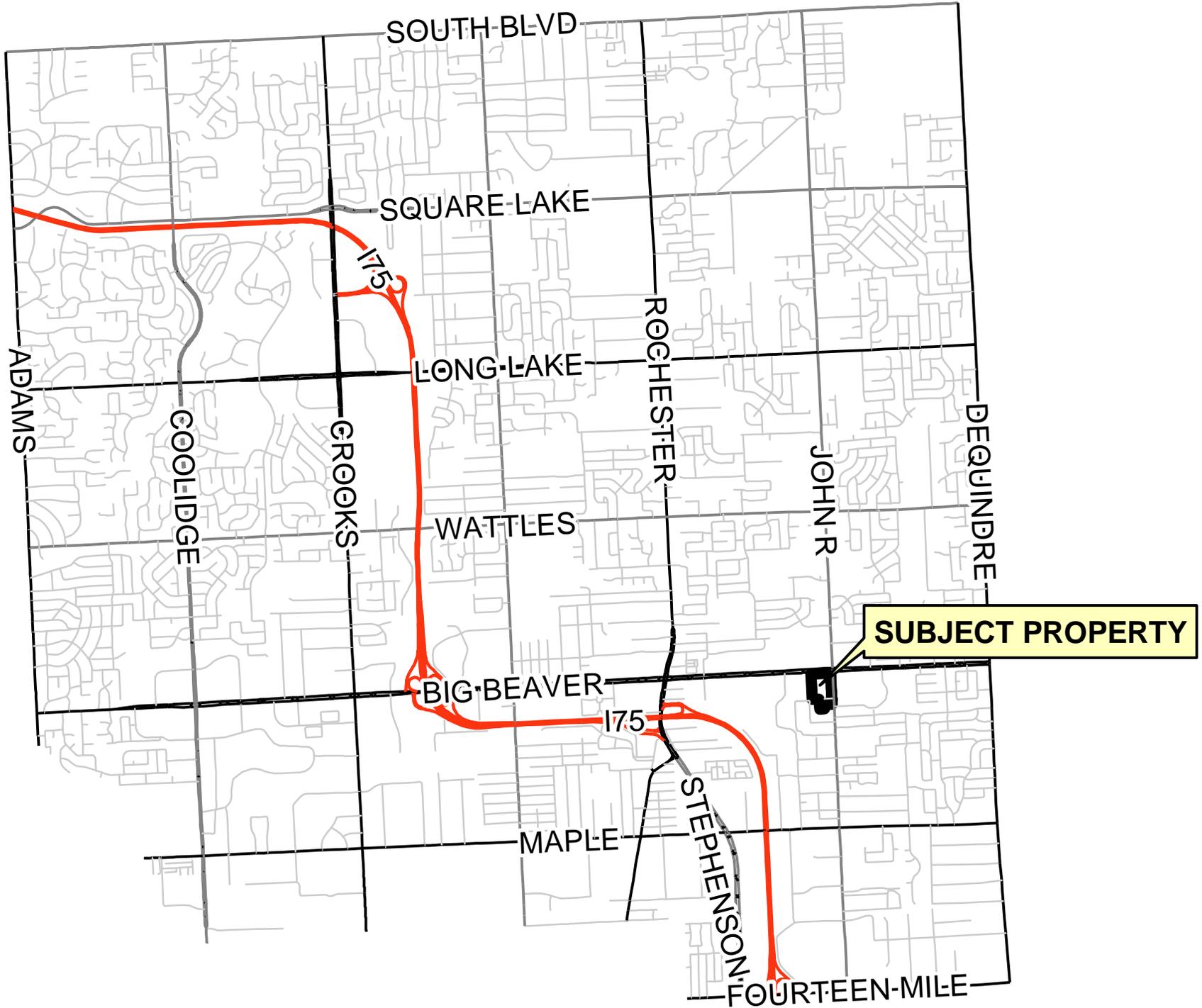
1. Maps.
2. Agreement of Understanding.

Prepared by RBS/MFM

cc: Applicant
File /PUD 7

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CITY OF TROY



AGREEMENT OF UNDERSTANDING

This Agreement dated _____, 2008, by and between SAAAM-TROY, LLC, a Michigan limited liability company, the address of which is 2100 E. Maple Road, Suite 200, Birmingham, Michigan 48009, (hereinafter referred to as “Developer” or “SAAAM”) and THE CITY OF TROY, a Michigan municipal corporation, having its principal offices at 500 W. Big Beaver Road, Troy, Michigan 48084, (hereinafter referred to as the “City”).

R E C I T A L S

A. Developer is the owner of certain real property located in the City of Troy containing approximately 15.04 gross acres on the southwest corner of John R and Big Beaver Roads (hereinafter referred to as “the Property”);

B. Developer and the City have entered into a Development Agreement for the Village at Big Beaver Planned Unit Development, (“PUD and Development Agreement”) consisting of Phase I being a retail development and Phase II, which was contemplated to be a senior living residential development;

C. Developer did undertake, develop and construct on Phase I, a CVS Pharmacy, (“CVS”) in accordance with the ordinance and requirements of the PUD ordinance and requirements of the City of Troy and the PUD and Development Agreement;

D. The CVS Pharmacy has been constructed as a stand alone, retail facility with egress and ingress to John R and Big Beaver with all utilities installed and energized, and has been approved by the City, which has issued a temporary certificate of occupancy;

E. SAAAM and CVS desire that a final certificate of occupancy be issued by the City for CVS;

F. Sunrise Development, the proposed developer and user for the Senior Living residential development has withdrawn and terminated its agreements with Developer to construct and operate a senior living facility at this time;

G. SAAAM is in the process of negotiating with other senior living developer operators to find a substitute developer of the senior living residential development, Phase II;

H. Due to the dramatic change in economics and the economy in the State of Michigan, many local and national tenants have withdrawn from the retail market and/or limited further development to the projects which have already been commenced;

I. At this time, SAAAM has completed and constructed all public infrastructure items required under the PUD and Development Agreement, except for the following:

1. Corner Plaza feature;
2. Big Beaver Pedestrian Plaza;
3. Paving of parking area for retail buildings A, B, C and the “Bank;”
4. Landscape for the remaining retail parking area;
5. Big Beaver Road improvements;
6. Pedestrian lighting along Big Beaver Road, John R, and the internal Boulevard lighting;
7. Parking area lighting for the retail buildings, which have not yet been constructed;
8. Signalization improvements at the westerly most driveway entrance;
9. Installation of 225’ section of sanitary sewer from manhole “G” to manhole “H” and monitoring manholes and 6” diameter service leads to retail “A” and the “Bank.” This has not yet been completed since the additional retail uses are unknown at this time, and therefore the sewer route and other needs cannot be ascertained at this time.
10. Two (2) water main connections at locations as indicated on the approved engineering plans if such have not been previously installed.

NOW THEREFORE, for One and 00/100 (\$1.00) Dollar and other valuable consideration, the Parties agree as follows:

1. Upon execution of this Agreement by the Parties, the Building Department of the City of Troy shall issue a Final Certificate of Occupancy to CVS Pharmacy.

2. It is acknowledged by SAAAM and agreed, that it shall remain responsible for the remaining improvements on Phase I, which shall be completed on the first to occur of the following events: when Phase I(a), being the remainder of retail on Phase I, is completed and/or when Phase II commences, and/or by December 16, 2013, whichever is sooner to occur;

3. SAAAM shall submit a request to the Planning Commission with a proposed revised site plan with sufficient detail for review and City Council consideration an amendment of the PUD, Development Agreement, Declaration of Restrictions, Reciprocal Easements and Restrictions, (the "Declaration of Restrictions") , and the site plan to reflect that Phase I, as it currently exists, is the CVS property and the improvements as already constructed, and Phase I(a) is the remaining undeveloped retail portion of Phase I, as defined in the PUD and Development Agreement. SAAAM shall submit said application within one hundred eighty (180) days this agreement is executed by the Parties;

4. SAAAM shall continue to keep in full force and effect all insurance and bonds, including a letter of credit, as required by the PUD and Development Agreement, and shall provide documentation of such continuing coverage upon the request of the City;

5. SAAAM may also submit a request to the Planning Commission for review and City Council consideration of an amendment to the PUD and Development Agreement to reflect alternative uses which may be additionally permissible in the Phase II area, which had been previously designated for use for senior living; SAAAM shall comply with the requirements set forth in the current City of Troy Zoning Ordinance; specifically Chapter 39, Sections 35.60.01,

Amendment of the Planned Unit Development, and 35.50.01, Conceptual Development Plan Approval, in applying for said amendment to the PUD, if applicable.

6. It is acknowledged that SAAAM will be responsible to pay for additional water main testing fees in the future for the other water lines when constructed by SAAAM since all of the waterlines have not yet been constructed;

7. SAAAM shall continue all soil erosion measures until development is complete in accordance with chapter 86 of the City of Troy Ordinance. Also, a revised soil erosion only plan is to be submitted to the City of Troy Engineering Department relating to the revised phasing;

8. SAAAM shall continue to maintain the screening or fencing which is erected to maintain dust and control access to the site until such time as the Parties agree otherwise in writing;

9. SAAAM shall continue to screen the piles of asphalt shavings to be used in roadbeds and top soil for curbs, and remove the front-end loader not in current use from the Property within thirty (30) days of the date this Agreement is executed by the Parties;

10. If SAAAM does not perform or complete its obligations set forth in the above Paragraphs 7, 8, and 9. (soil erosion measures, maintain screening or fencing, removal of heavy equipment) then upon thirty (30) days prior written notice and failure to correct and cure (weather permitting) the City is authorized to enter upon the Property, or cause its agents or contractors to enter upon the Property, and perform or complete said obligations. The reasonable cost of to perform or complete said obligations shall be borne exclusively by SAAAM, and may be secured by a lien on the Property, or by the City pursuing its lawful rights;

11. The Parties shall negotiate in good faith the terms and conditions of an Amendment to the PUD and Development Agreement, the Declaration of Restrictions and Site Plan, consistent with this Agreement.

