

**TO:** Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
**DATE:** March 9, 2010  
**SUBJECT:** Release of Construction Phasing Agreement – 301 and 305 W. Big Beaver

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On August 8, 1994, City Council approved a Construction Phasing Agreement with Bob Evans Farms, Inc. which owned a 6.141 acre parcel of property on Big Beaver Road which is now occupied by Champps Restaurant and the Columbia III office building (301 and 305 W. Big Beaver Road, respectively). This property is zoned O-S-C, which at the time required that any restaurant be connected to an office building. The Construction Phasing Agreement allowed for the construction of a restaurant in advance of the required connecting office building. According to the attached documents, the property owner wanted to construct the restaurant immediately, but wanted to wait for some time until the office market improved. In order to accommodate these wishes, the Construction Phasing Agreement was proposed, which provided some assurance that the required office element would be constructed at a later date. This Construction Phasing Agreement was recorded with the Oakland County Register of Deeds.

Both the restaurant and the office building were constructed in 1998, in accordance with the approved site plan. There is an enclosed pedestrian access between the office building and the restaurant. However, the Construction Phasing Agreement remains on the title as a possible encumbrance. The prospective purchaser of the office building has requested a release of this agreement, and has drafted a proposed document for your consideration.

City Administration recommends approval of the attached Release of the Construction Phasing Agreement. If approved by the Troy City Council, then the successor property owners will also be required to execute the document before the Construction Phasing Agreement can be extinguished.

Please let me know if you have any questions concerning the above.

**RELEASE**

KNOW ALL MEN BY THESE PRESENTS, that a certain Construction Phasing Agreement, dated August 8, 1994, by and between BOB EVANS FARMS, INC., an Ohio corporation ("Developer") and the CITY OF TROY, a Michigan municipal corporation and recorded in the Office of the Register of Deeds for the County of Oakland, State of Michigan, in Liber 15430, page 157, on June 1, 1995, is hereby discharged.

Said Construction Phasing Agreement covered the real property commonly known as Columbia Center III, at 301 West Big Beaver Road (Unit #1) and 305 West Big Beaver Road (Unit #2) in Troy, Michigan, more particularly described on Exhibit A attached hereto. Unit #1 is owned by Champps Operating Corporation, a Minnesota corporation and Unit #2 is owned by MEPT Columbia Center III, LLC, a Delaware limited liability company (together, the "Current Owners"). The Current Owners are successors in interest to Developer and do hereby join in the discharge of the Construction Phasing Agreement.

SIGNATURE PAGES TO FOLLOW



**Champps Operating Corporation, a**  
Minnesota corporation

By: \_\_\_\_\_  
Name: James K. Zielke  
Its: President

STATE OF KANSAS            )  
  ) ss  
COUNTY OF SEDGWICK    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2010, by James K. Zielke, President of Champps Operating Corporation, a Minnesota corporation, on behalf of said company.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_  
State of \_\_\_\_\_, County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**MEPT Columbia Center III, LLC**, a Delaware limited liability company

By: NewTower Trust Company, as Trustee of the NewTower Trust Company Multi-Employer Property Trust, collective investment fund operating under 12 C.F.R. Section 9.18, its sole member

By: \_\_\_\_\_  
Name: Patrick O. Mayberry  
Its: President

STATE OF MARYLAND            )  
  ) ss  
COUNTY OF MONTGOMERY    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2010, by Patrick O. Mayberry, the President of NewTower Trust Company, as Trustee of the NewTower Trust Company Multi-Employer Property Trust, the sole member of MEPT Columbia Center III, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_  
State of \_\_\_\_\_, County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

THE CITY OF TROY, a Michigan  
municipal corporation

By: \_\_\_\_\_  
Name: Louise E. Schilling  
Its: Mayor

AND

By: \_\_\_\_\_  
Name: Tonni L. Bartholomew  
Its: City Clerk

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2010, by Louise E. Schilling, Mayor and Tonni L. Bartholomew, City Clerk of The City of Troy, a Michigan municipal corporation, on behalf of said company.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_  
State of \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

DRAFTED BY AND AFTER RECORDING  
RETURN TO:  
Dawn Yeaton, Esq.  
Dykema Gossett, PLLC  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, Michigan 48304-2820

**EXHIBIT A  
TO RELEASE**

Unit #1 and Unit #2, BIG BEAVER PARK CONDOMINIUM, each a condominium, according to the Master Deed recorded in Liber 17559, pages 647 through 683 inclusive, amended by First American to Master Deed recorded in Liber 17984, pages 806 through 813, inclusive, Oakland County Records, and designated as Oakland County Condominium Subdivision Plan No. 1069 together with rights in general common elements and limited common elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978 and amendments thereto.

Tax Parcel Nos. 20-28-203-037 and 20-28-203-036

LIB# 15430-157

#94-673  
8-8-94

CONSTRUCTION PHASING AGREEMENT

\$ 29.00 MISCELLANEOUS RECORDING  
RECORDED - DAN AND COUNTY  
JUN 95 7:55 A.M. RECEIVED TO  
PAID  
RECORDED - DAN AND COUNTY  
LIB# 15430-157

THIS CONSTRUCTION PHASING AGREEMENT ("Agreement") is made and entered into on September 8, 1994, by and between BOB EVANS FARMS, INC., an Ohio corporation ("Bob Evans"), whose address is 3776 South High Street, Columbus, Ohio 43207 and the CITY OF TROY, a Michigan Municipal Corporation ("Troy"), whose address is 500 West Big Beaver, Troy, Michigan 48064.

The circumstances underlying the execution of this Agreement are as follows:

1. Bob Evans has recently acquired a certain parcel of real estate containing approximately 6.141 acres of land within the City of Troy, Michigan and being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Bob Evans Property").
2. Bob Evans intends that the Bob Evans Property will be developed with an office and restaurant building complex as depicted on the site plan (dated July 29, 1994), elevations and rendering (dated August 4, 1994) prepared by Minoru Yamasaki Associates, Inc., copies of which are attached hereto as Exhibit "B" and made a part hereof (the "Plan").
3. The Plan is in accordance with the terms and provisions of the Zoning Ordinances of Troy including, without limitation, Section 26.25.00 et seq. The Planning Commission of Troy has approved the Plan pursuant to a resolution adopted at their meeting of July 12, 1994.
4. It is anticipated that Bob Evans will develop the restaurant portion of the building and that a third party will develop the office portion. Bob Evans and Troy wish to enter into this Agreement for the purpose of evidencing their agreement regarding the manner of development of the Bob Evans Property.

NOW THEREFORE, for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acknowledgment of Recitals. Bob Evans and Troy hereby acknowledge that the foregoing recitals are true and correct and the same are incorporated herein by reference as an integral part of this Agreement.
2. Development of Bob Evans Property. The Bob Evans Property may be developed only in accordance with the Plan or another plan approved by the Planning Commission of Troy in accordance with its usual procedure.
3. Construction Phasing. Bob Evans and Troy acknowledge that simultaneous development of the office building and restaurant portions of the building complex upon the Bob Evans property may not be commercially practical due to the present temporarily depressed economic conditions within the Troy area office market. Therefore, the development of the Bob Evans Property may be completed in phases such that either the office element or the restaurant element may be individually completed and operated prior to the completion of the other element.
4. No Lot Split. Bob Evans agrees that it will not make application for any subdivision or split of the Bob Evans Property prior to the completion of the entire development as depicted on the Plan.

JUN 195095628

29.00  
2.00  
RIPK

O.K. - LM

15430-158

5. Building Element Interconnection. Bob Evans agrees that the completed office and restaurant complex shall include a fully enclosed and weatherized pedestrian connection between the office and restaurant elements.

6. Miscellaneous.

(a) Any notices required or permitted hereunder may be delivered personally or may be sent by certified or registered mail, return receipt requested, or prepaid courier service, to the addressee at the address, as set forth above, or at such other address as a party may hereafter furnish in writing to the other parties to this Agreement. If notices are sent by mail, the date such notices are postmarked shall be deemed the date upon which such notice was given. If a matter is sent by prepaid courier service, the delivery date thereof shall be deemed the date upon which such notice was given.

(b) The covenants and restrictions herein contained shall be perpetual and shall run with the land and shall inure to the benefit of and be binding upon the parties hereto and their heirs, successors or assigns.

(c) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and may be changed only by a written agreement signed by all parties hereto.

(d) This Agreement shall be recorded with the Oakland County Register of Deeds.

Signed and acknowledged in the presence of:

BOB EVANS FARMS, INC., an Ohio corporation

Terese A. Evans  
Witness

By: Stephan A. Wallace  
Stephan A. Wallace

Terese A. Evans  
Printed Name of Witness

Its: SR. Vice Pres.

John M. Kanter  
Witness

John M. Kanter  
Printed Name of Witness

15430-159

THE CITY OF TROY

Ester Corbin  
Witness AS TO BOTH

ESTER CORBIN  
Printed Name of Witness

By: Jeanne M. Stine  
Jeanne Stine, Mayor

By: Tamara A. Renshaw  
Tamara Renshaw, City Clerk

Maryann Hays  
Witness AS TO BOTH

MARYANN HAYS  
Printed Name of Witness

APPROVED AS TO FORM  
By: Peter A. Letzmann  
Peter A. Letzmann (P16587)  
City Attorney

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

On this 19th day of September, 1994, personally appeared Stephen A. Warchime, who, being by me duly sworn, did say that he is the <sup>President</sup> Vice President of Bob Evans Farms, Inc.; and that he has been duly authorized to sign the foregoing agreement on behalf of Bob Evans Farms, Inc.; and that the execution of such agreement is the free act and deed of such corporation.

Teresa A. Ehmman  
Notary Public

STATE OF MICHIGAN  
COUNTY OF OAKLAND, SS:



TERESA A. EHMANN  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 11/87

On this 2nd day of November, 1994, personally appeared Jeanne Stine, who being by me duly sworn, did say that she is the Mayor, and Tamara Renshaw, the City Clerk of the City of Troy, a Michigan municipal Corporation; that they have been duly authorized by the Council of the City of Troy to sign the foregoing agreement on behalf of the City of Troy; and that the execution of such agreement is the free act and deed of said City.

Cecilia A. Brukwinski  
Notary Public Cecilia A. Brukwinski  
Oakland County, Michigan  
My Commission expires June 18, 1998

THIS INSTRUMENT PREPARED BY:  
John M. Kantner, Esq.  
Bob Evans Farms, Inc.  
3776 South High Street  
Columbus, Ohio 43207

RETURN TO: Troy City Clerk  
500 W. Big Beaver  
Troy, Michigan 48084-5285

15430-160

LIBER 1947 PAGE 417  
N.E. 1/4, LOT OF SEC. 28  
T.2N., R.1E.

# Certificate of Survey

N.E. COR.  
SEC. 28  
T.2N., R.1E.



EAST 172.8'

P.O.B.

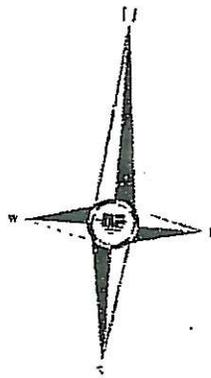


EXHIBIT "A"

EAST 116.00'

103 104 105 106

107

108

109

EAST 50.00'

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113

113

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116

116

117

EAST 206.00'

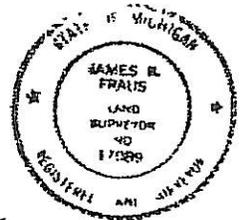
N. 75° 40' 22" W. 266.76'

REC'D

APR 15 94

PLANNING DEPT.

CERTIFIED TO:  
Lawyers Title Insurance Corporation  
Fidelity Title Company  
Bob Evans Farms, Inc., an Ohio Corporation



WE HEREBY CERTIFY that we have surveyed the property herein described and that we have placed marker iron at the corners of the parcel or as indicated in the above sketch and the error of closure is no greater than 3 in 5,000, which is within the accuracy of survey as required by Act No. 283 of Public Acts of 1957 and that we have complied with the survey requirements of Section 3, Public Act 132 of 1970 as amended.

*[Signature]*  
REGISTERED LAND SURVEYOR

## NOWAK & FRAUS CORP.

CIVIL ENGINEERS  
1310 N. STEPHENSON HWY.  
PHONE 399-0886  
LAND SURVEYORS  
ROYAL OAK, MI

DATED *6-10-94* JOB NO. *6116* SCALE 1" = 100'

1 OF 2

15430-161

EXHIBIT "A"

LEGAL DESCRIPTION

Part of Lots 103 to 106 and all of Lots 107 to 116 inclusive and the Easterly 50.00 feet of Lots 95 to 100 inclusive and part of Lot 117 and part of Lot 94 of "Beaver Park Subdivision", of the West part of the S.E. 1/4 of Section 28, T.24., R.11E., City of Troy, Oakland County, Michigan, as recorded in Liber 28, Page 29, Oakland County Records, being more particularly described as beginning at a point on the South line of Big Beaver Road (204.00 feet wide) and the West line of Spencer Road (50.00 feet wide), said point being S. 00° 46' 00" E., 69.00 feet from the N.E. corner of said Lot 106; thence from this point of beginning, S. 00° 46' 00" E., along said West line of Spencer Road, 916.00 feet to the Northern line of Michigan Department of Transportation right-of-way for frontage road (service drive); thence along said Northern line, N. 78° 18' 27" W., 271.37 feet and N. 73° 40' 22" W., 266.76 feet; thence due East along the North line of said Lot 94, 205.00 feet; thence N. 03° 46' 00" W., 450.00 feet; thence due East along the North line of said Lot 109, 50.00 feet; thence N. 00° 46' 00" W., to the South line of Big Beaver Road, 336.00 feet; thence due East along the said South line of Big Beaver Road, 265.00 feet to the point of beginning. Contains 267,442 square feet or 6.141 acres.

20-28-203-032

28029

REC'D

JUN 15 94

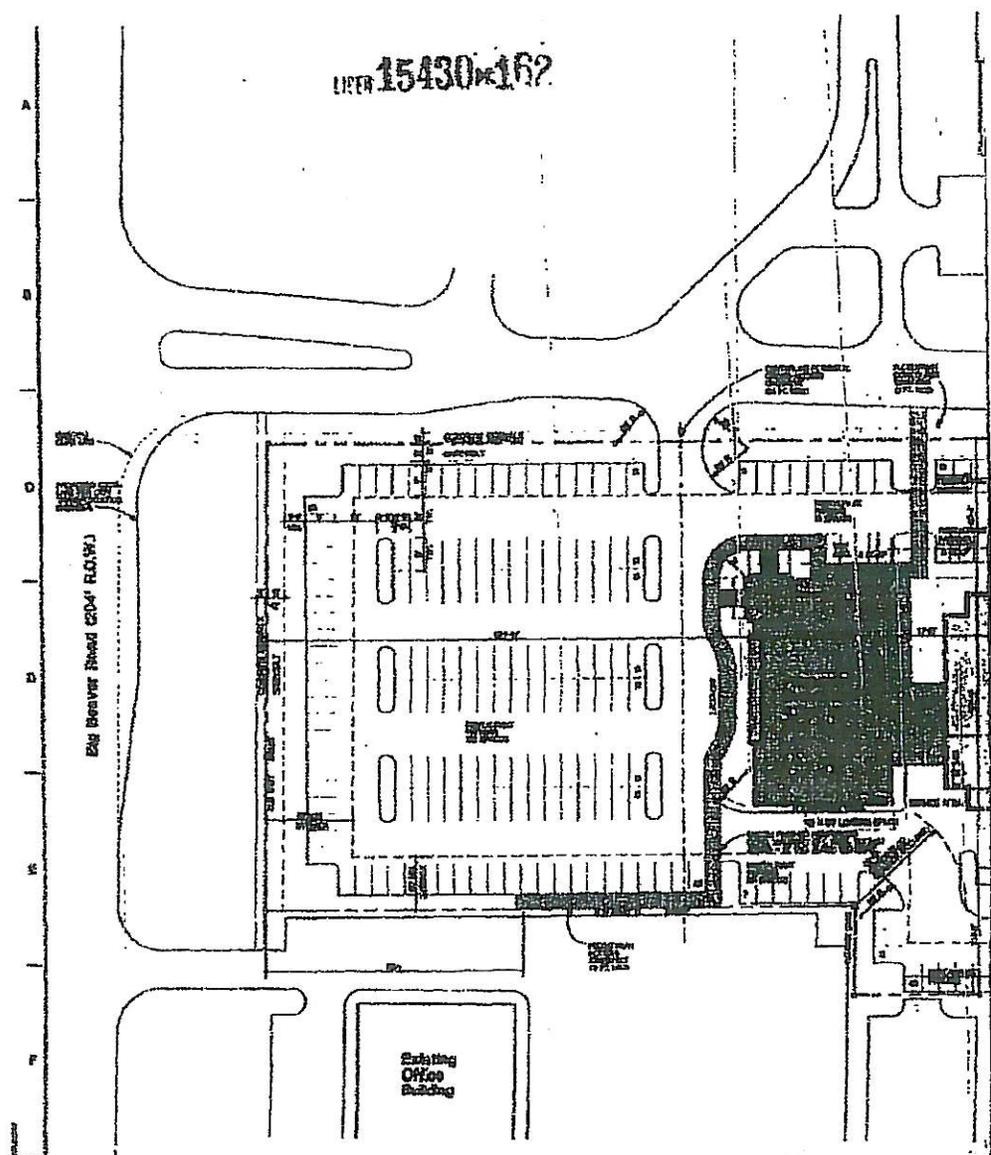
PLANNING DEPT.

**NOWAK & FRAUS CORP.**  
CIVIL ENGINEERING      LAND SURVEYING  
1310 N. STEPHENSON HWY.      ROYAL OAK, MI  
PHONE 399-0666

DATED 6-17-94 JOB NO. 6467 SCALE 1" =

2 OF 2

LITR 15430-162



**SITE DEVELOPMENT DATA**

A. Site Data		C. Planning Data	
Gross Site Area	0.141 Acres (607,602 SF)	1. Parking Required	
Net Site Area	0.141 Acres (607,602 SF)	Restaurant (Number)	
<b>B. Building Data</b>		Ⓐ 1 Drive Thru	
1. Allowable Development Density	184,230 SF	Ⓐ 1 Employee (EVE)	
0.141 AC x 30,000 GSF/AC =		Ⓐ 4000 SF Dining Area	
2. Proposed Building Area		Office Building	
Restaurant	8,933 SF	7000 SF - 1.500	
Office Building	79,760 SF	- approx 100 SF	
3. Proposed Building Data		0.00000 Error	
Restaurant		Total Parking Req	
Height To Forest	21'-0"	2. Parking Provided	
Height To Footprint	27'-0"	Restaurant	
Office Building		Office Building	
4 Floors At 10'-0" + Forest 10'-0"	65'-0"	Total Parking Provided	
Top Of Footprint	82'-0"	Note: Includes 4 Handicap	

Existing Office Building

1 Story Branch Bank

116' x 15480' x 163'

Existing Parking Structure

**MINORU YAMABARI ASSOCIATES**

Architects  
Interior Designers

200 N. WASHINGTON, SUITE 200  
WASHINGTON, D.C. 20004  
202-331-1100 FAX 202-331-1101

The owner and architect warrant that the information contained herein and the drawings, documents and specifications are true and correct and that they are not intended to be construed as a contract. The architect and designer are not responsible for the accuracy of the information and drawings. The architect and designer are not responsible for the accuracy of the information and drawings. The architect and designer are not responsible for the accuracy of the information and drawings.

Bob Evans Farms, Inc.  
2070 South Hill Street  
P.O. Box 2120  
Columbus, Ohio 43261-0212

Restaurant/  
Office Building

Site Plan



Scale: 1" = 20'-0"

DATE: JUL 29, 1994

PROJECT: BOB EVANS FARM

NO. 0417

REV. 1

REV. 2

REV. 3

REV. 4

REV. 5

REV. 6

REV. 7

REV. 8

REV. 9

REV. 10

REV. 11

REV. 12

REV. 13

REV. 14

REV. 15

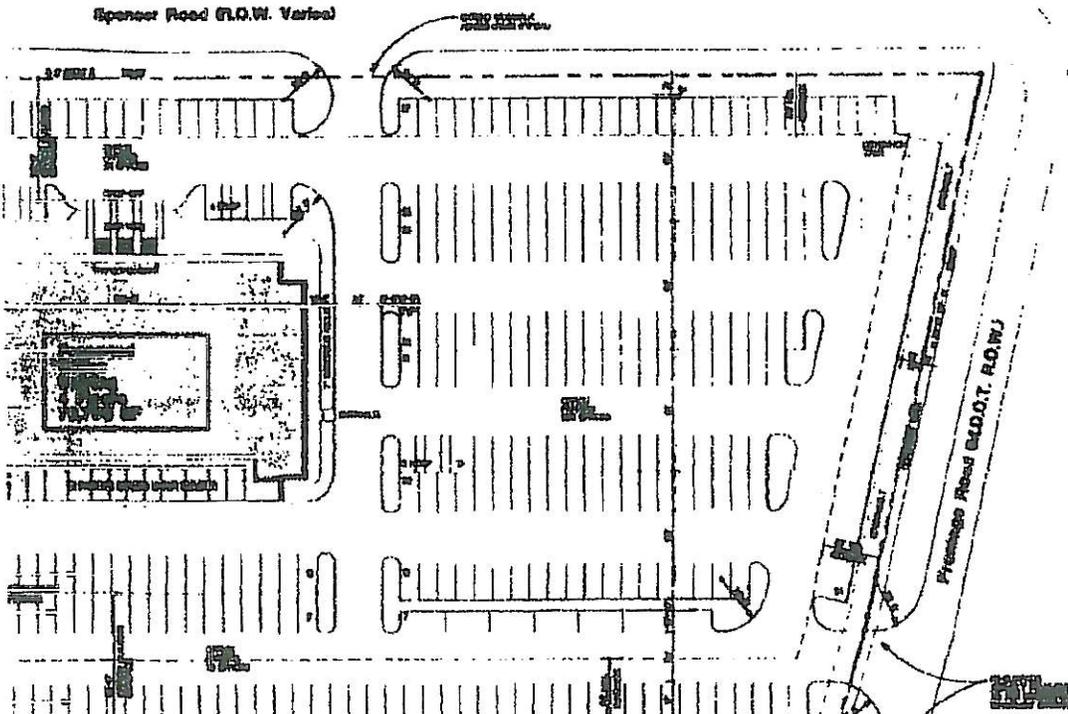
REV. 16

REV. 17

REV. 18

REV. 19

REV. 20



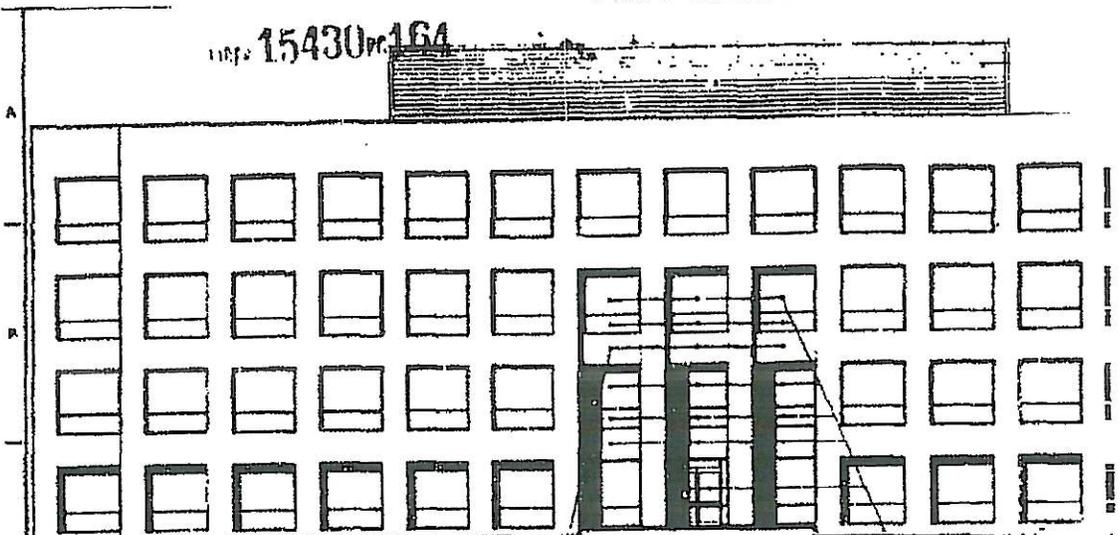
**D. Landscape Data**

1. Landscape Required (10%) (i.e. 1897,608 SF)	20,760 SF
2. Landscape Provided	20,977 SF (10%)
- Living	24,000 SF
- Durable Non-Living	2,487 SF
3. Credit includes 1 Tree For 30' Of Frontage (Min.) Across All Three Frontages.	

**REC'D**  
JUL 29 1994  
PLANNING DEPT.

**EXHIBIT "B"**  
Site Plan  
July 29, 1994

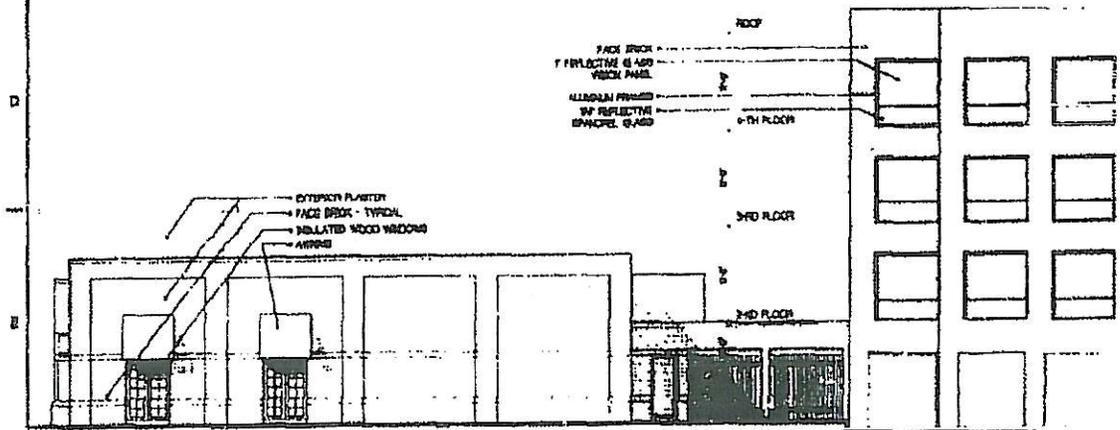
15430-164



East Elevation

BRICK SPACERS

CLING BEHIND GLASS ENTRANCE HALL IN KILNDRY WOODS

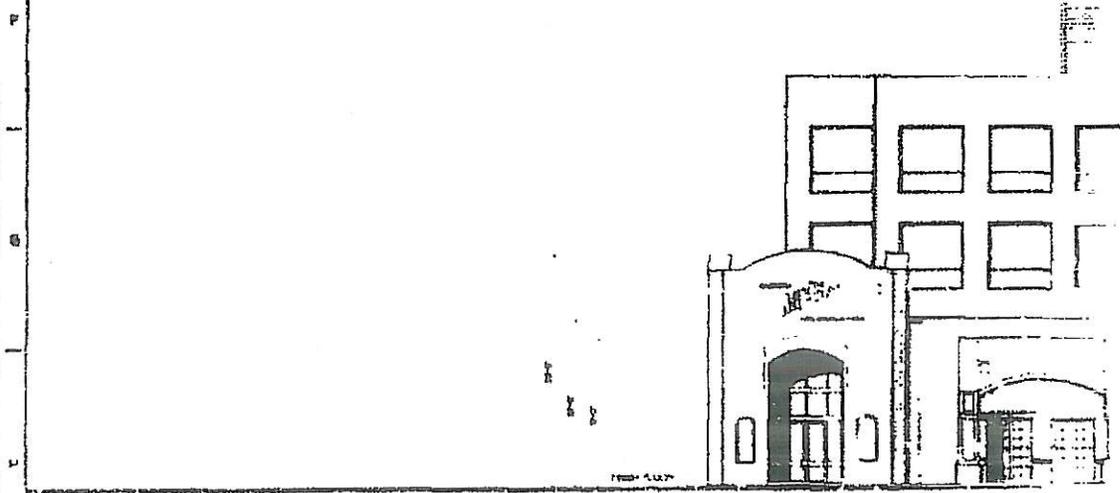


West Elevation

WOOD AND METAL GATES FOR TRAIN ENCLOSURE

ROOF  
 FACE BRICK  
 1" REFLECTIVE GLASS  
 VEHICLE PANEL  
 ALUMINUM FINISHED  
 1/4" REFLECTIVE  
 SPACER GLASS  
 6TH FLOOR  
 5TH FLOOR  
 4TH FLOOR

EXTERIOR PLASTER  
 FACE BRICK - TYPICAL  
 INSULATED WOOD WINDOW  
 AIRSIDE



North Elevation

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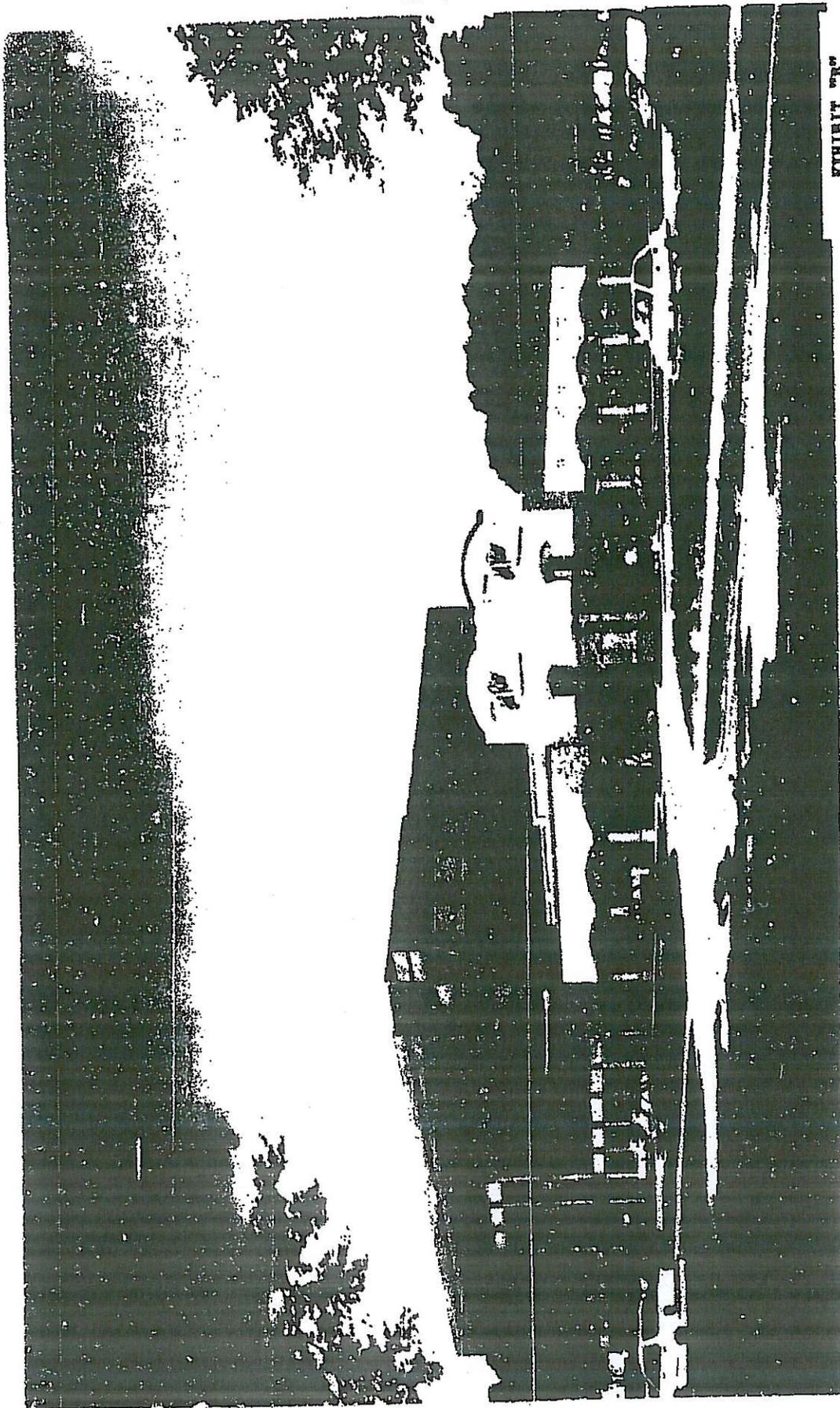
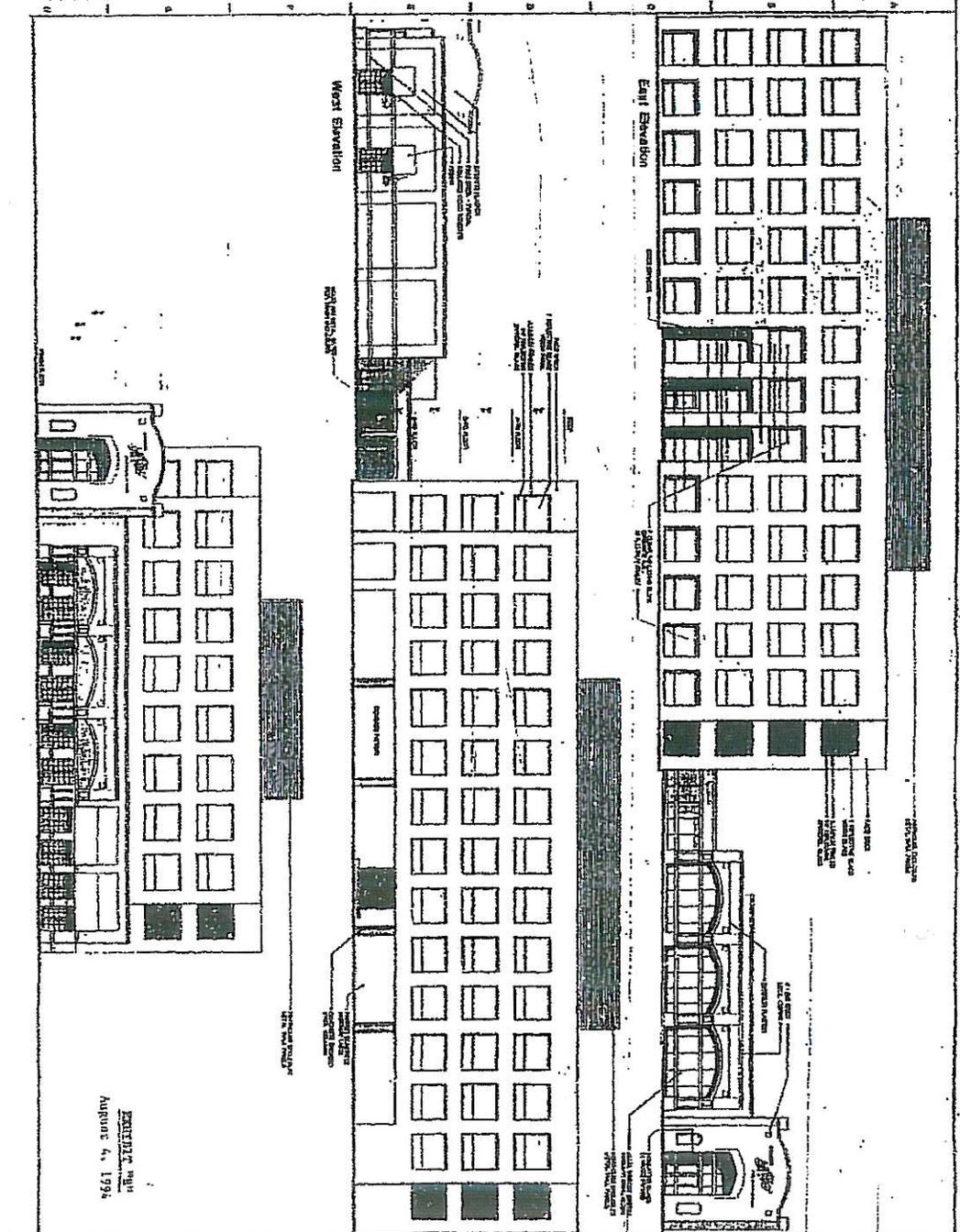


EXHIBIT "B"

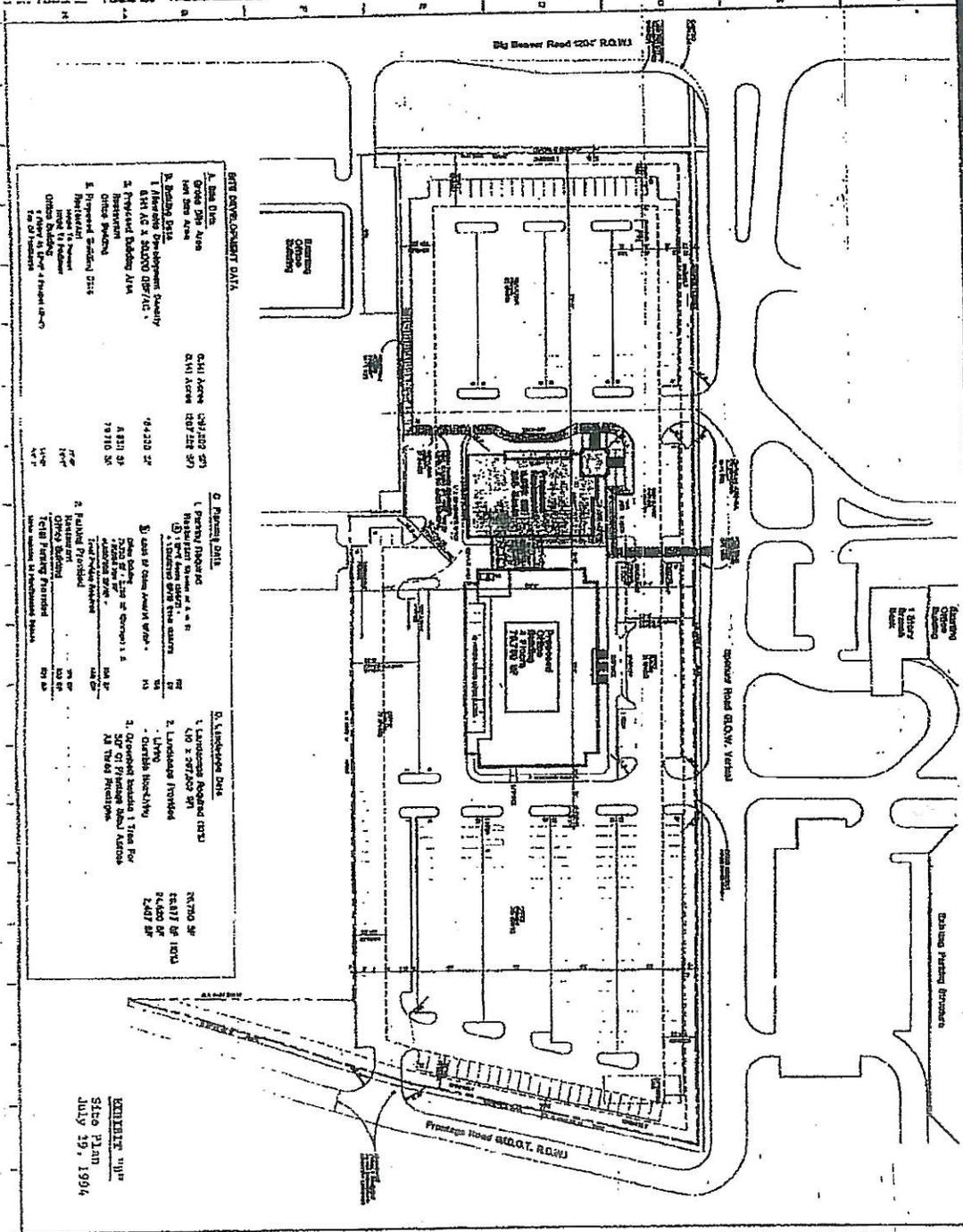
AUGUST 4, 1994



ARCHITECT  
 YOUNG & RUBICAM  
 ARCHITECTS  
 1000 RIVER STREET  
 NEW YORK, N.Y. 10020  
 (212) 512-2000  
 FAX (212) 512-2001  
 WWW.YOUNGANDRUBICAM.COM

Project Name: [Illegible]  
 Project No.: [Illegible]  
 Date: August 4, 1998  
 Scale: [Illegible]  
 Drawing No.: [Illegible]

ARCHITECT  
 YOUNG & RUBICAM  
 ARCHITECTS  
 1000 RIVER STREET  
 NEW YORK, N.Y. 10020  
 (212) 512-2000  
 FAX (212) 512-2001  
 WWW.YOUNGANDRUBICAM.COM



**SITE DEVELOPMENT DATA**

A. Data Data		C. Physical Data		E. Landscaping Data	
1. Building Data	1. Proposed Building Data	1. Parking Proposed	1. Landscaping Proposed (Total)	1. Landscaping Proposed (Total)	1. Landscaping Proposed (Total)
2. Proposed Building Data	2. Proposed Building Data	2. Total Proposed	2. Landscaping Proposed	2. Landscaping Proposed	2. Landscaping Proposed
3. Proposed Building Data	3. Proposed Building Data	3. Total Proposed	3. Landscaping Proposed	3. Landscaping Proposed	3. Landscaping Proposed
4. Proposed Building Data	4. Proposed Building Data	4. Total Proposed	4. Landscaping Proposed	4. Landscaping Proposed	4. Landscaping Proposed
5. Proposed Building Data	5. Proposed Building Data	5. Total Proposed	5. Landscaping Proposed	5. Landscaping Proposed	5. Landscaping Proposed

EXHIBIT 111  
 SITE PLAN  
 JULY 19, 1994

**PLANNING ASSOCIATES**

1000 ...

RESTAURANT/ OFFICE BUILDING

SITE PLAN

DATE: 7/19/94

SCALE: 1" = 20'

PROJECT NO: 15430

CLIENT: ...

DESIGNER: ...

DATE: 7/19/94

SCALE: 1" = 20'

PROJECT NO: 15430

CLIENT: ...

DESIGNER: ...

Request from Diversified Wire & Cable, 800 Chicago, for  
Temporary Suspension of Chapters 39 (Tents) and 88  
(Amplification) of the Code of the City of Troy - To  
Permit Tent September 15-17, 1994 and Amplification on  
September 16, 1994 C-25

Resolution #94-644  
Moved by Husk  
Seconded by Pallotta

RESOLVED, that the request from Diversified Wire & Cable, 800 Chicago, for temporary suspension of Chapter 39, Section 40.60.02, of the Code of the City of Troy to permit placement of a 60' x 80' tent from September 15 through September 17, 1994, in conjunction with their open house, is hereby approved; and

BE IT FURTHER RESOLVED, that the request from Diversified Wire & Cable, 800 Chicago, for temporary suspension of Chapter 88, Section 9.5, of the Code of the City of Troy to permit amplification on September 16, 1994, from 6:30 to 10:30 p.m., in conjunction with their open house, is hereby approved; and

BE IT FINALLY RESOLVED, that it is the intent of the City Council of the City of Troy to keep in force and effect Chapter 39, Section 39.90.08, Noise, as follows:

The emission of measurable noises from the premises shall not exceed sixty-five (65) decibels as measured at the boundary property line, except that where normal street traffic noises exceed sixty-five (65) decibels during such periods, the measurable noise emanating from the premises may equal, but not exceed, such traffic noises.

Yeas: All-6  
Absent: Allemon

Resolution Approving Construction Phasing Agreement C-26  
Between Bob Evans Farms, Inc. and City of Troy - Proposed  
Office-Restaurant Complex, South Side of Big Beaver, East  
of I-75

Resolution #94-645  
Moved by Pryor  
Seconded by Gosselin

RESOLVED, that the Construction Phasing Agreement between Bob Evans Farms, Inc. and the City of Troy regarding construction of a proposed office-restaurant complex to be located on the south side of Big Beaver, east of I-75 is hereby approved and the Mayor and City Clerk are authorized to execute the documents, a copy of which shall be attached to the original minutes of this meeting.

Yeas: All-6  
Absent: Allemon

Recommendation of the Liquor Advisory Committee - Meeting C-27  
of November 8, 1993 - Request from Bob Evans Farms, Inc.  
(Cantina Del Rio) for New Class C License with Sunday Sales,  
Food and Outdoor Service Permits to Be Held at New Building  
at Approximately 305 West Big Beaver

Resolution #94-646  
Moved by Pallotta  
Seconded by Pryor

RESOLVED, that the request from Bob Evans Farms, Inc. (Cantina Del Rio) for a new Class C license with Sunday Sales, Food and Outdoor Service permits to be held at a new building to be built at approximately 305 West Big Beaver, Troy, Oakland County, Michigan 48084, be considered for disapproval.

It is the consensus of this legislative body that the application be not recommended for issuance.

Yeas: All-6  
Absent: Allemon

July 28, 1994

*Adm C-26*  
*8-8-94*  
BIBO

AUG 0 1

CITY MANAGER'S OFFICE

TO: Frank Gerstenecker, City Manager

FROM: Laurence G. Keisling, Planning Director

SUBJECT: Construction Phasing Agreement - Proposed Office-Restaurant Complex - South Side of Big Beaver, East of I-75

A development proposal has been submitted for the construction of a 4-story office and restaurant complex on the 6.14 acre O-S-C zoned site which extends south from Big Beaver Road to I-75 along the west side of Spencer Road. The proposed development is to include a 263 seat "Cantina del Rio" restaurant, attached to a 4-story 79,750 square foot office building, which would be developed by Kirco Development, following the character of the adjacent Columbia Center development, for which Kirco is the developer partner. The restaurant includes an indoor-outdoor patio area. Cantina del Rio, which is a mexican restaurant subsidiary of the Bob Evans organization, has been seeking a site in Troy for over a year. They have recently secured the subject O-S-C zoned parcel, recognizing that the O-S-C District requires that restaurants be within or attached to the principal office or hotel building or use, rather than free-standing. Because of this restriction, they sought an office development partner, and are now proceeding with their plans in conjunction with Kirco.

Because of the office development climate, the Bob Evans organization and Kirco have proposed the execution of a "Development Agreement" under which they would initially be permitted to proceed with the construction of the restaurant element of this development. This Agreement, which is now termed a "Construction Phasing Agreement", would assure that the remaining portion of the site is committed to a development in the manner indicated on the overall plans as submitted at this time. Such an Agreement must of course be entered between the property owners, and the City Council, on behalf of the City of Troy. This is a new approach for the City of Troy, but it is felt that such a procedure would be reasonable, considering the current office development climate, the nature and location of the site, and the restrictions which can be included in the Construction Phasing Agreement. As an example, both the City staff and the Columbia Center owners and developers are concerned about the character and appearance of the proposed building complex. The Development Agreement approach provides an opportunity to assure that the exterior appearance of the restaurant element of this development will be fully compatible with existing and potential future development in this area, a level of control which is not typically available through zoning.

The Planning Commission considered the site plan for the overall office-restaurant complex at their Regular Meeting of July 12, 1994. An excerpt from the minutes of that meeting related to this matter is enclosed. After discussion the Planning Commission

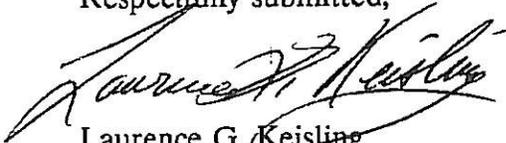
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Construction Phasing Agreement  
Proposed Office-Restaurant Complex  
South Side of Big Beaver, East of I-75

adopted a resolution approving the overall site plan including the expansion of the greenbelt area along the Big Beaver Road frontage. Implementation of this site plan will also include construction of the first portion of the "pedestrian concourse", which is intended to inter-connect building entrances throughout the Big Beaver corridor. Easements for this concourse have previously been provided in many locations throughout the corridor, including the area extending east from Spencer Street across the front of the Columbia Center development, and ultimately to Livernois Road. In the course of taking action on this development proposal it was stated that the Planning Commission fully expects that the office phase of this development will occur, and that no significant change in the land use direction for this site is expected. The enclosed proposed Construction Phasing Agreement is now presented for consideration and execution by the City Council. This Agreement represents a modification, by City staff, of the draft originally presented by Bob Evans' attorneys. Approval and execution of this Construction Phasing Agreement is recommended.

Please advise as to any further information or assistance which I might provide in relation to this matter.

Respectfully submitted,



Laurence G. Keisling  
Planning Director

LGK/eh

copies: John Szerlag, Assistant City Manager  
Peter Letzmann, City Attorney  
John Martin, Assistant City Attorney  
Gary Shripka, Chief Building Inspector

5. SITE PLAN REVIEW - Proposed Office-Restaurant Complex - South Side of Big Beaver, West of Spencer - Section 28 (SP-744)

Mr. Keisling explained that a site plan has been submitted for the construction of a 4-story office and restaurant complex on the 6.14 acre O-S-C zoned site which extends south from Big Beaver Road to I-75 along the west side of Spencer Road. The proposed development is to include a 263 seat "Cantina del Rio" restaurant, attached to a 4-story 79,750 square foot office building, which would be developed by Kirco Development, following the character of the adjacent Columbia Center development, for which Kirco is the developer partner. The restaurant includes an indoor-outdoor patio area and the ultimate development will include an enclosed pedestrian connection. Cantina del Rio, which is a Mexican restaurant subsidiary of the Bob Evans organization, has been seeking a site in Troy for over a year. They have recently secured the subject O-S-C zoned parcel, recognizing that the O-S-C District requires that restaurants be within or attached to the principal office or hotel building or use, rather than free-standing. Because of this restriction, they sought an office development partner, and now are proceeding with their plans in conjunction with Kirco.

Mr. Keisling stated that, because of the office development climate, the petitioners are working with the City staff in order to evolve a Development Agreement under which they would initially be permitted to proceed with the construction of the restaurant element of this development. The Development Agreement, which must ultimately be considered and approved by the City Council, would assure that the remaining portion of the site is committed to a development in the manner indicated on the overall plans as submitted at this time. This is a new approach for the City of Troy, but it was felt that it would be reasonable, considering the current office development climate, the nature and location of the site, and the restrictions which can be included in the Development Agreement. As an example, both the City staff and the Columbia Center owners and developers are concerned about the character and appearance of the proposed building. The Development Agreement approach provides an opportunity to assure that the exterior appearance of the restaurant element of this development will be fully compatible with existing and potential future development in this area, a level of control which is not typically available through zoning.

Mr. Keisling noted that the subject site has 265 feet of frontage on Big Beaver Road, and extends 916 feet to the I-75 service road. The construction of Spencer Road and other street and access improvements in this area were carried out by the developers in conjunction with the Columbia Center development. The development now proposed may involve the construction of a decel lane on Big Beaver at Spencer Road. This improvement may, however, be postponed and included with the proposed overall improvement of Big Beaver Road in this area. Previous development plans in this area have involved the provision of easements to accommodate the placement of a potential "pedestrian concourse" extending through developments along the Big Beaver Corridor and inter-connecting entrances, etc. Such an easement was provided in the general area of the sidewalk across the front of the Columbia Center development. With the recently increased level of interest in pedestrian facilities in this area due to the initial efforts of the DDA, etc., it was felt that it would be reasonable to require placement of a walkway which could serve as the pedestrian concourse across this site in conjunction with its initial development. The site plan, therefore, indicates such a walkway facility extending from the east property line opposite the sidewalk and easement in the Columbia Center site, across the proposed restaurant entrance, to the west property line, to a point opposite the south side of the adjacent office building where the primary pedestrian access to that building occurs. All applicable Ordinance provisions are complied with. Mr. Keisling suggested that the appearance of the site and development from Big Beaver could be even further enhanced by the removal of a series of 8 parking spaces in the northerly portion of the parking area, thus increasing the Big Beaver greenbelt area by almost 10 feet in width. The restaurant owners desire to have a generous amount of parking would still be met, in conjunction with the provision of this additional landscaped area. The petitioners have agreed to this modification. Mr. Keisling noted the proposed building elevations, which are intended to assure compatibility of this development with the adjacent Columbia Center development. These elevations will accompany the proposed Development Agreement, which would also enable phasing of this development. Following action on the overall site plan by the Planning Commission, the City Council will consider and act upon the proposed Development Agreement.

In response to Mr. Starr's question, Mr. Keisling explained that, in multi-phase developments, the City's approach has been that the Site Plan Approval would be in effect as long as the first phase of the development was initiated within one year. In answer to Mr. Kramer's inquiry, Mr. Keisling noted the hotel and office developments which have been previously been proposed at this location. He also indicated that the size of the proposed restaurant, as a percentage of the total development, will be well below the 20% support use factor permitted in O-S-C zoning.

July 12, 1994 Minutes

Robert Szantner, architect with Yamasaki Associates, was present along with Tyler Abram and Steve Warehime of the Bob Evans organization, and Al Kiriluk of Kirco Development. In response to questions from the Commission, Mr. Kiriluk stated that, immediately after receiving approval of the Development Agreement from the City Council, they would begin marketing the proposed office development. The Columbia Center is over 98% leased, and Kirco looked forward to the opportunity of having an office facility of the size of the proposed development available.

Mr. Starr asked that the minutes include the statement that the Planning Commission fully expects that the office phase of this development will occur, and that no significant change in the land use direction for this site is expected.

Moved by Palazzolo

Seconded by Reece

RESOLVED, that Preliminary Site Plan Approval, as requested for the construction of an office-restaurant complex involving a 4-story 79,750 square foot office building element and a 263 seat inter-connected restaurant on the 6.14 acre O-S-C zoned site extending south from Big Beaver Road to I-75 along the west side of Spencer Road is hereby granted, subject to the expansion of the greenbelt along the north edge of the property along Big Beaver Road.

Yeas: All Present (6)

Absent: Thompson, Storrs, Wright

MOTION CARRIED

*Handwritten notes:*  
p/c  
7-12-94