



AGENDA ITEM SUMMARY FORM

MEETING DATE: 6/12/23

PREPARED BY: Giles Tucker - CED

AGENDA ITEM CONTENT: 29101 John R Rd Development Agreement-

AGENDA ITEM SECTION: Reports

BUDGETED AMOUNT:

FUNDS REQUESTED:

FUND:

EXECUTIVE SUMMARY:

City Council approved the Brownfield Plan for Madison Center Owner LLC, which included a Development Agreement meant to ensure the project was completed in a timely manner. The Development Agreement requires that the developer make an investment in the property of at least \$17.6M and that they complete all of the site plan requirements and activities identified within a conceptual site plan included in the Development Agreement described as "Exhibit B". Staff has been provided documentation showing investment that exceeds \$17.6M, but the developer has not completed a second outlot building described in "Exhibit B". While the developer has acknowledged that this second outlot has not been developed, they are asking that the City Council approve this second and final amendment for the purpose of satisfying the Development Agreement.

RECOMMENDATION:

Staff recommends that the City Council approved and authorize the Mayor to sign the proposed second and final amendment to the Development Agreement for the approved Brownfield Plan for 29101 John R Rd.



MEMORANDUM

To: Melissa Marsh, City Manager
From: Giles Tucker, Community & Economic Development Director
Date: May 22, 2023
Subject: 29101 John R Rd- Development Agreement- Second Amendment

SUMMARY:

On December 9, 2019, the City Council approved the Brownfield Plan for Madison Center Owner LLC, which included a Development Agreement meant to ensure the project was completed in compliance with City Ordinances and in a timely manner. The deadline to satisfy all the activities and improvements described in the agreement was December 31, 2021, unless extended through an amendment.

The first amendment to this development agreement was approved by the City Council at the Regular Council meeting held on December 13, 2021. This amendment requested by Madison Center LLC proposed to extend the time for completion of the project until March 31, 2023. The reasons cited for this extension by the applicant included that the project had been delayed by COVID-19 including apprehension from potential tenants and cost increases and disruptions to the construction supply chain.

A second and final amendment to this agreement was requested of city staff by representatives of the developer on March 31st, 2023, along with a Letter of Credit of \$100,000 as required in the agreement. There are two main requirements to be met to fully satisfy the Development Agreement. First, that the developer would invest a minimum of \$17.6 million for all activities and improvements for the project, and second, that the developer completes all activities/improvements for the project including all the site plan requirements and activities identified in "Exhibit B" of the development Agreement. "Exhibit B" is a conceptual site plan that includes the BJ's Wholesale and Fueling Station, the renovation of the existing "strip" building, an outlot for a McDonald's and a second outlot in front of the "strip" building.

The developer has provided city staff with documentation showing a total investment that exceeds the required \$17.6M in investment and has completed all the elements described in "Exhibit B" except for the second outlot that was proposed to be in front of the "strip" building. While the developer has acknowledged that this second outlot has not been developed, they are asking that the City Council approve this second and final amendment for the purpose of satisfying the Development Agreement.

STAFF RECOMMENDATION:

While the developer has not completed all the elements described in "Exhibit B", they have demonstrated significant investment in the site. Further, the fact that the second outlot has not been completed does not impact the total amount of taxes being reimbursed to the developer, only the speed in which they will be reimbursed over the course of the plan. It is in the interest of both the developer and the city that the project site increases in taxable value. Approving this amendment releases the \$100,000 in funds tied up in the letter

of credit and still allows for future improvements to the site to increase its value. For these reasons, staff recommends that the City Council approve and authorize the Mayor to sign the proposed second and final amendment to the Development Agreement for the approved Brownfield Plan for 29101 John R Rd.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Amendment**”) is made and entered into as of this ____ day of May, 2023, by and between the **CITY OF MADISON HEIGHTS**, a Michigan municipal corporation (“**City**”), and **MADISON CENTER OWNER, LLC** (“**Developer**”).

RECITALS:

A. City and Developer entered into that certain Development Agreement dated as of December 9, 2019, as amended by a First Amendment to Development Agreement dated December 14, 2021 (as amended, the “**Agreement**”) regarding the development of certain real property located in Madison Heights, Michigan, as more particularly described in the Agreement.

B. Owner and Developer desire to amend the Agreement upon the terms and provisions set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and subject to the terms and conditions contained herein, Owner and Developer agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Completion of Project.** Notwithstanding that certain Site Plan Requirements and Proposed Site Activities identified on **Exhibit B** to the Agreement haven’t been completed to date, Developer has invested more than \$17,600,000.00 for the Project and, therefore, for purposes of the Development Agreement and its subsequent amendments, the parties confirm that such Agreement has been fully satisfied.

3. **Miscellaneous.**

a. This Amendment may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. Electronic signatures shall have the same effect as original signatures.

b. The Agreement, as herein amended, the Brownfield Plan and the Reimbursement Agreement hereby are ratified and confirmed by the parties hereto and shall remain in full force and effect. The Agreement, together with this Amendment, the Brownfield Plan and the Reimbursement Agreement, set forth all of the covenants, representations, promises, agreements, conditions and understandings between City and Developer concerning the Project and there are no other covenants, representations, promises, agreements, conditions or understandings, either oral or written, between them.

c. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The parties have executed this Amendment as of the date first above written.

CITY OF MADISON HEIGHTS,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____

“City”

MADISON CENTER OWNER, LLC,
a Michigan limited liability company

By: _____
Name: Nikolaos Moschouris
Its: Authorized Representative

“Developer”

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “Amendment”) is made and entered into as of this 14 day of December, 2021, by and between the CITY OF MADISON HEIGHTS, a Michigan municipal corporation (“City”), and MADISON CENTER OWNER, LLC (“Developer”).

RECITALS:

A. City and Developer entered into that certain Development Agreement dated as of December 9, 2019 (the “Agreement”) regarding the development of certain real property located in Madison Heights, Michigan, as more particularly described in the Agreement.

B. Owner and Developer desire to amend the Agreement upon the terms and provisions set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and subject to the terms and conditions contained herein, Owner and Developer agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Timing for Completion of Project.** Section 3.B.a. of the Agreement is amended by deleting all references to “December 31, 2021” and replacing them with “March 31, 2023”.

3. **Exhibit B.** The Site Plan attached as **Exhibit B** to the Agreement is hereby deleted and the Site Plan attached to this Amendment as **Exhibit B** is substituted in place thereof, provided, however, City and Developer acknowledge and agree that the Site Plan(s) which are ultimately approved by the City through its site plan approval process will be the Site Plan(s) that governs and controls Developer’s activities and improvements for the Project and once approved by the City’s site plan approval process, all references to “Site Plan” and “Exhibit B” in the Agreement shall mean and refer to such Site Plan(s) as approved by the City.

4. **Miscellaneous.**

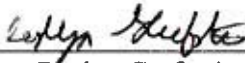
a. This Amendment may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. Electronic signatures shall have the same effect as original signatures.

b. The Agreement, as herein amended, hereby is ratified and confirmed by the parties hereto and shall remain in full force and effect. The Agreement, together with this Amendment, the Brownfield Plan and the Reimbursement Agreement, set forth all of the covenants, representations, promises, agreements, conditions and understandings between City and Developer concerning the Project and there are no other covenants, representations, promises, agreements, conditions or understandings, either oral or written, between them.

c. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

The parties have executed this First Amendment to Development Agreement as of the date first above written.

CITY OF MADISON HEIGHTS,
a Michigan municipal corporation

By: 
Name: Roslyn Grafstein
Its: Mayor

“City”

Witnessed By (Print Name): ADAM OWCZARZAK


Witnessed By (Signature): 

MADISON CENTER OWNER, LLC,
a Michigan limited liability company

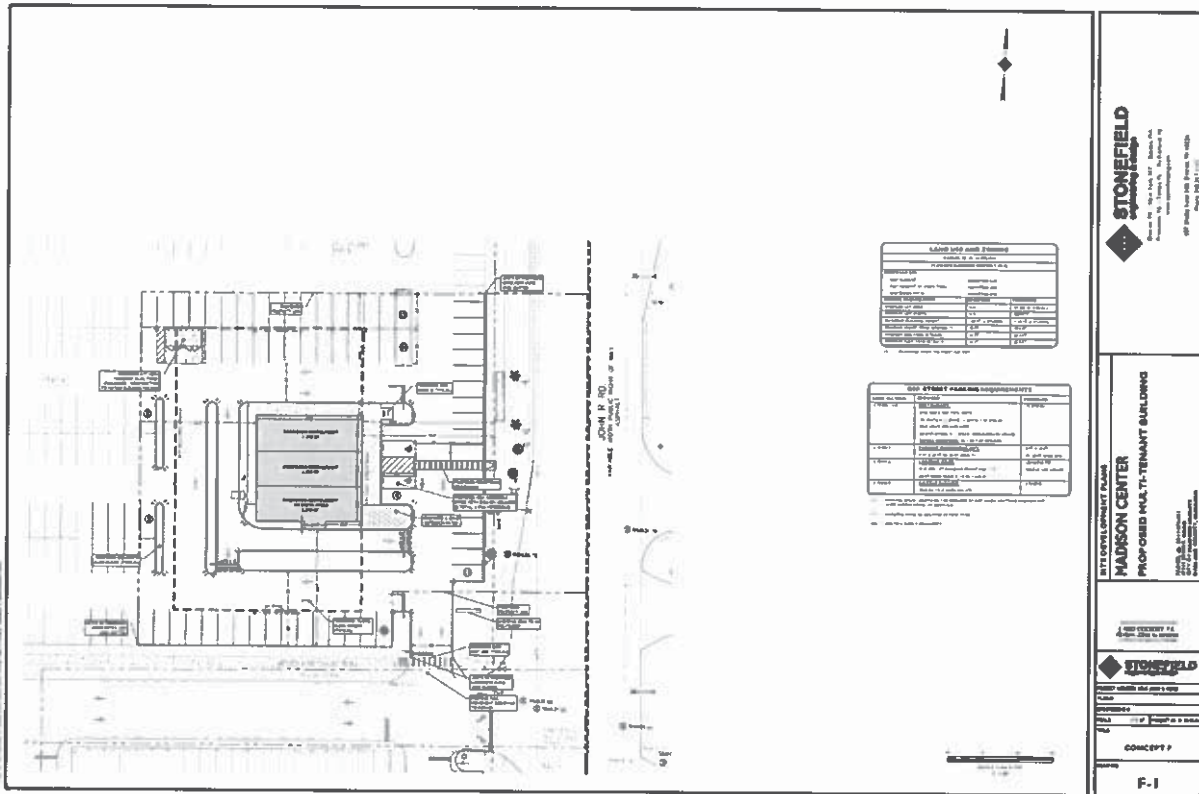
By: 
Name: Nikolaos Moschouris
Its: Authorized Representative

“Developer”

Witnessed By (Print Name): Giles Tucker

Witnessed By (Signature): 

CONCEPTUAL SITE PLAN OF OUTLOT BUILDING



[illegible]

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), is entered into as of the last date ascribed to below, by and between the CITY OF MADISON HEIGHTS, a Michigan municipal corporation, with offices located at 300 West Thirteen Mile Road, Madison Heights, Michigan 48071, ("City"), and MADISON CENTER OWNER, LLC, whose address is 28454 Woodward Ave., Royal Oak, MI 48067 ("Developer").

WITNESSETH:

WHEREAS, the Developer owns a parcel of real property in the City of Madison Heights and legally described on the attached **Exhibit A**, attached hereto and incorporated by reference, which will be collectively referred to within this Agreement as the "Property," and

WHEREAS, Developer wishes to make improvements to the Property; and

WHEREAS, the improvements Developer wishes to make to the Property include the demolition of existing structures, infrastructure (including storm water) improvements, landscaping, and other activities/improvements identified on **Exhibit B**, attached hereto and incorporated by reference (the "Project").

WHEREAS, the City requires that Developer's Project comply with the City of Madison Heights Code of Ordinances; and

WHEREAS, the City will agree to issue permits for the Project contingent upon Developer agreeing to the Development Criteria set forth in this Agreement; and

NOW, THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. RECITALS. The foregoing recitals are incorporated in and form a part of this Agreement.
2. DEFINITIONS. The following definitions shall apply to the provisions of this Agreement:
 - A. "Commencement of the Project" means that permits for the Project have been issued, and actual physical Development activity is underway
 - B. "Substantial Completion of the Project" means sufficient work has been completed showing that a financial commitment as well as the Developer's intent and ability to satisfactorily complete each applicable Phase of the Development within the time frames established in this Agreement. The City, in its reasonable discretion, shall determine whether Developer has Substantially Completed each phase of the development.
 - C. "Completion of the Project" means that the improvements to the Property required by this Agreement have been satisfied and the Project is fully completed.
3. DEVELOPMENT CRITERIA.
 - A. PERMIT ISSUANCE: In order to obtain issuance of permits for the Project, Developer agrees to the following:
 - i. To meet the conditions contained in this Agreement;
 - ii. To complete the Project within the deadlines provided in this Agreement;
 - iii. To comply with the site plan attached as **Exhibit B** for making the improvements set forth in this Agreement within the time periods established by this Agreement; and

- iv. To complete all Proposed Site Activities and Future Site Activities as identified on **Exhibit B** within the time periods established by this Agreement.

B. IMPROVEMENTS AND INVESTMENTS:

- a. All activities/improvements for the Project including, but not limited to all Site Plan Requirements identified in **Exhibit B** and all Proposed Site Activities and Future Site Activities as identified in **Exhibit B**, shall be completed by December 31, 2021. The City acknowledges that the Property is contaminated and that Developer's objective is to capture constituents of concern in the soil and groundwater and to perform remediation actions. If Developer fails to complete the Project by December 31, 2021, or as may otherwise be extended through an amendment to this Agreement, then Developer shall furnish a cash deposit or proof of funds evidencing the same with the City in the amount of One hundred Thousand (\$100,000.00) Dollars which is intended to cover the cost of the remaining activities/improvements for the Project listed on **Exhibits B**. Said deposit shall be refunded to Developer within ten (10) days after completion of the Project and issuance of a certificate of occupancy. The Developer shall request a release of the deposit prior to issuance. This section in no way shall be interpreted to circumvent or misconstrue the City's policy regarding bond requirements.
- b. Developer agrees to invest a minimum of \$17.6 million (seventeen million, six-hundred thousand U.S. dollars) for all activities/improvements for the Project including, but not limited to all Site Plan Requirements identified in **Exhibit B** and all Proposed Site Activities and Future Site Activities as identified in **Exhibit B**.

- C. INSPECTIONS. The Developer shall permit inspections of the Property as needed by the City, and the City shall provide reasonable notice to Developer unless an emergency arises, in which case, the City will make a good faith attempt to contact Developer.

D. PERMIT ISSUANCE. Upon the execution of this Agreement, the City shall issue permits necessary to complete the Project, and the other activities/improvements required by this Agreement, provided, however, the required Architecturally or Engineered stamped, construction drawings shall be submitted to the City by State Licensed Contractors and be in compliance with all applicable State of Michigan and International Codes, and comply with the City of Madison Heights current site standards. Further, upon submission of any future permit applications by Developer during the term of this Agreement, the City shall issue permits necessary to complete any activities/improvements to the Project, provided, however, the required Architecturally or Engineered stamped, construction drawings are submitted to the City by State Licensed Contractors and are in compliance with all applicable State of Michigan and International Codes and comply with the City of Madison Heights site standards.

4. DEFAULT BY DEVELOPER. Developer shall be deemed to be in default of this Agreement if Developer materially fails to comply with any covenant, clause, provision, requirement, or agreement herein contained. However, Developer shall not be in default of this Agreement if Developer's failure to comply with any covenant, clause, provision, requirement, or agreement herein contained is caused by any act(s), event(s) or combination thereof that are beyond the reasonable control of Developer, and Developer promptly initiates and continues best efforts to cure Developer's failure to comply with such covenant, clause, provision, requirement or agreement. Upon default by Developer, the City shall be entitled to seek any legal or equitable remedy available under the law, including, but not necessarily limited to, money damages or specific performance. Developer shall be entitled to thirty (30) days' written notice of any default and the opportunity to cure same. If any default has not been cured within thirty (30) days of the delivery of the notice to the address of Developer specified in this Agreement, or such additional time as may be reasonably required in light of the circumstances of the default, the City may revoke the Brownfield Plan and Reimbursement Agreement and initiate an action for any legal or equitable remedy available. If Developer is in default, no past or

future payments that may be due to the developer for completed Eligible Activities shall be payable by the City unless the default is cured.

5. **BINDING EFFECT.** This Agreement binds the parties, and their respective successors, legal representatives, and assigns.
6. **NON-DISCRIMINATION REQUIREMENT.** The Developer, its successors and assigns, and every successor in interest to the Property or any part thereof, shall not discriminate upon the basis of race, color, religion, sex, or national origin in the rental or in the use or occupancy of the Property or any improvements to be erected thereon, or any part thereof.
7. **MODIFICATION.** The promises, covenants, terms, and conditions herein contained shall not be modified, altered, or extended without the mutual written consent of the parties.
8. **NOTICE.** Except as otherwise specified herein, all notices, consents, approvals, requests, and other communications (collectively called "Notices") required or permitted under this Agreement shall be given in writing and are effective on delivery. Delivery may be effectuated by personal service with receipt obtained; certified mail or first-class mail with delivery proof; or nationally recognized overnight courier delivery service with next business day delivery. Notices shall be addressed as follows:

If to the City, to: City of Madison Heights
300 West Thirteen Mile Road
Madison Heights, Michigan 48071
Attn: Community & Economic Development

If to Developer, to: Madison Center Owner, LLC
28454 Woodward Ave.
Royal Oak, MI 48067
Attn: Kevin Baker or Nick Moschouris

9. **INDEMNIFICATION.** Developer shall assume all liability for and protect, indemnify, defend, and hold harmless the City, its officers, directors, employees, volunteers, invitees,

agents and representatives (hereinafter collectively "Indemnitees") from and against all actions, claims, demands, judgments, losses, expenses, suits or actions, (including attorney fees) for any injury or death of any person or persons, and loss or damage to property of any person or persons whomsoever, arising either out of this Agreement or the intentional or negligent acts, errors or omissions of the Developer or its agents, contractors, subcontractors, and employees. However, Developer shall not be required to indemnify the City for such injury, death, loss, or damage to the extent caused by the City's negligence. Developer's obligation to indemnify the City shall survive termination and/or expiration of this Agreement.

10. **INSURANCE.** During the period this Agreement is in effect and until the Developer completes the Project, Developer and its consultants/contractors/subcontractors who perform any activities/improvements for the Project shall maintain general liability insurance in amounts of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. The insurance shall list the City as an additional insured, as its interest may appear. The Developer shall provide the City with a certificate of insurance evidencing such insurance coverage as provided for herein. Said insurance coverage shall protect the City from claims for bodily injury, death, property damage, and pollution liability which may arise or occur from the activities/improvements undertaken for the Project or as a result of this Agreement. All certificates of insurance shall be provided to the City for approval prior to commencement of the Project. The City may review the policies from time to time to assure itself of its terms, and that the insurer is financially responsible.
11. **SEVERABILITY.** If any one or more provisions of this Agreement, or in any instrument or other document delivered pursuant to this Agreement, or the application thereof to any person or circumstance is, to any extent, declared or determined to be invalid or unenforceable, the validity, legality, and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected or impaired thereby, and each provision of this Agreement is valid and enforceable to the fullest extent of the law.

12. COUNTERPARTS. This Agreement may be executed in counterparts, each of which is deemed an original document, but together constitute one instrument.
13. GOVERNING LAW AND INTERPRETATION. The laws of the State of Michigan govern this Agreement and the venue for all proceedings in connection with this Agreement shall be Oakland County, Michigan. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and do not supplement, limit, or otherwise vary the text of this Agreement.
14. LEGAL REPRESENTATION. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply due to the joint contribution of both parties.
15. WAIVER. The failure of the City to exercise any right given hereunder or to insist upon strict compliance with regard to any provision of this Agreement, at any time, shall not constitute a waiver of such provision or the right by such at any time to avail itself of such remedies as it may have for any breach or breaches of such provision.
16. ENTIRE AGREEMENT. This Agreement and any Exhibits attached hereto represent the entire agreement between the parties regarding its subject matter, and supersedes and cancels any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements, whether written or oral, regarding this Agreement.

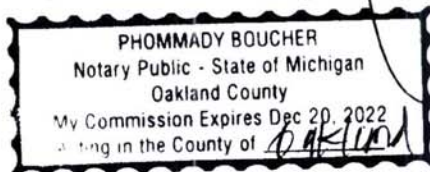
IN WITNESS WHEREOF, the parties have executed this Agreement on the 9th day of December, 2019.

THE CITY OF MADISON HEIGHTS

By [Signature]
Brian C. Hartwell
Mayor

STATE OF MICHIGAN)
)ss
COUNTY OF MADISON HEIGHTS)

The foregoing instrument was acknowledged before me, this 12th day of December, 2019, by Brian C. Hartwell, Mayor of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.



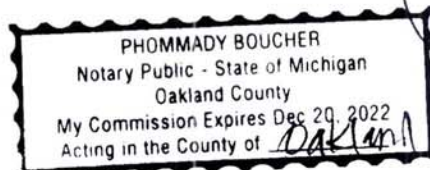
[Signature], Notary Public
Madison Heights County, Michigan
My commission expires 12/20/22

THE CITY OF MADISON HEIGHTS

By [Signature]
Cheryl Rottmann
City Clerk

STATE OF MICHIGAN)
)ss
COUNTY OF MADISON HEIGHTS)

The foregoing instrument was acknowledged before me, this 12th day of December, 2019, by Cheryl Rottmann, the City Clerk of the City of Madison Heights, a Michigan municipal corporation, on behalf of the corporation.



[Signature], Notary Public
Madison Heights County, Michigan
My commission expires 12/20/22

MADISON CENTER OWNER, LLC

By:

Kevin J. Baker

Its:

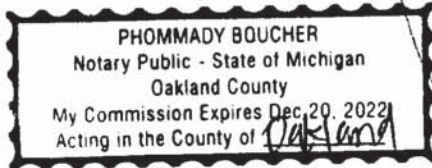
Manager

STATE OF MICHIGAN)

)ss

COUNTY OF MADISON HEIGHTS)

The foregoing instrument was acknowledged before me, this 18th day of December, 2019, by Kevin J. Baker, as Member, on behalf of Madison Center Owner, LLC.



Phommady Boucher, Notary Public
Madison Heights County, Michigan
My commission expires 12/20/22

EXHIBIT A – DESCRIPTION OF REAL PROPERTY

Real property commonly known as 29101-29305 John R Road in the City of Madison Heights, County of Madison Heights, State of Michigan, which is more particularly described as:

Parcel Number: 44-25-11-476-014

Address: 29101 John R Road

Acres: 22.36

Legal Description:

T1N, R11R, SEC 11, PART OF SE 1/4 BEG AT SE SEC COR, TH W 343 FT, TH N 00-17-36 E 241 FT, TH W 275 FT, TH S 00-17-36 W 241 FT, TH W 24.66 FT, TH N 00-27-12 E 881.10 FT, TH S 89-34-50 E 104.26 FT, TH S 00-25-10 W 24.16 FT, TH S 89-34-50 E 178.48 FT, TH N 00-25-10 E 43.15 FT, TH S 89-34-50 E 357.42 FT, TH S 00-17-36 W 895.39 FT TO BEG EXC S 33 FT TAKEN FOR RD, ALSO EXC THAT PART TAKEN FOR RD DESC AS BEG AT PT DIST S 87-44-30 W 642.66 FT & N 01-48-30 W 33 FT FROM SE SEC COR, TH N 01-48-30 W 27 FT TH N 87-44-30 E 24.5 FT, TH S 01-57-00 E 27 FT, TH 87-44-30 W 24.57 FT TO BEG 11.18 A 04-19-02 FR 003 & 009 09/30/08 CORR

Parcel Number: 44-25-11-476-013

Address: 29305 John R Road

Acres: 17.10

Legal Description:

T1N, R11E, SEC 11, PART OF SE 1/4 BEG AT PT DIST N 01-57-54 W 895.39 FT FROM SE SEC COR, TH S 88-09-40 W 357.41 FT, TH S 01-50-20 E 43.15 FT, TH S 88-09-40 W 178.48 FT, TH N 01-50-20 W 24.16 FT, TH S 88-09-40 W 104.31 FT, TH N 01-48-30 W 596.69 FT, TH N 83-53-24 E 640.29 FT, TH S 01-57-54 E 625.39 FT TO BEG EXC THAT PART TAKEN FOR DARTMOUTH RD DESC AS BEG AT PT DIST S 87-44-30 W 642.66 FT & N 01-48-30 W 1412.04 FT FROM SE SEC COR, TH N 01-48-30 W 65.75 FT, TH N 83-53-24 E 585.45 FT, TH S 01-58-15 E 43.56 FT, TH S 88-02-06 W 131.40 FT, TH ALG CURVE TO LEFT, RAD 1450 FT, CHORD BEARS S 85-41-41 W 118.42 FT, DIST OF 118.45 FT, TH S 83-21-16 W 131.11 FT, TH ALG CURVE TO LEFT, RAD 680 FT, CHORD BEARS S 78-12-16 W 128.39 FT, TH ALG CURVE TO LEFT, RAD 580 FT, CHORD BEARS S 68-44-34 W 81.98 FT, DIST OF 82.05 FT TO BEG 8.55 A 04-19-02 FR 003 & 009 01/18/08 CORR

Commonly known as 29101-29305 John R Road, Madison Heights, Michigan 48071.

EXHIBIT B – SITE PLAN

Attached

The Developer has provided staff with the following documentation substantiating total investment that exceeds \$17.6M:

BJ's Wholesale Club Inc. Building Allowance	\$8,361,365.00
The Alan Group Constructors LLC (TAG) for "Madison Center Whitebox"	\$6,393,347.21
The Alan Group Constructors LLC (TAG) for Project Sitework	\$4,517,285.00
Total:	\$19,271,997.21

BJ's Wholesale Club Inc. Building Allowance **\$8,361,365.00**

It is common practice that the developer provides a building allowance for tenants to develop their spaces to suit including improvements such as interior buildout. Madison Center Owner has supplied four forms of evidence to support this portion of the investment in the property:

- A Conditional Waiver between Madison Center Owner LLC and BJ's Wholesale Club Inc. which states that Landlord is required to pay the Tenant a "Building Allowance of \$8,361,365.00 and that subject to receiving the Building Allowance the tenant waives and releases its Tenant's Lien rights. Signed 1-10-2020, this shows that this investment was required to be made by Madison Center Owner LLC.
- A Business Checking Statement from 12-31-19 to 1/31-20 showing two wire transfers to BJ's Wholesale for Building Allowance showing a total of \$7,861,365. This is exactly \$500,000 less than the required Building Allowance.
- A Business Checking Statement from 2-29-20 to 3/31-20 showing a wire transfer of \$500,000 to BJ's Wholesale for Building Allowance and a corresponding Final Invoice from BJ's Wholesale to Madison Center Owner LLC noting this is the final payment for the Building Allowance.
- An Estoppel Certificate stating that "all construction obligations of Landlord under the Lease have been satisfactorily completed by the Landlord and accepted by Tenant."

The Alan Group Constructors LLC for "Madison Center Whitebox" **\$6,393,347.21**

An Application for Payment to Madison Center Owner LLC from their contractor The Alan Group Constructors, LLC dated 5-23-23 that shows a Contract Sum of \$6,519,421.62 and the payment due of \$126,074.41. It also includes that \$6,393,347.21 has already been paid to (TAG) prior to this application. They also included a sworn statement from the Contractor that \$6,393,347.21 has already been paid.

The Alan Group Constructors LLC for the Project Area's Sitework **\$4,517,285.00**

The Alan Group Constructors LLC provided sitework activities for the entire project area which included activities such as sitework, site utilities, asphalt paving, electrical, concrete and HVAC. The Developer has provided a series of invoices and Sworn Statements from the contractor demonstrating payments made throughout the construction at the site, including a final Sworn Statement showing that

\$4,226,612.16 has been previously paid and that \$339,775.25 remains to be paid to the Contractor. Further, they have provided a Full Unconditional Waiver signed by The Alan Group stating that their contract for improvement of the property described as "Madison Center- BJ's" has been fully paid and satisfied.