



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item E
November 13, 2007

SUBJECT: Consideration of request of Singh Development for a two-year extension to the termination date provided in the PRO Agreement for Uptown Park, a 201 unit residential condominium development, proposed to be located on a 38.6 acre parcel of land located west of Meadowbrook Road, and south of Twelve Mile Road.

Bonus
SUBMITTING DEPARTMENT: Community Development - Planning

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

In 2005, the City Council approved a request by Singh IV Limited Partnership for a Planned Rezoning Overlay (PRO) Agreement and conceptual plan for Uptown Park. The property is located west of Meadowbrook Road and south of Twelve Mile Road, consisting of 38.621 acres. The PRO agreement accompanied a rezoning request from RM-1, Low Density, Low Rise Multiple Family, and OST, Office Service Technology, to RM-2, High Density, Mid Rise Multiple Family.

The PRO agreement indicates that the development will be a residential condominium community consisting of no more than 201 units, to be marketed and made available as "for sale" units, intended for separate, private ownership for each units, rather than for rent or lease. A conceptual plan is attached as "Exhibit B" to the agreement.

For the Planned Rezoning Overlay ordinance, Section 3402 (d) (3) indicates, "Unless extended by the City Council for good cause, the Rezoning with Planned Rezoning Overlay shall expire following a period of two (2) years from the effective date of the Rezoning unless approved bona fide development of the property pursuant to building and other required permits issued by the City commences within such two (2) year period and proceeds diligently and in good faith as required by ordinance to completion." Permits have not been issued and construction has not begun.

The applicant has provided the attached letter requesting an extension to the approval for another two year period. The letter cites the current economic conditions in southeast Michigan, particularly relative to the residential market as the reasons for the request for an extension.

RECOMMENDED ACTION: Approval of request of Singh Development for a two-year extension to the termination date provided in the PRO Agreement for Uptown Park, a 201 unit residential condominium development, proposed to be located on a 38.6 acre parcel of land located west of Meadowbrook Road, and south of Twelve Mile Road.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				



®

Real Estate - Developers - Builders - Investors - Management

SINGH DEVELOPMENT, L.L.C.
7125 ORCHARD LAKE ROAD
SUITE 200
WEST BLOOMFIELD, MICHIGAN 48322

TELEPHONE: (248) 865-1600
DIRECT DIAL: (248) 865-1602
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E-MAIL: kahm@SinghMail.com

October 9, 2007

Clay J. Pearson
City Manager
City of Novi
45175 W. Ten Mile Road
Novi, Michigan 48375-3024

Re: Request for Extension to Term of PRO Agreement
Uptown Park; 38.621 Acres West of Meadowbrook and South of Twelve Mile
Novi, Michigan

Dear Clay:

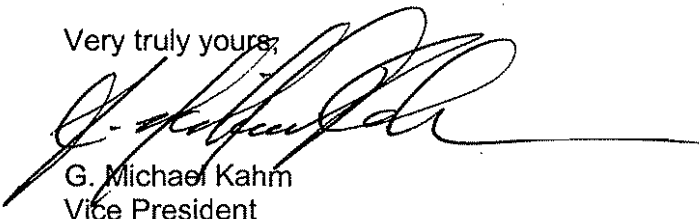
As you know, we entered into a Planned Rezoning Overlay (PRO) Agreement with the City of Novi regarding the referenced property on October 10, 2005, which was recorded in the Oakland County Register of Deeds on December 12, 2005. A recorded copy of the PRO Agreement is attached for your reference.

Section 3402(D)(3)(a), Planned Rezoning Overlay (PRO), of the City of Novi Zoning Ordinance provides that, ... *"In the event bona fide development has not commenced within two (2) years from the effective date of the Rezoning, the Rezoning and Planned Rezoning Overlay shall be void and of no effect"*. With the two year anniversary of the effective date of December 12, 2005 approaching, we are respectfully requesting the City's consideration to grant a two (2) year extension to the termination date of the PRO Agreement for Uptown Park.

Recitation V(A) of the PRO Agreement provides for the development of the property solely for a residential condominium community of no more than 201 units. Given the current economic conditions in the southeast Michigan area, particularly relative to the residential market, we have not chosen to proceed with the development of the property at this time. Therefore, we are seeking an extension to allow for an improvement in market conditions, which would be more conducive to a condominium project.

Please advise if you should require any further information and/or explanation in order to consider the requested two (2) year extension to the PRO Agreement for Uptown Park.

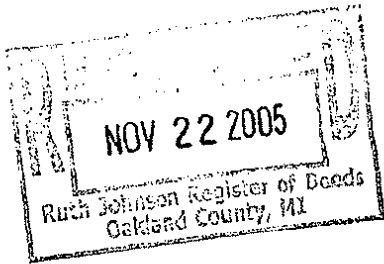
Very truly yours,



G. Michael Kahm
Vice President

Enclosure

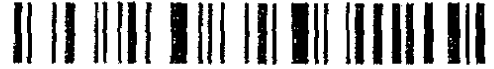
LIBER36755 PG157



CITY OF NOVI
CITY CLERK'S OFFICE

05 DEC 27 PM 3:30

344986
LIBER 36755 PAGE 157
\$34.00 MISC RECORDING
\$4.00 REMONUMENTATION
12/12/2005 12:53:39 P.M. RECEIPT# 138724



PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

PLANNED REZONING OVERLAY (PRO) AGREEMENT
UPTOWN PARK

AGREEMENT, by and between Singh IV Limited Partnership, a Michigan Limited Partnership, whose address is 7125 Orchard Lake Road, Suite 200, West Bloomfield Michigan, and Lakeside/Novi Land Partnership, LLC, a Michigan limited liability company, whose address is 200 East Long Lake Road, P.O. Box 200, Bloomfield Hills, MI 48303-0200 (together referred to as "Owner"), and the City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 ("City").

RECITATIONS:

- I. Lakeside is fee owner of the "Land" described on **Exhibit A**, attached and incorporated herein. Singh is the contract purchaser of the Land from Lakeside. Together, Lakeside and Singh own all interest in and to the Land
- II. For purposes of improving and using the Land for a residential condominium community consisting of no more than 201 units, to be marketed and made available as "for sale" units intended for separate, private ownership with regard to each and every condominium unit, rather than rent or lease by Owner or its successor-in-interest to the development (as opposed to any individual unit owner). Owner petitioned the City for an amendment of the Zoning Ordinance, as amended, so as to reclassify the Land from OST, Office Service Technology, to RM-2, Multiple-Family Residential. The OST classification under the Zoning Ordinance shall be referred to in this Agreement as the "**Existing Classification**"; and, the RM-2 classification under the Zoning Ordinance shall be referred to in this Agreement as the "**Proposed Classification**."
- III. The Proposed Classification would provide the Owner with certain material development options not available under the Existing Classification, and would be a distinct and material benefit and advantage to the Owner.
- IV. The City has reviewed and approved the Owner's proposed petition to amend the zoning district classification of the Land from the Existing Classification to the Proposed Classification under the terms of the Planned Rezoning Overlay (PRO) provisions of the City's Zoning Ordinance, and has reviewed the Owner's proposed PRO Plan, attached hereto and incorporated herein as **Exhibit B** (the



"PRO Plan"), which is a conceptual or illustrative plan for the potential development of the Land under the Proposed Classification, and not an approval to construct the proposed improvements as shown.

- V. In proposing the Proposed Classification to the City, Owner has expressed as a firm and unalterable intent that Owner will develop and use the Land in conformance with the following undertakings by Owner, as well as the following forbearances by the Owner (each and every one of such undertakings and forbearances shall together be referred to as the "Undertakings"):
- A. Owner shall develop and use the Land solely for a residential condominium community of no more than 201 units, to the extent permitted under the Proposed Classification, all of which such units are to be marketed and available as "for sale" units intended for separate, private ownership with regard to each and every condominium unit, rather than for rent or lease by Owner or its successor-in-interest to the development (as opposed to any individual unit owner), and shall forbear from developing and/or using the Land in any manner other than as authorized and/or limited by this Agreement.
 - B. Owner shall develop the Land in accordance with all applicable laws and regulations, and with all applicable ordinances, including all applicable height, area, and bulk requirements of the Zoning Ordinance as relates to the Proposed Classification. The PRO Plan is acknowledged by both the City and Owner to be a conceptual plan for the purpose of depicting the general area contemplated for development. However, no deviations from the provisions of the City's ordinances, rules, or regulations depicted in the PRO Plan are approved by virtue of this Agreement, and the attachment of the conceptual PRO Plan to this Agreement shall not be construed as granting the Owner the right to construct the improvements as shown in the Plan, and the Owner's right to develop a residential condominium community under the requirements of the Proposed Classification shall be subject to and in accordance with all applications, reviews, approvals, permits and authorizations required under applicable laws, ordinances, and regulations, including, but not limited to, site plan approval, storm water management plan approval, woodlands and wetlands permits, and engineering plan approval, except as expressly provided in this Agreement.
 - C. In addition to any other ordinance requirements, and in recognition of the substantial natural features on the Land, Owner shall seek, obtain approval for, and use best management practices and efforts with respect to all wetland, storm water and soil erosion requirements and measures throughout the site during the design and construction phases, and

subsequent use, of the development contemplated in the Proposed Classification.

- D. The Land shall be improved as a residential condominium development. Owner shall market the condominium units on the Land for use by residents for separate, private ownership with regard to each and every condominium unit. This provision shall not apply with regard to a retail consumer who has purchased a condominium unit for his or her own private occupancy.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Upon the Proposed Classification becoming final following entry into this Agreement:
 - a. The Undertakings shall be carried out by Owner on and for the Land;
 - b. Owner shall act in conformance with the Undertakings; and,
 - c. The Owner shall forbear from acting in a manner inconsistent with the Undertakings.
2. In the event Owner attempts to or proceeds with actions to complete improvement of the Land in any manner other than a residential condominium development of no greater than 201 units, all of which are to be marketed and available as "for sale" units intended for separate, private ownership with regard to each and every condominium unit, rather than for rent or lease by Owner or its successor-in-interest to the development (as opposed to any individual unit owner), or to rent or lease condominium units on the Land, rather than market the condominium units on the Land for use by residents for separate, private ownership with regard to each and every condominium unit, the City shall be authorized to revoke all outstanding building permits and certificates of occupancy issued for condominium units on the Land until such time as reasonable and adequate assurances are made that each condominium unit will be marketed and occupied for separate, private ownership, and that there are no outstanding leases from Owner to residents of units on the Land, and that there is no program of rental of units on the Land. This provision shall not apply with regard to a retail consumer who has purchased a condominium unit for his or her own private occupancy.
3. Prior to the date of this Agreement, Owner presented an issue to the City relative to whether it could develop the Land under the Existing Classification with or without the Undertakings. However, Owner withdraws any and all issues or claims to such effect. It is acknowledged and agreed that the City has not required the Undertakings. The Undertakings have been voluntarily offered by Owner in order to provide an enhanced use and value of the Land, to protect the public safety and welfare, and to induce the City to rezone the Land to the

Proposed Classification so as to provide material advantages and development options for the Owner.

4. All of the Undertakings represent actions, improvements and/or forbearances that are directly beneficial to the Land and/or to the development of and/or marketing of residential units on the Land. The burden of the Undertakings on the Owner is roughly proportionate to the burdens being created by the development, and to the benefit which will accrue to the Land as a result of the requirements represented in the Undertakings.
5. In addition to the provision in paragraph number one, above, in the event the Owner, or its respective successors, assigns and/or transferees proceed with a proposal for, or other pursuit of, development of the Land in a manner which is in material violation of the Undertakings, the City shall, following notice and a reasonable opportunity to cure, have the right and option to take action using the procedure prescribed by law for the amendment of the Master Plan and Zoning Ordinance applicable to the Land to amend the Master Plan and zoning classifications of the Land to a reasonable classification determined appropriate by the City, and neither the Owner nor its respective successors, assigns and/or transferees, shall have any vested rights in the Proposed Classification and/or use of the Land as permitted under the Proposed Classification, and Owner shall be estopped from objecting to the rezoning and reclassification to such reasonable classifications based upon the argument that such action represents a "downzoning" or based upon any other argument relating to the approval of the Proposed Classification and use of the Land; provided, this provision shall not preclude Owner from otherwise challenging the reasonableness of such rezoning as applied to the Land.
6. Notwithstanding anything to the contrary contained herein, due to the natural features on the Land and the unique shape of the Land, Owner shall not be required to abide by and City shall grant to Owner a waiver from the requirements of Zoning Ordinance Section 2400(e)(4) requiring the buildings to be oriented to a 45 degree angle to the property line.
7. Notwithstanding anything to the contrary contained herein and subject to Owner using the existing vegetation as a landscape buffer, Owner shall not be required to abide by, and City shall grant to Owner a waiver from, the requirements of Zoning Ordinance Section 2509.3.a requiring a landscaped earth berm or obscuring wall; provided, however, that the Owner shall permanently preserve those areas of existing vegetation intended to serve as the landscape buffer by execution and recording of a preservation or conservation easement, in a form acceptable to the City Attorney, encompassing and encumbering such area (as determined by the Planning Commission at the time of site plan approval).

8. By execution of this Agreement, Owner acknowledges that it has acted in consideration of the City approving the Proposed Classification on the Land, and Owner agrees to be bound by the provisions of this Agreement.
9. After consulting with an attorney, the Owner understands and agrees that this Agreement is authorized by and consistent with all applicable state and federal laws and Constitutions, that the terms of this Agreement are reasonable, that it shall be estopped from taking a contrary position in the future, and, that the City shall be entitled to injunctive relief to prohibit any actions by the Owner inconsistent with the terms of this Agreement.
10. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may be recorded by either party with the office of the Oakland County Register of Deeds.
11. The Zoning Board of Appeals (ZBA) shall have no jurisdiction over the Property or the application of this Agreement.
12. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.
13. This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. Any and all suits for any and every breach of this Agreement may be instituted and maintained in any court of competent jurisdiction in the County of Oakland, State of Michigan.
14. This Agreement may be signed in counterparts.

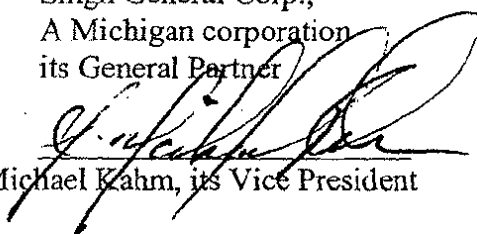
[signatures on following pages]

WITNESSES:

SINGH IV LIMITED PARTNERSHIP,
Michigan limited partnership

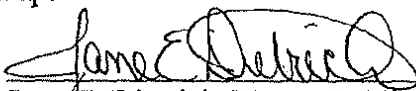
By: Singh General Corp.,
A Michigan corporation
its General Partner

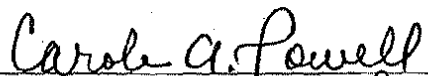

Jane Dietrich

By: 
G. Michael Kahm, its Vice President

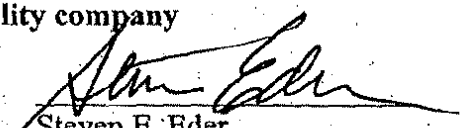
STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this 5th day of August, 2005, before me appeared G. Michael Kahm, the Vice President of Singh General Corp., a Michigan corporation, the General Partner of Singh IV Limited Partnership, a Michigan limited partnership, who states that he has signed this document of his own free will on behalf of the limited partnership.


Jane E. Dietrich, Notary Public
Oakland County, Michigan
Acting in Oakland County
My Commission Expires: 06-08-2012


Print Name: Carole A. Powell


LAKESIDE/NOVI LAND
PARTNERSHIP, LLC, a Michigan
liability company

By: 
Steven E. Eder
Its: Authorized Signatory

Print Name: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this 22nd day of August, 2005, before me appeared Steven E. Eder, the Authorized Signatory of Lakeside/Novi Land Partnership, LLC, a Michigan limited liability company, who states that he has signed this document of his own free will on behalf of the limited liability company.


Notary Public **CAROLE A. POWELL**
NOTARY PUBLIC OAKLAND CO., MI
MY COMMISSION EXPIRES JUL 18, 2008

[signatures on behalf of the City of Novi on the following page]

Acting in Oakland

EXHIBIT A

PROPERTY DESCRIPTION

A part of the Northeast 1/4 and Southeast 1/4 of Section 14, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, being more particularly described as commencing at the North 1/4 Corner of said Section 14; thence North 89°24'35" East, 1066.73 feet, along the North line of said Section 14 and the centerline of Twelve Mile Road; thence South 00°35'25" East, 860.00 feet, to the Point of Beginning; thence North 89°24'35" East, 912.12 feet; thence South 00°01'05" East, 1777.58 feet, to a point on the East and West 1/4 line of said Section 14, (said point being South 89°20'01" West, 660.00 feet, from the East 1/4 Corner of said Section 14); thence South 89°20'01" West, 652.86 feet, along the East and West 1/4 line of said Section 14; thence South 00°15'15" East, 664.29 feet; thence South 89°20'01" West, 1064.93 feet; thence North 41°58'04" East, 70.32 feet; thence North 04°01'24" East, 130.44 feet; thence North 88°56'39" East, 55.41 feet; thence South 06°42'58" East, 56.24 feet; thence North 45°00'25" East, 257.12 feet; thence South 48°26'09" East, 32.37 feet, to said Traverse point "B"; thence Southeasterly, Easterly, Northerly, Northeasterly, Easterly and Northwesterly, 2723 feet more or less along the shore of "Twelve Oaks Lake"; thence North 59°05'44" East, 30.00 feet, to Traverse point "A" (said Traverse Point "A" being South 69°28'42" East, 225.60 feet and South 31°58'09" East, 158.61 feet and North 88°24'00" East, 341.76 feet and North 01°15'56" East, 172.77 feet and North 37°23'07" West, 127.31 feet and North 31°25'47" East, 261.69 feet and North 11°18'35" East, 131.38 feet and North 87°31'55" East, 110.80 feet and North 08°21'20" West, 494.05 feet and North 58°12'28" West, 222.88 feet and North 04°59'03" West, 270.31 feet and North 33°52'43" West, 87.70 feet, from said Traverse Point "B"); thence North 59°05'44" East, 34.15 feet; thence North 11°58'06" East, 139.41 feet; thence North 58°49'11" West, 130.49 feet; thence North 00°34'12" West, 86.30 feet; thence North 48°39'49" West, 28.68 feet; thence North 00°34'12" West, 182.89 feet; thence North 89°25'48" East, 55.70 feet; thence North 00°35'25" West, 279.42 feet, to the Point of Beginning. All of the above containing 38.621 Acres, more or less. All of the above being subject easements, restrictions and right-of-ways of record.

Tax Id. #'s 22-14-401-015 and a portion of 22-14-200-043 *PT*

