



## CITY OF NOVI CITY COUNCIL AUGUST 31, 2020

**SUBJECT:** Approval of the request of Hunter Pasteur Homes for a proposed First Amendment to the approved Planned Rezoning Overlay (PRO) Agreement for Dunhill Park, JSP 15-13, located in Section 32, at the northwest corner of Beck Road and Eight Mile Road with respect to environmental issues. The property totals 23.76 acres and the applicant is constructing a 31-unit single family residential development in a cluster arrangement with frontage on and access to Eight Mile Road.

**SUBMITTING DEPARTMENT:** Community Development Department - Planning

**BACKGROUND INFORMATION:** The City Council approved a PRO Agreement for the Dunhill development (Hunter Pasteur) in March of 2016. The development is 31 homes located on a former trucking/orchard site. One of the public benefits as determined by City Council at the time of approval was that the property—which was contaminated and a brownfield site—would be cleaned up with the development of the residential homes.

The PRO Agreement as originally approved includes the following language with regard to the standards to which the property would be cleaned: "Applicant shall be required to clean up, remove, and remediate any and all site contamination, including but not limited to any underground storage tanks or hazardous or toxic substances existing on, under, above or upon the Land such that the Land is safe for single family residential homes in conformance with MDEQ unrestricted residential cleanup criteria."

Initial cleanup of the site was completed and MDEQ approved the subsequent report, with the exception of Lots 25 and 26, where additional remediation would be performed if needed when the basement(s) were excavated. Additional work did occur for Lot 25 but was apparently insufficient to meet the "unrestricted" criteria at the present time.

The developer is seeking to amend that language in the PRO Agreement only with respect to Lots 25 and 26. Lot 25 is already developed with a substantial home.

The attached draft amendment explains in greater detail the alternative activities the Developer will be undertaking with regard to the two lots affected. The City Attorney's office and the City's environmental expert, Dirk Mammen, have reviewed the proposed documents and have no objection to the amendment.

**RECOMMENDED ACTION:** Approval of the First Amendment to the approved Planned Rezoning Overlay (PRO) Agreement for Dunhill Park as proposed, subject to final review by the City Manager and City Attorney's office as to minor changes to the form of the Amendment.

**FIRST AMENDMENT TO**  
**PLANNED REZONING OVERLAY (PRO) AGREEMENT**  
**DUNHILL PARK**

**AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2020 by and among Hunter Pasteur Homes Dunhill Park, a Michigan Limited Partnership, whose address is 32300 Northwestern Highway, Suite 125, Farmington Hills, MI 48334 (referred to as “**Developer**”) and the City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 (“**City**”).

**RECITATIONS:**

- I. Developer and City entered into a Planned Rezoning Overlay (PRO) Agreement (the “**Agreement**”) governing the development of an approximately 23.76-acre parcel of property located on the northwest corner of Eight Mile and Beck Roads, herein known as the “Land” or the “Development” described on **Exhibit A**, attached and incorporated herein.
- II. The Agreement authorizes the Developer to develop and use the Land solely for a 31-unit high-quality, owner occupied, single-family residential project, in accordance with the PRO Plan. The Agreement is dated July 11, 2016 and was recorded at the Oakland County Register of Deeds on August 4, 2016. Developer thereafter commenced development and has to date completed development of all of the lots, and many have completed homes on them or homes are under construction.
- III. At the time of the PRO approval, the Land was the former site of a trucking facility and was in fact a partially-remediated brownfield site (and also a former orchard). The Agreement contemplated that, as part of the development of the Land with homes, there would be further environmental remediation, including the approval of a brownfield redevelopment plan by the City and Oakland County.
- IV. More specifically, among the PRO Conditions listed in the PRO Agreement is the requirement, at Paragraph E.1 that “...Applicants [Developer] shall be required to clean up, remove, and remediate any and all site contamination, including but not limited to any underground storage tanks or hazardous or toxic substances existing on, under, above or upon the Land such that the Land is safe for use for single family residential homes in conformance with MDEQ *unrestricted* residential clean-up criteria, and conforms to the Applicants’ Brownfield Redevelopment Plan requirements pursuant to MDEQ approved certificate(s) of completion.” (Emphasis added.) A similar requirement is listed in Paragraph D.2, which states

that “The clean-up shall result in a site that is safe for residential occupancy and that complies with the *unrestricted* residential clean-up criteria of the Michigan Department of Environmental Quality (MDEQ), to the satisfaction of the City’s environmental consultants.” (Emphasis added.)

- V. Since commencing development of homes on the site, the Developer has conducted significant remediation and clean up on the Land. In 2018, the Developer unexpectedly encountered low levels of residual diesel fuel at substantial depth (more than 20 feet below ground) on Lot 25 and a small portion of Lot 26 that was associated with a former diesel fuel tank that was removed in 1999, and for which the MDEQ had approved an unrestricted residential closure.. Due to the significant depth of the residual diesel, Developer is unable, under current EGLE (formerly MDEQ) standards, to meet the technical requirements for “unrestricted” clean up status as to Lots 25 and 26. However, the Developer has undertaken substantial clean up and has utilized building materials and methods that in its opinion would qualify the properties for safe residential use—including, but not limited to, the use of an impermeable coating and passive venting system approved for use by EGLE and in consultation with EGLE.
- VI. Lot 25 has been improved with a home that is otherwise (i.e., except for compliance with the “unrestricted” status requirement of the PRO) ready for issuance of a certificate of occupancy, and the Developer is ready to commence work on the home on Lot 26.
- VII. The Developer has asked the City to amend the Agreement to allow issuance of certificates of occupancy for the homes on Lots 25 and 26 if they meet sufficient alternative criteria to the EGLE “unrestricted” clean up criteria.

***NOW, THEREFORE, IT IS AGREED AS FOLLOWS:***

- 1. For purposes of Lots 25 and 26 only, the requirements of Paragraphs E.1 and D.2 of the Agreement, as set forth in Recital IV above, shall be considered met if the following are satisfied:
  - a. The Developer applies, in a manner acceptable to the City and EGLE, an impermeable coating and passive venting system approved for use by EGLE in the basements and garages of the homes on Lots 25 and 26;
  - b. The Developer prepares for each Lot a Due Care Documentation plan that is approved by EGLE;
  - c. The Developer provides a copy of the Due Care Documentation and this First Amendment to PRO Agreement to the purchasers of the homes on Lots 25 and 26; and

- d. The Developer to include a deed restriction disclosing the Due Care Documentation and release of claim as follows:

A diesel fuel tank was removed from the area of the Unit over 20 years ago and the Michigan Department of Environmental Quality (MDEQ) approved its removal as an unrestricted residential closure. In 2018, low levels of residual diesel fuel were identified more than 20 feet below the surface of the Unit. In accordance with standards established by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) (the successor to MDEQ), building materials that qualify the Unit for safe residential use under EGLE standards, including, but not limited to, an impermeable coating and passive venting system, was installed below the basement and garage of the home on the Unit. A Due Care Plan (Due Care Plan) was also approved by EGLE and delivered to the Grantee which provides the maintenance requirements for these improvements. Grantee is to provide Grantee's purchaser of the Unit with a copy of this Due Care Plan. This requirement to provide the Due Care Plan to successive purchasers shall no longer apply if EGLE, or its successor, confirms that the Unit complies with the unrestricted residential clean-up criteria or a similar criteria that may exist in the future for the same purpose. Grantee and all successor purchasers of the Unit, further acknowledge and agree that the environmental condition disclosed in this restriction and the requirement to maintain the Due Care Plan is a private obligation and not an obligation of the City of Novi or any of its departments, elected officials, agents or employees (collectively "City"), and Grantee shall not seek nor expect that the City will undertake, in any way, on Grantee's behalf any action involving the environmental condition described above or the maintenance requirements set forth in the Due Care Plan and further releases and agree not to bring action against the City from any and all claims regarding the environmental condition described above and the obligation to maintain the Due Care Plan that applies to Grantee's Unit.

2. Except as expressly modified by this Amendment, the PRO Agreement remains in full force and effect.
3. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. The rights and obligations contained in this Amendment shall run with the property.
4. This Amendment has been duly authorized by all necessary action of Developer and City.
5. This Amendment may be executed by the parties in counterparts.

IN WITNESS WHEREOF the undersigned have executed this amendment effective as of the day and year set forth above.

**DEVELOPER**

HUNTER PASTEUR HOMES DUNHILL  
PARK, LLC

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

Its: Manager

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF OAKLAND    )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me appeared  
who states that he has signed this document of his own free will duly authorized on behalf of the  
Developer.

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

**CITY OF NOVI**

By: \_\_\_\_\_  
Robert J. Gatt, Mayor

By: \_\_\_\_\_  
Cortney Hanson, Clerk

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF OAKLAND    )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me appeared Robert J. Gatt and Cortney Hanson, who stated that they had signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

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

Drafted by:

Elizabeth Kudla Saarela  
Johnson, Rosati, Schultz & Joppich  
27555 Executive Drive, Suite 250  
Farmington Hills, MI 48331

When recorded return to:  
Maryanne Cornelius, Clerk  
City of Novi  
45175 West Ten Mile Road  
Novi, MI 48375-3024

EXHIBIT A

LAND



EXHIBIT B

PRO PLAN

EXHIBIT C

STAFF AND CONSULTANT REVIEW LETTERS

