



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item 5

October 22, 2007

SUBJECT: Consideration of a Completion Agreement for SP#03-46 Provincial Glades RUD in accordance with the requirements of Chapter 26.5

SUBMITTING DEPARTMENT: Community Development – Planning *Barb*

CITY MANAGER APPROVAL: *PWA for COP*

BACKGROUND INFORMATION: The City Council originally considered a proposed Completion Agreement for Provincial Glades at the meeting of September 10, 2007. City Attorney Beth Kudla and City staff have since met with developer Mike Fellows to amend the Agreement language based on direction provided by the City Council during the Council meeting.

The attached October 10, 2007 letter from the City Attorney's office details the proposed modifications to the draft Completion Agreement, including a reduction of the amount of financial security from \$1,852,646 to \$1,595,074. Additionally, the issue of repairs to 50855 Nine Mile has been removed from the Agreement, and the completed storm water retention improvements have been reflected in the amount of financial guarantees released. The schedule for completion of several items (Singh Trail, woodland replacement trees and restoration of wetland areas) has been revised in the attached draft Completion Agreement, in consideration of the requests of the developer and City Council's previous discussion. Finally, the City Attorney's letter indicates that, instead of amending each letter of credit to increase the amount of security to 200%, the developer may provide one additional letter of credit containing the incremental increases for all of the improvements.

In the applicant's letter dated October 1, 2007, the developer indicates that he believes a consensus has been reached on most of the terms of the agreement. However, the developer continues to debate the cost estimate amounts for utilities/paving and tree plantings (woodland replacements, landscaping and street trees). The applicant notes that the city's cost estimates for these improvements amount to more than the developer's actual costs for these improvements, and when the amount is doubled as a part of a completion agreement, the difference is magnified. The developer would like to continue to discuss these aspects of the Completion Agreement.

Because of the applicant's concerns and at the request of the applicant, the City's Consulting Engineer recently reassessed the amounts originally provided in the July 17, 2007 walkthrough. Several modifications have now been made to the utility, grading and paving items. The total cost of paving has now been reduced from \$150,000 to \$125,000 at the professional recommendation of the City's Consulting Engineer. This reduced amount is reflected in the revised Completion Agreement. Likewise, the Landscape cost estimate has been reduced from \$299,851 to \$185,451 to reflect the removal of street trees from this calculation. The City believes that the estimate for the cost of street trees is accurate, and should remain as originally calculated.

While the financial guarantee amounts have been reduced somewhat, based on subsequent reviews, the applicant's indication of developer's cost is still less than the city's cost estimates. Staff believes that the amounts provided in the attached Draft Completion Agreement are accurate and will insure that the required improvements can be completed by the City or the City's representatives, in the event that the applicant cannot complete these items.

Please see the letter from the City Attorney's office dated October 10, 2007 detailing the changes to the Draft Completion Agreement. The City Attorney has indicated that it is within City Council's authority, generally, to permit the developer to vary from some or all of the requirements of the ordinance, and/or the provisions of the agreement recommended by City staff and consultants,

although no particular Section of Chapter 26.5 discusses the standards to be considered in order to vary from the ordinance. In that regard, the Council should be guided by the general standards of Section 1-12 of the City Code:

1. A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
2. The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
3. The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

RECOMMENDED ACTION: Approval of a Completion Agreement for SP#03-46 Provincial Glades RUD in accordance with the requirements of Chapter 26.5.

	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				

**CITY ATTORNEY'S LETTER
OCTOBER 10, 2007**

October 10, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
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Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Marina Neumaier, Assistant Finance Director
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

**Re: Provincial Glades Agreement for Completion and Maintenance of
Improvements Pursuant to Chapter 26.5 of City Code
Our File No. 55142 NOV**

Dear Ms. Neumaier:

As you know City Council considered two versions of a proposed Agreement for Completion and Maintenance of Improvements for Provincial Glades at its September 10, 2007 meeting. The first version was the draft we prepared with input from City staff. The second version was prepared by the Developer and contained revisions from the City's proposed version with respect to the amount of security, the schedule for completion of improvements, and the administration of the Agreement pursuant to City ordinance. Based on City Council's comments, and our subsequent discussions with the Developer, we have prepared a revised Agreement for Completion and Maintenance of Improvements. The primary changes in the revised version of the Agreement include an adjustment to the amount of security due to recalculation of certain costs of completion and a revision of the schedule for completion, and more specifically the following changes:

1. The overall amount of financial security has been revised from \$1,852,646.00 to \$1,595,074.00 based on recalculation of the cost of landscaping, wetland restoration, paving and the Singh trail boardwalk.
2. The issue of repairs to 50855 Nine Mile Road has been removed from the Agreement.
3. Storm water retention improvements have been completed and the financial guarantee released.
4. The schedule for completion of Singh Trail has been revised to coincide with the timing of completion of Singh's portion of the trail or prior to issuance of the 64th certificate of occupancy within

Provincial Glades, whichever occurs first. In all events, if Singh's portion of the trail is not in before the issuance of the 64th certificate of occupancy, then the Developer may release the funds to the City for the City to complete the trail at the appropriate time in the future.

5. The schedules for completion of installation of woodland replacement trees, protective fencing, street trees, and site landscaping have been revised to occur in accordance with completion of percentages of homes within the Development. However, if after 4 years, no more than 36 of the 70 homes have been completed, City Council may reconsider the schedule for completion so that the residents of the subdivision are not indefinitely subject to incomplete site landscaping, street tree installation and replacement.
6. The schedule for restoration of wetland impacts relating to the Singh Trail construction and the maintenance of the temporary secondary access road have been revised to correspond with the schedule for completing those improvements. Because it is unclear whether the temporary secondary access road will ever be able to be abandoned depending upon the development of adjacent parcels, we have included a provision for City Council to reconsider the need for wetland restoration relating to the temporary access road if it is still in place in 2012. The provision allows for consideration of amendment of the wetland permit at that time to make the wetland impact permanent if the road cannot be abandoned due to lack of other secondary access.
7. Instead of amending each letter of credit to increase the amount of security to 200%, it is our understanding that the Developer may provide one additional letter of credit containing the incremental increase for all of the improvements.

Though the Developer is in agreement, for the most part, with the proposed revised schedule for completion, he has also indicated in his letter to City Council dated October 1, 2007 that he would like Council to reconsider (1) the 200% factor applied to the completion cost estimate, and (2) the \$400 cost estimated for street trees provided by Section 26.5-4 of the City Ordinance Code.

As we previously indicated, it is within City Council's authority, generally, to permit the Developer to vary from some or all of the requirements of the ordinance and/or provisions of the agreement recommended by City staff and consultants, though no particular Section of Chapter 26.5 discusses particular

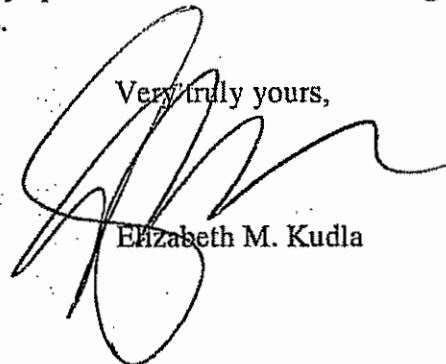
standards to be considered to vary from the ordinance; in that regard, the Council should be guided by the general standards of Section 1-12 of the City Code:

- (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- (2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
- (3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

City Council may determine, if the above standards are met, that the 200% multiplier should be modified.

Should you have any questions or concerns with regard to this matter, please feel free to contact us.

Very truly yours,



Elizabeth M. Kudla

EMK

Enclosures

- C: Maryanne Cornelius, City Clerk (w/Enclosures)
Clay Pearson, Assistant City Manager (w/Enclosures)
Rob Hayes, City Engineer (w/Enclosures)
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
Sheila Weber, Treasurer's Office (w/Enclosures)
Dave Beschke, Landscape Architect (w/Enclosures)
John Freeland, ECT, Inc. (w/Enclosures)
Ted Meadows, Stantec (w/Enclosures)
Sarah Marchioni, Building Department (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

**DRAFT
COMPLETION AGREEMENT
10/10/07**

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

PROVINCIAL GLADES
FKA THE PRESERVE RUD

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2007, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 4837547 ("City"), and Provincial Glades, LLC, whose address is 41115 Jo Drive, Novi, MI 48375-1920 ("Developer") who represents itself hereby as the owner of the Property and Developer of the Development.

RECITATIONS:

Developer is the owner and developer of the land in the City of Novi, Oakland County, Michigan, described on the attached Exhibit A (the "Property"). The subject land has been approved for development as a Residential Unit Development pursuant to the provisions of the City of Novi Zoning Ordinance, and The Preserve Residential Unit Development Agreement, dated July 31, 2004, to contain seventy (70) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the "Development".

As part of the approval process, Developer has offered and agreed to develop the Property, to complete certain improvements, and to proceed with other undertakings in compliance with applicable City Ordinances. Chapter 26.5 of the City of Novi Code of Ordinances, Section 26.5-5 (b) requires completion of actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit for any improvements, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The initial permit for the Development was issued on June 29, 2005. Because two (2) years have elapsed since the initial permit, the Developer must either complete the improvements immediately, or request an extension of time. Section 26.5-5 (b) requires that extension of such time periods may only be granted by City Council when such extensions are requested for reasons other than delay resulting from weather conditions and/or delay in securing required approvals/permits from outside regulatory agencies.

Because the Developer is requesting an extension with respect to the completion of improvements for reasons other than delay resulting from weather conditions and/or approvals/permits from outside regulatory agencies, Developer must request an extension from City Council and must provide a written completion agreement, together with a revised performance guarantee, pursuant to Section 26.5-12 of the City of Novi Code of Ordinances.

Consistent with all applicable laws and ordinances, more particularly Chapter 26.5 of the City of Novi Code of Ordinances, to obtain an extension with respect to completion of improvements, the Developer has offered to provide, and the City is willing to accept, certain assurances to the City that such improvements relating to the Development will be properly completed and maintained pursuant to a schedule. Such assurances include providing a performance guarantee in an amount no less than two hundred (200) percent of the cost of the work to be completed, and a schedule, for completion and maintenance of the improvements for the Development.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

The City and the Developer enter into this Agreement for the purpose of ensuring that certain improvements for the Development will be completed and maintained pursuant to all approvals granted by the City and all applicable laws and ordinances, and that such completion and maintenance occur on a timely basis, in accordance with a schedule approved by City Council.

2. Performance Guarantee Posted

Prior to or with the execution of this Agreement, the Developer has provided, or does provide, to the City, performance guarantee in the total amount of \$ 1,595,074.000 to guarantee completion and maintenance of improvements for the Development, as estimated and itemized in Paragraph 3, below. Such performance guarantee funds have been posted in the form of irrevocable Letters of Credit Nos. 07048, 07063, 5005120468, 5005120467, and 07064, issued by Citizens Bank ("Bank"), to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year, and shall provide by its terms that it shall, without further action by any person or entity be continuously renewed and be continuously effective for successive periods of one (1) year subject to termination only by 60 days advanced, written notice by Bank to the City's Assistant Finance Director as follows. As a condition to the termination of the effectiveness of the letter of credit, Bank shall be required to provide to the office of the City's Assistant Finance Director, with 60 days advanced written notice, a statement that the letter of credit shall terminate at the end of the 60 day period. Such notice shall be required regardless of the stated termination date of any other documentation. Prior to the date of termination at the conclusion of the 60 day period, the letter of credit shall at all times be effective and payable according to its terms.

3. Items of Improvement and Maintenance

The items of improvements and maintenance included within this Agreement, and the estimated cost of completion and ongoing maintenance, are set forth below:

(a)	Woodlands:	\$200,800.00
(b)	Woodland fence:	\$ 17,500.00
(c)	Landscape:	\$ 185,451.00

(d)	Wetland:	\$ 32,386.00
(e)	Right-of-Way (Paving):	\$125,000.00
(f)	Street Trees:	\$114,400.00
(g)	Singh Trail including paving and boardwalk:	\$122,000.00

Subtotal:	\$ 797,537.00
200% Multiplier:	x 2
Total Financial Guarantee:	\$ 1,595,074.00

4. Completion and Maintenance of Improvements; Schedule and Requirements

Each of the Improvement Items listed in Paragraph 3, above, shall be completed and maintained by the Developer, at its expense, pursuant to all final approvals granted by the City and all applicable laws and ordinances, according to the following schedule:

- a) Improvement Item 3(g), above, contemplates and includes without limitation the installation of a pathway system within the "Connecting Open Space" within the Development. The RUD Agreement provides that a trail system shall be constructed by Developer on the area of the Property that has been dedicated to the City as a park connecting the terminus of the City's Singh Trail to Nine Mile Road. Developer shall construct a trail system in accordance with AASHTO (American Association of State Highway and Transportation Officials) and ADA (Americans with Disabilities Act) standards. The trail shall mostly be an asphalt pathway, and boardwalk only where necessary. Improvement Item 3(g), above, shall be completed in all events at the time of installation of the "Singh" portion of the pathway system, or, alternatively, prior to the issuance of the 64th certificate of occupancy for the Development. In all events, if the "Singh" portion of the pathway system is not installed by or before the issuance of the 64th certificate of occupancy for the Development, the Developer may, as an alternative to constructing his portion of the pathway system, deposit the amount set forth in Paragraph 3(g) above with the City, and the City may complete the pathway at a time that the City, in its discretion, deems appropriate.
- b) Improvement Items 3(a) (b), (c), and (f) above, contemplate and include without limitation preservation of existing woodlands and the installation of woodland fence, woodland replacement trees and protective fencing, the installation of street trees, and site Landscaping for the overall Development. Approximately 54 acres of regulated woodlands will be preserved including the installation of 462 woodland replacement trees (which includes 280, or 4 trees per lot, to be installed on lots by homeowners in accordance with the Master Deed for the Development), 334 street trees, protective fencing, and security for 27 trees over 8"

DBH. Improvement Items 3(a), (b), (c), and (f) above, shall be completed in increments in accordance with the completion of construction of new homes within the Development. In all events, 25% of the improvement items in Paragraphs 3 (a),(b), (c) and (f) shall be installed prior to the issuance of the 18th certificate of occupancy within the Development. 50% of the improvement items in Paragraphs 3(a), (b), (c) and (f) shall be installed prior to the issuance of the 36th certificate of occupancy within the Development. 75% of the improvement items in Paragraphs 3(a), (b), (c), and (f) shall be installed prior to the issuance of the 53rd certificate of occupancy within the Development. 100% of the of the improvement items in Paragraphs 3(a), (b), (c), and (f) shall be installed prior to the issuance of the final three (3) certificates of occupancy within the Development. Pursuant to the terms of this Paragraph, a partial release of financial guarantee may be made at the time of the issuance of the of each of the 18th, 36th, 53rd and final certificates of occupancy within the Development, subject to the City retaining and appropriate amount to guarantee replacement of any dead, substantially dead, diseased or removed trees, and/or landscaping during the one (1) year period following installation of the trees and/or landscaping. If by June 29, 2011, not more than 36 certificates of occupancy within the development have been installed, City Council may reconsider, in its discretion, the scheduling of the installation of the improvement items set forth in Paragraphs 3(a), (b), (c) and (f) so as to require more immediate installation of the improvement items, in its reasonable discretion to ensure that the homeowners receive the benefit of those improvement items.

- c) Improvement Item 3(d) above contemplates and includes restoration of temporary impacts to wetland buffers for impacts caused by (1) the installation and maintenance of the temporary secondary access road for the Development, and (2) impacts caused by installation of Improvement Item 3(g) above, the pathway system. Improvement Item 3(d)(1), shall be completed at the time, and in accordance with Improvement Item 3(g), above. Improvement Item 3(d)(2) shall be completed at the time the temporary secondary access road for the Development is abandoned and restored. In all events, if the temporary secondary access road is still in place by June 29, 2012, City Council shall revisit this issue to determine whether it is reasonably foreseeable that a permanent access road will be installed, and, wetland restoration will take place. If City Council determines that the temporary access road will not be abandoned in the foreseeable future, Developer may apply for an amendment to his wetland permit to maintain a permanent wetland impact in the area of the temporary access road, and may seek release of the appropriate amount of financial guarantee, accordingly.
- d) Improvement Item 3(e) above contemplates (1) repair of existing base course of paving on Nine Mile Road, (2) the installation of the top course of bituminous paving for Nine Mile Road; and(3) installation of top course

of paving along interior roads within the Condominium. Improvement Items 3(e), above shall be completed, prior to the issuance of the 63rd certificate of occupancy for the Development, and in all events, no later than June 29, 2009.

5. City Authority to Complete and/or Maintain.

In the event Developer has failed to complete and/or maintain the improvements itemized in Paragraph 3, above, within the time periods and in the manner specified in this Agreement, and, provided the City has given the Developer 14 days notice of the failure to timely complete and/or maintain and Developer has not completed and/or maintained all of such improvements within said 14 days, the City shall have the authority, but shall not have the legal obligation, to take one or more of the following actions:

(a) The City may draw the funds from the letter of credit or other securities posted and enter upon the Development through its officials, employees, agents, and/or contractors and complete and/or maintain the improvements, or restore the Property or areas disturbed by the Development. In such event, all costs and expenses incurred shall be paid from the proceeds of the funds drawn on the letter of credit or otherwise obtained from the performance guarantee posted. Any amounts of unused proceeds of the performance guarantee shall be returned to Developer, or otherwise be credited, as the case may be. Developer, and all of Developer's officers, employees, consultants and agents, shall be obligated to act and work in cooperation with the City to bring about completion and/or maintenance of the improvements as contemplated in this Agreement, or restoration, and shall provide the City with all drawings, contracts, documentation, public and private correspondence, agreements and other materials relating to any such improvements, restoration and/or maintenance. Notwithstanding other provisions to the contrary, in the event the City receives a notice of termination from Bank with regard to the letter of credit, or from any other securing party as to performance guarantee posted pursuant to this Agreement, and the improvements and/or maintenance itemized in Paragraph 3, above, have not been completed or fulfilled as required by this Agreement, the City shall be entitled to immediately draw the funds from the letter of credit or other performance guarantee posted, without notice to Developer, and proceed as specified in this paragraph.

(b) The City may issue a stop work order as to any or all aspects of the Development, deny the issuance of any requested building permit or certificate of occupancy, as applicable, and suspend further inspections of any or all aspects of the Development.

(c) The City may, but is not required to, initiate a lawsuit for purposes of enforcing and achieving full compliance with the terms and provisions of this Agreement. In the event that the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

(d) The City may, in its discretion, in accordance with the provisions of Chapter 26.5, grant Developer additional time beyond the time periods reference in Paragraph 4, in accordance with the provisions of Chapter 26.5 of the City of Novi Code of Ordinances, which provisions may be amended from time to time.

6. Additional Liability

Developer shall also be liable for any costs and expenses incurred by the City in excess of the amounts posted by the Developer under this Agreement as well as any costs and expenses, including reasonable attorney fees, incurred by the City in any action and/or litigation to enforce or collect such funds and/or to otherwise restore the property and/or secure completion and/or maintenance of the improvements itemized in Paragraph 3, above, pursuant to the terms of this Agreement, in the event the City obtains any relief as a result of such lawsuit. The liability of Developer in such regard, if unpaid after 30 days of a billing sent to Developer at its last known address, may be secured by the City recording a lien on the Property, effective as of the date the City is authorized to proceed with the completion and/or maintenance of improvements, or restoration, as provided in this Agreement, and all such unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may also be collected by suit initiated against the Developer, and in the event the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

7. Rebate or reduction of Performance Guarantee

The City shall not release a performance guarantee until (1) all fees that are due to the City have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required (4) expired permits have been renewed; and (5) the City has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The City may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the City, in its sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. At no point shall the amount of the performance guarantees held by the city be less than two hundred (200) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

8. Binding Effect

This Agreement shall run with the land constituting the property described on Exhibit A and shall be binding upon and inure to the benefit of the City and Developer and to their respective heirs, successors, assigns and transferees.

9. Owner's Warranty on Ownership

Developer hereby warrants that it is the owner of the Property described on attached Exhibit A, and that it, and Developer have the full authority to execute this Agreement.

10. Delay in Enforcement

A delay in enforcement of any provision of this Agreement shall not be construed as a waiver or estoppel of the City's right to eventually enforce, or take action to enforce, the terms of this Agreement.

11. Severability

Each covenant, requirement, obligation and provision contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event one or more of the covenants, requirements, obligations or provisions shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining covenants, requirements, obligations and provisions shall nevertheless remain in full force and effect.

12. Lawful Document

Owner, Developer and City agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of Michigan and the United States of America. Developer has offered and agreed to complete the on-site and off-site improvements, at their cost and expense, as specified in this Agreement. Developer has offered and agreed to complete such improvements, and to proceed with other undertakings and obligations as set forth in this Agreement in order to protect the public health, safety and welfare and provide material advantages and development options for the Developer, all of which improvements and obligations Developer and the City agreed were roughly proportional to the burden imposed and necessary in order to ensure that public services and facilities necessary for or affected by the Development will be capable of accommodating the development on the Property and the increased service and facility loads caused by the Development, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially, environmentally and economically desirable manner, and to achieve other reasonable and legitimate objectives of the City and Developer, as authorized under applicable City ordinances and the Home Rule City Act, MCL 117.1, et seq. Furthermore, Developer fully accepts and agrees to the final terms, conditions, requirements, and obligations of this Agreement, and Developer shall not be permitted in the future to claim that the effect of this Agreement results in an unreasonable limitation upon use of all or any portion of the Property, or claim that enforcement of this Agreement causes an inverse condemnation or taking of all or any portion of such property. It is further agreed and acknowledged that the terms, condition, obligations, and requirements of this Agreement are clearly and substantially related to the burdens to be created by the development of the Property, and are, without exception, clearly and substantially related to the City's legitimate interests in protecting the public health, safety, and general welfare.

13. Applicable Law

This Agreement shall be interpreted and construed in accordance with Michigan law, and shall be subject to enforcement only in Michigan courts.

14. Current and Future Owners and Developers.

As used in this Agreement, the term "Developer" shall mean and include the undersigned party designated herein as developer and owner of the Property, as well as all future and successor persons and entities that become owners and developers of all or any portion of the Development property in the future until such time as all phases of the Development have been completed and approved.

15. Headings.

The headings contained herein are for the convenience of the parties and are not to be used in construing or interpreting this Agreement.

16. Effective Date.

This Agreement is deemed effective as of the date first written above.

"DEVELOPER"

PROVINCIAL GLADES, LLC,
a Michigan limited liability company

By: Michael Fellows Its: Managing Member

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, as the _____ of _____.

Notary Public
Oakland County, Michigan

My Commission Expires: _____

“CITY”:
CITY OF NOVI
a Michigan municipal corporation

BY: _____

BY: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged, signed and sworn to before me on this _____ day
_____, 2007, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

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STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

PROVINCIAL GLADES
FKA THE PRESERVE RUD

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2007, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 4837547 ("City"), and Provincial Glades, LLC, whose address is 41115 Jo Drive, Novi, MI 48375-1920 ("Developer") who represents itself hereby as the owner of the Property and Developer of the Development.

R E C I T A T I O N S:

Developer is the owner and developer of the land in the City of Novi, Oakland County, Michigan, described on the attached Exhibit A (the "Property"). The subject land has been approved for development as a Residential Unit Development pursuant to the provisions of the City of Novi Zoning Ordinance, and The Preserve Residential Unit Development Agreement, dated July 31, 2004, to contain seventy (70) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the "Development".

As part of the approval process, Developer has offered and agreed to develop the Property, to complete certain improvements, and to proceed with other undertakings in compliance with applicable City Ordinances. Chapter 26.5 of the City of Novi Code of Ordinances, Section 26.5-5 (b) requires completion of actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit for any improvements, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The initial permit for the Development was issued on June 29, 2005. Because two (2) years have elapsed since the initial permit, the Developer must either complete the improvements immediately, or request an extension of time. Section 26.5-5 (b) requires that extension of such time periods may only be granted by City Council when such extensions are requested for reasons other than delay resulting from weather conditions and/or delay in securing required approvals/permits from outside regulatory agencies.

Because the Developer is requesting an extension with respect to the completion of improvements for reasons other than delay resulting from weather conditions and/or approvals/permits from outside regulatory agencies, Developer must request an extension from City Council and must provide a written completion agreement, together with a revised performance guarantee, pursuant to Section 26.5-12 of the City of Novi Code of Ordinances.

Consistent with all applicable laws and ordinances, more particularly Chapter 26.5 of the City of Novi Code of Ordinances, to obtain an extension with respect to completion of improvements, the Developer has offered to provide, and the City is willing to accept, certain assurances to the City that such improvements relating to the Development will be properly completed and maintained pursuant to a schedule. Such assurances include providing a performance guarantee in an amount no less than two hundred (200) percent of the cost of the work to be completed, and a schedule, for completion and maintenance of the improvements for the Development.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

The City and the Developer enter into this Agreement for the purpose of ensuring that certain improvements for the Development will be completed and maintained pursuant to all approvals granted by the City and all applicable laws and ordinances, and that such completion and maintenance occur on a timely basis, in accordance with a schedule approved by City Council.

2. Performance Guarantee Posted

Prior to or with the execution of this Agreement, the Developer has provided, or does provide, to the City, performance guarantee in the total amount of \$ ~~1,595,074.000~~ 852,646.00 to guarantee completion and maintenance of improvements for the Development, as estimated and itemized in Paragraph 3, below. Such performance guarantee funds have been posted in the form of irrevocable Letters of Credit Nos. 07048, 07063, 5005120468, 5005120467, and 07064, _____ issued by Citizens Bank ("Bank"), to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year, and shall provide by its terms that it shall, without further action by any person or entity be continuously renewed and be continuously effective for successive periods of one (1) year subject to termination only by 60 days advanced, written notice by Bank to the City's Assistant Finance Director as follows. As a condition to the termination of the effectiveness of the letter of credit, Bank shall be required to provide to the office of the City's Assistant Finance Director, with 60 days advanced written notice, a statement that the letter of credit shall terminate at the end of the 60 day period. Such notice shall be required regardless of the stated termination date of any other documentation. Prior to the date of termination at the conclusion of the 60 day period, the letter of credit shall at all times be effective and payable according to its terms.

3. Items of Improvement and Maintenance

The items of improvements and maintenance included within this Agreement, and the estimated cost of completion and ongoing maintenance, are set forth below:

- | | | |
|-----|-----------------|--------------|
| (a) | Woodlands: | \$200,800.00 |
| (b) | Woodland fence: | \$ 17,500.00 |

(c) Landscape:	\$299,851.00	<u>185,451.00</u>
(d) Wetland:	\$ 64,772.00	<u>32,386.00</u>
(e) Right-of-Way (Paving):	\$150,000.00	<u>125,000.00</u>
(f) 50855 Nine Mile repairs:	\$ 5,000.00	
(g) Storm Water Detention:	\$ 6,000.00	
(h)(f) Street Trees:	\$114,400.00	
(i)(g) Singh Trail including paving and boardwalk:	\$ 68,000.00	<u>122,000.00</u>

Subtotal:	\$ 926,323.00	<u>797,537.00</u>
200% Multiplier:		x 2
Total Financial Guarantee:	\$ 1,595,074.00	<u>852,646.00</u>

4. Completion and Maintenance of Improvements; Schedule and Requirements

Each of the Improvement Items listed in Paragraph 3, above, shall be completed and maintained by the Developer, at its expense, pursuant to all final approvals granted by the City and all applicable laws and ordinances, according to the following schedule:

- a) Improvement Item 3(i)(g), above, contemplates and includes without limitation the installation of a pathway system within the "Connecting Open Space" within the Development. The RUD Agreement provides that a trail system shall be constructed by Developer on the area of the Property that has been dedicated to the City as a park connecting the terminus of the City's Singh Trail to Nine Mile Road. Developer shall construct a trail system in accordance with AASHTO (American Association of State Highway and Transportation Officials) and ADA (Americans with Disabilities Act) standards. The trail shall mostly be an asphalt pathway, and boardwalk only where necessary. Improvement Item 3(i)(g), above, shall be completed in all events ~~on or before June 29, 2009,~~ at the time of installation of the "Singh" portion of the pathway system, or, alternatively, prior to the issuance of the 64th certificate of occupancy for the Development. In all events, if the "Singh" portion of the pathway system is not installed by or before the issuance of the 64th certificate of occupancy for the Development, the Developer may, as an alternative to constructing his portion of the pathway system, deposit the amount set forth in Paragraph 3(g) above with the City, and the City may complete the pathway at a time that the City, in its discretion, deems appropriate.
- b) Improvement Items 3(a) and 3(b), (c), and (f) above, contemplates and includes without limitation preservation of existing woodlands and the installation of woodland fence, and woodland replacement trees and protective fencing, the installation of street trees, and site Landscaping for the overall Development. Approximately 54 acres of regulated woodlands

will be preserved including the installation of 462 woodland replacement trees (which includes 280, or 4 trees per lot, to be installed on lots by homeowners in accordance with the Master Deed for the Development), 334 street trees, protective fencing, and security for 27 trees over 8" DBH. Improvement Items 3(a), and 3(b), (c), and (f) above, shall be completed in all events on or before June 29, 2009, in increments in accordance with the completion of construction of new homes within the Development. In all events, 25% of the improvement items in Paragraphs 3 (a),(b), (c) and (f) shall be installed prior to the issuance of the 18th certificate of occupancy within the Development. 50% of the improvement items in Paragraphs 3(a), (b), (c) and (f) shall be installed prior to the issuance of the 36th certificate of occupancy within the Development. 75% of the improvement items in Paragraphs 3(a), (b), (c), and (f) shall be installed prior to the issuance of the 53rd certificate of occupancy within the Development. 100% of the of the improvement items in Paragraphs 3(a), (b), (c), and (f) shall be installed prior to the issuance of the final three (3) certificates of occupancy within the Development. Pursuant to the terms of this Paragraph, a partial release of financial guarantee may be made at the time of the issuance of the of each of the 18th, 36th, 53rd and final certificates of occupancy within the Development, subject to the City retaining and appropriate amount to guarantee replacement of any dead, substantially dead, diseased or removed trees, and/or landscaping during the one (1) year period following installation of the trees and/or landscaping. If by June 29, 2011, not more than 36 certificates of occupancy within the development have been installed, City Council may reconsider, in its discretion, the scheduling of the installation of the improvement items set forth in Paragraphs 3(a), (b), (c) and (f) so as to require more immediate installation of the improvement items, in its reasonable discretion to ensure that the homeowners receive the benefit of those improvement items.

b)Improvement Item 3(e), contemplates and includes the installation of all site landscaping, not including street trees and woodland replacement trees. All site landscaping shall be completed on or before June 29, 2009. For one (1) year from the date of completion of the installation of all such landscape plantings installed as part of the Development, Developer shall, under this Agreement, maintain the trees and landscaping that were so installed, which maintenance shall include the replacement of any dead, substantially dead, diseased or removed trees or landscaping during such one (1) year period.

c) Improvement Item 3(d) above contemplates and includes (1) preservation of wetlands and natural feature setbacks,(2) on-site and the installation of a naturalized buffer associated with the detention ponds; and (3) restoration of temporary impacts to wetland buffers for impacts caused by (1) the installation and maintenance of the temporary secondary access road for the Development, and (2) impacts caused by installation of

~~Improvement Item 3(g) above, the pathway system.---Improvement Item 3(d)(1), above, shall be completed in all events on or before October 1, 2007 at the time, and in accordance with Improvement Item 3(g). above. Improvement Item 3(d)(2) shall be completed at the time the temporary secondary access road for the Development is abandoned and restored. In all events, if the temporary secondary access road is still in place by June 29, 2012, City Council shall revisit this issue to determine whether it is reasonably foreseeable that a permanent access road will be installed, and wetland restoration will take place. If City Council determines that the temporary access road will not be abandoned in the foreseeable future, Developer may apply for an amendment to his wetland permit to maintain a permanent wetland impact in the area of the temporary access road, and may seek release of the appropriate amount of financial guarantee, accordingly.~~

~~e)d) Improvement Item 3(e) above contemplates (1) repair of existing base course of paving on Nine Mile Road, (2) the installation of the top course of bituminous paving for Nine Mile Road; and(3) installation of top course of paving along interior roads within the Condominium. Improvement Items 3(e), above shall be completed, prior to the issuance of the 63rd certificate of occupancy for the Development, and in all events, before no later than June 29, 2009.~~

~~d) Improvement Item 3(f) above, contemplates and includes the repair of a sidewalk flag at the east end of right of way and the restoration and repair of an asphalt drive, fence and front yard of a neighboring property, located at 50855 Nine Mile Road. Improvement Item 3(f), above, shall be completed in all events on or before October 1, 2007.~~

~~e)Improvement Item 3(g) above contemplates and includes additional grading and stabilization of on-site storm water detention basins. Improvement Item 3(g), above, shall be completed in all events on or before October 1, 2007.~~

5. City Authority to Complete and/or Maintain.

In the event Developer has failed to complete and/or maintain the improvements itemized in Paragraph 3, above, within the time periods and in the manner specified in this Agreement, and, provided the City has given the Developer 14 days notice of the failure to timely complete and/or maintain and Developer has not completed and/or maintained all of such improvements within said 14 days, the City shall have the authority, but shall not have the legal obligation, to take one or more of the following actions:

(a) The City may draw the funds from the letter of credit or other securities posted and enter upon the Development through its officials, employees, agents, and/or contractors and complete and/or maintain the improvements, or restore the Property or areas disturbed by the Development. In such event, all costs and expenses incurred shall be paid from the proceeds of the funds drawn on the letter of credit or otherwise obtained

from the performance guarantee posted. Any amounts of unused proceeds of the performance guarantee shall be returned to Developer, or otherwise be credited, as the case may be. Developer, and all of Developer's officers, employees, consultants and agents, shall be obligated to act and work in cooperation with the City to bring about completion and/or maintenance of the improvements as contemplated in this Agreement, or restoration, and shall provide the City with all drawings, contracts, documentation, public and private correspondence, agreements and other materials relating to any such improvements, restoration and/or maintenance. Notwithstanding other provisions to the contrary, in the event the City receives a notice of termination from Bank with regard to the letter of credit, or from any other securing party as to performance guarantee posted pursuant to this Agreement, and the improvements and/or maintenance itemized in Paragraph 3, above, have not been completed or fulfilled as required by this Agreement, the City shall be entitled to immediately draw the funds from the letter of credit or other performance guarantee posted, without notice to Developer, and proceed as specified in this paragraph.

(b) The City may issue a stop work order as to any or all aspects of the Development, deny the issuance of any requested building permit or certificate of occupancy, as applicable, and suspend further inspections of any or all aspects of the Development.

(c) The City may, but is not required to, initiate a lawsuit for purposes of enforcing and achieving full compliance with the terms and provisions of this Agreement. In the event that the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

(d) The City may, in its discretion, in accordance with the provisions of Chapter 26.5, grant Developer additional time beyond the time periods reference in Paragraph 4, in accordance with the provisions of Chapter 26.5 of the City of Novi Code of Ordinances, which provisions may be amended from time to time.

6. Additional Liability

Developer shall also be liable for any costs and expenses incurred by the City in excess of the amounts posted by the Developer under this Agreement as well as any costs and expenses, including reasonable attorney fees, incurred by the City in any action and/or litigation to enforce or collect such funds and/or to otherwise restore the property and/or secure completion and/or maintenance of the improvements itemized in Paragraph 3, above, pursuant to the terms of this Agreement, in the event the City obtains any relief as a result of such lawsuit. The liability of Developer in such regard, if unpaid after 30 days of a billing sent to Developer at its last known address, may be secured by the City recording a lien on the Property, effective as of the date the City is authorized to proceed with the completion and/or maintenance of improvements, or restoration, as provided in this Agreement, and all such unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City,

such costs and expenses may also be collected by suit initiated against the Developer, and in the event the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

7. Rebate or reduction of Performance Guarantee

The City shall not release a performance guarantee until (1) all fees that are due to the City have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required (4) expired permits have been re-newed; and (5) the City has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The City may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the City, in its sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. At no point shall the amount of the performance guarantees held by the city be less than two hundred (200) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

8. Binding Effect

This Agreement shall run with the land constituting the property described on Exhibit A and shall be binding upon and inure to the benefit of the City and Developer and to their respective heirs, successors, assigns and transferees.

9. Owner's Warranty on Ownership

Developer hereby warrants that it is the owner of the Property described on attached Exhibit A, and that it, and Developer have the full authority to execute this Agreement.

10. Delay in Enforcement

A delay in enforcement of any provision of this Agreement shall not be construed as a waiver or estoppel of the City's right to eventually enforce, or take action to enforce, the terms of this Agreement.

11. Severability

Each covenant, requirement, obligation and provision contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event one or more of the covenants, requirements, obligations or provisions shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining covenants, requirements, obligations and provisions shall nevertheless remain in full force and effect.

12. Lawful Document

Owner, Developer and City agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of Michigan and the United States of America. Developer has offered and agreed to complete the on-site and off-site improvements, at their cost and expense, as specified in this Agreement. Developer has offered and agreed to complete such improvements, and to proceed with other undertakings and obligations as set forth in this Agreement in order to protect the public health, safety and welfare and provide material advantages and development options for the Developer, all of which improvements and obligations Developer and the City agreed were roughly proportional to the burden imposed and necessary in order to ensure that public services and facilities necessary for or affected by the Development will be capable of accommodating the development on the Property and the increased service and facility loads caused by the Development, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially, environmentally and economically desirable manner, and to achieve other reasonable and legitimate objectives of the City and Developer, as authorized under applicable City ordinances and the Home Rule City Act, MCL 117.1, et seq. Furthermore, Developer fully accepts and agrees to the final terms, conditions, requirements, and obligations of this Agreement, and Developer shall not be permitted in the future to claim that the effect of this Agreement results in an unreasonable limitation upon use of all or any portion of the Property, or claim that enforcement of this Agreement causes an inverse condemnation or taking of all or any portion of such property. It is further agreed and acknowledged that the terms, condition, obligations, and requirements of this Agreement are clearly and substantially related to the burdens to be created by the development of the Property, and are, without exception, clearly and substantially related to the City's legitimate interests in protecting the public health, safety, and general welfare.

13. Applicable Law

This Agreement shall be interpreted and construed in accordance with Michigan law, and shall be subject to enforcement only in Michigan courts.

14. Current and Future Owners and Developers.

As used in this Agreement, the term "Developer" shall mean and include the undersigned party designated herein as developer and owner of the Property, as well as all future and successor persons and entities that become owners and developers of all or any portion of the Development property in the future until such time as all phases of the Development have been completed and approved.

15. Headings.

The headings contained herein are for the convenience of the parties and are not to be used in construing or interpreting this Agreement.

16. Effective Date.

This Agreement is deemed effective as of the date first written above.

“DEVELOPER”

PROVINCIAL GLADES, LLC,
a Michigan limited liability company

By: Michael Fellows Its: Managing Member

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledges before me this _____ day of _____,
200_, by _____, as the _____ of
_____.

Notary Public
Oakland County, Michigan
My Commission Expires: _____

“CITY”:
CITY OF NOVI
a Michigan municipal corporation

BY: _____

BY: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged, signed and sworn to before me on this _____ day
_____, 2007, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

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C:\NrPortbl\manage\BKUDLA\964776_3.DOC

APPLICANT'S LETTER
OCTOBER 1, 2007

October 1, 2007

Novi City Council
c/o Ms. Barbara McBeth
45175 10 Mile Rd.
Novi, MI 48375-3024

Re: Provincial Glades project completion and financial guarantees

Dear Ms. McBeth and Council Members,

On October 22 I will be at your Council meeting to finalize our discussion about the Provincial Glades completion agreement. I am grateful for the opportunity to speak to you about it again, and also appreciated your consideration and comments at the September 10 meeting. The City's staff and we have reached a consensus about the bulk of the agreement, but there are a couple items that I would like to continue to bring to your attention. They are the cost estimate amounts, and the 200% multiplier, which when taken together in my opinion result in quite unreasonably high financial guarantees.

In most cases the cost estimates are reasonable enough. But for 1.) the Utilities, Grading and Paving punchlist, and 2.) the Required Tree Plantings, the estimates are unreasonably high. For the Utilities, Grading and Paving, the City's consultants have estimated a completion cost of \$272,000 (leaving out the separate issue of damage to a neighbor's property, which will be resolved independently). The consultant does not provide any backup, nor worksheets to show how this amount is arrived at. I have provided a bit of information, an actual contracted cost amount, and a simple calculation indicating more accurate cost estimates of \$171,000. Not only is the amount itself quite relevant, but it becomes that much more the issue if a multiplier of 200% is to be applied to the estimate. Using the City's combined formula, the required financial guarantee would be \$554,000, or more than 3 times the actual cost of getting the work done. And the same is true for the Required Tree Plantings (which includes Woodland replacements, landscaping and street trees). The City requires a tree cost estimate to be calculated using a price of \$400 for each individual tree. The actual current cost of these trees varies from \$195 to about \$265. If \$400 must be used, and a 200% factor is applied, that means we are required to post an \$800 financial guarantee for a \$265 tree, again more than 3 times the actual cost.

So what I would respectfully request is that if the 200% multiplier must be used, that it be applied to the more accurate cost estimates. This will still provide financial guarantees in amounts far in excess of the money actually required to finish the job, should the City ever have to draw on the guarantees. This is summarized on the next page:

Continued

<u>Item</u>	<u>Developer's costs</u>	<u>City's estimates</u>	<u>Fin Guar at 200% of cost</u>
Utilities & Paving	\$171,000	\$272,000	\$342,000
All Tree Plantings	\$360,000	\$576,101	\$720,000

As I've mentioned before, in the unlikely event the financial guarantees are ever drawn, the City has the option of planting much smaller trees at substantially lower costs. These trees will only grow, and in a very short time could be the 2-1/2" size that we would have to plant.

Please take the above into consideration prior to our attendance at the Oct 22 meeting. Again, I do appreciate the opportunity to work this out with you, and look forward to the meeting.

Respectfully,



Michael Fellows
Provincial Glades LLC

**STANTEC LETTER
MARK/UP
OCTOBER 4, 2007**



Stantec Consulting Michigan Inc.
3959 Research Park Drive
Ann Arbor MI 48108-2216
Tel: (734) 761-1010
Fax: (734) 761-1200

Stantec

July 18, 2007
File: 2075087400

City of Novi
Building Department
45175 W Ten Mile Road
Novi, Michigan 48375-5683

Attention: Mr. Aaron Staup

Dear Mr. Staup:

**Reference: Provincial Glades
Site Work Status**

*Mark-up
10/4/07
G.T.*

Please be advised that our field personnel visited the above referenced site on July 17, 2007 to verify completion of the public utilities, grading, and base course road paving as shown on the approved construction plans for this project. As a result of the walkthrough, the items listed on the attached punch list must be completed prior to final site acceptance. In addition, as-built plans have been submitted to our office and are currently under review.

Regarding the evaluation of the site work financial guarantee amount, ^{\$494,000} we recommend that the Incomplete Site Work/Utilities Financial Guarantee be increased from \$234,000 to ~~\$554,000~~. This increase is based on the attached summary of remaining civil site improvement items to be completed prior to substantial completion of the project and includes the City of Novi 2.0 multiplier.

The next stage of inspection will take place when the applicant is ready to evaluate the base course of the road for repairs prior to paving of the wearing course of asphalt. It is the Applicant's responsibility to contact Stantec to schedule a walkthrough of the roads to evaluate the scope of repairs. We anticipate that this would occur at approximately 80% house construction or 3.5 years from the date of the initial permit (6/29/05). This will allow sufficient time for repairs to be completed prior to the deadline for the Applicant to request his Substantial Completion Inspection to the Building Division, which is 60 days prior to 90% house completion or 4 years after the date of the initial permit (6/29/05). At this time, Stantec and the Engineering Division will review the project and verify that all requirements of the Chapter 26.5 Performance Guarantee Ordinance have been satisfied for final approval.

Please note that we have not addressed any items related to the requirements of the planning division, landscaping, woodlands or wetlands because we assume that the appropriate City staff or consultants will address these issues.

If you have any questions, please do not hesitate to contact us.

Stantec

August 27, 2007
Mr. Aaron Staup
Page 2 of 3

**Reference: Provincial Glades
Site Work Status**

Sincerely,

STANTEC CONSULTING MICHIGAN INC.



Ted Meadows
Assistant Field Services Manager
Tel: (734) 214-1820
Fax: (734) 761-1200
ted.meadows@stantec.com

- c. Marina Neumaier, City of Novi
- Sarah Marchioni, City of Novi
- Sheila Weber, City of Novi
- Benny McCusker, City of Novi
- Mike Fellows, Mozart Homes - Provincial Glades LLC
- George Tsakoff, Stantec

Stantec

August 27, 2007
Mr. Aaron Staup
Page 3 of 3

Reference: Provincial Glades
Site Work Status

CITY OF NOVI
PROVINCIAL GLADES
UTILITY, GRADING AND PAVING
PUNCH LIST
Project No.: 2075087400

Mark-up
10/4/07
G.T.

July 17, 2007 Walkthrough

1. PAVING (TOTAL COST - ~~\$150,000~~ ^{\$125,000})
 - a. Pavement Repairs (Cost - ~~\$45,000~~ ^{\$30,000}).
 - b. Curb and Gutter Repairs (Cost - ~~\$30,000~~ ^{\$20,000}).
 - c. Top Course of Pavement (Cost - \$75,000).
2. MISCELLANEOUS (TOTAL COST - \$5,000)
 - a. Make the following repairs to address 50855 Nine Mile Road:
 - Repair chain link fence.
 - Remove weeds and debris from chain link fence to Nine Mile Road; provide topsoil with seed and mulch.
 - Remove and replace damaged asphalt approach.
3. SINGH TRAIL & NINE MILE ROAD (TOTAL COST - \$122,000)
 - a. Boardwalk Construction (Cost - \$95,000)
 - b. Bituminous Bike Path Construction (Cost - \$27,000)

per discussion
w/ City of
Novi

**DRAFT
COMPLETION AGREEMENT
PREVIOUSLY CONSIDERED BY COUNCIL
90/10/07**

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

PROVINCIAL GLADES
FKA THE PRESERVE RUD

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2007, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 4837547 ("City"), and Provincial Glades, LLC, whose address is 41115 Jo Drive, Novi, MI 48375-1920 ("Developer") who represents itself hereby as the owner of the Property and Developer of the Development.

RECITATIONS:

Developer is the owner and developer of the land in the City of Novi, Oakland County, Michigan, described on the attached Exhibit A (the "Property"). The subject land has been approved for development as a Residential Unit Development pursuant to the provisions of the City of Novi Zoning Ordinance, and The Preserve Residential Unit Development Agreement, dated July 31, 2004, to contain seventy (70) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the "Development".

As part of the approval process, Developer has offered and agreed to develop the Property, to complete certain improvements, and to proceed with other undertakings in compliance with applicable City Ordinances. Chapter 26.5 of the City of Novi Code of Ordinances, Section 26.5-5 (b) requires completion of actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit for any improvements, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. The initial permit for the Development was issued on June 29, 2005. Because two (2) years have elapsed since the initial permit, the Developer must either complete the improvements immediately, or request an extension of time. Section 26.5-5 (b) requires that extension of such time periods may only be granted by City Council when such extensions are requested for reasons other than delay resulting from weather conditions and/or delay in securing required approvals/permits from outside regulatory agencies.

Because the Developer is requesting an extension with respect to the completion of improvements for reasons other than delay resulting from weather conditions and/or approvals/permits from outside regulatory agencies, Developer must request an extension from City Council and must provide a written completion agreement, together with a revised performance guarantee, pursuant to Section 26.5-12 of the City of Novi Code of Ordinances.

Consistent with all applicable laws and ordinances, more particularly Chapter 26.5 of the City of Novi Code of Ordinances, to obtain an extension with respect to completion of

improvements, the Developer has offered to provide, and the City is willing to accept, certain assurances to the City that such improvements relating to the Development will be properly completed and maintained pursuant to a schedule. Such assurances include providing a performance guarantee in an amount no less than two hundred (200) percent of the cost of the work to be completed, and a schedule, for completion and maintenance of the improvements for the Development.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

The City and the Developer enter into this Agreement for the purpose of ensuring that certain improvements for the Development will be completed and maintained pursuant to all approvals granted by the City and all applicable laws and ordinances, and that such completion and maintenance occur on a timely basis, in accordance with a schedule approved by City Council.

2. Performance Guarantee Posted

Prior to or with the execution of this Agreement, the Developer has provided, or does provide, to the City, performance guarantee in the total amount of \$ 1,852,646.00 to guarantee completion and maintenance of improvements for the Development, as estimated and itemized in Paragraph 3, below. Such performance guarantee funds have been posted in the form of irrevocable Letter of Credit No. _____ issued by _____ ("Bank"), to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year, and shall provide by its terms that it shall, without further action by any person or entity be continuously renewed and be continuously effective for successive periods of one (1) year subject to termination only by 60 days advanced, written notice by Bank to the City's Assistant Finance Director as follows. As a condition to the termination of the effectiveness of the letter of credit, Bank shall be required to provide to the office of the City's Assistant Finance Director, with 60 days advanced written notice, a statement that the letter of credit shall terminate at the end of the 60 day period. Such notice shall be required regardless of the stated termination date of any other documentation. Prior to the date of termination at the conclusion of the 60 day period, the letter of credit shall at all times be effective and payable according to its terms.

3. Items of Improvement and Maintenance

The items of improvements and maintenance included within this Agreement, and the estimated cost of completion and ongoing maintenance, are set forth below:

(a)	Woodlands:	\$200,800.00
(b)	Woodland fence:	\$ 17,500.00
(c)	Landscape:	\$299,851.00
(d)	Wetland:	\$ 64,772.00

(e)	Right-of-Way (Paving):	\$150,000.00
(f)	50855 Nine Mile repairs:	\$ 5,000.00
(g)	Storm Water Detention:	\$ 6,000.00
(h)	Street Trees:	\$114,400.00
(i)	Singh Trail including paving and boardwalk:	\$ 68,000.00

Subtotal:	<u>\$ 926,323.00</u>
200% Multiplier:	x 2
Total Financial Guarantee:	<u>\$ 1,852,646.00</u>

4. Completion and Maintenance of Improvements: Schedule and Requirements

Each of the Improvement Items listed in Paragraph 3, above, shall be completed and maintained by the Developer, at its expense, pursuant to all final approvals granted by the City and all applicable laws and ordinances, according to the following schedule:

- a) Improvement Item 3(i), above, contemplates and includes without limitation the installation of a pathway system within the "Connecting Open Space" within the Development. The RUD Agreement provides that a trail system shall be constructed by Developer on the area of the Property that has been dedicated to the City as a park connecting the terminus of the City's Singh Trail to Nine Mile Road. Developer shall construct a trail system in accordance with AASHTO (American Association of State Highway and Transportation Officials) and ADA (Americans with Disabilities Act) standards. The trail shall mostly be an asphalt pathway, and boardwalk only where necessary. Improvement Item 3(i), above, shall be completed in all events on or before June 29, 2009.
- b) Improvement Items 3(a) and 3(b), above, contemplates and includes without limitation preservation of existing woodlands and the installation of woodland fence and woodland replacement trees and protective fencing. Approximately 54 acres of regulated woodlands will be preserved including the installation of 462 woodland replacement trees, protective fencing, and security for 27 trees over 8" DBH. Improvement Items 3(a) and 3(b), above, shall be completed in all events on or before June 29, 2009.
- c) Improvement Item 3(c), contemplates and includes the installation of all site landscaping, not including street trees and woodland replacement trees. All site landscaping shall be completed on or before June 29, 2009. For one (1) year from the date of completion of the installation of all such landscape plantings installed as part of the Development, Developer shall, under this Agreement, maintain the trees and landscaping that were so

installed, which maintenance shall include the replacement of any dead, substantially dead, diseased or removed trees or landscaping during such one (1) year period.

- d) Improvement Item 3(d) above contemplates and includes (1) preservation of wetlands and natural feature setbacks,(2) on-site and the installation of a naturalized buffer associated with the detention ponds; and (3) restoration of temporary impacts to wetland buffers. Improvement Item 3(d), above, shall be completed in all events on or before October 1, 2007.
- e) Improvement Item 3(e) above contemplates (1) repair of existing base course of paving on Nine Mile Road, (2) the installation of the top course of bituminous paving for Nine Mile Road; and(3) installation of top course of paving along interior roads within the Condominium. Improvement Items 3(e), above shall be completed, in all events, before June 29, 2009.
- f) Improvement Item 3(f) above, contemplates and includes the repair of a sidewalk flag at the east end of right-of-way and the restoration and repair of an asphalt drive, fence and front yard of a neighboring property, located at 50855 Nine Mile Road. Improvement Item 3(f), above, shall be completed in all events on or before October 1, 2007.
- g) Improvement Item 3(g) above contemplates and includes additional grading and stabilization of on-site storm water detention basins. Improvement Item 3(g), above, shall be completed in all events on or before October 1, 2007.

5. City Authority to Complete and/or Maintain.

In the event Developer has failed to complete and/or maintain the improvements itemized in Paragraph 3, above, within the time periods and in the manner specified in this Agreement, and, provided the City has given the Developer 14 days notice of the failure to timely complete and/or maintain and Developer has not completed and/or maintained all of such improvements within said 14 days, the City shall have the authority, but shall not have the legal obligation, to take one or more of the following actions:

- (a) The City may draw the funds from the letter of credit or other securities posted and enter upon the Development through its officials, employees, agents, and/or contractors and complete and/or maintain the improvements, or restore the Property or areas disturbed by the Development. In such event, all costs and expenses incurred shall be paid from the proceeds of the funds drawn on the letter of credit or otherwise obtained from the performance guarantee posted. Any amounts of unused proceeds of the performance guarantee shall be returned to Developer, or otherwise be credited, as the case may be. Developer, and all of Developer's officers, employees, consultants and agents, shall be obligated to act and work in cooperation with the City to bring about completion and/or maintenance of the improvements as contemplated in this Agreement, or restoration, and shall provide the City with all drawings, contracts, documentation, public and private correspondence, agreements and other materials relating to any such

improvements, restoration and/or maintenance. Notwithstanding other provisions to the contrary, in the event the City receives a notice of termination from Bank with regard to the letter of credit, or from any other securing party as to performance guarantee posted pursuant to this Agreement, and the improvements and/or maintenance itemized in Paragraph 3, above, have not been completed or fulfilled as required by this Agreement, the City shall be entitled to immediately draw the funds from the letter of credit or other performance guarantee posted, without notice to Developer, and proceed as specified in this paragraph.

(b) The City may issue a stop work order as to any or all aspects of the Development, deny the issuance of any requested building permit or certificate of occupancy, as applicable, and suspend further inspections of any or all aspects of the Development.

(c) The City may, but is not required to, initiate a lawsuit for purposes of enforcing and achieving full compliance with the terms and provisions of this Agreement. In the event that the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

(d) The City may, in its discretion, in accordance with the provisions of Chapter 26.5, grant Developer additional time beyond the time periods reference in Paragraph 4, in accordance with the provisions of Chapter 26.5 of the City of Novi Code of Ordinances, which provisions may be amended from time to time.

6. Additional Liability

Developer shall also be liable for any costs and expenses incurred by the City in excess of the amounts posted by the Developer under this Agreement as well as any costs and expenses, including reasonable attorney fees, incurred by the City in any action and/or litigation to enforce or collect such funds and/or to otherwise restore the property and/or secure completion and/or maintenance of the improvements itemized in Paragraph 3, above, pursuant to the terms of this Agreement, in the event the City obtains any relief as a result of such lawsuit. The liability of Developer in such regard, if unpaid after 30 days of a billing sent to Developer at its last known address, may be secured by the City recording a lien on the Property, effective as of the date the City is authorized to proceed with the completion and/or maintenance of improvements, or restoration, as provided in this Agreement, and all such unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may also be collected by suit initiated against the Developer, and in the event the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

7. Rebate or reduction of Performance Guarantee

The City shall not release a performance guarantee until (1) all fees that are due to the City have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required (4) expired permits have been renewed; and (5) the City has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted.

The City may, after performing a site inspection at the written request of an applicant, rebate or reduce portions of a performance guarantee upon determination by the City, in its sole discretion, that the improvements and/or actions for which that performance guarantee was posted have been satisfactorily completed in accordance with the approved plans, any temporary certificate of occupancy, and all other applicable laws, regulations, and ordinances. At no point shall the amount of the performance guarantees held by the city be less than two hundred (200) percent of the cost to complete the remaining required improvements on the property. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

8. Binding Effect

This Agreement shall run with the land constituting the property described on Exhibit A and shall be binding upon and inure to the benefit of the City and Developer and to their respective heirs, successors, assigns and transferees.

9. Owner's Warranty on Ownership

Developer hereby warrants that it is the owner of the Property described on attached Exhibit A, and that it, and Developer have the full authority to execute this Agreement.

10. Delay in Enforcement

A delay in enforcement of any provision of this Agreement shall not be construed as a waiver or estoppel of the City's right to eventually enforce, or take action to enforce, the terms of this Agreement.

11. Severability

Each covenant, requirement, obligation and provision contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event one or more of the covenants, requirements, obligations or provisions shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining covenants, requirements, obligations and provisions shall nevertheless remain in full force and effect.

12. Lawful Document

Owner, Developer and City agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of Michigan and the United States of America. Developer has offered and agreed to complete the on-site and off-site improvements, at their cost and

expense, as specified in this Agreement. Developer has offered and agreed to complete such improvements, and to proceed with other undertakings and obligations as set forth in this Agreement in order to protect the public health, safety and welfare and provide material advantages and development options for the Developer, all of which improvements and obligations Developer and the City agreed were roughly proportional to the burden imposed and necessary in order to ensure that public services and facilities necessary for or affected by the Development will be capable of accommodating the development on the Property and the increased service and facility loads caused by the Development, to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially, environmentally and economically desirable manner, and to achieve other reasonable and legitimate objectives of the City and Developer, as authorized under applicable City ordinances and the Home Rule City Act, MCL 117.1, et seq. Furthermore, Developer fully accepts and agrees to the final terms, conditions, requirements, and obligations of this Agreement, and Developer shall not be permitted in the future to claim that the effect of this Agreement results in an unreasonable limitation upon use of all or any portion of the Property, or claim that enforcement of this Agreement causes an inverse condemnation or taking of all or any portion of such property. It is further agreed and acknowledged that the terms, condition, obligations, and requirements of this Agreement are clearly and substantially related to the burdens to be created by the development of the Property, and are, without exception, clearly and substantially related to the City's legitimate interests in protecting the public health, safety, and general welfare.

13. Applicable Law

This Agreement shall be interpreted and construed in accordance with Michigan law, and shall be subject to enforcement only in Michigan courts.

14. Current and Future Owners and Developers.

As used in this Agreement, the term "Developer" shall mean and include the undersigned party designated herein as developer and owner of the Property, as well as all future and successor persons and entities that become owners and developers of all or any portion of the Development property in the future until such time as all phases of the Development have been completed and approved.

15. Headings.

The headings contained herein are for the convenience of the parties and are not to be used in construing or interpreting this Agreement.

16. Effective Date.

This Agreement is deemed effective as of the date first written above.

“DEVELOPER”
PROVINCIAL GLADES, LLC,
a Michigan limited liability company

By: Michael Fellows Its: Managing Member

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledges before me this ____ day of _____,
200_, by _____, as the _____ of
_____.

Notary Public
Oakland County, Michigan
My Commission Expires: _____

“CITY”:
CITY OF NOVI
a Michigan municipal corporation

BY: _____

BY: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged, signed and sworn to before me on this _____ day
_____, 2005, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

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