

CITY of NOVI CITY COUNCIL

Agenda Item D
October 24, 2011

SUBJECT: Approval of a Completion Agreement for SP02-30 Tuscany Reserve Residential Unit Development (RUD) Phase II located north of Eight Mile Road and east of Garfield Road, in accordance with the requirements of Chapter 26.5.

SUBMITTING DEPARTMENT: Community Development Department *mm*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

City Council is being asked to consider a request from Novi Investment Company, LLC to approve a Completion Agreement for Phase II of the Tuscany Reserve RUD, SP02-30. The development is a portion of a 77.37 acre, single family residential development planned for a total of fifty eight (58) detached home sites, twenty seven (27) of which are in Phase II. The site is located north of Eight Mile Road and east of Garfield Road.

This project is subject to the provisions of Chapter 26.5 of the City of Novi Code of Ordinances and requires a Completion Agreement as the developer has not completed the site improvements shown on the approved site plan within (2) years of the initial permit (May 25, 2005). This portion of the project is currently on hold as the developer awaits more favorable market conditions. The Developer asserts that no lots in Phase II have been sold.

In this phase of the project, the developer has commenced with minimal site improvements including clearing and grading. The developer is requesting an extension and waiver as to improvements not yet commenced. Should Council agree to the waiver, the developer will be required to stabilize and maintain the site. Performance guarantees for woodland tree replacements necessitated by the clearing of the site to date are included with Phase I as the replacement was intended on that portion of the site.

As a condition of the Completion Agreement to allow an extension of the time period allowed for completion of the site improvements, Novi Investment Company has agreed to provide assurances that all performance guarantees released for improvements for which no work has commenced, will be reposted with the City prior to recommencing development of Phase II of the RUD. The Developer also agrees to schedule a preconstruction meeting with the City and secure all required new permits and post required performance guarantees with respect to soil erosion and sedimentation control, woodland clearing, grading, woodland replacement, right of way and any other applicable permits prior to beginning further work on Phase II. The installation of the water main planned for Phase II is the subject of a separate agreement.

The Site Plan and Woodland Permit for this project have been expired for some time. The City of Novi has continued to issue Building Permits for Phase I of the project in good faith while expending an increasing amount of staff time and resources to come up with a way to structure completion agreements in accordance with the City Ordinances and within

the limits of the developers existing financial guarantees including separating out the pavement repairs and final lift of asphalt that the developer committed to complete this fall and the Watermain agreement the City paid to have drafted. These efforts have been dedicated to keeping the project viable and prevent the need for the City to draw on the Financial Guarantees and construct the watermain and complete the roads.

The Developer has requested a number of changes to the agreement. Staff is opposed to these revisions as providing inadequate protections for the City of Novi and its residents. The 200% multiplier for financial guarantees provides an incentive for the developer to complete the project while protecting the City from increases in construction and material costs as well as repair of increased deterioration that typically results when unfinished roads and improvements are left open to weather and use for extended periods of time. Other projects that provided the 200% financial guarantees with Completion Agreements include, Stoneridge Office Park, the Liberty Park Project, Mayberry Park Estates and Avalon Pointe. The requested changes are as noted below:

- Item 3: The Developer is requesting an increase in the duration of the agreement from two (2) years to five (5) years. Staff is opposed to this change as this Phase of the project has commenced, albeit with limited scope and, as intended by the provisions of Ordinance 26.5, remains under the purview of the City Council. If the developer has not allowed completed development of Phase II of the project at the expiration of the Completion Agreement, the developer has the right to return to City Council for extension of the agreement.
- Item 4c: The Developer is requesting removal of the requirement that all Street Trees be installed on or before July 1, 2013 (November 1, 2013 in the current agreement) instead suggesting a condition that Street Trees be installed on a lot by lot basis following issuance of a Certificate of Occupancy for each residence. Staff is opposed to this request as a) the original timeframe for installation of all street trees was May 25, 2007 b) extending the replacement period indefinitely negates the timely benefits of the street trees as well as creating an inspection and monitoring nightmare for City staff. If insufficient lots are developed to allow installation of all the trees at the expiration of the Completion Agreement, the developers as the right to return to City Council for extension of the agreement.

RECOMMENDED ACTION: Approval of a Completion Agreement for SP02-30 Tuscany Reserve Residential Unit Development (RUD) Phase II, in accordance with the requirements of Chapter 26.5.

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

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				



October 19, 2011

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Fax: 248-851-2158
www.secretwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secretwardle.com

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

Re: ***Completion Agreement for Tuscany Reserve RUD (Phases I and II)***
Our File No. 55142 NOV

Dear Ms. Neumaier:

Attached are the proposed Completion Agreements for the Tuscany Reserve RUD for Council consideration. The agreements are required under Chapter 26.5 of the Code of Ordinances because the developer has not completed the required site improvements within the project within the required 2-year time period. There are separate agreements for Phase I, which is the part of the development where the site improvements are largely complete and home construction is ongoing, and for Phase II, which has not really yet commenced. The agreements are in similar form to those previously approved by the City Council for other developments.

The specific improvements in Phase I that are not complete include woodland replacement trees, site landscaping, and street trees, as well as the final lift of asphalt and minor repairs to the road. The road improvements are currently being undertaken, and should be done either this fall or in the spring. They are therefore not part of this agreement, which only refers to completion of the woodland replacement trees, site landscaping, and street trees. The estimated amount for those improvements is \$137,700. With the 200% multiplier, the amount of the financial guarantee is \$275,400. The completion agreement requires that all of the improvements will be done within two years from the date of the agreement.

The City is currently holding a letter of credit in the amount of \$472,488. This is sufficient to guarantee the tree and landscape planting at \$275,400. However, the agreement does provide that the City will continue to hold that entire amount (i.e., the "extra" \$197,088) until the road improvements are done. If the road improvements are not completed in six months, the completion agreement would be voided, and the developer would be considered in default under Chapter 26.5 again.

As you are aware, the developer has asked for a couple of changes to the agreement that the City staff does not recommend. Specifically, the developer has requested that the 200% multiplier be reduced to 150%. The developer is also

Ms. Marina Neumaier
October 19, 2011
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requesting that it have five years to plant the replacement and street trees instead of two.

We note that staff opposes these deviations, for the reasons stated in the motion sheet. However, the City Council does have the authority to vary those terms. Section 26.5-12, which states:

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter, including, but not limited to, the form, timing, waiver, or reduction of performance guarantee amounts.

The city council may also authorize the issuance of permits, approvals, or temporary certificates of occupancy before all requirements for issuance under this chapter have been met, where the applicant has demonstrated that unusual or unique circumstances exist, that work is proceeding toward completion, and that any delay in completion is not unreasonable or dilatory. In reaching this determination, the standards of section 1-12 of this Code shall apply. In addition, the council shall consider such factors as the size and nature of the development project and the existence of matters beyond the control of the applicant (such as weather conditions, delay in securing permits/approvals from other regulatory agencies, or unforeseen economic events or conditions). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

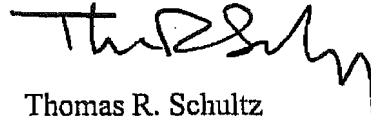
The agreement for Phase I has not yet been signed by the developer, because it is asking for the Council amendments. Should the City Council decline to grant the deviations, and should the developer at that point fail to sign the completion agreement, enforcement action would be undertaken consistent with the provisions of Section 26.5 to cure or address the current default.

The Phase II completion agreement is of much smaller scope. As noted above, very little work has occurred on the Phase II property. The completion agreement mostly just requires the developer to stabilize and restore the property, at which point all of the performance guarantees posted by the developer will be returned to it. No work would be commenced on any improvements in Phase II until those performance guarantees required by ordinance had been re-posted and payment has been received for the cost of the extension of the water main as provided under separate agreement.

Ms. Marina Neumaier
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If you have any questions, please do not hesitate to call.

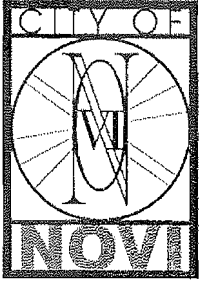
Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Schultz", written in a cursive style.

Thomas R. Schultz

TRS/jec
Enclosures

1738935



October 13, 2011

CITY COUNCIL

Mayor
David B. Landry

Mayor Pro Tem
Bob Gatt

Terry K. Margolls

Andrew Mutch

Dave Staudt

Justin Fischer

Wayne Wrobel

City Manager
Clay J. Pearson

Novi Investment Company, LLC
Mark Guidobono
47765 Bellagio Drive
Northville, MI 48167

Mr. Guidobono:

The Community Development Department would like to advise you that your two-year project completion requirement for Tuscany Reserve expired on May 25, 2007. At the time an extension is requested, a site inspection will be conducted, with the cost of such inspection being your direct responsibility, to confirm work remaining on the site.

If an extension is requested for reasons other than weather conditions, delays in securing approvals/permits from outside regulatory agencies or unforeseen economic events or conditions, approval of the City Council shall be required, together with a written completion agreement. If an extension is granted, a revised performance guarantee shall be posted in an amount no less than two hundred (200) percent of the cost of the work remaining to be completed. For more information regarding this requirement please see the City of Novi Ordinance, Section 26.5-5.

Building Division
248.347.0415
248.735.5600 fax

Planning Division
248.347.0475
248.735.5633 fax

Ordinance Enforcement
Division
248.735.5678
248.735.5600 fax

If you have any questions regarding this matter, please feel free to contact me at 248-347-0417 or agerecke@cityofnovi.org.

Sincerely,

Andy Gerecke
Building Official

Cc: Sarah Marchioni, Building Permit Coordinator (email)
Sheila Weber, Bond Coordinator (email)
Beth Kudla, City Attorney (email)
Charles Boulard, Community Development Director (email)

City of Novi
45175 W. Ten Mile Road
Novi, Michigan 48375

cityofnovi.org

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

TUSCANY RESERVE – SINGLE FAMILY
PHASE II

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2011, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (“City”), and Novi Investment Company, LLC, a Michigan limited liability company, whose address is 47765 Bellagio Drive, Northville, Michigan 48167 (“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 77.37 acre, single-family Residential Unit Development pursuant to the provisions of Section 2404 of the City of Novi Zoning Ordinance, to contain fifty-eight (58) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the “Development.” Phase II of the Development includes 27 residential units and corresponding improvements, and is shown on the attached Exhibit B.

As part of the approval process for the Development, Developer has offered and agreed to develop the Property, to complete certain improvements within the Development, 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 site improvements shown on the site plan 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. However, Section 26.5 (c) permits Developer to request a waiver from City Council from this requirement with respect to site improvements that have not been commenced upon Developer’s showing that (1) few or limited physical improvements have occurred on site, such as minimal clearing and grading, no site improvements such as roads or utilities have been installed or constructed, and no footings or foundations for any buildings have been commenced, or alternatively that any such improvements will be removed and the site restored as required by the City; and (2) no lot, unit, or parcel within the development or project has been transferred to a third party.

The initial permit for the Development was issued on May 25, 2005; however, Developer has commenced minimal site improvement in Phase II of the Development, including, minimal

clearing and the construction of an emergency fire access road. Developer asserts no unit or lot within the Development has been transferred to a third party.

Because two (2) years have elapsed since the initial permit, the Developer must either complete the improvements immediately, or request an extension of time and a waiver from the requirement to increase financial guarantees to (200) percent of the cost of work to be completed within Phase II of the Development. Section 26.5-5 (b) requires that extension of such time periods may be granted by City Council upon Developer's showing that the delay is not dilatory or unreasonable under all circumstances.

Because the Developer is requesting an extension and waiver as to improvements not yet commenced, based upon placement of Phase II of the Development on hold pending more favorable market conditions, and City Council has agreed to such waiver, Developer shall complete soil erosion control measures related to clearing that has been undertaken and shall provide a written completion agreement pursuant to Section 26.5-5(c) of the City of Novi Code of Ordinances in order to obtain release of performance guarantees relating to Phase II.

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 Phase II of the Development will be stabilized and restored, and that all performance guarantees released with respect to improvements for which no work has commenced will be reposted with the City prior to recommencing development in Phase II of the RUD.

2. 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) maintenance guarantees have been posted, if applicable; (3) inspection of the development site has been performed when required; (4) soil erosion control measures shall be completed and the Soil Erosion Permit for Tuscany Reserve that includes Phase II is closed out and a new Soil Erosion Permit applicable only to Phase I is issued on or before its expiration date; 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. All tree protection fencing in Phase II shall be removed by Developer upon completion of the water main by the City in accordance with the Agreement for Extension of Water Main between the Developer and the City, dated _____, 2011.

3. Expiration of Waiver

Developer shall schedule a pre-construction meeting with the City prior to recommencing construction within Phase II of the Development. Notwithstanding anything herein, if the water main through Phase II is not completed by the City pursuant to the Agreement for Extension of Water Main, for any reason, Developer shall be responsible for completion of the water main through Phase II, at its own expense, at the time the site improvements for Phase II

are constructed. All performance guarantees released pursuant to this Agreement shall be reposted prior to recommencing construction. New permits will be required with respect to soil erosion and sedimentation control, woodland clearing, grading, and right-of-way (for the Garfield Road access). Additionally, new bonds shall be required including but not limited to, woodland fence, woodland replacement, and soil erosion and sedimentation control. All construction traffic for Phase II shall use the Garfield Road entrance. In the event that the Development does not re-commence prior to two years from the date of this Agreement, and all performance guarantees for incomplete site improvements are not re-posted, unless City Council grants an extension pursuant to Section 26.5-12, then any vested rights the Owner may have in the Site Plan for Phase II of the Development, and all related project approvals shall be considered to be expired and/or null and void.

4.. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Applicable Law

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

10. 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.

11. Headings.

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

12. Effective Date.

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

“DEVELOPER”

NOVI INVESTMENT COMPANY, LLC,
a Michigan limited liability company

By: MEG Development, LLC
A Michigan limited liability company
Its: Authorized Manager

By: _____
Mark F. Guidobono
Its: Authorized Member

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledges before me this ____ day of _____,
2011, 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
_____, 2011, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

MEG Development, L.L.C.

October 13, 2011

Mayor Landry
City of Novi
45225 West Ten Mile Road
Novi, Michigan 48375

Dear Mayor Landry:

We have reviewed the Water Main and Completion Agreements for Phases I and II of Tuscany Reserve. Our comments are listed below:

A) Phase I Completion Agreement

ITEM #3: 200% Multiplier - Due to the condition of the economy and the banking system, we request the multiplier be changed to 150%. In our situation the multiplier is being used for trees not commodities like copper or concrete which have volatility in the market.

ITEM #4A: Remove - Improvement Item 3(a) above shall be completed in all events on or before July 1, 2013. Change to: Replacement trees are planted on lots after Certificate of Occupancy is issued for each lot. We are currently handling it this way with Tuscany Reserve and this was approved this way from day one. Why should we change something we already agreed to with the City? Second, the Letter of Credit amount for Woodlands Replacement in the Completion Agreement for Phase I also counts tree replacements on lots in Phase II, a phase we have not built yet. We cannot install trees on lots that have not been built yet and we do not have the desire or ability to come up with cash to put in the City of Novi's tree fund. Again, we do not want to change something we already have in place.

ITEM #4C: Remove - The remaining street trees shall be installed before July 1, 2013. Change to: Street trees to be planted on individual lots after receipt of Certificate of Occupancy. We would like to change this for the same reasons as stated in 4A above.

ITEM - Signature Page: Change Novi Investment to MEG Development like Water Main Agreement.

B) Phase II Completion Agreement

ITEM #3: Change two years to five years. First, we have a weak economy and second, the City could use this as leverage to get MEG Development/Novi Investment to pay off the City on the Water Main in two years vs. when the improvements are installed for Phase II or in 5 years, whichever comes first.

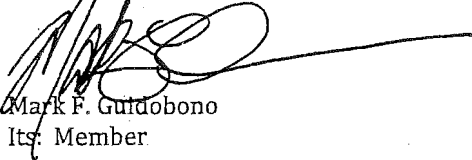
ITEM - Signature Page: Change Novi Investment to MEG Development like Water Main Agreement.

C) Water Main Agreement

We have no issues with this Agreement.

Sincerely,

MEG DEVELOPMENT, L.L.C.



Mark F. Guidobono
Its Member