



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item 4

September 10, 2007

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

SUBMITTING DEPARTMENT: Community Development *B-5*

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION: In accordance with the requirements of the City of Novi Performance Guarantee Ordinance, Chapter 26.5, City Council is being asked to consider a request from Provincial Glades, LLC to approve a Completion Agreement for Provincial Glades SP#03-46. The site plan consists of a 70 unit single family RUD development located in Section 30, on the north side of Nine Mile and east of Napier Road. At this time, a substantial amount of site work has been started, including grading, installation of utilities, first course of road pavement, storm water facilities, and woodlands removal. Construction is continuing on the site, and at this time, only two of the 70 homes have been constructed. A sales trailer exists on site and marketing of the homes and lots continues.

Section 26.5-5 states, "performance guarantees shall require **actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit**, ..., 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 developer for this project, Michael Fellows was notified in writing on April 26, 2007 that his two-year project completion requirement for Provincial Glades would expire on June 29, 2007.

Because this extension is requested for reasons other than weather conditions or delays in securing required approvals/permits from outside regulatory agencies, approval by City Council is required, together with a written Completion Agreement pursuant to Section 26.5-12. If an extension is granted, a revised performance guarantee shall be required in an amount no less than 200% of the cost of the work to be completed.

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 letters must be completed prior to final site acceptance. Landscaping installed to date is less than 50% complete and permanent soil erosion stabilization must be established. Clearing operations were completed resulting in the removal of over 460 woodland replacement trees from the site.

If approved, the Completion Agreement would require all site improvements, including the installation of the Singh Trail on this property as specified within the RUD Agreement, to be completed no later than June 29, 2009. There are a few immediate concerns within the right-of-way and stabilization around the detention basins for which staff is recommending completion no later than October 1, 2007. Please note, the detention basin issue has since been resolved as noted in the August 31st letter from Stantec, the City's consulting engineer for this project, and will be modified in the final agreement.

Two versions of a Draft Completion Agreement are attached: one prepared by the City Attorney's office and the other modified by the developer. The City's Draft Agreement meets the standards of the ordinance and reflects the results of the field inspections. After review of the Draft Agreement, the developer sent a letter August 19th objecting to several terms of the Draft Agreement. This letter was discussed at a recent meeting with the City Attorney's office, city staff and the developer.

The developer has provided a redlined Agreement highlighting his concerns for consideration by the City Council. At this point, staff would consider these discrepancies requests for variances from the standards of Chapter 26.5. Among the differences noted between the two Draft Agreements are requests by the developer for the following changes to the agreement:

- Reduce the financial guarantee multiplier from the ordinance standard of 200% of the cost of the work to be completed to 150% (Recitation section, and Section 3). *Staff does not recommend this reduction as it is contrary to the intent of the ordinance to insure that there will be adequate funds available to complete required work and for the continued health and safety of the community as the construction continues on the project.*
- Modify the form for posting performance guarantee funds: instead of being posted in the form of an irrevocable letter of credit, the developer would prefer to post a performance bond (Section 2). *Staff notes that the ordinance indicates that a minimum of the first \$250,000 of performance guarantee funds needs to be posted as cash or letter of credit, due to the liquidity and ease of access to the funds in case of an emergency. For funds in excess of the first \$250,000, the ordinance allows funds to be posted as a performance bond, in form and language as approved by the City Attorney. Performance bonds are a guarantee, in which the surety assures that the developer, called the "principal" in the bond, will perform the "obligation" as stated in the bond. If the principal fails to perform the obligation stated in the bond, both the principal and the surety are liable on the bond, and their liability is "joint and several". That is, either the principal or surety or both may be sued on the bond, and the entire liability may be collected from either the principal or the surety. Performance bonds are generally considered not as liquid as a letter of credit and if the funds need to be accessed, the process is more cumbersome and time consuming in terms of coordination among several city departments, the city attorney's office and the bonding company's representatives. Staff does not recommend modifying the standards of the city ordinance in this instance, and continue to recommend that the first \$250,000 be posted as a letter of credit. In addition, the developer has cleared the site of all replacement woodland trees. Staff recommends that the woodland replacement guarantee in the amount of \$301,200 ($\$200,800 * 1.5$) as specified in section 3 of the completion agreement continue to be held as either cash or letter of credit and not be replaced with a performance bond.*
- Modify the initial period of consideration from 1 year to 2 years (Section 2). *Considering the state of the economy and the pace of new home sales throughout the region, City Council may wish to extend the initial period of consideration to two years.*
- Numerous modifications to the cost of completion and ongoing maintenance of various items (Section 3). *Staff does not recommend modification of the city engineer's costs estimates as these were determined through the professional guidance and advice of the city's consulting engineers. Please note that the city's estimate for cost of completion and ongoing maintenance totals \$926,323.00, and with the 200% multiplier \$1,852,646.00 total financial guarantee is required (Section 3). The applicant's various modifications to the cost estimates show \$700,386.00, and with the proposed 150% multiplier, a total of \$1,050,579.00 is proposed to be held in a financial guarantee. This is a discrepancy of \$802,067.00 between the city's cost estimate and the applicant's cost estimate.*
- Modify the timeframe for completion of the portion of Singh Trail on this property from no later than June 29, 2009 to some time before the C of O for the 63rd home (Section 4.a). *Staff does not recommend modification of the timing of the construction of the trail to an unknown date in the future as this does not offer the certainty and assurance that this important link to the neighboring trail will be provided for the benefit of the residents of this development, and the community in general.*

- Modify the time and dates for the installation of the woodland replacements, restoration of the wetland buffer, and installation of the top course of paving of Nine Mile Road (Section 4). *At this stage of construction, woodlands have been cleared from the site and the wetlands have been disturbed. It is the city's expectation that the woodland replacements and wetland restoration be accomplished in a timely manner. So again, staff does not recommend modification of the timing of the improvements, as the staff and consultants have recommended an additional two-year time frame for completion of many of these improvements, and the ordinance provides for an opportunity for the City Council to reconsider the time periods and additional extensions based on the build out of the project again at that time.*
- Remove the financial guarantee to repair a sidewalk flag on the neighboring property (Section 4.f). *According to the letter from the developer dated August 19, 2007, page 2, item 1.b, the developer intends to make some repairs to the adjacent property before the end of this construction season. Staff continues to recommend that this item be included in the completion agreement until it can be shown that this item has been resolved to the satisfaction of the city and therefore cannot recommend modification of the agreement.*
- Modify several other items throughout the document.

Please see the letter from the City Attorney's office dated September 4, 2007 detailing the changes requested by the applicant. 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, 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.

Because the applicant has proposed so many changes to the suggested Completion Agreement, it is the recommendation of staff and the City Attorney's office that the matter be reviewed by the City Council for discussion of any variances from the ordinance standards or the proposed Agreement. Following City Council's discussion, a final draft will be forwarded at a subsequent Council meeting for consideration.

RECOMMENDED ACTION: Discussion 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				

August 8, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secrestwardle.com

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

Attached is a ***draft*** of an Agreement for Completion and Maintenance of Improvements prepared with respect to the Provincial Glades project in accordance with the provisions of Chapter 26.5 of the City Code, dealing with performance guarantees for streets and utility acceptance. We are writing this letter for the purpose of outlining the terms of the attached Agreement.

As you know, the Provincial Glades project falls under the requirements of our new performance guarantee ordinance. 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. The initial permit for the Development of Provincial Glades was issued on June 29, 2005. Because two (2) years have elapsed since the initial permit, and the site improvements have not been completed, the Developer must either complete the improvements immediately, or request an extension of time.

The Developer, Provincial Glades, LLC, is also the property owner. The Agreement authorizes the City to enter onto the property and alter the property by completing certain site improvements. Generally, obtaining the property owner's consent, or some alternative form of authorization to enter the property, such as court order, to make improvements to the property is required. Therefore the Agreement provides for a means securing that authorization "up front" in this type of situation, and thus avoids the necessity of obtaining the property owner's consent or seeking a court order in the event the improvements are not completed in the required time frame.

A short outline of the pertinent sections of the Agreement is as follows:

Section 1 of the Agreement describes the purpose of the Agreement as ensuring timely completion of improvements with respect to the Development.

Section 2 provides for the inclusion of specific information relating to the amount and type of performance guarantee provided by the Owner and/or Developer to secure completion of the incomplete site improvements.

Section 3 contains specifics regarding which site improvements are outstanding and the costs relating to completing those improvements. The figures are provided by the City consultant or department responsible for inspecting each particular improvement. The 200% multiplier provided for by Section 26.5-5 of the Code of Ordinances is included in the calculation of the total amount of security required as detailed in this Section of the Agreement.

Section 4 sets forth the time schedule in which the Developer must complete the improvements. The schedule provides for completion by a specific date, regardless of whether the project has been progressing on schedule. Please note that certain items were required to be addressed immediately, such as restoration of an adjacent property owner's land that incurred damage in connection with the Development. Generally, most of the proposed completion dates are approximately two years from the date of this Agreement. The City's consultants agreed on the dates as being reasonable with respect to each particular site improvement based on the current rate that units within the condominium are being developed.

Section 5 contains the language authorizing the City to enter on to the property and use the performance guarantee to complete the site improvements in the event that the Developer has not complied with the time schedule set forth in Section 4. Section 5 also permits the City to deny issuance of related building permits and certificates of occupancy until such time as the requirements for completion have been addressed.

Section 6 permits the City to recover any additional expenses incurred in pursuing completion of the required improvements pursuant to the Agreement, including but not limited to attorney's fees and court costs if it becomes necessary to pursue litigation of the Agreement or the issues contained in the agreement.

Section 7 provides for a reduction in the amount of performance guarantees to be held by the City in the event of completion of certain improvements. This provision follows the language contained in Chapter 26.5 with respect to reduction in performance guarantees.

Letter to M. Neumaier
August 8, 2007
Page 3

We provide you with a working draft of the completion agreement that may require modification based on City Councils consideration of the content. If you have any questions regarding document please let me know.

Very truly yours,

Elizabeth M. Kudla

EMK
Enclosure

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

C:\NrPortbl\manage\BKUDLA\964771_1.DOC

**COMPLETION AGREEMENT
PROPOSED BY STAFF AND CITY ATTORNEY**

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 \$ 1,852,646.00 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:	\$ 926,323.00
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: _____

**LETTER FROM DEVELOPER
DETAILING OBJECTIONS TO THE
PROPOSED COMPLETION AGREEMENT
AUGUST 19, 2007**

August 19, 2007

Novi City Council
c/o Ms. Beth Kudla,
Novi City Attorney

45175 10 Mile Rd.
Novi, MI 48375-3024

Re: Provincial Glades project completion and financial guarantees

Dear Ms. Kudla and Council Members,

About a week ago I was given a proposed "Agreement for Completion and Maintenance of Improvements" for the Provincial Glades community, and asked to provide comments regarding the agreement and associated financial guarantees. We are grateful for the opportunity to do so.

For residential developments like Provincial Glades, in one part of the ordinance there is a requirement of project completion in a 2 year period, yet in another part of the ordinance the completion (specifically the top course of asphalt and street acceptance) is prevented until a certain percentage of housing permits are issued. This of course is contradictory. Section 26.5-5 further clearly states that "in all events, however, the work must be completed at the time ninety (90) percent of the building permits have been issued or within four (4) years after the issuance of the initial permit". This alone would seem to address the issue, and override any provision requiring a new completion agreement after a two year period. Perhaps the ordinances would benefit from a bit of review and refinement for the various types of developments that are proposed. The City does have provisions for extending these time periods, but these provisions also require the posting of overly large and therefore expensive financial guarantees. Most developers are honorable, and usually the only reason a project is not completed timely is because of economic conditions beyond the control of either the City or the developer. Requiring larger financial guarantees in those circumstances is indeed a double whammy to an already stressed business.

As told directly to me by the City attorney's office, the purpose of financial guarantees is not necessarily to allow the City to complete an unfinished development (there may be prudent reasons the City would not *want* to), but to have money in place to prevent, or provide a remedy for, a developer creating a 'dangerous or unsightly' condition in the development of a project. I do believe this is necessary, and have no objection to the posting of financial guarantees for this purpose. But I also believe the City has gone too far in recent years with unnecessarily large financial guarantees, to the extent that they are exceedingly more than would be necessary to correct any dangerous condition. For instance, there surely is no need for money to install water and sewer mains in a project if the developer clears trees and then abandons the project. There need only be sufficient funds to correct any condition which is dangerous to people or the environment which was caused by the tree clearing. Similarly, the installation of all street trees prior to home construction would be foolish, as those trees would then be very vulnerable to

damage during the construction of a new home on the lot; so having large financial guarantees for street trees would seem unnecessary. And further, in a project like Provincial Glades, where the woodland replacement trees and landscaping trees are mostly designed and approved to be planted adjacent to existing mature woodlands which surround the project, does the absence of the relatively few new trees next to the existing forest constitute an “unsightly” condition, and therefore demand the drawing on a financial guarantee? I think any reasonable person would say no. As already mentioned, however, I do agree with the need to have certain financial guarantees in place, and would like the City to consider the following for the Provincial Glades project:

1. Incomplete Site work

a. In Mr. Ted Meadows’ 7-17-07 punchlist of uncompleted items, he cites a figure of \$75,000 for curb and pavement repairs. This number is ridiculous. I would like to see a detailed estimate of how this amount is arrived at. Historically, our road repairs prior to topping the asphalt have been about 20% of the topping cost. His other number of \$75,000 for all topping in the job is fairly accurate. A total paving completion cost estimate of \$100,000 is appropriate, and will of course increase after a multiplier is used to calculate the guarantee amount.

b. There is also a “miscellaneous” cost of \$5,000 for repairs to property at 50855 9 Mile Rd. As Mr. Meadows is well aware, there is no evidence that any property damage at this address is the responsibility of the developer. I have spoken to the owner, and do believe him that the property has sustained damage, but he has admitted he does not know the exact cause. At the time of the Provincial Glades site development, there was also in the same area a new water main installation completed by separate contractors hired by the City. In the interest of being a good neighbor, and allowing for the possibility that one of the Provincial Glades contractors did indeed cause any damage, the developer has offered to make some repairs at our expense, and we will do so before the end of this construction season. We have also already tendered to Mr. Vizniak (the owner) a small payment to help cover the cost of some repairs he himself has already made. It is neither just nor fair to ask Provincial Glades to post a financial guarantee to cover any remaining repairs at this address.

2. Storm Water Detention

All detention basins are installed, all outlet structures are installed, and all basin slopes have been planted with seed mix and plantings consistent with the approved plans. There is no uncompleted stormwater detention work. This has been verbally confirmed by Mr. Meadows to Sarah Marchioni. We will be formally requesting a release of this financial guarantee.

3. Wetland Restoration

I have no objection to John Freeland’s 7-27-07 letter regarding the status of wetland restoration, and further welcome his suggested reassessment of our wetland protection practices. I will be calling John to schedule a meeting for this purpose. No unpermitted wetland intrusions have taken place, and all of our wetland and tree protection fencing is properly installed. We will

continue to take the best possible care to not allow any wetland disturbance. In John's letter he recommends 50% of the original restoration cost estimate be used to calculate the financial guarantee. The original cost estimate, still in place as of this writing, was \$64,772. So 50% of this is \$32,386, again more than adequate for the very small permitted, temporarily disturbed wetland areas (0.16 acre total) to be properly restored.

4. Woodland, Woodland Fence, Landscaping and Street Trees

Taken all together, these plantings and the fence maintenance will cost an estimated \$480,000 to complete, using new plantings of a size and quality as specified by the City's various ordinances. The tree prices the City uses to estimate costs and calculate the financial guarantees simply are unnecessarily high (for instance \$400 per deciduous tree and \$4.00 for sq yd of sod). Also, requiring a financial guarantee for every single tree, shrub and flower proposed in a project is excessive. Again, if a developer begins a project which is kept neat and safe, but not completed timely because of reasons beyond his control, it would seem unnecessary to plant all of these trees and shrubs prior to completion of the homes. Actually, if the developer were to abandon the project, the City would have the option (which the developer doesn't) of saving considerable dollars by planting smaller trees --- they only grow. If possible, I would like to meet with Mr. Beschke so that together we may arrive at a reasonable financial guarantee estimate. A reasonable completion cost estimate of \$500,000 for financial guarantee purposes is exceedingly more than adequate, and again will be enlarged for the financial guarantee when a multiplier is applied.

Adding up the cost estimates in items 1, 3 and 4 above, and then including the \$68,000 estimate for the completion of the Singh Trail, (which incidentally is about the same as our estimate) yields a total estimate of uncompleted work on the project in the approximate amount of \$711,000. Assuming the already hefty multiplier of 150% is applied to this, the City would have financial guarantees in place of \$1,066,500. Certainly, minor items which really do require completion, plus any truly dangerous and unsightly condition, could be paid for with this much money!

Separate from these cost estimates is the timing of required completion of all of these items. Again, as mentioned above, Section 26.5-5 already specifies that all the work be completed by the time 90% of the building permits are issued for the project. There seems to be no need to modify this, as attempting to tie completion to a calendar rather than the pace of sales and home completion makes less sense. Nevertheless, in the interest of cooperation, I would propose that all remaining work be connected to home completion, according to a schedule something like this:

- I. Road repairs and top course of asphalt would be completed upon the C of O being issued for 95% of the homes in the project. This is consistent with the requirement that 90% be completed prior to final inspection and repairs of curbs and pavement for final street acceptance, and allows a bit of time to make those repairs. All wetland restoration, ROW completion, and any Soil Erosion financial guarantees could also be held by the City until this point. There is the one item


about replacing a broken sidewalk flag at the project entrance, which we will do by October 31, 2007.

- II. Of the 462 woodland replacement trees required on the job, 4 per lot, or 280, are contractually obligated to be planted by the new homeowners on his or her lot; and the balance of 182 are to be planted by the developer, per the approved woodland plans, Master Deed, and Condominium Bylaws. I propose that these 182, and all other landscaping and street trees, are to be completed in increments of 25% of the total corresponding to a parallel issuance of C of Os in 25% increments. In other words, when 25% of the homes are completed, then 25% of all new plantings must be completed also, prior to the issuance of any more C of Os. The financial guarantees would then also be reduced accordingly in these steps.

- III. The portion of the Singh Trail which is on the Provincial Glades property is quite small compared to its entire length. It makes little sense to install this short portion prior to the main length being completed. Doing so could result in unwanted intrusions onto our neighbors' properties to the east by a person who did not know the path leads nowhere. For this path I would propose one of two things: A) that Provincial Glades complete its portion upon or just prior to the completion of the main path, under the condition that it receives no further C of Os until completed, or B) in the event Provincial Glades is all built out prior to construction of the main path then Provincial Glades shall tender to the City in cash the estimated \$68,000 to complete the path, as a condition of final street acceptance for the project.

We do sincerely appreciate the opportunity to provide Council with the above comments, and we make them with much consideration and in the good faith that they will be seriously reviewed and considered by the appropriate City personnel and of course the Council members as well. We welcome in the same good faith any comments the City may provide in response, and look forward to the continued good relationship that I myself have established with the City over the past 20 years of working in Novi.

Respectfully submitted,



Michael Fellows
Mozart Homes LLC
Provincial Glades LLC

**LETTER FROM CITY ATTORNEY
DETAILING CHANGES PROPOSED BY DEVELOPER**

September 4, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
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:

With respect to the proposed Agreement for Completion and Maintenance of Improvements prepared by our office with the input of City employees and consultants, the Developer has prepared a redlined version with alternative provisions that he is requesting. Many of the Developer's proposed changes vary from the requirements of Chapter 26.5 and will require approval of City Council.

A short summary of the significant differences within the Developer's proposed alternative Agreement for Completion and Maintenance of Improvements are as follows:

Fourth Paragraph of Recitations Section. The Developer is requesting a 150% multiplier with respect to the total amount of performance guarantees to be held by the City after the initial two years has elapsed since the issuance of the initial permit within the Development, rather than the 200% multiplier required by Section 26.5-4 of the Ordinance Code.

Paragraph No. 2. The alternative Agreement indicates that the performance guarantees submitted to the City for improvements in accordance with the Agreement will be submitted in the form of a two-year performance bond rather than letter of credit as suggested in the City's version of the Agreement. Section 26.5-7, in conjunction with Section 26.5-4 of the Ordinance Code would permit a performance bond to be used for any amount over \$250,000. The ordinance requires the first \$250,000 to be in the form of cash, check or letter of credit.

The notice period for cancellation of the performance bond has been decreased from a 60 day to a 30 day notice period. This term is not specified by Chapter 26.5.

Paragraph No. 3. The Developer has requested modifications to the "costs of completion" from the amounts recommended by City staff, City consultants, and ordinance requirements. A written explanation as to the proposed changes has been submitted by the Developer in his letter dated August 19, 2007.

Paragraph No. 4. The Developer has proposed different dates for completing site improvements than those dates recommended by City staff and consultants. Generally, City staff and consultants recommended an additional two-year time period for installation of the pathway system, woodland fence, site landscaping, and paving. At the end of two-years, the ordinance provides for an opportunity for City Council to reconsider the time periods and additional extensions based on the build-out of the project at that time.

The Developer's proposal instead ties the installation of pathway, landscaping and street trees, and paving improvements to the completion of a certain number of homes within the development.

Section 26.5-33 of the Ordinance Code allows for paving and street trees to be installed later than other site improvements, at the time ninety (90) percent of the certificates of occupancy (including temporary certificates) have been issued, or within four (4) years after the issuance of the initial permit, whichever occurs first.

It is our understanding that the Developer intends to complete all storm water requirements, and certain wetland improvements, before consideration of the proposed Agreement by City Council, thus certain amounts relating to these items have been deleted and/or modified

Based on his letter dated August 19, 2007, it appears it the Developer's intent is to complete the 50855 Nine Mile Road repairs outside of the scope of the Agreement.

Paragraph No. 5. The Developer has modified the Agreement to provide that performance guarantee proceeds would not be permitted to be used to cover administrative expenses incurred by the City in completing improvements not completed by Developer. Sections 26.5-10 and 26.5-11 specifically provide that the amounts may be applied to inspections, and to administrative costs.

Paragraph No. 12. The Developer has modified standard language included in the Agreement for the purpose of confirming that site improvements required pursuant to ordinance and as part of site plan approval for the development are required for the purpose of public health, safety and welfare.

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

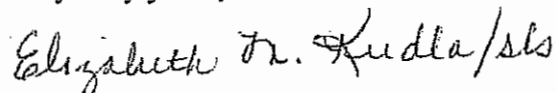
26.5 discusses particular standards to be considered to vary from the ordinance; in that regard, the Council should be guided by the general standards of Section 1-12 of the City Code:

- (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.

Council therefore City Council may determine that City staff's proposed Agreement 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

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

**COMPLETION AGREEMENT
PROPOSED BY DEVELOPER**

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 48375 (“City”), and Provincial Glades, LLC, whose address is 22612 Provincial Drive, Novi, MI 48374 (“Developer”) who represents itself hereby as the owner of the Property and Developer of the Development.

Formatted: Left

Deleted: 41115 Jo

Deleted: 5

Deleted: -1920

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, the City requires the Developer 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.

Deleted: has offered and agreed

Deleted: develop the Property, to

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. And therefore 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.

Deleted: Because t

Deleted: ,

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 One Hundred Fifty (150) percent of the cost of the work to be completed, and a schedule for completion and maintenance of the improvements for the Development.

Deleted: two hundred
 Deleted: 200
 Deleted: ,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Deleted: ¶

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 in accordance with the schedule specified herein and approved by City Council.

Deleted: on a timely basis,
 Deleted: a

2. Performance Guarantee Posted

Prior to or with the execution of this Agreement, the Developer has provided, or does provide, to the City, a performance guarantee in the total amount of \$ 1,050,579.00 to guarantee completion and maintenance of improvements for the Development, as estimated and itemized in Paragraph 3, below. Such performance guarantee funds shall be posted in the form of a performance bond, as permitted in Sections 26.5-4 and 26.5-7, to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of two (2) years, 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 30 days advanced, written notice by Bonding institution to the City's Assistant Finance Director as follows. As a condition to the termination of the effectiveness of the guarantee, Bonding institution shall be required to provide to the office of the City's Assistant Finance Director, with 30 days advanced written notice, a statement that the letter of credit shall terminate at the end of the 30 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 30 day period, the guarantee shall at all times be effective and payable according to its terms.

Deleted: 852,646.
 Deleted: have been
 Deleted: irrevocable Letter of Credit No. _____ issued by _____ ("Bank")
 Deleted: one (1) year,
 Deleted: 6
 Deleted: ank
 Deleted: letter of credit,
 Deleted: ank
 Deleted: 6
 Deleted: 6
 Deleted: 6
 Deleted: letter of credit

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) <u>Woodlands, Woodland Fence, Landscaping, and Street Trees:</u>	\$500,000.00
(b) <u>Wetland buffer Restoration:</u>	\$ 32,386.00
(c) <u>Right-of-Way (Paving):</u>	\$100,000.00

Formatted: Indent: Left: 0.5"
 Deleted: 200,800
 Deleted: <#>Woodland fence: . . . \$ 17,500.00¶
 Deleted: <#>Landscape: . . . \$299,851.00¶
 Deleted: . . .
 Deleted: 64,772
 Deleted: 5

(d) Singh Trail including paving and boardwalk: \$ 68,000.00

- Deleted: <#>50855 Nine Mile repairs: . . \$ 5,000.00¶
- <#>Storm Water Detention: . . \$ 6,000.00¶
- <#>Street Trees: \$114,400.00 ¶
- Deleted: ¶
- Deleted: .
- Deleted: 926.323
- Deleted: 200
- Deleted: 2
- Deleted: 852.646

Subtotal: \$ 700,386.00
 150% Multiplier: x 1.5
 Total Financial Guarantee: \$ 1,050,579.00

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(d), 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(d), above, shall be completed in all events on or before completion of the main portion of the path which is to be constructed to the East and the North on property owned by others. If the Cof O for the 63th home in the Development is issued prior to offsite completion of the main portion of the path, then the Developer shall tender to the City in cash the \$68,000 cost to complete the trail. prior to issuance of the C of O for the 64th home in the Development.
- b) Improvement Item 3(a) above, includes the maintenance of woodland fence, and the installation of landscaping, street trees, and woodland replacement trees. Approximately 54 acres of regulated woodlands are to remain preserved including the installation of 462 woodland replacement trees, 280 of which are to be planted upon the individual lots according to the approved Master Deed and Condominium Bylaws, and security for 27 trees over 8" DBH. Improvement Item 3(a) above, shall be completed continuously and simultaneously along with the issuance of Certificates of Occupancy for the new homes in the Development, in increments of 10% at a time. In other words, when 10% of the homes are occupied, then 10% of all new plantings must be completed also, prior to issuance of any more Certificates of Occupancy.
- c) Improvement Items 3(b) and 3(c), contemplate and include the restoration of the Wetland buffer areas, the repair of existing base course of paving on

- Deleted: i
- Deleted: i
- Deleted: June 29, 2009
- Formatted: Superscript
- Formatted: Superscript
- Deleted: s
- Deleted: a
- Deleted: and 3(b),
- Deleted: .
- Deleted: contemplates and
- Deleted: s
- Deleted: without limitation preservation of existing woodlands and
- Deleted: installation
- Deleted: and protective fencing
- Deleted: will be
- Deleted: protective fencing,
- Deleted: s
- Deleted: a
- Deleted: and 3(b),
- Deleted: in all events on or before June 29, 2009.
- Deleted: s
- Deleted: s

Nine Mile Road, the installation of the top course of bituminous paving of Nine Mile Road, and the installation of the top course of paving along interior roads within the Condominium. Restoration of the Wetland buffer areas includes the area adjacent to the temporary emergency access drive between lots 29 and 30, and therefore must be completed at such time as a second paved entrance is installed connecting the project to another public or private drive. The top course of asphalt must be installed after 90% of the homes are constructed and occupied, and prior issuance of the Certificate of Occupancy of the 64th home.

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 30 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 30 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. Any funds drawn in such a manner shall be in an amount only for the cost of completing Developer's uncompleted improvements, and shall only be used for the purpose of completing Developer's uncompleted improvements. 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 or Bonding institution with regard to the financial guarantee, 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

Formatted: Superscript

Formatted: Font: CG Times

~~<#> 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.~~

~~<#>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.~~

~~<#>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.~~

~~<#> 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.~~

~~<#>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.~~

Deleted: 14

Deleted: 14

Deleted: 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

Deleted: letter of credit

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 one hundred fifty (150) 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.

Deleted: two hundred
Deleted: 200

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 applicable 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, 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.

Deleted: the intent

Deleted: and

Deleted: and provide material advantages and development options for the Developer,

Deleted: 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: _____

C:\NrPortbl\image\BKUDLA\964776_2.DOC

**INSPECTION LETTERS FROM
CITY ENGINEERS AND CITY STAFF**



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**

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, we recommend that the Incomplete Site Work/Utilities Financial Guarantee be increased from \$234,000 to \$446,000. 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.

Sincerely,

STANTEC CONSULTING MICHIGAN INC.

Stantec

July 19, 2007
Mr. Aaron Staup
Page 2 of 3

**Reference: Provincial Glades
Site Work Status**

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

rd v:\2075\active\2075087400\230874.00\file 2\row not approved 2.doc

**Reference: Provincial Glades
Site Work Status**

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

July 17, 2007 Walkthrough

1. PAVING (TOTAL COST - \$150,000)

- a. Pavement Repairs (Cost - \$45,000).
- b. Curb and Gutter Repairs (Cost - \$30,000).
- 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 (TOTAL COST - \$68,000)

- a. Boardwalk Construction (Cost - \$41,000)
- b. Bituminous Bike Path Construction (Cost - \$27,000)



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
Engineering Department
45175 W Ten Mile Road
Novi, Michigan 48375-5683

Attention: Mr. Aaron Staup

Dear Mr. Staup:

**Reference: Provincial Glades
ROW Permit: ROW05-0035
Right-Of-Way Inspection**

Please be advised that we have reviewed the status of the Right-of-Way for the above referenced site on July 17, 2007. As a result of this review, we have determined the Right-of-Way is not in general conformance with the approved construction plans. The following items need to be addressed prior to release of this financial guarantee:

1. Provide top course of bituminous pavement for Nine Mile Road.
2. Complete repair of sidewalk flag at east end of right-of-way.
3. Complete repairs to fence, yard, and asphalt drive for address 50855 Nine Mile Road.

THIS SITE CANNOT BE CLOSED UNTIL THESE ITEMS ARE ADDRESSED. The applicant should request an additional inspection through Sarah Marchioni at the City of Novi Building Department after completion of these items.

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

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 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: 2075087450

City of Novi
45175 West Ten Mile Road
Novi, Michigan 48375

Attention: Ms. Sarah Marchioni

Dear Ms. Marchioni:

**Reference: Provincial Glades
SE: 05-0005
Soil Erosion Project Status Inspection**

Please note that based on our July 17, 2007 soil erosion inspection, this site cannot be closed at this time. All of the proposed building lots are not completely stabilized with vegetation. Permanent vegetation must be established for the entire site prior to release of the financial guarantee. **THIS SITE CANNOT BE CLOSED UNTIL THIS ITEM HAS BEEN ADDRESSED.**

The applicant should request an additional inspection through the Community Development Department after completion of these items. If you have questions or comments regarding the above mentioned site, please do not hesitate to contact us.

Sincerely,

STANTEC CONSULTING MICHIGAN INC.

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

c. C.J. Killebrew, City of Novi
Aaron Staup, City of Novi
Sheila Weber, City of Novi
Mike Fellows, Mozart Homes - Provincial Glades LLC
George Tsakoff, Stantec



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

Stantec

August 31, 2007
File: 2075087400

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

Attention: Mr. Aaron Staup

Dear Mr. Staup:

**Reference: Provincial Glades
Stormwater Detention System Inspection**

Please be advised that we have reviewed the status of the stormwater detention system including storm sewer piping, detention basin(s) and outlet control structure(s) for the above mentioned site. As a result of this review, we have determined the stormwater detention system to be in general conformance with the approved construction plans and recommend a full release of this financial guarantee.

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

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 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
45175 W Ten Mile Road
Novi, Michigan 48375-5683

Attention: Mr. Aaron Staup

Dear Mr. Staup:

**Reference: Provincial Glades
Stormwater Detention System Inspection**

Please be advised that we have reviewed the status of the stormwater detention systems including storm sewer piping, detention basin(s) and outlet control structure(s) for the above mentioned site. As a result of this review we recommend the Performance Guarantee amount remain \$9,000, this includes the City Multiplier of 1.5. This will ensure that additional grading and stabilization of the detention basin will occur with seed mix and plantings consistent with the approved plans and as approved by the appropriate City consultants. This will also cover any modifications that may be necessary to the outlet control structures. These items can be verified in the field once a formal request is made to the City by the Developer.

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

Sincerely,

STANTEC CONSULTING MICHIGAN INC.

A handwritten signature in black ink that reads "Ted Meadows".

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

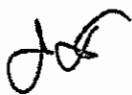


Environmental Consulting & Technology, Inc.

2200 Commonwealth Blvd
Suite 300
Ann Arbor, MI 48105
734-769-3004

MEMORANDUM

TO: Marina Neumaier
City of Novi, Finance & Community Development

FROM: John Freeland, Ph.D., PWS 

DATE: July 27, 2007

RE: Provincial Glades SP# 03-46 Wetland Restoration Status

ECT has reviewed the Provincial Glades Site Plan, the City and MDEQ Wetland Permits, and visited the site to assess the current state of progress regarding wetland restoration and other aspects of the permit conditions.

The Provincial Glades project, which required several small wetland fills mostly for culvert crossings, did not require wetland mitigation. However, two areas of temporary wetland impact were to be restored to wetland conditions following construction. One of these temporary impacts is for a temporary road near the northwest corner of the site. The other temporary impact is for a water pipe and boardwalk construction along the north side of Nine-Mile Road.

Temporary Impacts Calling for Wetland Restoration

The temporary road impact is listed on the permit as 0.09-acre. I spoke with the Developer (Mike Fellows) on July 27, 2007 and he indicated the temporary road would need to stay, pending the development plans of the property to the north.

The area for the watermain and 260-feet of boardwalk is 0.07-acre. This area appears to have been at least partially restored following the watermain construction. However, following construction of the boardwalk, the wetland will likely require some restoration.

Additional Concerns

The project has stormwater detention basins A, B, C, and D, which discharge to wetlands. The water in the detention ponds appears turbid. This is likely due to erosion and sedimentation in the uplands. ECT recommends that the City and Developer reassess the erosion and sediment control management practices on site in order protect wetlands and water quality.

Conclusion

Given that the project is not finished and two areas of temporary impact are still not restored, ECT recommends that at least 50% of the wetland financial remain with the City until the permit conditions are met.

cc: John Hines, Novi Community Development (JHines@cityofnovi.org)
Steve Rumble, Director, Novi Community Development (SRumble@cityofnovi.org)
Barbara McBeth, Deputy Director of Community Development (BMcBeth@cityofnovi.org)
Sheila Weber, Bond Coordinator (SWeber@cityofnovi.org)



MEMO

TO: Sarah Marchioni
Building Permit Coordinator

FROM: David R. Beschke, RLA

DATE: April 27, 2007

SUBJECT: **Provincial Glades 03-46**
Partial Installation Street Tree Inspection

A landscape inspection was performed on April 27, 2007. The Applicant requested a partial inspection at this time, reporting 25% of the landscape has been installed.

**Please withhold a landscape financial guarantee of (\$ 114,400 x 1.5)
\$ 171,600 for the remaining portion of the street trees to be installed.**

The applicant should contact Sarah Marchioni of the Building Department at (248) 347-0430 to arrange the Final Landscape Re-Inspection after all issues related to landscape installation including but not limited to the items listed below are addressed. The applicant must provide at the time of request, a letter indicating how each of the items listed in the inspection report have been addressed and the planted landscape is an attractive addition to the City and is substantially complete.

City of Novi Fee Calculation Chart

Perennials	\$15.00	Ornamental trees	\$250.00	Deciduous trees	\$400.00
Shrubs	\$50.00	Evergreen trees	\$325.00	Labor hr	\$50.00
Seed sq/yd	\$2.50	Sod sq/yd	\$4.00		

Numerals below relate to numbers as shown on the attached plan and also appear on the Landscape Inspection. Street trees of issue are bold. Our findings are as follows:

1. Stressed *Pinus strobus* to be watched through the growing season.
2. Bed overgrown and weeded. Please renovate.
3. Bed overgrown and weeded. Please renovate.
4. One (1) missing *Picea glauca*. Provide proper number.
5. Remove old protection fencing.

6. None of these 67 Thuja occidentalis 'Nigra' have been installed. Please install.

7. Unmulched street tree in dying/dead. Replace.

8. Eight (8) Syringa x. 'Persica' not installed. Provide these plants.

9. Stressed Pinus nigra to be watched through growing season.

10. Bed needs mulch and ongoing wiring work to be completed and restored.

11. Severe rabbit damage to Euonymus alata. Should recover. Watch through growing season.

12. Dead street tree to be replaced.

13. Trunk damage to street tree. Watch through growing season.

14. Only nine (9) of proposed twelve (12) Viburnum opulus installed. Provide proper number, enlarging bed if necessary. One plant is dead and must also be replaced.

15. Two (2) dead street trees to be replaced.

16. Only eight (8) of proposed twelve (12) Ligustrum obtusifolium 'Regalianum' installed. Provide proper number, enlarging bed if necessary.

17. One (1) dead Taxus x. media 'Everlow' (?). Replace.

18. Severe rabbit damage to several trunks of understory trees to be watched through growing season.

19. Street tree to be straightened.

20. Trunk damage to street tree. To be watched through growing season.

General Observations:

1. Please weed all beds/tree rings. Remove any debris.

2. All beds should be remulched for this season. Tree rings should be 4' in diameter. Mulch should remain 3" to 4" from trunks.

3. All staking may be removed at this time, with the exception of any trees which are in need of straightening. All crooked trees should be readjusted.

4. Tags should be removed from all plant material.

5. Bed edges should be recut for a clean edge.

6. Prune all dead limbs/branches.

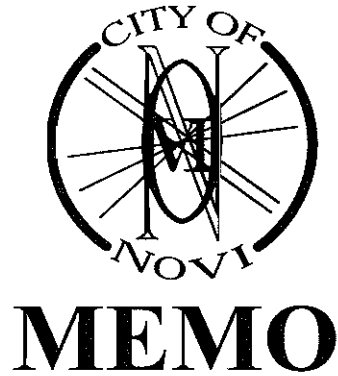
The above items are those witnessed at the time of inspection. It is possible for additional items/issues to develop after the timing of this inspection and before the items are addressed. After **all** plant materials are installed per the approved landscape plan, **any** unhealthy plant materials have been replaced and **all** weeds and debris have been removed to the satisfaction of the City of Novi, the two year warranty period will commence.

If there are any further questions, please direct the applicant to contact me at the address or phone number below.

David R. Beschke, RLA
City of Novi Landscape Architect
Planning Department
45175 W. Ten Mile Road

Novi, Michigan
Phone (248) 735-5621
Cc:/ S. Weber, J. Schimpf

48375-3024
Fax (248) 735-5600



TO: Sarah Marchioni
Building Permit Coordinator

FROM: David R. Beschke, RLA

DATE: April 27, 2007

SUBJECT: **Provincial Glades 03-46**
Partial Installation Landscape Inspection

A landscape inspection was performed on April 27, 2007. The Applicant requested a partial inspection at this time, reporting 25% of the landscape has been installed.

**Please withhold a landscape financial guarantee of (\$ 299,851 x 1.5)
\$ 449,776.50 for the remaining portion of the landscape to be installed.**

The applicant should contact Sarah Marchioni of the Building Department at (248) 347-0430 to arrange the Final Landscape Re-Inspection after all issues related to landscape installation including but not limited to the items listed below are addressed. The applicant must provide at the time of request, a letter indicating how each of the items listed in the inspection report have been addressed and the planted landscape is an attractive addition to the City and is substantially complete.

City of Novi Fee Calculation Chart

Perennials	\$15.00	Ornamental trees	\$250.00	Deciduous trees	\$400.00
Shrubs	\$50.00	Evergreen trees	\$325.00	Labor hr	\$50.00
Seed sq/yd	\$2.50	Sod sq/yd	\$4.00		

Numerals below relate to numbers as shown on the attached plan. Our findings are as follows:

1. Stressed Pinus strobus to be watched through the growing season.
2. Bed overgrown and weeded. Please renovate.
3. Bed overgrown and weeded. Please renovate.
4. One (1) missing Picea glauca. Provide proper number.
5. Remove old protection fencing.
6. None of these 67 Thuja occidentalis 'Nigra' have been installed. Please install.


7. Unmulched street tree in dying/dead. Replace.
8. Eight (8) Syringa x. 'Persica' not installed. Provide these plants.
9. Stressed Pinus nigra to be watched through growing season.
10. Bed needs mulch and ongoing wiring work to be completed and restored.
11. Severe rabbit damage to Euonymus alata. Should recover. Watch through growing season.
12. Dead street tree to be replaced.
13. Trunk damage to street tree. Watch through growing season.
14. Only nine (9) of proposed twelve (12) Viburnum opulus installed. Provide proper number, enlarging bed if necessary. One plant is dead and must also be replaced.
15. Two (2) dead street trees to be replaced.
16. Only eight (8) of proposed twelve (12) Ligustrum obtusifolium 'Regalianum' installed. Provide proper number, enlarging bed if necessary.
17. One (1) dead Taxus x. media 'Everlow' (?). Replace.
18. Severe rabbit damage to several trunks of understory trees to be watched through growing season.
19. Street tree to be straightened.
20. Trunk damage to street tree. To be watched through growing season.

General Observations:

1. Please weed all beds/tree rings. Remove any debris.
2. All beds should be remulched for this season. Tree rings should be 4' in diameter. Mulch should remain 3" to 4" from trunks.
3. All staking may be removed at this time, with the exception of any trees which are in need of straightening. All crooked trees should be readjusted.
4. Tags should be removed from all plant material.
5. Bed edges should be recut for a clean edge.
6. Prune all dead limbs/branches.

The above items are those witnessed at the time of inspection. It is possible for additional items/issues to develop after the timing of this inspection and before the items are addressed. After **all** plant materials are installed per the approved landscape plan, **any** unhealthy plant materials have been replaced and **all** weeds and debris have been removed to the satisfaction of the City of Novi, the two year warranty period will commence.

If there are any further questions, please direct the applicant to contact me at the address or phone number below.



David R. Beschke, RLA
 City of Novi Landscape Architect
 Planning Department
 45175 W. Ten Mile Road
 Novi, Michigan 48375-3024
 Phone (248) 735-5621 Fax (248) 735-5600
 Cc:/ S. Weber, J. Schimpf

**EXCERPTS FROM CHAPTER 26.5
RELATING TO COMPLETION AGREEMENTS**

Excerpts from Chapter 26.5 relating to Completion Agreements

Sec. 26.5-5. Authorization.

- (a) Subject to the provisions of article IV of this chapter, and as set forth in the various provisions of this Code, the department is authorized to require all applicants constructing improvements under any permits and approvals granted pursuant to this Code to post a performance guarantee with the director to guarantee completion of all required improvements in accordance with this chapter.
- (b) Notwithstanding any provision of any other chapter of this Code with regard to issuance of permits for specific improvements, performance guarantees shall require actual construction and installation of all required improvements within two (2) years after the issuance of the initial permit, together with the posting of necessary bonds therefor, for any improvements listed in subsection (a) above, 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 time limit may be extended for six (6) months at the director's discretion, upon determination that work is proceeding toward completion and that the delay is not dilatory or unreasonable under all the circumstances. In reaching this determination, the director shall only take into consideration weather conditions or delays in securing required approvals/permits from other regulatory agencies. The request for extension shall be in writing, accompanied by a schedule for completion of all remaining work. At the time an extension is requested, a site inspection will be conducted, with the cost of such inspection being the direct responsibility of the applicant, to confirm work remaining on the site. If an extension is requested for reasons other than weather conditions or delays in securing required approvals/permits from outside regulatory agencies or a further extension is requested, approval of the city council shall be required, together with a written completion agreement pursuant to section 26.5-12. 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 to be completed. In all events, however, the work must be completed at the time ninety (90) percent of the building permits have been issued or within four (4) years after the issuance of the initial permit.

(Ord. No. 04-173, § 1, 9-13-04)

Sec. 26.5-12. Exceptions; written completion agreement required.

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter. 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 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 (weather conditions, delay in securing permits/approvals from other regulatory agencies). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

(Ord. No. 04-173, § 1, 9-13-04)