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CITY of NOVI CITY COUNCIL

Agenda Item G
March 8, 2010

SUBJECT: Approval of a Completion Agreement for SP05-0039 Townes at Liberty Park –Phase II, Multiple Family, in accordance with the requirements of Chapter 26.5

SUBMITTING DEPARTMENT: Community Development *UM*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

City Council is being asked to consider a request from Pulte Land Company, LLC to approve a Completion Agreement for Phase II of the Townes at Liberty Park, SP05-0039. The development is a 16.72 acre, multiple family residential condominium development planned for 308 multiple family stacked ranch style units located west of Novi Road, North of 12 Mile Road and is part of the larger Liberty Park development. This project is subject to the provisions of Chapter 26.5, and requires a Completion Agreement as the developer has not completed the site improvements shown on the approved site plan within (2) years of issuance of the initial permit for any improvements (October 28, 2005).

As a condition of the Completion Agreement to allow an extension of the time period allowed for completion of the site improvements, Pulte, the developer has agreed to provide assurances including provision of a performance guarantee in the amount of no less than 200% of the cost of the work to be completed as well as a schedule for completion and maintenance of the improvements for this development.

The Completion Agreement requires a minimum Financial Guarantee of \$1,277,676 and contemplates:

- Replacement and installation of certain traffic control signs on or before September 1, 2014
- Installation of all remaining site landscaping except street trees by September 1, 2014
- Installation of 145 remaining street trees on or before September 1, 2014
- Completion of paving, curb, storm water structures and site utility, and sidewalk repairs as well as installation of top course of interior road paving, sidewalks, inspection approvals and dedication documents on or before September 1, 2014
- Completion of wetland and buffer restoration and stabilization on or before September 1, 2014
- Ongoing required installation and maintenance of soil erosion and sedimentation controls through issuance of the final certificate of occupancy.

RECOMMENDED ACTION: Approval of a Completion Agreement for SP05-0039 Liberty Park Condominium – Phase II, Multiple Family, in accordance with the requirements of Chapter 26.5

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

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

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
TOWNES AT
LIBERTY PARK – MULTIPLE FAMILY
PHASE II

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2010, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (“City”), and Pulte Land Company, LLC, a Michigan limited liability company, whose address is 450 West Fourth Street, Royal Oak, Michigan 48067 (“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 16.72 acre, multiple-family residential condominium development pursuant to the provisions of the City of Novi Zoning Ordinance, to contain three hundred and eight (308) multiple-family stacked ranch style units to be established as part of a condominium. The condominium will be herein known as the “Development.” The Development is part of a larger overall Development on property subject to the terms and conditions of an Agreement for Entry into Consent Judgment, dated June 25, 2002.

As part of the approval process for the Development, 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 site improvements shown on the site plan within two (2) years after the issuance of the initial permit for any site 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 October 28, 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 site 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 a performance guarantee in the total amount of \$ **1,277,676.00** 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 Comerica Bank ("Bank"), to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year the letter of credit shall provide by its terms that it will, 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 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)	Traffic Control Signs:	\$ 8,000.00
(b)	Landscaping	\$ 335,438.00
(c)	Street Trees	\$ 55,600.00
(d)	Incomplete Site Work	\$ 224,806.00
(e)	Wetlands	\$ 11,736.00
(f)	Soil Erosion and Sedimentation Control:	\$ 3,258.00
	Subtotal:	<u>\$638,838.00</u>
	200% Multiplier:	x 2
	Total Financial Guarantee:	<u>\$1,277,676.00</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(a) above contemplates and includes replacement and installation of certain traffic control signs within the Development. The traffic control signs shall be installed on or before September 1, 2014.
- b) Improvement Item 3(b) above contemplates and includes the installation of all site landscaping, not including street trees. All site landscaping shall be completed on or before September 1, 2014. For two (2) years 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 two (2) year period.
- c) Improvement Item 3(c) above contemplates and includes installation of 145 remaining street trees. The remaining street trees shall be installed before the issuance of the 300th certificate of occupancy within the Development, and in all events on or before September 1, 2014. For two (2) years from the date of completion of the installation of all such trees installed as part of the Development, Developer shall, under this Agreement, maintain the trees that were so installed, which maintenance shall include the replacement of any dead, substantially dead, diseased, or removed trees during such two (2) year period.

- d) Improvement Item 3(d) above contemplates and includes (a) repair damage to site utilities; (b) pavement repairs; (c) curb repairs; and, (d) installation of the top course of paving for the interior roads; (e) walk-through inspections; and (f) completion of roadway and utility dedication documents. Improvement Items 3(d), above shall be completed, prior to the issuance of the 300th certificate of occupancy for the Development, and in all events, no later than September 1, 2014.
 - e) Improvement Item 3 (e) above contemplates and includes the completion of restoration and maintenance of wetlands within the Development, including soil stabilization adjacent to wetland areas as well as restoration of the 25-foot natural feature setback area. Wetland stabilization and restoration activities shall be completed on or before the issuance of the 300th certificate of occupancy with in the development, but in all events, no later than September 1, 2014.
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- f) Improvement Item 3(f) above contemplates and includes without limitation: (i) the immediate installation of all required soil erosion and sedimentation controls; and (ii) completion of repairs and maintenance of the soil erosion and sedimentation controls within and for the Development on an ongoing basis until issuance of the final certificate of occupancy within the Development.

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. 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. Partial drawings shall be permitted. Any amounts of unused proceeds of the performance guarantee shall be returned to Developer. 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, with written notice to Developer, and proceed as specified in this paragraph. Failure to renew soil erosion permits shall constitute a default under this section and the City shall be permitted to make a partial drawing on the performance guarantee for the purpose of renewing the permit and paying inspection fees that are due and owing.

(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 to be 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; and (4) 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. Upon submission of a Request for Private Development Inspection to the City, subject to all inspection fees having been paid, the City shall complete the requested inspections and issue inspection reports within 30 days within the scope of the City seasonal inspection periods (typically March 15 through November 15, weather dependent) and subject to the Developer undertaking any and all access/preparation requirements necessary to facilitate inspection.

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 reasonable 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”

PULTE LAND COMPANY, LLC
a Michigan limited liability company

By: _____ Its: _____

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
_____, 2009, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____