

CITY of NOVI CITY COUNCIL

Agenda Item 1
February 4, 2008

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

SUBMITTING DEPARTMENT: Community Development - Planning *Burb*

CITY MANAGER APPROVAL: *PA for SP*

BACKGROUND INFORMATION:

On September 10, 2007 the City Council was asked to approve a completion agreement for Provincial Glades in accordance with the requirements of the City of Novi Performance Guarantee Ordinance, Chapter 26.5. The site plan for Provincial Glades 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".

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.

City Council's directive at the meeting of September 10th was that the agreement should be modified to include certain provisions and the revised agreement was to be brought back to Council for approval. City Council's direction at that time was to:

- Modify the suggested timeframe for completion of the portion of Singh Trail for this property.
- Issue a temporary Certificate of Occupancy for the existing home nearing completion prior to formal adoption of the completion agreement provided the applicant was moving forward in good faith.
- Modify the timeframe provided in the agreement for the installation of the woodland replacements and restoration of the wetland buffer.
- Repair of the sidewalk to be completed by Mr. Fellows before Fall 2007.
- Renegotiation of the letters of credit that are in place at the time they are due again, as long as the Finance Director was confident that the City had sufficient financial guarantees.

A revised agreement reflecting these changes was brought forward to City Council on October 22, 2007 and was approved subject to Provincial Glades, LLC signing the agreement within 14 days. However, the applicant, Mr. Mike Fellows was not willing to sign the agreement within the specified time period stating that he was not in a position to post the additional performance guarantees and that Provincial Glades, LLC no longer owned the property.

On November 7, 2007 the City was notified in writing that Pinnacle-Novi, LLC had entered into an agreement with Citizens Bank to acquire the loan and mortgage with respect to the project. Closing on the property was expected to occur in mid-December, but in January, City Staff was notified that the closing is not anticipated until July 2008. Because the City desires to have an agreement in place prior to this time, both Successor Developer and Developer will be asked to execute a completion agreement prior to closing.

The Letters of Credit posted by Provincial Glades, LLC which are currently held by the City shall remain in place. Pinnacle-Novi, LLC shall post the additional Letter of Credit in the amount of \$242,575.50 to satisfy the requirements of Section 25.6-5 (b) of the City of Novi Code of Ordinances. If Pinnacle-Novi, LLC acquires the Development, it shall replace the letters of credit which have been provided at the time of closing. Once closing occurs, and Pinnacle-Novi, LLC replaces all Letters of Credit, Successor Developer shall be deemed the "Developer", and Provincial Glades, LLC will have no further rights or obligations under this Completion Agreement.

The current Letters of Credit posted for this project are scheduled to expire in 2008, with the first expiration date being May 15, 2008. The agreement will further require Developer or Citizens Bank to provide renewals of each of the letters of credit for an additional one-year period on or before April 15, 2008. If renewals are not provided on or before April 15, 2008, the Developer shall be deemed to be in default under the terms of the Letters of Credit and the City has the right, but not the obligation to draw on the existing letters of credit posted by Developer.

A draft of the City's proposed agreement is attached and has been sent to both Mark S. Cohn, attorney representing Pinnacle-Novi, LLC and Howard Fingerroot of Pinnacle for their review. The draft completion agreement is similar to the agreement approved by the City Council on October 22nd with some further modifications requested by Pinnacle Homes and as detailed in the letter from the City Attorney's office.

One change that had not been noted previously is to Paragraph 4.a. This modification indicates that the portion of the public pathway system shown on the site plan to be completed by Provincial Glades shall be constructed by the developer prior to the issuance of the 64th certificate of occupancy, or as an alternative, the dollar amount for the cost of the Provincial Glades portion of the pathway may be deposited with the City, and Pinnacle shall have no further obligation to construct the pathway.

The City Attorney has indicated that it is within City Council's authority, generally, to permit the developer to vary from some or all of the requirements of the ordinance, and/or the provisions of the agreement recommended by City staff and consultants, although no particular Section of Chapter 26.5 discusses the standards to be considered in order to vary from the ordinance. In that regard, the Council should be guided by the general standards of Section 1-12 of the City Code:

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

At this time, it is recommended that the City Council consider approval of the draft Completion Agreement provided in this packet.

RECOMMENDED ACTION: Approval of a Completion Agreement prepared by the City Attorney 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 Crawford				
Council Member Gatt				

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

**LETTER FROM
CITY ATTORNEY'S OFFICE**

January 28, 2008

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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. 660034. NOV1**

Dear Ms. Neumaier:

On November 26, 2007, City Council rescinded its previous approval of the Agreement for Completion and Maintenance of Improvements which required execution of the Agreement by Provincial Glades, LLC due to a pending property transfer of the project to Pinnacle Homes.

On January 10, 2008, Pinnacle Homes notified us that Pinnacle Homes has entered into a purchase agreement and has the right (but not the obligation) to purchase the Provincial Glades property; however, in the event that Pinnacle Homes purchases the property, the transfer of the property will not occur until July, 2008. Because Provincial Glades, LLC is still record owner of the property, Provincial Glades, LLC and Pinnacle-Nov, LLC, have proposed to execute the Agreement for Completion and Maintenance of Improvements jointly, with Pinnacle-Nov, LLC, posting the addition \$242,575.50 performance guarantee to satisfy the requirements of Section 25.6-5 (b) of the City of Novi Code of Ordinances.

It should be noted that Pinnacle has indicated that it may not purchase the Development in the end but just lots within the Development. In that event, pursuant to Section 26.5-4 of the Code, until such time as another developer or the mortgagee bank replace the performance guarantees, the Developer shall continue to be responsible in accordance with the current performance guarantees for completing the project in accordance with their terms.

Pinnacle has requested only minor changes to the substance of the Agreement that was previously approved by City Council at the Developer's request. Pursuant to discussions with Pinnacle Homes in December, 2007, we made the following changes to the Agreement:

1. A statement has been added to Paragraph 4(a) to clarify that if the Developer deposits the Singh Trail amount with the City for completion of the trail/boardwalk in accordance with that paragraph, instead of completing the trail/boardwalk itself, the Developer shall have no further responsibility with respect to the trail/boardwalk.
2. A clarification has been made to Paragraph 4(b) that performance guarantees for landscape maintenance shall be posted only in accordance with ordinance requirements.
3. A revision to Paragraph 4(b) has been made to provide that street trees for each home site shall not be required to be installed prior to completion of the residence on the home site.

The Agreement is proposed to be jointly enforced against both Developer and Pinnacle Homes pursuant to Section 26.5-4 of the City's Performance Guarantee Ordinance:

Applicant means the person or entity that has a legal or equitable right to effect the development or improvement of the subject real property. Only the applicant may post a performance guarantee. If the subject real property is transferred, conveyed, or sold (other than as an individual, single-family lot or unit), the successor (with legal proof of ownership) shall replace any outstanding performance guarantees at the time of purchase. Cash bonds may be assigned upon proof of transfer, conveyance, or sale. If the successor does not replace all performance guarantees, then the applicant shall continue to be responsible under such guarantees for completing the project in accordance with their terms. **This provision shall not prohibit joint performance guarantees, provided that the applicant is one of the joint guarantors and if deemed acceptable by the director.**

Pursuant to this provision, additional revisions to the substance of the proposed Agreement were made, primarily to the Recitations Section, and Section 2 of the Agreement to permit for the joint posting of financial guarantees.

Because Provincial Glades, LLC's current performance guarantees begin expiring on May 15, 2008, with the latest performance guarantee expiring July 19, 2008, we have provided for all of the expiring performance guarantees to be renewed on or before April 15, 2008.

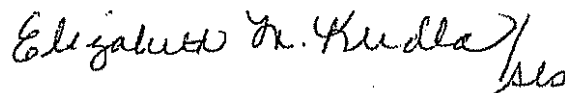
We have enclosed both the version of the Agreement previously approved

by City Council, and the revised version proposed to accomplish joint posting of performance guarantees.

Though the joint posting of financial guarantees is permitted by ordinance with approval of the City of Novi Building Official or his or her designee the most recent submittal of the Agreement still contains the revisions previously proposed by the Developer as a variance from those originally proposed by City Administration. Thus, as with the approval of the previous version, City Council will be varying from the terms of the Ordinance if this version of the Agreement is approved. As we previously indicated, it is within City Council's authority, generally, to permit the Developer to vary from some or all of the requirements of the ordinance.

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

Very truly yours,



Elizabeth M. Kudla

EMK

Enclosures

- C: Maryanne Cornelius, City Clerk (w/Enclosures)
- Clay Pearson, City Manager (w/Enclosures)
- Rob Hayes, City Engineer (w/Enclosures)
- Aaron Staup, Construction Engineering Coordinator (w/Enclosures)
- Sheila Weber, Treasurer's Office (w/Enclosures)
- Dave Beschke, Landscape Architect (w/Enclosures)
- John Freeland, ECT, Inc. (w/Enclosures)
- Ted Meadows, Stantec (w/Enclosures)
- Sarah Marchioni, Building Department (w/Enclosures)
- Howard Fingerroot, Diversified Property Group, LLC (w/Enclosures)
- Mark S. Cohn, Esquire (w/Enclosures)
- Mike Fellows, Provincial Glades, LLC (w/Enclosures)
- Thomas R. Schultz, Esquire (w/Enclosures)

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

PROVINCIAL GLADES
FKA THE PRESERVE RUD

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2008~~7~~, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 4837547 ("City"), and _____ Pinnacle-Nov~~i~~. LLC, a Michigan limited liability company ~~Provincial Glades, LLC~~, whose address is ~~28800 Orchard Lake Road, Suite 200, Farmington Hills, MI 48334~~ ("Pinnacle"), and Provincial Glades, LLC, a Michigan Limited Liability Company whose address is 41115 Jo Drive, Novi, MI 48375-1920 ("Developer") ~~who represents itself hereby as the owner of the Property and Developer of the Development.~~

RECITATIONS:

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

Pinnacle intends to purchase the Property and complete the Development. Pinnacle has entered into a Purchase Agreement which entitles it to purchase the Development with this intent. The closing is anticipated to occur in July, 2008.

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.~~

Because the City desires to have a Completion Agreement in place prior to Pinnacle's acquisition of the Development, both Pinnacle and Developer shall execute this Agreement. The Letters of Credit posted by Developer which are currently held by the City shall remain in place, in accordance with Section 2 of this Agreement.

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

credit shall terminate at the end of the 60 day period. Such notice shall be required regardless of the stated termination date of any other documentation. Prior to the date of termination at the conclusion of the 60 day period, the letter of credit shall at all times be effective and payable according to its terms.

The parties acknowledge that Pinnacle has the right to acquire the Development in accordance with a purchase agreement. Pinnacle has agreed to jointly execute this Agreement and to post the additional security required by Section 3 of this Agreement in the form of an irrevocable letter of credit in the amount of \$242,575.50 (the "Pinnacle Letter of Credit"). The parties agree that in the event Pinnacle acquires the Development, Pinnacle shall become the sole Developer under this Agreement and the City shall permit Pinnacle to replace the irrevocable letters of credit previously posted by the Provincial Glades, LLC, in the amount of \$1,352,498.50, with substitute irrevocable letters of credit in the same amount. Upon the receipt of such replacement letters of credit, Provincial Glades, LLC, shall be released from any obligations under this Agreement. In the event that Pinnacle does not acquire the Development, it shall provide written notice to the City, after which the City shall permit the Bank, and/or its successors or assigns, to replace the Pinnacle Letter of Credit with an irrevocable letter of credit of an equal amount. Anything in this Agreement to the contrary notwithstanding, upon the receipt of such replacement letter of credit from the Bank, its successors and/or assigns, Pinnacle shall be released from any obligations under this Agreement. If Pinnacle, does not acquire the Development, in no event shall Pinnacle have any liability under this Agreement in excess of the amount of the Pinnacle Letter of Credit. The parties acknowledge that Pinnacle also has the right to purchase and build on individual units even if it does not acquire the Development, and, further that the purchase of individual units is not the same as acquiring the Development.

Developer acknowledges that 07048, 07063, 5005120468, 5005120467, and 07064 are scheduled to expire in 2008, with the first expiration date being May 15, 2008. Developer or Citizen's Bank shall provide renewals of each of the letters of credit for an additional one-year on or before April 15, 2008. If renewals are not provided on or before April 15, 2008, the Developer shall be deemed to be in default under the terms of the Letters of Credit and the City has the right, but not the obligation to draw on the existing letters of credit posted by Developer.

3. Items of Improvement and Maintenance

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

(a)	Woodlands:	\$200,800.00
(b)	Woodland fence:	\$ 17,500.00
(c)	Landscape:	\$ 185,451.00
(d)	Wetland:	\$ 32,386.00
(e)	Right-of-Way (Paving):	\$125,000.00
(f)	Street Trees:	\$114,400.00
(g)	Singh Trail including	

paving and boardwalk: \$122,000.00

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

4. Completion and Maintenance of Improvements; Schedule and Requirements

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

- a) Improvement Item 3(g), above, contemplates and includes without limitation the installation of a pathway system within the "Connecting Open Space" within the Development. The RUD Agreement provides that a trail system shall be constructed by Developer on the area of the Property that has been dedicated to the City as a park connecting the terminus of the City's Singh Trail to Nine Mile Road. ~~Developer shall construct a~~ A trail system shall be constructed in accordance with AASHTO (American Association of State Highway and Transportation Officials) and ADA (Americans with Disabilities Act) standards. The trail shall mostly be an asphalt pathway, and boardwalk only where necessary. Improvement Item 3(g), above, shall be completed in all events at the time of installation of the "Singh" portion of the pathway system, or, alternatively, prior to the issuance of the 64th certificate of occupancy for the Development. In all events, if the "Singh" portion of the pathway system is not installed by or before the issuance of the 64th certificate of occupancy for the Development, ~~the Developer may,~~ as an alternative to constructing ~~his~~ the Provincial Glades portion of the pathway system, ~~the amount deposit the amount~~ the amount set forth in Paragraph 3(g) above may be deposited with the City, and the City may complete the pathway at a time that the City, in its discretion, deems appropriate. Upon the deposit of such amount with the City, Developer and Pinnacle shall have no further obligation regarding Improvement Item 3(g).
- b) Improvement Items 3(a), (b), (c), and (f) above, contemplate and include without limitation preservation of existing woodlands and the installation of woodland fence, woodland replacement trees and protective fencing, the installation of street trees, and site landscaping for the overall Development. Approximately 54 acres of regulated woodlands will be preserved including the installation of 462 woodland replacement trees (which includes 280, or 4 trees per lot, to be installed on lots by

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

- c) Improvement Item 3(d) above contemplates and includes restoration of temporary impacts to wetland buffers for impacts caused by (1) the installation and maintenance of the temporary secondary access road for the Development, and (2) impacts caused by installation of Improvement Item 3(g) above, the pathway system. Improvement Item 3(d)(1), shall be completed at the time, and in accordance with Improvement Item 3(g), above. Improvement Item 3(d)(2) shall be completed at the time the temporary secondary access road for the Development is abandoned and restored. In all events, if the temporary secondary access road is still in place by June 29, 2012, City Council shall revisit this issue to determine whether it is reasonably foreseeable that a permanent access road will be installed, and, wetland restoration will take place. If City Council determines that the temporary access road will not be abandoned in the foreseeable future, an application Developer may apply for an amendment to his~~the~~ Provincial Glades wetland permit may be submitted seeking to maintain a permanent wetland impact in the area of the

temporary access road, and ~~may seeking~~ release of the appropriate amount of financial guarantee, accordingly.

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

5- City Authority to Complete and/or Maintain.

In the event Developer and/or Pinnacle ~~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 and Pinnacle 14 days notice of the failure to timely complete and/or maintain and Developer and/or Pinnacle ~~has do 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~~ the party that posted the letter of credit, or otherwise be credited, as the case may be. Developer, and all of Developer's officers, employees, consultants and agents, and their successors, 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/or Pinnacle, 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 and Pinnacle 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 and Pinnacle 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 and/or Pinnacle in such regard, if unpaid after 30 days of a billing sent to Developer and Pinnacle at ~~its each one's~~ 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/or Pinnacle, and in the event the City is awarded relief in such suit, the Developer and Pinnacle shall be obligated to 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 Pinnacle~~ 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, Pinnacle~~ 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 ~~neither Developer nor Pinnacle 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.

~~Except as specifically set forth in this Agreement~~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: _____

"PINNACLE"

PINNACLE-NOVI, 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
| _____, 20078, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

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

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

PROVINCIAL GLADES
FKA THE PRESERVE RUD

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

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

RECITATIONS:

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

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

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

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

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

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

2. Performance Guarantee Posted

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

3. Items of Improvement and Maintenance

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

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

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

Subtotal:	<u>\$ 797,537.00</u>
200% Multiplier:	x 2
Total Financial Guarantee:	<u>\$ 1,595,074.00</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(g), above, contemplates and includes without limitation the installation of a pathway system within the "Connecting Open Space" within the Development. The RUD Agreement provides that a trail system shall be constructed by Developer on the area of the Property that has been dedicated to the City as a park connecting the terminus of the City's Singh Trail to Nine Mile Road. Developer shall construct a trail system in accordance with AASHTO (American Association of State Highway and Transportation Officials) and ADA (Americans with Disabilities Act) standards. The trail shall mostly be an asphalt pathway, and boardwalk only where necessary. Improvement Item 3(g), above, shall be completed in all events at the time of installation of the "Singh" portion of the pathway system, or, alternatively, prior to the issuance of the 64th certificate of occupancy for the Development. In all events, if the "Singh" portion of the pathway system is not installed by or before the issuance of the 64th certificate of occupancy for the Development, the Developer may, as an alternative to constructing his portion of the pathway system, deposit the amount set forth in Paragraph 3(g) above with the City, and the City may complete the pathway at a time that the City, in its discretion, deems appropriate.
- b) Improvement Items 3(a) (b), (c), and (f) above, contemplate and include without limitation preservation of existing woodlands and the installation of woodland fence, woodland replacement trees and protective fencing, the installation of street trees, and site Landscaping for the overall Development. Approximately 54 acres of regulated woodlands will be preserved including the installation of 462 woodland replacement trees (which includes 280, or 4 trees per lot, to be installed on lots by homeowners in accordance with the Master Deed for the Development), 334 street trees, protective fencing, and security for 27 trees over 8"

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

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

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

5. City Authority to Complete and/or Maintain.

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

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

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

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

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

6. Additional Liability

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

7. Rebate or reduction of Performance Guarantee

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

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

8. Binding Effect

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

9. Owner's Warranty on Ownership

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

10. Delay in Enforcement

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

11. Severability

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

12. Lawful Document

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

13. Applicable Law

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

14. Current and Future Owners and Developers.

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

15. Headings.

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

16. Effective Date.

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

"DEVELOPER"

PROVINCIAL GLADES, LLC,
a Michigan limited liability company

By: Michael Fellows Its: Managing Member

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

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

Notary Public
Oakland County, Michigan

My Commission Expires: _____

"CITY":
CITY OF NOVI
a Michigan municipal corporation

BY: _____

BY: _____

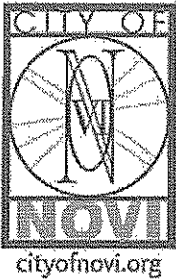
STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

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

Notary Public
_____ County, Michigan
My Commission Expires: _____

C:\NrPortb\Nimange\BKUDLA\964776_5.DOC

**PROVINCIAL GLADES
STATUS UPDATE
JANUARY 23, 2008**



Memorandum

To: Clay Pearson, City Manager

C.c.: Pam Antil, Assistant City Manager
Kathy Smith-Roy, Finance Director
Steve Rumble, Community Development Director
Barb McBeth, Deputy Director Community Development

From: Marina Neumaier, Assistant Finance Director *[Signature]*

Date: January 23, 2008

Subject: Provincial Glades Status Update

1/23/08
To: Mayor and City Council Members

Update *[Signature]*

In accordance with the requirements of the City of Novi Performance Guarantee Ordinance, Chapter 26.5, City Council was asked on September 10, 2007 to approve a completion agreement for Provincial Glades. Council's directive at that time was to modify the agreement to include certain provisions and bring back the revised agreement to Council for approval. These provisions included:

- ✓ Modify the suggested timeframe for completion of the portion of Singh Trail for this property.
- ✓ In regard to the home about to be completed, a temporary C of O be given subject to completion before the agreement was done as long as they were moving forward in good faith.
- ✓ To modify the time and dates for the installation of the woodland replacements and restoration of the wetland buffer.
- ✓ The sidewalk repair completed by Mr. Fellows before fall.
- ✓ The letters of credit that are in place be renegotiated when they come up again as long as the Finance Director was confident that the City had sufficient financial guarantees.

A revised agreement was brought forward to City Council on October 22, 2007 and was approved subject to Provincial Glades, LLC signing the agreement within 14 days. Mr. Fellows was not willing to sign the agreement within the specified time period stating that he was not in a position to post the additional performance guarantees and that Provincial Glades, LLC no longer owned the property.

On November 7, 2007 the City was notified in writing by Pinnacle-Novis, LLC that on September 25, 2007, Pinnacle entered into an agreement with Citizen's Bank to acquire the loan and mortgage with respect to the project (see attached letter). We were also told at that time that Pinnacle believed the closing with Citizens would occur on November 30, 2007 with the transfer of the property to occur in mid-December. As a result of this action, Council was asked on November 26, 2007 to rescind the completion agreement approved for Provincial Glades on

January 23, 2008

October 22nd and to postpone this matter until completion of a property transfer by Pinnacle-Novu, LLC.

X On January 10, 2008 we were notified by Pinnacle that the closing was now anticipated to occur in July 2008. Because the City desires to have an agreement in place prior to this time, both Successor Developer and Developer will be asked to execute a completion agreement prior to closing. The Letters of Credit posted by Provincial Glades, LLC which are currently held by the City shall remain in place. Pinnacle-Novu, LLC shall post the additional Letter of Credit in the amount of \$242,575.50 to satisfy the requirements of Section 25.6-5 (b) of the City of Novi Code of Ordinances. If Pinnacle-Novu, LLC acquires the Development, it shall replace the letters of credit which have been provided at the time of closing. Once closing occurs, and Pinnacle-Novu, LLC replaces all Letters of Credit, Successor Developer shall be deemed the "Developer", and Provincial Glades, LLC will have no further rights or obligations under this Completion Agreement.

X The current Letters of Credit posted for this project are scheduled to expire in 2008, with the first expiration date being May 15, 2008. The agreement will further require Developer or Citizen's Bank to provide renewals of each of the letters of credit for an additional one-year on or before April 15, 2008. If renewals are not provided on or before April 15, 2008, the Developer shall be deemed to be in default under the terms of the Letters of Credit and the City has the right, but not the obligation to draw on the existing letters of credit posted by Developer.

X A draft of the City's proposed agreement is attached and has been sent to both Mark S. Cohn, attorney representing Pinnacle-Novu, LLC and Howard Fingerroot of Pinnacle for their review. Upon their agreement, staff will then take this matter to City Council at the next available Council meeting for approval.

November 13, 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
ekudla@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. 660034. NOVI**

Dear Ms. Neumaier:

Enclosed please find a copy of a letter from Pinnacle-Novu, LLC, explaining its position as a potential successor developer for the Provincial Glades Development. In addition to explaining its status, the letter requests an extended deadline with respect to execution of the proposed Agreement. This correspondence should be included in the next City Council package pertaining to this matter.

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

Very truly yours,


Elizabeth M. Kudla

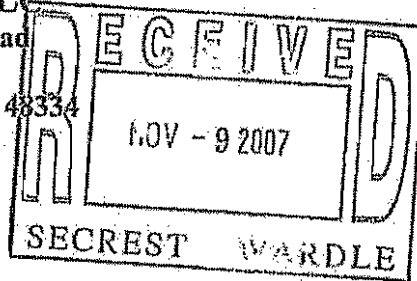
EMK

Enclosure

C: Maryanne Cornelius, City Clerk (w/Enclosure)
Clay Pearson, Assistant City Manager (w/Enclosure)
Rob Hayes, City Engineer (w/Enclosure)
Steve Rumpel, Director Community Development (w/Enclosure)
Barbara McBeth, Deputy Community Dev. Director (w/Enclosure)
Aaron Staup, Construction Engineering Coordinator (w/Enclosure)
Sheila Weber, Treasurer's Office (w/Enclosure)
Dave Beschke, Landscape Architect (w/Enclosure)
John Freeland, ECT, Inc. (w/Enclosure)
Ted Meadows, Stantec (w/Enclosure)
Sarah Marchioni, Building Department (w/Enclosure)
Howard Fingeroot, Diversified Property Group, LLC (w/Enclosure)
Mark S. Cohn, Esquire (w/Enclosure)
Mike Fellows, Provincial Glades, LLC (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

PINNACLE-NOVI LLC
28800 Orchard Lake Road
Suite 200
Farmington Hills, Michigan 48334

November 7, 2007



Elizabeth M. Kudla, Esq.
Secrest Wardle
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-

*Re: Provincial Glades ("Project")
Your File No. 55142 NOV*

Dear Ms. Kudla:

Pursuant to our discussion today's date, the following is a brief letter of introduction explaining the involvement of Pinnacle-Novu LLC (hereinafter "Pinnacle"), in the above-referenced Project.

On September 25, Pinnacle entered into an agreement with Citizens Bank (formerly Republic Bank), to acquire the loan and mortgage with respect to the Project. Pinnacle is currently engaged in negotiations with the borrower (Provincial Glades, LLC), regarding the orderly transfer of the Project to Pinnacle, which will occur after the closing on the loan and mortgage. The closing with Citizens Bank is expected to occur on November 30, 2007, with the transfer of the Project expected to occur in early December.

As a result of the above, Pinnacle will be unable to execute the negotiated completion agreement until such time as it has acquired the aforementioned interest in the Project. Pinnacle requests that the City of Novi extend the deadline for execution of the completion agreement until mid-December 2007.

If you or the City Council have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Fingerroot".

Howard Fingerroot

**CITY COUNCIL MINUTES
SEPTEMBER 10, 2007**

Excerpt from

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, SEPTEMBER 10, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Gatt, Margolis, Mutch, Nagy-absent/excused, Paul-absent*

*Member Paul arrived at 7:01 P.M.

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

Mike Fellows, petitioner, was present and said they were seeking relief from the strict application of the ordinance relating to the content of completion agreements. He said the City staff had provided him with the proposed completion agreement and asked him to revise, edit and comment, which he did and provided to Council. In addition, he submitted a short letter describing his reasoning for those revisions. Mr. Fellows said they were very happy to do a completion agreement and to put into writing a commitment to finish up the uncompleted things that were in the Provincial Glades job. He thought the schedule for the completion of those items should be appropriately tied to the type of development that it was and the natural sequence of construction for that kind of development. He said it was quite a bit different from a small single use building as far as completion of landscaping and tree items.

Mr. Fellows said there were already 13 or 14 existing letters of credit, financial guarantees, which were posted and were in place for this job. They were just renewed a couple of months ago and to revise them now was additional expense to them and the ones in place were perfectly adequate. He asked that, if they do revise them, they wait until the current ones expire and then put the new ones into place. He said there was a second house under construction in that job, which was very near completion and the owners were very anxious to move in. He said they didn't submit that plan as a model because they were pretty sure, and as it turned out they were right, that the utilities would be accepted and except for this completion agreement issue, which he wasn't aware of, there would be no problem issuing a C of O for that house. Mr. Fellows commented that he was informed by the City attorney that pending the completion and signing of the completion agreement the C of O for that house would be held up. He said since the job had 70 homes and would normally get either three or four model C of O's anyhow he was asking that if there was any discussion or the completion agreement lingers longer than the completion of the house that the homeowners would be allowed to move in and the C of O would be issued.

Mr. Pearson said Provincial Glades started the residential a couple years ago, and it was a beautiful development on Nine Mile Road just east of Napier Road. He said he was there today and the road was in place, obviously without the final lift and a number of utilities. He said the development had not taken place at the speed and occupancy that had originally been contemplated. The City did require a series of financial guarantees for the protection of both the City and the residents that live near the development and also the residents that are the first ones in the development. Mr. Pearson said this was unique in that before today they didn't know that anyone would be in there. He said the City had pretty substantial and clear requirements for financial guarantees. Letters of credit were covering different types of improvements, which were tied to specific improvements. There might be 14 letters of credit overall but the City didn't have the latitude to say they were going to take money from A and cover B because then there wouldn't be any money to cover A. Mr. Pearson said the new ordinance required that the completion agreement come before Council after two years, which was the point this was at now.

Ms. McBeth said the streets and utilities were partially in and inspections were done in July of this year to verify the completion of these items, and that was where they started with the completion agreement. She highlighted the several differences between the City staff's recommended completion agreement and the applicant's modification to that. 1) There was a reduction in the performance guarantee multiplier for the cost to complete the remaining items from the 200% multiplier as the ordinance required to 150%. 2) There was a modification for the forum of posting the performance guarantees instead of the funds being posted as an irrevocable letter of credit the developer would prefer to post a performance bond. 3) There was just a modification for the initial period of consideration for that term for that financial guarantee from one year to two years. 4) The developer proposes numerous modifications to the City's consulting engineer's estimates for costs of completion throughout the paperwork that Council had this evening. 5) The developer proposes to modify the suggested timeframe for completion of the portion of Singh Trail for this property from no later than June 29, 2009 as staff had suggested to sometime before the C of O for the 63 homes out of the 70 home development or when the completion of the remainder of Singh Trail took place. 6) The applicant proposes to modify the time and dates for the installation of the woodland replacements, restoration of the wetland buffer, and installation of the top course for the paving along Nine Mile Road, which was required as part of the RUD agreement. 7) The applicant proposes to remove from the financial guarantee just some small repairs to the adjacent property as noted by the City's consulting engineer in the field. There was a sidewalk flag offense and some driveway damage that recently took place.

Ms. McBeth said they were hoping to hear Council's comments regarding this, and they hoped to come back with something that everyone would be agreeable to for a completion agreement.

Mayor Pro Tem Capello said he saw that a couple of the comments had to do with the new Financial Guarantee Ordinance. He wanted Mr. Fellows to understand why he was going to be opposed to a couple of those things. He said the major problems Council has had in the City in regard to completion had been residential subdivisions, and that was why the ordinance was amended and was why the requirement for the \$250,000 in cash, the first portion of the guarantee, was there and was why the 200% was there. He said they had spent a lot of time with Cousineau, Guidobono and Harris and came up with something they believed was workable for the builders. He commented that it was something that should work for everybody. Mayor Pro Tem Capello understood that there were problems out there and there were certain things that Council couldn't go back on. He thought that when they felt like they were starting to get into financial trouble Council should work with him but he didn't think they could work with him by reducing his financial commitment and increasing the City's risk to get this completed.

In regard to the extension of time to complete the Singh Trail, Mayor Pro Tem Capello wholly agreed. He said if they didn't have the cash flow coming in to do that at this point, he didn't have a problem with that. He didn't want to keep it open that wide to wait until the 63rd home got its C of O. He said he hoped that with Administration, in regard to the home he talked about, if completed before the agreement was done a temporary C of O could be given subject to completion of the agreement as long as, in good faith, they were moving forward. He commented that any of the areas that Council could help without creating additional risk to the City, he would be more than willing to look at and work with Mr. Fellows. Mr. Fellows was one of the few builders that was still building houses in Novi, and there was no reason for Council to tie his hands and make it more difficult to do that.

Mayor Pro Tem Capello understood, regarding the woodlands and wetlands, why they should probably jump on that and try to preserve the buffers and those types of things. The woodland replacements were costly to Mr. Fellows and he didn't have a problem if Mr. Fellows planted those trees two or three years from now because someone in the community would still get the benefit of those.

Mayor Pro Tem Capello said it looked like the sidewalk issue was somewhat resolved and he would leave that up to Administration, and whatever they worked out would be fine with him. As far as the letters of credit that are in place, Mayor Pro Tem Capello understood there was a cost to Mr. Fellows to renegotiate them in the middle of the term. He said he didn't have a problem waiting until they come up again and then letting him renegotiate them as long as Ms. Smith-Roy was confident that the City had sufficient financial guarantees to cover it. He thought they might have to get another bond or guarantee for a certain amount of money but overall he was fine with that concept, and felt there was no sense in making him spend that money now.

CM-07-09-277 Moved by Capello, seconded by Margolis, CARRIED UNANIMOUSLY:

To modify the suggested timeframe for completion of the portion of Singh Trail for this property. In regard to the home about to be completed, a temporary C of O be given subject to completion before the agreement was done as long as they were moving forward in good faith. To modify the time and dates for the installation of the woodland replacements and restoration of the wetland buffer. Also, that the sidewalk repair be made by Mr. Fellows before fall, that the letters of credit that are in place be renegotiated when they come up again as long as the Finance Director was confident that the City had sufficient financial guarantees. Also, when these items are incorporated into the agreement it be brought back to Council.

Member Paul said she and Mayor Pro Tem Capello sat on that committee together with all of the developers trying to make heads or tails of this because the City had developers who put it in financial risk. She said the City had been completing roads that were in ill repair that some of the developers had left the City. Member Paul said that was why Council was covering the risks and had changed the ordinance. She asked Ms. Smith-Roy and Ms. McBeth to clarify what their intent would be regarding the sidewalk.

Ms. McBeth said there were several damages to the adjacent property and it was not clear whose fault this was. She thought Mr. Fellows had offered to make a certain amount of repairs. She thought they would all prefer that this be completed this fall rather than waiting the two years, which was the recommended timeframe for the completion agreement. She said they would rather resolve this and not have it as part of the completion agreement.

Member Paul said that was the only comment that she wanted to talk with the maker of the motion about. She said the staff clearly made the comment that they would like that to be repaired this fall for good reason. Member Paul felt they couldn't leave the sidewalk in ill repair if someone would be walking on it, it was unsafe and with winter coming it was not a good idea. She said it was not a large section.

Mayor Pro Tem Capello said his comment was to send it to Administration and whatever they worked out would be fine with him, and he figured they would do whatever they needed to do. He didn't mind that as a friendly amendment if the idea was to let two of the Administration and Mr. Fellows figure out what was really wrong. He didn't think they had identified whose fault it was.

Member Paul said that's why she asked for clarification because she thought they really wanted that in the letter as what was written and what had been verbally stated.

Mr. Fellows said the sidewalk was not related to any damage to adjacent property. He thought it was just a broken flag that was on their property at their entrance and was their frontage that no one walked on. He said they would be happy to fix it before fall. The repairs to adjacent property was a different issue and it was not clear how that was caused. He said their property was being developed and the sewer line was being put in the same time a water main was being installed by the City and both Provincial Glades contractors and City contractors were up and down that street. He said there was also damage to a fence and to the grading of property owned by Mr. Visnyak on the other side of the road. He said in an attempt to be a good neighbor he had already reimbursed him for some cost for his fence repair and had also gone out, at their expense, and regraded his right-of-way and put some top soil out there. The only thing that remained to be fixed, that he was aware of, on his property was a 40 ft. piece of fence. Mr. Fellows said he didn't know who caused the damage but didn't think it was fair to ask him to post a financial guarantee to fix something that they didn't know he broke. He said it was a very minor thing and he had hoped it wouldn't be an issue but he was against being on the hook for money, especially at 200% of someone else's inflated estimate to repair that property.

Member Paul said the main thing she was concerned about was the sidewalk and let the City Administration work out the fence. She wanted the sidewalk being fixed by Mr. Fellows as a friendly amendment. Mayor Pro Tem Capello accepted the friendly amendment and said the understanding was that Mr. Fellows was not going to post the financial guarantee until it was proven to the City that he caused the damage.

Member Paul said she was in agreement with what had been stated previously and hoped Mr. Fellows understood that Council was trying to protect the citizens and not trying to hurt him in any way as he was one of Novi's business citizens they were hoping to work with in the future as well.

Member Mutch asked if there were two homes completed in his development. Mr. Fellows responded there was one completed and one that was very close, and the third one just got started. Member Mutch said the City was asking for financial guarantee of \$1.8 million total. Mr. Fellows said if all of the City's consultant estimates were used and the 200% multiplier was applied, he thought it was over \$1.8 million. Member Mutch said he was familiar with their work on Taft Road, and said the first phase was great and then the economy went south and the second phase had been a challenge and Mr. Fellows had a lot more visibility at that location than the location on Nine Mile. He recognized that the site was a significant challenge and he said the numbers were big and jumped out at him. He thought some of the concerns Mr. Fellows expressed regarding what Council was asking him to guarantee money for in terms of what needed to be completed and whether that was paid up front or at a certain percentage were legitimate concerns. On the other hand a lot of those meetings preceded his time on Council, so he didn't have the familiarity with a lot of the past problems other

than the general discussion as well as the details of what the committee members who worked through it went through. Therefore, to a degree, he would defer to their experience and expertise but he would be open to looking at some of these. He said the Singh Trail was an important component of the park system when completed, but he had more confidence that Mr. Fellows would be completed than he had with the rest of it would ever be completed. He said the reality was that Mr. Fellows was building and there was nothing going on with the other property. He thought they were looking at several years minimum before seeing that kind of work completed based on how things were going now. Member Mutch said regarding financial issues, he thought they absolutely had to protect the City's interests, and didn't want to leave either the City or residents who were moving into that development on the hook, if Mr. Fellows was not there. However, Council had to balance that with the reality of what this economy was today. He said when a reputable builder and developer had a development with a lot of selling points to it, and they had only sold two homes out of 70 that was a pretty stark number and was something that Council had to take into consideration as they worked with Mr. Fellows. The last thing Council wanted to do was hammer him to a point where he couldn't financially afford it. He said he would look forward to what came back from Administration based on Mayor Pro Tem Capello's comments.

Mayor Landry echoed the comments of Mayor Pro Tem Capello and would not be in favor of altering the numbers. However, he would be OK with extending the initial period from one year to two, had no problem with when the Singh Trail had to be done and was sure they could work something out that was fair to Mr. Fellows. He didn't think it made sense for Mr. Fellows to have his part of the trail there and the rest of it not be there. It didn't make sense to put him through that expense. Mayor Landry thought something could also be worked out regarding the woodland replacement and the wetlands preservation regarding the timing of all that. He said it appeared that they had worked through the sidewalk flag and let's get to the bottom of this because if it wasn't Mr. Fellows' fault he shouldn't have to pay for it. He applauded Mr. Fellows for making the first effort to be a good neighbor with respect to his neighbor. He said he would support the motion, and asked if the motion proposed gave Administration the direction they needed. Mr. Pearson believed it did and looked forward to working this out with Mr. Fellows.

Roll call vote on CM-07-09-277 Yeas: Mutch, Paul, Landry, Capello, Gatt, Margolis

Nays: None

Absent: Nagy

**CITY COUNCIL MINUTES
OCTOBER 22, 2007**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, OCTOBER 22, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS - NOVI CIVIC CENTER - 45175 W. TEN MILE ROAD**

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Gatt, Margolis, Mutch, Nagy, Paul-absent/excused.

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

Ms. Antil said this was being brought back to address the concerns that were discussed at the last meeting. Since that time, Council had been given correspondence and some changes in their packets, and she thought they might want to discuss this again.

CM-07-10-312 Moved by Margolis, seconded by Capello; CARRIED UNANIMOUSLY:

To approve Completion Agreement for SP#03-46 Provincial Glades RUD in accordance with the requirements of Chapter 26.5, subject to Provincial Glades signing the agreement within 14 days.

DISCUSSION

Mr. Schultz said Ms. Antil sent some correspondence to his office, which had been an ongoing topic of discussion on Friday and today. He noted one of the things that he thought was apparent was that the proponent was not present from Provincial Glades. Mr. Schultz said they had worked with them at Council's request quite a bit since the last meeting and there were a few issues they had not signed off on yet. He thought one of the things that needed to be appended to the motion, if Member Margolis would consider it, was to make the approval subject to Provincial Glades signing it and to add a timeframe. Mr. Schultz thought a reasonable timeframe would be 14 days, which would give them time to talk to whoever it was they needed to get that approval from. Member Margolis and Mayor Pro Tem Capello accepted the amendment.

Member Mutch asked Mr. Schultz to address what would happen if Provincial Glades decided not to sign these amended agreements. Mr. Schultz said the agreement was covering the fact that under the ordinance there was two years to complete site improvements, which would be all the roads, landscaping and things like that. He said because this development had taken a while to get launched, they've passed the two years. Mr. Schultz said the agreement extended sometimes and did so under some conditions, and technically they were in default under the ordinance now. He said the City would have a number of ways, under the ordinance, to address that through circuit court or district court action or to look at the financial guarantees. He noted there were a number of

options available and what this agreement did was try to work with the developer so they wouldn't have to exercise those options. He said if Council didn't have an agreement, they would have to pick one of those options. Member Mutch said in the process of developing this agreement, the Administration came to some understanding that the cost that was originally projected needed some adjustment, and they were presenting those now as Council's final understanding of what the costs would be. He asked if that would carry over if another developer took over the project, or would it revert back to the previous formulas. Member Mutch asked if this agreement was specific to this particular applicant, or would Council move forward with the understanding that these were the actual numbers they would work with no matter who came before Council and made this request. Mr. Schultz said the agreement was specific to Provincial Glades, who were still the owner of the property, as far as he knew. He said if there was a need to amend it, the Council would have a lot of discretion in deciding what the numbers ought to be. He said the letters of credit that were in place now and referred to in the agreement were only posted by Provincial Glades, and the ordinance required new letters, if there was a transfer of the property. Member Mutch said there was a question raised regarding Council approving an agreement and whether it would create a legal or financial liability for Provincial Glades. Mr. Schultz said from the City's perspective, at this point, as he understood the Council's motion, Council was approving the form and Provincial Glades would either agree or disagree. He said by just approving the form or the agreement, he didn't think the motion on the table had a specific application to the property at this point.

Roll call vote on CM-07-10-313 Yeas: Landry, Capello, Gatt, Margolis, Mutch, Nagy

Nays: None

Absent: Paul

**CITY COUNCIL MINUTES
NOVEMBER 26, 2007**

Excerpt from

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, NOVEMBER 26, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE RD.**

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Crawford, Gatt, Margolis, Mutch, Staudt

1. Approval to rescind the Completion Agreement for SP#03-46 Provincial Glades RUD between the City of Novi and Provincial Glades, LLC and to postpone this matter pending completion of a property transfer by Pinnacle-Novis, LLC in accordance with the requirement of Chapter 26.5.

CM-07-11-334 Moved by Capello, seconded by Margolis; CARRIED UNANIMOUSLY:

To rescind the Completion Agreement for SP#03-46 Provincial Glades RUD between the City of Novi and Provincial Glades, LLC and to postpone this matter pending completion of a property transfer by Pinnacle-Novis, LLC in accordance with the requirement of Chapter 26.5.

Mr. Pearson said the Council had given a 15 day extension because of property ownership transfer issues, and they needed a little more time.

Mayor Landry asked why they were rescinding it instead of extending it. Mr. Schultz responded that the property ownership was going to change hands. He said they would end up bringing back an agreement with an entirely different entity that apparently already had an agreement in place but had not closed on it yet. He thought the staff's conclusion was to make the prior developer go through and execute this document, which had things in it he already said he couldn't do when there was someone waiting in the wings, who they had met with and who said they were willing to sign it, if a couple of changes were made. Mr. Schultz said the changes had been made and there was nothing that was going to expire in terms of a financial guarantee already posted at this time.

Mayor Pro Tem Capello said Pinnacle was on board with what they were doing and he didn't want them to back out because they thought Council was entering into an agreement, and now they're not. Mr. Schultz said correct, and what he had was a series of conversations and a letter saying they were interested but needed to close first. He said he didn't blame them for not being willing to sign it until they had some closure.

Roll call vote on CM-07-11-334 Yeas: Gatt, Margolis, Mutch, Staudt, Landry, Capello, Crawford

Nays: None