

**CITY of NOVI CITY COUNCIL**

**Agenda Item C  
March 8, 2010**

**SUBJECT: Approval of a Completion Agreement for SP04-20 Liberty Park Condominium –Phase I, Single Family, in accordance with the requirements of Chapter 26.5**

**SUBMITTING DEPARTMENT:** Community Development *WJ*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

City Council is being asked to consider a request from Pulte Land Company, LLC to approve a Completion Agreement for Phase I of the Liberty Park Condominium, SP04-20. The development is a 19.57 acre, single family residential site condominium planned for 113 detached home sites located west of Novi Road, North of 12 Mile Road and is part of the larger Liberty Park development. This project is subject to the provisions of the City’s Street and Utility Acceptance Policy for Subdivisions and Site Condominiums, and requires a Completion Agreement as the developer has not completed the site improvements shown on the approved site plan within (2) years of recording of the condominium documents (January 11, 2005).

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

The Completion Agreement requires a minimum Financial Guarantee of \$51,250 and contemplates completion of:

- Installation of all remaining site landscaping except street trees by September 1, 2012
- Installation of 21 remaining street trees on or before September 1, 2012
- Replacement and installation of certain traffic control signs on or before September 1, 2010
- Installation and stabilization of remaining storm water facilities on or before September 1, 2010

**RECOMMENDED ACTION: Approval of a Completion Agreement for SP04-20 Liberty Park Condominium – Phase I, Single Family, in accordance with the requirements of Chapter 26.5**

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

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



March 3, 2010

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

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

Charles Boulard, Community Development Director  
City of Novi  
45175 West Ten Mile Road  
Novi, MI 48375-3024

**Re: Liberty Park -- Agreements for Completion and Maintenance  
of Improvements Pursuant to Chapter 26.5 of City Code  
Our File No. 660060 NOVI**

Dear Mr. Boulard:

As you are aware, we have prepared seven proposed Agreements for Completion and Maintenance of Improvements (the "Completion Agreement") for the various phases of the Liberty Park Development, including the following:

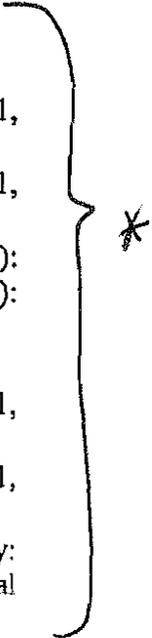
- Townes at Liberty Park --Phase I, Multiple Family
- Townes at Liberty Park --Phase II, Multiple Family
- Liberty Park Collector Road (Declaration Drive)
- Liberty Park Pool and Pool House
- Liberty Park Condominium --Phase I, Single Family
- Liberty Park Condominium --Phase II, Single Family
- Liberty Park Condominium --Phase III, Single Family

The different developments within the overall Liberty Park Development are in different stages of completion. While the pool house is nearly complete and has just a few outstanding punch list items, such as repairing sidewalks and curbs, in other phases, the developer has completed only minimal site work. Though Pulte has requested different time frames for completion of each phase of the development, Pulte has confirmed that it does not intend to walk away from the development. Pulte has expressed its commitment to stay in the City and keep the development moving forward.

The requests for extension for completion of each individual phase of the development are based on today's economic conditions and the expectation that residential home sales will be slow for the in the next few years. Pulte has asked for extensions of time for each phase so that site improvements are not damaged or destroyed as home construction progresses. City staff, including your office and the Finance Department through Marina Neumaier have carefully reviewed

the requests and assigned or agreed to appropriate extensions and terms. Phases that currently are near full build out have been given shorter time frames for completion, taking into consideration the expectations of the residents currently living in the developments.

The time frames for completion of site improvements are as follows:

- Townes at Liberty Park –Phase I, Multiple Family: September 1, 2014
  - Townes at Liberty Park –Phase II, Multiple Family: September 1, 2014
  - Liberty Park Collector Road (Declaration Drive up to Pool House): September 1, 2010; (Declaration Drive after Pool House): September 1, 2014
  - Liberty Park Pool and Pool House: September 1, 2010
  - Liberty Park Condominium –Phase I, Single Family: September 1, 2012
  - Liberty Park Condominium –Phase II, Single Family: September 1, 2014
  - Liberty Park Condominium –Phase III, Single Family: Temporarily Suspended Pursuant to 26.5 Conditions for Minimal Site Work
- 

Because minimal site work has been initiated with respect to Liberty Park Condominium –Phase III, Single Family, the developer is seeking only to secure the site and temporarily suspend construction pursuant to the conditions in Chapter 26.5 of the Code which allow for suspension in the event no building sites have been sold within the development. Once the site is secured, performance guarantees will be released. Before recommencing construction, another preconstruction meeting will be held and new performance guarantees posted.

These accommodations for Pulte in our view meet the intent of the extension authority under Chapter 26.5. For all phases, site work that may affect the public, health, safety and welfare will be required to be addressed immediately and has not been included in the extensions. In addition, the performance guarantees posted by the developer which are held to secure Pulte's promise to eventually complete the work will continue to be held by the City and will be increased by a 2.0 multiplier to account for potential increased construction costs during the extension.

If you have any questions regarding these documents, please let me know. Otherwise, they are ready to be placed on an agenda for Council consideration.

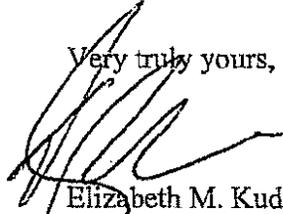
Charles Boulard, Community Development Director

March 3, 2010

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

Very truly yours,



Elizabeth M. Kudla

EMK

C: Maryanne Cornelius, City Clerk  
Clay Pearson, Assistant City Manager  
Rob Hayes, DPS Director  
Marina Neumaier, Assistant Finance Director  
Aaron Staup, Construction Engineering Coordinator  
Sheila Weber, Treasurer's Office  
Dave Beschke, Landscape Architect  
John Freeland, ECT, Inc.  
Ted Meadows, Spalding DeDecker  
Dean Trella, Stantec  
Sarah Marchioni, Building Permit Coordinator  
Kevin Christiansen, Pulte Land Company, LLC  
Clark Doughty, Esquire  
Thomas R. Schultz, Esquire

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February 26, 2010

The Honorable David Landry  
Mayor  
City of Novi  
45175 West Ten Mile Road  
Novi, Michigan 48375

Honorable Members of the  
Novi City Council  
City of Novi  
45175 West Ten Mile Road  
Novi, Michigan 48375

Re: Liberty Park and The Townes at Liberty Park  
Agreements For Completion and Maintenance Of Improvements

Greetings:

We have submitted to you for the City Council's review and approval Agreements for Completion And Maintenance Of Improvements for our current developments commonly known as Liberty Park and The Townes at Liberty Park. These draft agreements were recently prepared by the City Attorney after meetings between the City of Novi and Pulte Homes.

Pulte Homes has been involved in the development of Liberty Park and The Townes at Liberty Park since May 2005. During that time we have worked with the City Council and the City staff and City consultants to develop and work toward completion of the community. On June 7, 2004, the City Council approved the final site plan for Liberty Park Single Family Phase I. On October 4, 2004, the City Council approved the final site plan for The Townes at Liberty Park Multiple Family Phase I. Two additional phases of single family residential, one additional phase of multiple family residential, a collector road and a pool and pool house were also subsequently approved. When completed, Liberty Park and The Townes of Liberty Park will consist of a mixture of 305 single family residential units and 456 multiple family residential units, for a total of 761 units.

All but one phase of this multi-phase community has been initially developed, and production of over half of the approved residential units is complete. However, development of the last single family residential phase has not yet commenced, and final development work, to some degree, for all phases remains to be completed. As you are aware, the current economy has created unexpected challenges for the housing industry, and especially in southeastern Michigan. Unfortunately, no one anticipated this economic Liberty Park and The Townes at Liberty Park

Pulte Homes of Michigan  
100 Bloomfield Hills Parkway, Suite 150  
Bloomfield Hills, Michigan 48304

Agreements For Completion and Maintenance Of Improvements  
February 26, 2010  
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downturn, or its effects on the housing industry when the original development and the site plans for Liberty Park and The Townes at Liberty Park were approved. We find that the time-lines originally established are no longer feasible, and have requested a modification, based on current economic conditions.

As you know, we have worked very closely with City staff and the City's consultants on the review, approval and development of Liberty Park. During the past six (6) years it has been our pleasure to work in cooperation and in partnership with the City of Novi in developing and building what we believe is one of the premiere residential communities in the City. Without the continuing cooperative effort between the City of Novi and Pulte Homes, development and completion of this outstanding community would not be possible, and we look forward to being able to continue that relationship through completion of the project.

Please review the draft agreements and contact me if you have any questions. We know that it is an exciting time in the City of Novi and we are very proud to continue be part of it. We look forward to meeting with the City Council on March 8, 2010 for the Council's review, consideration and approval of the Agreements For Completion And Maintenance Of Improvements for Liberty Park and The Townes at Liberty Park.

Thank you for your time and consideration.

Very truly yours,



Kevin P. Christiansen, AICP, PCP  
Land Planning and Entitlement Manager

Attachments

Cc: Steve Atchison, Pulte Homes  
Clark Doughty, Bodman

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

LIBERTY PARK – SINGLE FAMILY  
PHASE I

**AGREEMENT FOR COMPLETION  
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated \_\_\_\_\_, 2010, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (“City”), and Pulte Land Company, LLC, a Michigan limited liability company, whose address is 450 West Fourth Street, Royal Oak, Michigan 48067 (“Developer”) who represents itself hereby as the owner of the Property and Developer of the Development.

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

Developer is the owner and developer of the land in the City of Novi, Oakland County, Michigan, described on the attached Exhibit A (the “Property”). The subject land has been approved for development as a 19.57 acre, single-family residential site condominium development pursuant to the provisions of the City of Novi Zoning Ordinance, to contain one hundred and thirteen (113) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the “Development.” The Development is part of a larger overall development on property subject to the terms and conditions of an Agreement for Entry into Consent Judgment, dated June 25, 2002.

As part of the approval process for the Development, Developer has offered and agreed to develop the Property, to complete certain improvements, and to proceed with other undertakings in compliance with applicable City Ordinances.

Consistent with all applicable laws and ordinances in effect at the time of site plan approval, more particularly the City of Novi Utility and Street Acceptance Policy for Subdivisions and Site Condominiums, site improvements shown on the site plan are require to be completed prior to the expiration of two (2) years from the recording of the condominium subdivision plan or plat in a subdivision or site condominium development. The condominium subdivision plan for the development was recorded on or about January 11, 2005. To obtain an extension with respect to completion of the site improvements, the Developer has offered to provide, and the City is willing to accept, certain assurances to the City that such improvements relating to the Development will be properly completed and maintained pursuant to a schedule. Such assurances include providing a performance guarantee in an amount no less than two hundred (200) percent of the cost of the work to be completed, and a schedule for completion and maintenance of the improvements for the Development.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

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

2. Performance Guarantee Posted

Prior to or with the execution of this Agreement, the Developer has provided, or does provide, to the City, a performance guarantee in the total amount of \$ 51,250.00 to guarantee completion and maintenance of improvements for the Development, as estimated and itemized in Paragraph 3, below. Such performance guarantee funds have been posted in the form of irrevocable Letter of Credit No. \_\_\_\_\_ issued by Comerica Bank ("Bank"), to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year the letter of credit shall provide by its terms that it will, without further action by any person or entity, be continuously renewed and be continuously effective for successive periods of one (1) year, subject to termination only by 60 days advanced, written notice by Bank to the City's Assistant Finance Director. As a condition to the termination of the effectiveness of the letter of credit, Bank shall be required to provide to the office of the City's Assistant Finance Director, with 60 days advanced written notice, a statement that the letter of credit shall terminate at the end of the 60 day period. Such notice shall be required regardless of the stated termination date of any other documentation. Prior to the date of termination at the conclusion of the 60 day period, the letter of credit shall at all times be effective and payable according to its terms.

3. Items of Improvement and Maintenance

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

(a)	Landscape:	\$ 1,625.00
(b)	Street Trees	\$ 8,400.00
(c)	Traffic Control Signs:	\$ 5,600.00
(d)	Storm Water Detention	\$ 10,000.00
	Subtotal:	\$ <u>25,625.00</u>
	200% Multiplier:	x 2
	<b>Total Financial Guarantee:</b>	<b>\$ <u>51,250.00</u></b>

4. Completion and Maintenance of Improvements; Schedule and Requirements

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

- a) Improvement Item 3(a) above contemplates and includes the installation of all site landscaping, not including street trees. All site landscaping shall be completed on or before September 1, 2012. For two (2) years from the date of completion of the installation of all such landscape plantings installed as part of the Development, Developer shall, under this Agreement, maintain the trees and landscaping that were so installed, which maintenance shall include the replacement of any dead, substantially dead, diseased, or removed trees or landscaping during such two (2) year period.
- b) Improvement Item 3(b) above contemplates and includes installation of 21 remaining street trees. The remaining street trees shall be installed before the issuance of the final 5 certificates of occupancy within the Development, and in all events on or before September 1, 2012.. For two (2) years from the date of completion of the installation of all such trees installed as part of the Development, Developer shall, under this Agreement, maintain the trees that were so installed, which maintenance shall include the replacement of any dead, substantially dead, diseased, or removed trees during such two (2) year period.
- c) Improvement Item 3(c) above contemplates and includes replacement and installation of certain traffic control signs within the Development. The traffic control signs shall be installed prior to the issuance of the final five (5) certificates of occupancy within the development, and in all events, on or before September 1, 2010.
- d) Improvement Item 3(d) above contemplates and includes the installation and stabilization of storm water facilities, including but not limited to, detention and/or retention facilities for the Development. Storm water facilities shall be completed prior to the issuance of the final certificate of occupancy within the Development, and in all events on or before September 1, 2010.

5. City Authority to Complete and/or Maintain.

In the event Developer has failed to complete and/or maintain the improvements itemized in Paragraph 3, above, within the time periods and in the manner specified in this Agreement, and provided the City has given the Developer 30 days notice of the failure to timely complete and/or maintain and Developer has not completed and/or maintained all of such improvements within said 30 days, the City shall have the authority, but shall not have the legal obligation, to take one or more of the following actions:

- (a) The City may draw the funds from the letter of credit or other securities

posted and enter upon the Development through its officials, employees, agents, and/or contractors and complete and/or maintain the improvements, or restore the Property or areas disturbed by the Development. In such event, all costs and expenses incurred shall be paid from the proceeds of the funds drawn on the letter of credit or otherwise obtained from the performance guarantee posted. Any amounts of unused proceeds of the performance guarantee shall be returned to Developer.. Developer, and all of Developer's officers, employees, consultants and agents, shall be obligated to act and work in cooperation with the City to bring about completion and/or maintenance of the improvements as contemplated in this Agreement, or restoration, and shall provide the City with all drawings, contracts, documentation, public and private correspondence, agreements and other materials relating to any such improvements, restoration and/or maintenance. Notwithstanding other provisions to the contrary, in the event the City receives a notice of termination from Bank with regard to the letter of credit, or from any other securing party as to performance guarantee posted pursuant to this Agreement, and the improvements and/or maintenance itemized in Paragraph 3, above, have not been completed or fulfilled as required by this Agreement, the City shall be entitled to immediately draw the funds from the letter of credit or other performance guarantee posted, with written notice to Developer, and proceed as specified in this paragraph.

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

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

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

## 6. Additional Liability

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

delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed to be delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may also be collected by suit initiated against the Developer, and in the event the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable actual attorney fees incurred by the City in connection with such suit.

7. Rebate or reduction of Performance Guarantee

The City shall not release a performance guarantee until (1) all fees that are due to the City have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required; and (4) the City has determined that the conditions and requirements of the permit/approval otherwise specified in the performance guarantee have been met and final approval of same has been granted. Upon submission of a Request for Private Development Inspection to the City, subject to all inspection fees having been paid, the City shall complete the requested inspections and issue inspection reports within 30 days within the scope of the City seasonal inspection periods (typically March 15 through November 15, weather dependent) and subject to the Developer undertaking any and all access/preparation requirements necessary to facilitate inspection.

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

8. Binding Effect

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

9. Owner's Warranty on Ownership

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

10. Delay in Enforcement

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

11. Severability

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

12. Lawful Document

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

13. Applicable Law

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

14. Current and Future Owners and Developers.

As used in this Agreement, the term "Developer" shall mean and include the undersigned party designated herein as developer and owner of the Property, as well as all future and successor persons and entities that become owners and developers of all or any portion of the



**“CITY”:**  
**CITY OF NOVI**  
a Michigan municipal corporation

BY: \_\_\_\_\_

BY: \_\_\_\_\_

STATE OF MICHIGAN        )  
  ) SS  
COUNTY OF OAKLAND     )

The foregoing Agreement was acknowledged, signed and sworn to before me on this \_\_\_\_\_ day  
\_\_\_\_\_, 2009, by \_\_\_\_\_, Mayor and \_\_\_\_\_, Clerk of the City of  
Novi.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_