



cityofnovi.org

**CITY of NOVI CITY COUNCIL**

**Agenda Item E  
March 8, 2010**

**SUBJECT: Approval of a Completion Agreement for SP04-66 Liberty Park Condominium –Phase III, Single Family, in accordance with the requirements of Chapter 26.5**

**SUBMITTING DEPARTMENT:** Community Development *WBS*

**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 III of the Liberty Park Condominium, SP04-66. The development is a 12.67 acre, single family residential site condominium planned for 56 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 Chapter 26.5, and requires a Completion Agreement as the developer has not completed the site improvements shown on the approved site plan within (2) years of issuance of the initial permit for any improvements (August 17, 2005). The project is currently on hold from the standpoint of the developer pending more favorable market conditions. According to the developer, no lots have been sold.

In this case, the developer has commenced with minimal site improvements including clearing and grading. The developer is requesting an extension and waiver as to improvements not yet commenced. Should Council agree to the waiver, the developer will be required to maintain a limited amount of performance guarantees for only the work already initiated. 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 that certain improvements relating to the development will be properly completed and maintained according to a schedule including performance guarantees for soil erosion and sedimentation control

The Completion Agreement requires a minimum Financial Guarantee of \$76,414 and contemplates:

- Ongoing required installation and maintenance of soil erosion and sedimentation controls through issuance of the final certificate of occupancy or if the initial permit is closed out, on a unit by unit basis.
- Completion of wetland and buffer restoration and stabilization on or before September 1, 2010

**RECOMMENDED ACTION: Approval of a Completion Agreement for SP04-66 Liberty Park Condominium – Phase III, 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				

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

LIBERTY PARK CONDO  
PHASE III – SINGLE FAMILY  
SITE CONDOMINIUM DEVELOPMENT

**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, whose address is 450 West Fourth Street, Royal Oak, MI 48322 (“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 12.67 acre single-family residential Site Condominium Development pursuant to the provisions of the City of Novi Zoning Ordinance, to contain fifty-six (56) 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. Chapter 26.5 of the City of Novi Code of Ordinances, Section 26.5-5 (b) requires completion of actual construction and installation of all required site improvements shown on the site plan within two (2) years after the issuance of the initial permit for any site improvements, or within six (6) months after a temporary occupancy permit has been issued for any structure on the property, whichever is shorter or occurs first. However, Section 26.5 (c) permits Developer to request a waiver from City Council from this requirement with respect to site improvements that have not been commenced upon Developer’s showing that, (1) few or limited physical improvements have occurred on site, such as minimal clearing and grading, no site improvements such as roads or utilities have been installed or constructed, and no footings or foundations for any buildings have been commenced, or alternatively that any such improvements will be removed and the site restored as required by the City; and, (2) no lot, unit, or parcel within the development or project has been transferred to a third party.

The initial permit for the Development was issued on August 17, 2005; however, Developer has commenced minimal site improvement, including, clearing of trees and grading. Developer asserts no unit or lot within the Development has been transferred to a third party. Because two (2) years have elapsed since the initial permit, the Developer must either complete the improvements immediately, or request an extension of time and a waiver from the requirement to increase financial guarantees to (200) percent of the cost of work to be completed within the Development. Section 26.5-5 (b) requires that extension of such time periods may be granted by City Council upon Developer's showing that the delay is not dilatory or unreasonable under all circumstances.

Because the Developer is requesting an extension and waiver as to improvements not yet commenced, based upon placement of the Development on hold pending more favorable market conditions, and City Council has agreed to such waiver, Developer shall maintain a limited amount of performance guarantees with respect to only those improvements that have been initiated. Developer must provide a written completion agreement, together with a revised performance guarantee, pursuant to Section 26.5-5(c) 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 certain improvements relating to the Development will be properly completed and maintained pursuant to a schedule. Such assurances include providing a performance guarantees for soil erosion and sedimentation control in the amount set forth below as determined by City Council

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 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 \$ **\$76,414.00** 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"), to guarantee completion and maintenance of improvements for the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year a 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)	Soil Erosion and Sedimentation Control:	\$ 22,545.00
(b)	Wetlands	\$ 15,662.00
Subtotal:		<u>\$38,207.00</u>
200% Multiplier:		x 2
<b>Total Financial Guarantee:</b>		<b>\$ 76,414.00</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 without limitation: (i) the immediate installation of all required soil erosion and sedimentation controls; and (ii) completion of repairs and maintenance of the soil erosion and sedimentation controls within and for the Development on an ongoing basis until issuance of the final certificate of occupancy within the Development. Alternatively, if the Development is stabilized and the existing soil erosion permit is closed out prior to the issuance of any building permits within the Development, then the financial guarantee amounts for soil erosion control may be released at that time, and individual soil erosion permits shall be required for each unit within the Development.
- b) Improvement Item 3(b) above contemplates and includes the completion of restoration and maintenance of wetlands within the Development, including soil stabilization adjacent to wetland areas as well as restoration of the 25-foot natural feature setback area. Wetland stabilization and restoration activities shall be completed on or before 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, including but not limited to the installation of all required woodland replacement trees. 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. Failure to renew soil erosion permits shall constitute a default under this Section and a partial drawing may be made on the Letter of Credit for purpose of renewing the permit and payment of inspection fees.

(b) 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.

(c) The City may, in its discretion, in accordance with the provisions of Chapter 26.5, grant Developer additional time beyond the time periods referenced 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 for the improvements set forth in paragraph 3 above, 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 site improvement 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. 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 set forth in Paragraph 3, above. The applicant is responsible for the actual cost of inspections requested pursuant to this section.

8. Pre-Construction Meeting

Prior to re-commencing any construction within the Development, Developer

shall schedule a pre-construction meeting with the City, and shall be required to post such performance guarantees as are required by City ordinance.

### Binding

9. 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.

### 10. 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.

### 11. 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.

### 12. 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.

### 13. 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.

14. Applicable Law

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

15. 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.

16. Headings.

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

17. Effective Date.

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

**"DEVELOPER"**

PULTE LAND COMPANY, LLC,  
a Michigan limited liability company

By: \_\_\_\_\_ Its: \_\_\_\_\_

STATE OF MICHIGAN    )  
                                  )ss  
COUNTY OF OAKLAND    )



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

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

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

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

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

STATE OF MICHIGAN        )  
  ) SS  
COUNTY OF OAKLAND     )

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

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