



## CITY of NOVI CITY COUNCIL

**Agenda Item C**  
**September 24, 2012**

**SUBJECT:** Approval of a Completion Agreement with S.E. Michigan Land Holdings, LLC for SP00-53A, the Maybury Park Residential Development Phases I & II located north of Eight Mile Road and west of Beck Road, in accordance with the requirements of Chapter 26.5.

**SUBMITTING DEPARTMENT:** Community Development Department *cmj*

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

**BACKGROUND INFORMATION:**

City Council is being asked to consider a request from S.E. Michigan Land Holdings, LLC to approve a Completion Agreement for the Maybury Park Residential Development Phases I & II, SP00-53A.

Chapter 26.5 of the Novi City Code specifies procedures and required financial guarantees that must be in place if development of a project extends beyond a period of 2 years. A formal Completion Agreement document outlining the remaining work and timeline for completion is required to be submitted for approval by the City Council. Posting of financial guarantees typically equal to 200% of the value of the outstanding work is also required. The Completion Agreement and financial guarantees protect the residents of Novi from the possible expense were the City have to complete an unfinished project due to developer default or nonperformance.

The Maybury Park development is an approximately 134 acre, single-family Residential Unit Development containing 106 single family home sites established as part of a site condominium. The project is located north of Eight Mile Road and west of Novi Road.

This project is subject to the provisions of Chapter 26.5 of the Novi City Code, and required a Completion Agreement because Babcock Homes, the original developer, had not completed the site improvements shown on the approved site plan within (2) years of issuance of the initial permit for any improvements (April 27, 2005). S.E. Michigan Land Holdings, LLC is the current owner of the project and successor developer.

As a condition of the Completion Agreement, S.E. Michigan Land Holding, LLC, the successor 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. The City currently holds financial guarantees of \$603,338.00 in the form of a letter of credit.

The Completion Agreement requires a minimum Performance Guarantee of \$726,300.00 and contemplates completion of:

- Drainage and paving improvements for Phase II prior to issuance of the final (3) Certificates of Occupancy within Phase II of the development, and in all events before October 1, 2012
- Maintenance and supplementary installation of Tree Protection fencing and Soil Erosion Control measures throughout the duration of the development project.
- Restoration of the municipal right of way on or before October 1, 2014.
- Ongoing monitoring and maintenance of Wetland areas.
- Installation of 78 remaining street trees within Phase I and 219 street trees within Phase II by October 1, 2014.

Staff supports the approval of the request.

**RECOMMENDED ACTION:** Approval of a Completion Agreement with S.E. Michigan Land Holdings, LLC for SP00-53A, the Maybury Park Residential Development Phases I & II located north of Eight Mile Road and west of Beck Road, in accordance with the requirements of Chapter 26.5.

	1	2	Y	N
<b>Mayor Gatt</b>				
<b>Council Member Casey</b>				
<b>Council Member Fischer</b>				
<b>Council Member Margolis</b>				

	1	2	Y	N
<b>Council Member Mutch</b>				
<b>Council Member Staudt</b>				
<b>Council Member Wrobel</b>				



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Elizabeth Kudla Saarela  
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September 10, 2012

Charles Boulard, Director  
CITY OF NOVI  
Community Development  
45175 W. Ten Mile Road  
Novi, MI 48375

**RE: Maybury Park  
Agreement for Completion and Maintenance of Improvements**

Dear Mr. Boulard:

Enclosed please find the proposed Completion Agreement for Phases I and II of Maybury Park Estates that is required by Chapter 26.5 of the City of Novi Code because site improvements for the development have not been completed within 2 years from the issuance of the initial permit. Because there are minimal improvements to be completed for Phase I, including only street trees and maintenance of soil erosion control measures, we have included both Phases into a single agreement. The terms of the Agreement are similar to previous completion agreements that have been approved by City Council pursuant to Chapter 26.5.

The specific improvements that are incomplete in Phase I include only the installation of street trees and the on-going installation and maintenance of soil erosion and sedimentation control measures during home construction. Staff recommends an additional two years to install the remaining 78 street trees, or prior to the final three certificates of occupancy, whatever comes first.

The incomplete improvements for Phase II include the completion of site work, including road maintenance and repairs and the installation of the final wearing course, the installation and maintenance of tree protection fencing, the monitoring of wetlands within the overall development, the installation of street trees, ROW restoration and the installation and maintenance of soil erosion control measures throughout construction. The Developer has proposed and City Staff has agreed that site work, including the asphalt wearing course, be completed immediately, and have provided a date of no later than October 1, 2012. Upon completion of the wearing course, a significant portion of the Performance Guarantee (approximately \$479,100) is proposed to be released. City staff has recommended the remainder of the improvements be completed by October 1, 2014. Wetland monitoring for the overall site will be on-going for the five year time period set forth in the Wetland Permit.

September 10, 2012.

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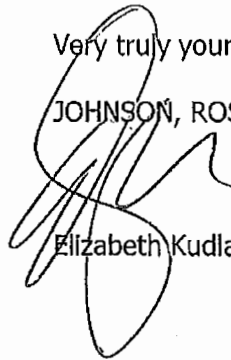
The City is currently holding a letter of credit in the amount of \$603,338.00. The Developer will post a replacement letter of credit in the amount of \$726,300.00, with the expectation that \$479,100 will be released upon the installation, inspection and approval of all site work within Phase II before October 1, 2012. Once posted, the Letter of Credit No. should be handwritten into Paragraph 2 of the Completion Agreement.

Based on all of the above, the proposed Completion Agreement is acceptable in the format proposed and meets with the requirements of Chapter 26.5.

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

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth Kudla Saarela

EKS

Enclosures

- C: Maryanne Cornelius, Clerk (w/Enclosures)  
Marina Neumaier, Assistant Finance Director (w/Enclosures)  
Barb McBeth, Deputy Community Development Director (w/Enclosures)  
Sheila Weber, Treasurer's Office (w/Enclosures)  
Kristin Pace, Treasurer's Office (w/Enclosures)  
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)  
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)  
Dave Beschke, Landscape Architect (w/Enclosures)  
Sue Troutman, City Clerk's Office (w/Enclosures)  
Timothy Koltun, Esquire (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

MAYBURY PARK  
PHASES I & II

**AGREEMENT FOR COMPLETION  
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated \_\_\_\_\_, 2012 by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road Novi, Michigan 48375 ("City"), and S.E. Michigan Land Holding LLC, a Michigan limited liability company, whose address is 51237 Danview Technology Court, Shelby Township, MI 48315 ("Developer"). Pursuant to an Assignment of Developer's Rights dated March 28, 2011 executed by Maybury Park, L.L.C. ("Original Developer") in favor of Developer, Original Developer assigned to Developer all of Original Developer's rights and interest in all development documents for that certain residential project located in Novi, Michigan and known as the Maybury Park Residential Unit Development ("Development"). Such development documents include the Master Deed of the Development, as the same has been amended, and the approved site plan number 00-53A, recommended for approval by Planning Commission on December 19, 2001, pursuant to Residential Unit Development Agreement ("RUD Agreement") approved by City Council on September 10, 2001, as the same has been amended, with final stamping sets dated August 5, 2003 for Phase I and March 21, 2005 for Phase II (the "Site Plan") (the foregoing being collectively referred to as, the "Development Documents"). Under Section 26.5-4 of Chapter 26.5 of the City of Novi Code of Ordinances, Developer is the "successor" of Original Developer with respect to the Project. The Development is located within the land described in attached Exhibit A (the "Property").

RECITATIONS:

The Property has been approved for development as a roughly 134- acre, single-family Residential Unit Development pursuant to the provisions of Section 2404 of the City of Novi Zoning Ordinance, and contains one hundred and six (106) single family home sites established as part of a site condominium. The site condominium will be herein known as the "Development." Phase I of the Development includes 43 residential units and corresponding improvements, and is shown on the attached Exhibit B. Phase II of the Development includes 63 residential units and corresponding improvements, and is shown on the attached Exhibit B.

Developer intends to complete the Development in accordance with the approved Site Plan subject to the RUD Agreement and as otherwise provided by applicable law including all applicable approvals and ordinances and this Agreement.

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 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 April 27, 2005. Because more than two (2) years has elapsed since the initial permit, the site improvements were to have been completed prior to the date of this Agreement. Accordingly, Developer must either complete the improvements immediately, or obtain 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 a period greater than six (6) months for reasons including but not limited to delays resulting from weather conditions and/or delays in securing required approvals/permits from outside regulatory agencies, and unforeseen economic events or conditions.

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, 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 unless otherwise provided by City Council, 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 inclusive of the above Recitations 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 the RUD Agreement, all applicable laws and ordinances, and that such completion 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 will provide, to the City, a performance guarantee in the total amount of \$726,300.00 to guarantee completion and maintenance of those improvements for Phases I and II of the Development that are estimated and itemized in Paragraph 3, below (collectively, "Improvements"). Such performance guarantee funds have been or will be posted in the form of irrevocable Letter of Credit No. \_\_\_\_\_ issued by JPMorgan Chase Bank ("Bank"), to guarantee completion and maintenance of the Improvements, 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 advance, 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 advance 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 letter of credit may be drawn upon by the City only as expressly permitted in this Agreement. Whenever the letter of credit is to be reduced pursuant to this Agreement, such reduction shall be effected by the delivery by the Developer to the City of either an amendment to the letter of credit that provides for such reduction or, as a replacement for such letter of credit, a new irrevocable letter of credit in the reduced amount that names the City as the beneficiary thereof, and, in the case of a new letter of credit, the City shall simultaneously deliver to the Developer the letter of credit that is being replaced by such new letter of credit.

### 3. Items of Improvement

Subject to changes or damages to the Improvements that may occur as a result of continuing construction by Developer, the items of improvements and maintenance included within this Agreement, and the estimated cost of completion and ongoing maintenance, are set forth below:

a. Incomplete Sitework – Phase II (Drainage and Paving Improvements)	\$479,100.00
b. Woodland Tree Protection Fence	\$ 7,500.00
c. Right of Way Restoration	\$ 2,000.00
d. Wetlands	\$ 10,000.00
e. Street Trees-Phase 1	\$ 25,350.00 (not subject to multiplier)
f. Street Trees-Phase II	\$ 142,350.00
g. Soil erosion and sedimentation control – Phase I	\$ 30,000.00 (not subject to multiplier)
h. Soil erosion and sedimentation control – Phase II	\$ 30,000.00 (not subject to multiplier)
<b>Total Performance Guarantee:</b>	<b>\$726,300.00</b>

\*The amount allocated to each of items a, b, c, d and f above represents the estimated cost to complete such item multiplied by 200%.

### 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 3a includes pavement repairs to the roads located within Phase II of the Development, removal and replacement of asphalt base course to the roads within Phase II of the Development if required because of defects in such roads, repairs to curbs of roads located within Phase II of the Development, maintenance and repairs of storm water structures that directly receive storm water runoff from roads within Phase

II of the Development and installation of the asphalt wearing course of paving to the interior roads within Phase II of the Development. Improvement Item 3a shall be completed prior to the issuance of the final three (3) certificates of occupancy for units within Phase II of the Development, and in all events, before October 1, 2012. Until such time as the asphalt wearing course is installed to the interior roads within Phase II of the Development, Developer shall be responsible under this Agreement for maintenance and repairs of the interior roads within Phase II of the Development. For purposes of this Agreement "maintenance and repairs" shall include removing of construction debris from the interior roads within Phase II of the Development, repairing pot holes and abnormal cracks, adding new materials if necessary, providing for proper drainage, constructing all needed structures (e.g., without limitation, lateral support, drainage, etc.), resurfacing and such other action as shall be necessary to provide structural integrity for the interior roads within Phase II of the Development or to provide proper drainage of storm water runoff from such interior roads.

- b) Improvement Item 3b includes installation of tree protection fencing in the Development in connection with the construction of unbuilt units in order to protect existing trees from damage. The tree protection fence shall be installed on a unit by unit basis, as needed, at the back of unbuilt units that are adjacent to existing open space/common area.
- c) Improvement Item 3c includes security for restoration for any work proposed within the right of way of the arterial system of the City as construction of Phase II of the Development is ongoing. Improvement Item 3c shall be completed in all events prior to the issuance of the final certificate of occupancy for a unit within the Development, and in all events on or before October 1, 2012.
- d) Improvement Item 3d includes the monitoring of wetlands within the Development with respect to the vegetation and seed material that was installed in 2011 until such time as the seed material installed that year is established. Monitoring shall continue for up to the 5 year monitoring period. The first growing season is for 2012. Monitoring reports must be submitted to the Community Development Department by December 1<sup>st</sup> for each year.
- e) Improvement Item 3e includes the installation of the remaining 78 street trees within Phase I of the Development. The remaining street trees shall be installed before the issuance of the final three (3) certificates of occupancy for units within Phase I of the Development, and in all events, before October 1, 2014. Developer shall, under this Agreement, maintain each tree that is so installed for a period of two years after such installation, which maintenance shall include the replacement of such tree if it becomes dead, substantially dead or diseased such that removal



thereof is reasonably necessary or is otherwise removed other than because it is dead, substantially dead or diseased. The Developer shall, if Developer has posted or caused to be posted with the City a maintenance guarantee as contemplated by Section 26.5-10 of Chapter 26.5 of the City of Novi Code of Ordinances, receive partial reductions in the Performance Guarantee for street trees that have been installed for at least two (2) years within Phase I of the Development after the date of this Agreement. The reduction shall be made annually and based on (i) the percentage obtained by dividing the total number of street trees that have been installed within Phase I of the Development after the date of this Agreement by 78 and (ii) the portion of the Performance Guarantee allocated to Improvement Item 3e in Paragraph 3, above.

- f) Improvement Item 3f includes the installation of the remaining 219 street trees within Phase II of the Development. The remaining street trees shall be installed before the issuance of the final three (3) certificates of occupancy for units within Phase II of the Development, and in all events, before October 1, 2014. Developer shall, under this Agreement, maintain each tree that is so installed for a period of two years after such installation, which maintenance shall include the replacement of such tree if it becomes dead, substantially dead or diseased such that removal thereof is reasonably necessary or is otherwise removed other than because it is dead, substantially dead or diseased. The Developer shall, if Developer has posted or caused to be posted with the City a maintenance guarantee as contemplated by Section 26.5-10 of Chapter 26.5 of the City of Novi Code of Ordinances, receive partial reductions in the Performance Guarantee for street trees that have been installed for at least two (2) years within Phase II of the Development after the date of this Agreement. The reduction shall, be made annually and based on (i) the percentage obtained by dividing the total number of street trees that have been installed within Phase II of the Development after the date of this Agreement by 219 and (ii) the portion of the Performance Guarantee allocated to Improvement Item 3f in Paragraph 3, above.
- g) Improvement Item 3g includes the implementation of soil erosion and sedimentation controls with respect to Phase I of the Development (excluding built units), as required pursuant to Chapter 29 of the City of Novi Code Ordinances. Nothing contained in this Agreement shall limit the remedies of the City under the City's Soil Erosion and Sedimentation Control Ordinance and other applicable laws and regulations governing soil erosion and sedimentation control.
- h) Improvement Item 3h includes the implementation of soil erosion and sedimentation controls with respect to Phase II of the Development, as required pursuant to Chapter 29 of the City of Novi Code Ordinances. Nothing contained in this Agreement shall limit the remedies of the City under the City's Soil Erosion and Sedimentation Control Ordinance and

other applicable laws and regulations governing soil erosion and sedimentation control.

5. City Authority to Complete and/or Maintenance.

In the event Developer has failed to complete the Improvements itemized in Paragraph 3, above, or maintain the Improvements as required in Paragraph 4 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 after such notice and provided that the City is not in default of any material obligations in this Agreement and as required by applicable law 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 enter upon the Development through its officials, employees, agents, and/or contractors and complete and/or maintain such Improvements, or restore portions of the Development disturbed by the completion and/or maintenance of such Improvements by the City, and draw upon the Performance Guarantee the amount necessary to pay the third party costs incurred by the City in completing and/or maintaining such Improvements or performing such restoration. In such event, all such costs and expenses incurred shall be paid from the Performance Guarantee. Developer and City, and those person and/or entities acting on behalf of the Developer or City, shall be obligated to act and work in cooperation with each other to bring about completion and/or maintenance of the Improvements or restoration as contemplated in this Agreement. If the City exercises its right under this subparagraph (a) to complete and/or maintain any Improvements or perform such restoration, Developer shall provide the City with all drawings, documentation and other materials relating to any such Improvements that are in the possession of Developer and reasonably necessary for the City to complete and/or maintain such Improvements or perform such restoration.

(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. If the City is not awarded relief in such suit, the City shall pay all court costs, expenses and reasonable, actual attorney fees incurred by the Developer 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 completing and/or maintaining Improvements pursuant to Paragraph 5(a), above, in excess of the Performance Guarantee provided 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 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 those units within the Development still owned by the Developer, effective as of the date the City is authorized to proceed with the completion and/or maintenance of Improvements, as provided in this Agreement, and all such unpaid amounts may be placed on the delinquent tax roll of the City as to such units, 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 attorney fees incurred by the City in connection with such suit.

7. Rebate or Reduction of Performance Guarantee

- (a) Full Release. The City shall not, except as otherwise provided in this Agreement, return the Performance Guarantee to Developer until (1) all fees that are due to the City from Developer 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 this Agreement have been met and final approval of same has been granted. Soil Erosion permits must be brought up to date and renewed on an ongoing basis until issuance of the final certificate of occupancy in the Development.
- (b) Partial Release. In addition to reductions in the Performance Guarantee provided elsewhere in this Agreement, the City may, after performing a site inspection at the written request of the Developer, rebate or reduce portions of the Performance Guarantee upon determination by the City, in its sole discretion, that the Improvements and/or actions included within an Improvement Item set forth in Paragraph 3, above, 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 Guarantee held by the City be less than the sum of two hundred percent (200%) of the cost to complete the remaining incomplete Improvements that are subject to the multiplier of 200% as set forth in Paragraph 3, above, and one hundred percent (100%) of the cost to complete the remaining incomplete Improvements that are not subject to such multiplier. The Developer 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 (other than units within the Development not owned by Developer as of the date of this Agreement) 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. Developer's Warranty on Ownership

The Developer hereby warrants that it is the owner of the Property described on attached Exhibit A (except for those Units and the undivided rights in General Common Elements and Limited Common Elements appurtenant to those Units that have been conveyed to Non-Developer Co-owners), and that Developer has the full authority to execute this Agreement as to Units still owned by Developer.

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 or the Developer's respective rights 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

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 Improvements, at its cost and expense, as specified in this Agreement. Developer has offered and agreed to complete the 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, each party 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. It is further agreed, that this Agreement shall not prohibit the Developer from seeking and obtaining amendments to the RUD Agreement and/or Site Plan as provided by applicable law, and/or from amending the Master Deed and/or the Development Documents as provided by the terms thereof or applicable law and from otherwise rezoning, developing and using the Property as provided by applicable law.

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 of the Property, as well as all persons and entities that become successor developers of all or any portion of the Development in the future pursuant to a written assignment of developer rights executed and delivered by the undersigned party 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.

17. Recording.

This Agreement is not intended to be recorded with Oakland County Records.

18. Amendment.

This Agreement may not be modified, replaced, amended or terminated except pursuant to a written instrument executed and delivered by the parties to this Agreement.

**[SIGNATURE PAGES FOLLOW]**

**"DEVELOPER"**

**S.E. MICHIGAN LAND HOLDING LLC,**  
a Michigan limited liability company

By: \_\_\_\_\_  
Anthony F. Lombardo  
Its: Manager

STATE OF MICHIGAN    )  
                                  ) ss.  
COUNTY OF MACOMB )

The foregoing instrument was acknowledged before me this 31<sup>ST</sup> day of  
AUGUST, 2012 by Anthony F. Lombardo, the manager of S.E. Michigan Land  
Holding LLC, a Michigan limited liability company, on behalf of the limited liability company.

**Mark Paul Roebuck**  
Notary Public, State of Michigan, County of Macomb  
My Commission Expires: July 8, 2017  
Acting in the County of Macomb

Mark Paul Roebuck  
\_\_\_\_\_, Notary Public  
MACOMB County, Michigan  
My commission expires: 7/8/2017  
Acting in MACOMB County, MI

**"CITY":**

**CITY OF NOVI,**  
a Michigan municipal corporation

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

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

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

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

STATE OF MICHIGAN    )  
                                  ) SS  
COUNTY OF OAKLAND    )

The foregoing Agreement was acknowledged, signed and sworn to before me on this  
\_\_\_\_\_ day \_\_\_\_\_, 2012, by \_\_\_\_\_, and \_\_\_\_\_, the  
\_\_\_\_\_ and \_\_\_\_\_, respectively, of the City of Novi.

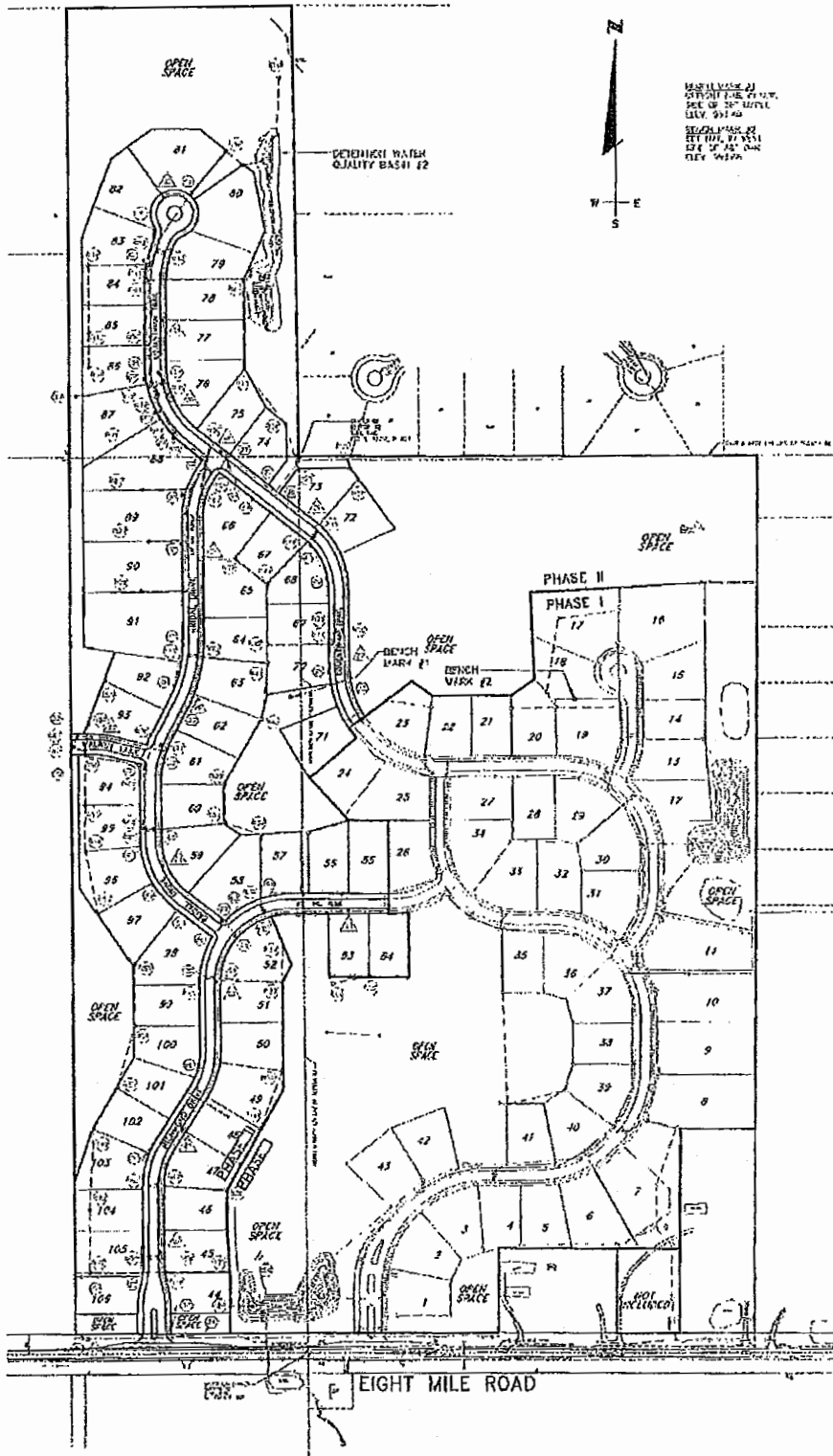
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, MI



EXHIBIT A

Maybury Park, according to the Master Deed recorded in Liber 32412, Pages 650 through 726, inclusive, Oakland County Records, as amended, and designated as Oakland County Condominium Subdivision Plan No. 11609, together with rights in common elements and limited common elements, as set forth in the above Master Deed (and amendments thereto) and as described in Act 59 of the Public Acts of 1978, as amended.

EXHIBIT B  
DEVELOPMENT PLOT PLAN



14 SOUTH SIDE  
 2 NORTH OF C  
 34E EAST OF C  
 D