

CITY of NOVI CITY COUNCIL

Agenda Item C
October 24, 2011

SUBJECT: Approval of a Completion Agreement for SP02-30 Tuscany Reserve Residential Unit Development (RUD) Phase I located north of Eight Mile Road and east of Garfield 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 Novi Investment Company, LLC to approve a Completion Agreement for Phase I of the Tuscany Reserve RUD, SP02-30. The development is a portion of a 77.37 acre single family residential development planned for a total of (58) detached home sites, (31) of which are in Phase I. The site is located north of Eight Mile Road and east of Garfield Road. This project is subject to the provisions of Chapter 26.5 of the City of Novi Code of Ordinances and requires a Completion Agreement as the developer has not completed the site improvements shown on the approved site plan within (2) years of the initial permit (May 25, 2005).

As a condition of the Completion Agreement to allow extension of the time period allowed for the construction and installation of the site improvements, Novi Investment is required 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 complete as well as a schedule for completion and maintenance of the improvements for this development.

The Completion Agreement requires a minimum Financial Guarantee of \$275,400 and contemplates completion of:

- Installation of remaining woodland replacement trees by November 1, 2013
- Installation of remaining site landscaping by November 1, 2013
- Installation of remaining street trees by November 1, 2013

These amounts do not include funds (\$190,900) securing the completion of curb and pavement repairs, final lift of asphalt paving and installation of wetland signage as this work is currently underway. The City will not allow a reduction in the existing financial guarantee amount prior to completion and inspection approval of this work.

The Site Plan and Woodland Permit for this project have been expired since January 2010. The City of Novi has continued to issue Building Permits in good faith while expending an increasing amount of staff time and resources to develop a structure for completion agreements in accordance with the City Ordinances and within the limits of the developers existing financial guarantees. Efforts including separating out the pavement repairs and final lift of asphalt that the developer committed to complete this fall and the Watermain agreement the City paid to have drafted. These efforts have been dedicated

to keeping the project viable and prevent the need for the City to draw on the Financial Guarantees and construct the watermain and complete the roads.

The Developer has requested a number of changes to the agreement. Staff is opposed to these revisions as providing inadequate protections for the City of Novi and its residents. The 200% multiplier for financial guarantees provides an incentive for the developer to complete the project while protecting the City from increases in construction and material costs as well as repair of increased deterioration that typically results when unfinished roads and improvements are left open to weather and use for extended periods of time. Other projects that provided the 200% financial guarantees with Completion Agreements include, Stoneridge Office Park, the Liberty Park Project, Mayberry Park Estates and Avalon Pointe. The requested changes are as noted below:

- Item 3. The Developer is requesting reduction of the 200% multiplier required in the Ordinance for the financial guarantee applicable to Woodland Replacement Trees, Site Landscaping and Street trees. Staff disagrees that trees and landscape materials are not subject to supply, demand, disease and weather or market influences justifying a reduction of the financial guarantee.
- Item 4a: The Developer is requesting removal of the requirement that all Woodland Replacement Trees be installed on or before July 1, 2013 (November 1, 2013 in the current agreement) instead suggesting a condition that Woodland Replacement Trees be installed on a lot by lot basis following issuance of a Certificate of Occupancy for each residence. Staff is opposed to this request as a) the original woodland permit expired on January 18, 2010. b) extending the replacement period indefinitely negates the timely benefits of the replacement trees as well as creating an inspection and monitoring nightmare for City staff. There is no guarantee that a lot could not be held by a future resident for a decade or more without replacement of the regulated woodland plantings. If insufficient lots are developed to allow installation of all the replacement trees at the expiration of the Completion Agreement, the developer has the right to return to City Council for extension of the agreement.
- Item 4c: The Developer is requesting removal of the requirement that all Street Trees be installed on or before July 1, 2013 (November 1, 2013 in the current agreement) instead suggesting a condition that Street Trees be installed on a lot by lot basis following issuance of a Certificate of Occupancy for each residence. Staff is opposed to this request as a) the original timeframe for installation of all street trees was May 25, 2007 b) extending the replacement period indefinitely negates the timely benefits of the street trees as well as creating an inspection and monitoring nightmare for City staff. If insufficient lots are developed to allow installation of all the trees at the expiration of the Completion Agreement, the developers have the right to return to City Council for extension of the agreement.

RECOMMENDED ACTION: Approval of a Completion Agreement for SP02-30 Tuscany Reserve Residential Unit Development (RUD) Phase I, in accordance with the requirements of Chapter 26.5.

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

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

October 19, 2011

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Direct: 248-539-2847
tschultz@secrestwardle.com

Ms. Marina Neumaier, Assistant Finance Director
City of Novi
45175 West Ten Mile Road
Novi, MI 48375

Re: ***Completion Agreement for Tuscany Reserve RUD (Phases I and II)***
Our File No. 55142 NOV

Dear Ms. Neumaier:

Attached are the proposed Completion Agreements for the Tuscany Reserve RUD for Council consideration. The agreements are required under Chapter 26.5 of the Code of Ordinances because the developer has not completed the required site improvements within the project within the required 2-year time period. There are separate agreements for Phase I, which is the part of the development where the site improvements are largely complete and home construction is ongoing, and for Phase II, which has not really yet commenced. The agreements are in similar form to those previously approved by the City Council for other developments.

The specific improvements in Phase I that are not complete include woodland replacement trees, site landscaping, and street trees, as well as the final lift of asphalt and minor repairs to the road. The road improvements are currently being undertaken, and should be done either this fall or in the spring. They are therefore not part of this agreement, which only refers to completion of the woodland replacement trees, site landscaping, and street trees. The estimated amount for those improvements is \$137,700. With the 200% multiplier, the amount of the financial guarantee is \$275,400. The completion agreement requires that all of the improvements will be done within two years from the date of the agreement.

The City is currently holding a letter of credit in the amount of \$472,488. This is sufficient to guarantee the tree and landscape planting at \$275,400. However, the agreement does provide that the City will continue to hold that entire amount (i.e., the "extra" \$197,088) until the road improvements are done. If the road improvements are not completed in six months, the completion agreement would be voided, and the developer would be considered in default under Chapter 26.5 again.

As you are aware, the developer has asked for a couple of changes to the agreement that the City staff does not recommend. Specifically, the developer has requested that the 200% multiplier be reduced to 150%. The developer is also

requesting that it have five years to plant the replacement and street trees instead of two.

We note that staff opposes these deviations, for the reasons stated in the motion sheet. However, the City Council does have the authority to vary those terms. Section 26.5-12, which states:

The city council may authorize exceptions to the requirements and conditions as set forth in this chapter, including, but not limited to, the form, timing, waiver, or reduction of performance guarantee amounts.

The city council may also authorize the issuance of permits, approvals, or temporary certificates of occupancy before all requirements for issuance under this chapter have been met, where the applicant has demonstrated that unusual or unique circumstances exist, that work is proceeding toward completion, and that any delay in completion is not unreasonable or dilatory. In reaching this determination, the standards of section 1-12 of this Code shall apply. In addition, the council shall consider such factors as the size and nature of the development project and the existence of matters beyond the control of the applicant (such as weather conditions, delay in securing permits/approvals from other regulatory agencies, or unforeseen economic events or conditions). If any such exceptions are granted, a written completion agreement may be required, in a form to be established by the city.

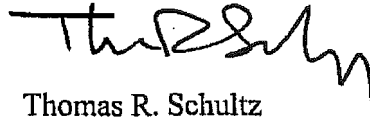
The agreement for Phase I has not yet been signed by the developer, because it is asking for the Council amendments. Should the City Council decline to grant the deviations, and should the developer at that point fail to sign the completion agreement, enforcement action would be undertaken consistent with the provisions of Section 26.5 to cure or address the current default.

The Phase II completion agreement is of much smaller scope. As noted above, very little work has occurred on the Phase II property. The completion agreement mostly just requires the developer to stabilize and restore the property, at which point all of the performance guarantees posted by the developer will be returned to it. No work would be commenced on any improvements in Phase II until those performance guarantees required by ordinance had been re-posted and payment has been received for the cost of the extension of the water main as provided under separate agreement.

Ms. Marina Neumaier
October 19, 2011
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If you have any questions, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Schultz", with a stylized flourish at the end.

Thomas R. Schultz

TRS/jec
Enclosures

1738935

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

TUSCANY RESERVE – SINGLE FAMILY
PHASE I

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated _____, 2011, by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 W. Ten Mile Road, Novi, Michigan 48375 (“City”), and Novi Investment Company, LLC, a Michigan limited liability company, whose address is 47765 Bellagio Drive, Northville, Michigan 48167 (“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 77.37 acre, single-family Residential Unit Development pursuant to the provisions of Section 2404 of the City of Novi Zoning Ordinance, to contain fifty-eight (58) single family home sites to be established as part of a site condominium. The site condominium will be herein known as the “Development.” Phase I of the Development includes 31 residential units and corresponding improvements, and is shown on the attached Exhibit B.

As part of the approval process for the Development, Developer has offered and agreed to develop the Property, to complete certain improvements within the Development, 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 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 May 25, 2005. Because more than 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. Developer has requested an extension of such time periods with respect to Phase I of the Development as set forth below.

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 and serving Phase I of 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 this 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 \$275,400.00 to guarantee completion and maintenance of improvements for Phase I of 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 Fifth Third Bank ("Bank"), to guarantee completion and maintenance of improvements for Phase I of 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)	Woodland Replacement Trees	\$ 92,300.00
(b)	Site Landscaping:	\$ 19,000.00
(c)	Street Trees	\$ 26,400.00
	Subtotal:	\$ <u>137,700.00</u>
	200% Multiplier:	x 2
	Total Financial Guarantee:	\$ <u>275,400.00</u>

As of the date of this Agreement, there are additional site items that still need to be completed with regard to the roads within Phase I of the development (e.g., final lift of asphalt, curb repair). These additional site items are not being made part of or subject to this Agreement for purposes of calculating the Financial Guarantee above because the Developer has represented that they will be completed in 2011, but in any event no later than 180 days from the date of this Agreement. The City is currently holding a total of \$472, 448 in financial guarantees. The

Developer agrees that until the outstanding site improvements with regard to the road have been completed, the City will continue to hold the entire financial guarantee amount to ensure both the above-items and the road completion. For purposes of this provision, road completion shall include all work in designated in the June 1, 2011 inspection letter from Spaulding DeDecker (attached) and as required by the approved Site Plan .

If Developer fails to complete all of the foregoing within 180 days of the date of this Agreement, this Agreement shall become null and void, and the City shall have any and all remedies, relief, and causes of action available to it to address Developer's default hereunder and under the City's ordinances, rules, and regulations. Upon completion of the foregoing road improvements within the 180 days, the City shall release \$197,048 to Developer, and retain the \$275,400 Total Financial Guarantee under the terms and conditions of this Agreement.

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 the installation of woodland replacement trees in Phase I of the Development including the installation of 284 woodland replacement trees, (above and beyond the 10 woodland credits per lot for the remaining 50 lots required by the January 18, 2008 Woodland Permit^{*}) or, where tree relocation or replacement is not feasible within the woodland area, or on the project property as determined by the City's Landscape Architect, a corresponding contribution to the City's tree fund. It is acknowledged that a portion of the 284 replacement trees required is attributable to removal of trees for the construction of the emergency fire access road in Phase II. A renewal of the Phase I Woodland Permit shall not be required to complete tree replacement for Phase I. Except for those replacement trees required as a result of the Phase II emergency access road which replacement trees may be installed in connection with a new woodland permit for Phase II, Improvement Item 3(a), above, including the 10 woodland credits per lot for the remaining 50 lots shall be completed in all events on or before November 1, 2013. For two (2) years from the date of completion of the installation of woodland replacement trees, Developer shall, 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.
- b) Improvement Item 3(b) above contemplates and includes the installation of all site landscaping, not including street trees within Phase I of the Development. All site landscaping shall be completed on or before

^{*} For the 10 woodland credit per lot requirement, each performance guarantee shall be posted on a lot by lot basis prior to issuance of each building permit as required pursuant to the Woodland Permit dated January 18, 2008.

November 1, 2013. For two (2) years from the date of completion of the installation of all landscape plantings installed after the date of this Agreement, Developer shall, maintain the trees and landscaping, maintenance shall include the replacement of any dead, substantially dead, diseased, or removed trees or landscaping during such two (2) year period. No Maintenance and Guarantee Bond for landscape maintenance shall be required.

- c) Improvement Item 3(c) above contemplates and includes installation of 66 remaining street trees in Phase I of the Development. The remaining street trees shall be installed before November 1, 2013. 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. No Maintenance and Guarantee Bond for street tree maintenance shall be required.

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

Except as otherwise proved in Paragraph 3 above with regard to the road improvements, 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. The Soil Erosion Permit for Tuscany Reserve that includes Phase II is closed out and a new Soil Erosion Permit applicable only to Phase I is issued on or before its expiration date of December 31, 2011, and is renewed annually before December 31, each year thereafter until the Permit is closed out for the Phase I. Upon submission of a Request for Private Development Inspection to the City, subject to all inspection fees having been paid, the City shall complete the requested inspections and

issue inspection reports within 30 days within the scope of the City seasonal inspection periods (typically March 15 through November 15, weather dependent) and subject to the Developer undertaking any and all access/preparation requirements necessary to facilitate inspection.

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

8. Binding Effect

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

9. Owner's Warranty on Ownership

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

10. Delay in Enforcement

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

11. Severability

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

12. Lawful Document

Owner, Developer and City agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of Michigan and the United States of America. Developer has offered and agreed to complete the on-site and off-site improvements, at their cost and expense, as specified in this Agreement. Developer has offered and agreed to complete such

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

13. Applicable Law

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

14. Current and Future Owners and Developers.

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

15. Headings.

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

16. Effective Date.

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

"DEVELOPER"

NOVI INVESTMENT COMPANY, LLC,
a Michigan limited liability company

By: MEG Development. LLC
A Michigan limited liability company
Its: Authorized Manager

By: _____
Mark F. Guidobono
Its: Authorized Member

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledges before me this ____ day of _____,
2011, 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
_____, 2011, by _____, Mayor and _____, Clerk of the City of
Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____



SPALDING DEDECKER ASSOCIATES, INC.

905 South Boulevard East • Rochester Hills • Michigan 48307 • Tel 248 844 5400 • Fax 248 844 5404

June 1, 2011

Mr. Aaron Staup
Construction Engineering Coordinator
Department of Public Services
Field Services Complex
26300 Delwal Drive
Novi, MI 48375

**Re: Tuscany Reserve Phase I
Right-Of-Way and Pavement Punch List Cost Estimate and Inspection Fee**
Novi SP No.: 02-0030
SDA Job No.: NV011-211

Dear Mr. Staup:

Please be advised that our field personnel visited the above referenced site on May 17, 2011 to verify the status of the above mentioned site's pavement and utility structures in the right-of-way. As a result of the walkthrough, below is a list of remaining civil site improvement items to be completed prior to substantial completion of the project.

Incomplete Site Utility and Pavement Items

As a response to the aforementioned walk-through, there are some items that have yet to be addressed and are delineated below with corresponding dollar amounts:

1. Milling/Removal of Existing Base Course (3,685 SYD)	\$7,400
2. Projected Base Pavement Repairs for Undercuts (553 SYD)	\$11,700
3. Place Asphalt Base Course at 2.5" of 1100L (33,162 SFT)	\$49,800
4. Place Asphalt Top Course at 1.5" of 1100T (86,496 SFT)	\$96,100
5. Curb Repairs (348 LFT)	\$10,500
6. Routing and Sealing Edge of Metal (7,208 LFT)	\$4,400
7. Catch Basin Repairs (10 EACH)	\$10,000
8. Clean bottom of all catch basins.	\$1,000
Total	\$190,900

Engineering Consultants

Infrastructure • Land Development • Surveying

Mr. Aaron Staup
City of Novi Engineering Division
Page 2

As a consequence, SDA recommends the City withhold a minimum amount of **\$190,900** for the incomplete pavement and site utility punch list.

In addition, SDA has been requested by the City to perform full time observation and construction administration for completion of the above list of incomplete items. As-builts plans have not been requested to be completed by SDA and are not included in this fee. Material Testing must be provided by the development or, if requested, can be subcontracted by SDA at an associated cost to the project. In order for SDA to perform the requested full time observation and construction administration a purchase order will need to be established in the amount of \$4,890. As a result of the defined scope, please note the estimated cost breakdown for observation and construction administration:

Item Description	Unit	Total Quantity	Unit Price	Item Subtotal
SDA Costs				
Inspection Time	hr	180	\$75.00	\$13,500.00
CCA	hr	24	\$95.00	\$2,280.00
total				\$15,780.00

This letter serves only as a cost estimate for the remaining civil site improvements and the associated observation fees necessary to complete the remaining civil site improvements. Upon further investigation the fees may increase or decrease depending on the work necessary to complete the project.

If you have any questions, please do not hesitate to contact us at our office.

Sincerely,

SPALDING DeDECKER ASSOCIATES, INC.



Ted Meadows
Contract Administrator

cc: Sarah Marchioni, City of Novi – Building Department Clerk (e-mail)
Christopher Robbins, PE, SDA (e-mail)
SDA CE Job File

Engineering Consultants

Infrastructure • Land Development • Surveying

MEG Development, L.L.C.

October 13, 2011

Mayor Landry
City of Novi
45225 West Ten Mile Road
Novi, Michigan 48375

Dear Mayor Landry:

We have reviewed the Water Main and Completion Agreements for Phases I and II of Tuscan Reserve. Our comments are listed below:

A) Phase I Completion Agreement

ITEM #3: 200% Multiplier - Due to the condition of the economy and the banking system, we request the multiplier be changed to 150%. In our situation the multiplier is being used for trees not commodities like copper or concrete which have volatility in the market.

ITEM #4A: Remove - Improvement Item 3(a) above shall be completed in all events on or before July 1, 2013. Change to: Replacement trees are planted on lots after Certificate of Occupancy is issued for each lot. We are currently handling it this way with Tuscan Reserve and this was approved this way from day one. Why should we change something we already agreed to with the City? Second, the Letter of Credit amount for Woodlands Replacement in the Completion Agreement for Phase I also counts tree replacements on lots in Phase II, a phase we have not built yet. We cannot install trees on lots that have not been built yet and we do not have the desire or ability to come up with cash to put in the City of Novi's tree fund. Again, we do not want to change something we already have in place.

ITEM #4C: Remove - The remaining street trees shall be installed before July 1, 2013. Change to: Street trees to be planted on individual lots after receipt of Certificate of Occupancy. We would like to change this for the same reasons as stated in 4A above.

ITEM - Signature Page: Change Novi Investment to MEG Development like Water Main Agreement.

B) Phase II Completion Agreement

ITEM #3: Change two years to five years. First, we have a weak economy and second, the City could use this as leverage to get MEG Development/Novi Investment to pay off the City on the Water Main in two years vs. when the improvements are installed for Phase II or in 5 years, whichever comes first.


ITEM - Signature Page: Change Novi Investment to MEG Development like Water Main Agreement.

C) Water Main Agreement

We have no issues with this Agreement.

Sincerely,

MEG DEVELOPMENT, L.L.C.



Mark F. Guidobono
Its. Member