



## CITY of NOVI CITY COUNCIL

**Agenda Item M**  
**June 4, 2018**

**SUBJECT:** Approval of a Completion Agreement with Toll MI II Limited Partnership for SP13-0049, the Island Lake of Novi Phase 7C residential development located north of Ten Mile Road and east of Wixom Road, in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

**SUBMITTING DEPARTMENT:** Community Development Department

**CITY MANAGER APPROVAL:** 

### **BACKGROUND INFORMATION:**

City Council is being asked to consider a request from Toll MI II Limited Partnership to approve a Completion Agreement for the Island Lake of Novi Phase 7C residential development, SP13-0049 until October 1, 2018.

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 two (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 150% 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 if the City had to complete an unfinished project due to developer default or nonperformance.

The Island Lake 7C development is comprised of 41 single family home sites established as part of a site condominium. The project is located between Ten and Eleven Mile Roads and is east of Wixom Road.

This project is subject to the provisions of Chapter 26.5 of the Novi City Code, and requires a Completion Agreement because the original developer had not completed the site improvements shown on the approved site plan within two (2) years of issuance of the initial permit for any improvements (November 1, 2013).

As a condition of the current Completion Agreement, the developer, has agreed to provide assurances including provision of a performance guarantee in the amount of no less than 150% of the cost of the work to be completed.

Under the terms of the current Completion Agreement the City holds a Performance Guarantee of \$181,080.00. Staff recommends continuing to hold the same amount in view of the additional period of potential deterioration and escalation of material and installation costs during the requested extended duration of the agreement which contemplates completion of:

- Maintenance of Soil Erosion and Sedimentation Control permit and measures including stabilization for the duration of the project.
- Repairs and completion of certain utility repairs and punch list items by October 1, 2018 and repair and completion of all outstanding utility, pavement, curb and other incomplete site work prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by October 1, 2018.

**RECOMMENDED ACTION:** Approval of a Completion Agreement with Toll MI II Limited Partnership for SP13-0049, the Island Lake of Novi Phase 7C residential development located north of Ten Mile Road and east of Wixom Road, in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

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May 21, 2018

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

**RE: Island Lake Phase 7 C JSP 13-0049**  
***Agreement for Completion and Maintenance of Improvements***

Dear Mr. Boulard:

Enclosed please find the proposed Completion Agreement for Island Lake, Phase 7C that is required by Chapter 26.5 of the City of Novi Code because site improvements for the development have not been completed within two years from the issuance of the initial permit. The terms of the Agreement are similar to previous completion agreements that have been approved by City Council pursuant to Chapter 26.5.

The incomplete improvements include the completion of site work, including road maintenance and paving repairs, curb repairs, and the installation of the final wearing course, as well as the installation and ongoing maintenance of all required soil erosion control measures. City Staff has proposed that they be completed no later than October 1, 2018.

The City is currently holding total performance guarantee of \$181,080.00.

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.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

JOHNSON ROSATI SCHULTZ JOPPICH



Elizabeth K. Saarela

Charles Boulard, Director  
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EKS

C: Cortney Hanson, Clerk (w/Enclosures)  
Charles Boulard, Community Development Director (w/Enclosures)  
Barb McBeth, City Planner (w/Enclosures)  
Sri Komaragiri, Planner (w/Enclosures)  
Lindsay Bell, Planner (w/Enclosures)  
Hannah Smith, Planning Assistant (w/Enclosures)  
Angie Pawlowski, Community Development Bond Coordinator (w/Enclosures)  
Darcy Rechtien, Plan Review Engineer (w/Enclosures)  
Theresa Bridges, Construction Engineer (w/Enclosures)  
Sarah Marchioni, Community Development Building Project Coordinator (w/Enclosures)  
Michael Freckelton, Taylor Reynolds & Ted Meadows, Spalding DeDecker (w/Enclosures)  
Sue Troutman, City Clerk's Office (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

RESERVE OF ISLAND LAKE  
PHASE 7(C)

**AGREEMENT FOR COMPLETION  
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated \_\_\_\_\_, 2018 by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 (“City”), and Toll MI II Limited Partnership, a Michigan Limited Partnership, whose address is 29665 William K Smith Dr., Ste B., New Hudson, MI 48615 hereinafter referred to as "Developer"), Developer is the owner and developer of the Reserve of Island Lake Site Condominium (“Development”).

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

The subject land, known as the Reserve of Island Lake, has been approved for development as part of the Island Lake of Novi Residential Unit Development (“Island Lake RUD”) pursuant to the provisions of the City of Novi Zoning Ordinance, the RUD Agreement for the Island Lake RUD, and all amendments thereto. The Reserve of Island Lake has been approved in three Phases (7A, 7B, and 7C) to contain a total of seventy-one (71) single family home sites to be established as part of a site condominium, forty-one (41) of which are to be located within Phase 7C. Phase 7C of the site condominium is the subject of this Agreement and will be herein known as the “Development.”

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, including Chapter 26.5 of the City of Novi Code of 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 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 November 1, 2013. 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 one hundred fifty (150) percent of the cost of the work to be completed, and a schedule, for completion and maintenance of the improvements for the Development.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose of Agreement

The City and the Developer enter into this Agreement 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, 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 \$181,080.00 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 \_\_\_\_\_ ("Bank"), to guarantee completion and maintenance of improvements 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 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 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

Subject to changes or damages to the improvements that may occur as a result of continuing construction, 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 \$ 16,987.50<sup>1</sup>
- b. Incomplete Site Work \$ 109,395.00

Subtotal:	\$ 109,395.00
150% Multiplier:	<u>          x1.5</u>
	\$ 164,092.50

**Total Performance Guarantee:     \$ 181,080.00**

4.     Completion and Maintenance of Improvements; Schedule and Requirements

Each of the Improvement Items listed in Paragraph 3, above, shall be completed and maintained by the Developer, 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 contemplates and includes without limitation, (i) the immediate installation of all required soil erosion and sedimentation controls, (ii) completion of repairs and maintenance of the soil erosion and sedimentation controls within and for the Development on an ongoing basis; and (iii) stabilization of soils until issuance of the final certificate of occupancy for the Development. Developer shall keep the Soil Erosion Permit current. Nothing herein shall limit the City’s remedies for violation of the City’s Soil Erosion and Sedimentation Control Ordinance.
  
- b) Improvement Item 3b contemplates completion, repair and maintenance of improvements, as set forth in the City Consulting Engineer’s punchlist, including but not limited to:
  - 1. Potential wearing course repairs and/or replacement;
  - 2. Potential base course repairs;
  - 3. Potential curb repairs

Items 1 – 3 of Improvement Item 3fb above shall be completed before October 1, 2018, or prior to the issuance of the final three (3) certificates of occupancy within the Development, whichever is first.

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 after such notice and provided that the City is not in default of any material

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<sup>1</sup> Not subject to multiplier of 1.5 per Ordinance.

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 draw the Performance Guarantee 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 in the Development. In such event, all costs and expenses incurred shall be paid from the Performance Guarantee. Any amounts of unused Performance Guarantee shall be returned to Developer, or otherwise be credited, as the case may be. Developer, and those person and/or entities acting on behalf of the Developer, 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.

(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 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 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 as to those units still owned by the Developer, effective as of the date the City is authorized to proceed with the completion and/or maintenance of improvements, or restoration, as provided in this Agreement, and all such unpaid amounts may be placed on the delinquent tax roll of the City as to the Property, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may also be collected by suit initiated against the Developer, and in the event the City is awarded relief in such suit, the Developer shall pay all court costs, expenses and reasonable 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 release Performance Guarantees associated with the completion of the items of improvement and maintenance referenced herein until (1) all fees that are due to the City have been paid; (2) a maintenance guarantee has been posted, if applicable; (3) inspection of the development site has been performed when required (4) expired permits have been renewed; and (5) the City has determined that the conditions and requirements of the permit/approval otherwise specified in 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. The City may, after performing a site inspection at the written request of the Developer, rebate or reduce portions of the Performance Guarantees upon determination by the City, in its sole discretion, that the improvements and/or actions for which that Performance Guarantee was posted as itemized above in paragraph 3a through d. 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 one hundred and fifty (150) percent of the cost to complete the remaining required improvements on the Property. 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 1 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

Upon Developers purchase of the Property, the Developer hereby warrants that it is the owner of the Property described on attached Exhibit 1 (except for those Units and the undivided rights in General Common Elements appurtenant to those Units that have been conveyed to Co-owners), and that it, and Developer has the full authority to execute this Agreement as to Unit 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 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 of the Property, as well as all future and successor persons and entities that become successor 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.

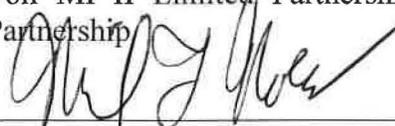
16. Recording.

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

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

**“DEVELOPER”**

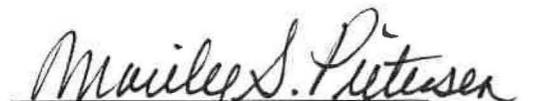
Toll MI II Limited Partnership, a Michigan Limited Partnership



By: Michael T. Noles  
Its: Sr. Vice President

STATE OF MICHIGAN     )  
  )ss  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 2018, by Michael T. Noles, as the Sr. Vice President, of Toll MI II Limited Partnership.

  
Notary Public, Marilee S. Pietersen  
Oakland County, Michigan  
My Commission Expires: Dec. 23, 2023

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

BY: \_\_\_\_\_  
Robert J. Gatt, Mayor

BY: \_\_\_\_\_  
Cortney Hanson, Clerk

STATE OF MICHIGAN        )  
  ) SS  
COUNTY OF OAKLAND     )

The foregoing Agreement was acknowledged, signed and sworn to before me on this \_\_\_\_\_ day  
\_\_\_\_\_, 2018, by Robert J. Gatt, Mayor and Cortney Hanson, Clerk of the City of Novi.

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

EXHIBIT 1

T1N, R8E, SEC 20 OAKLAND COUNTY CONDOMINIUM PLAN NO 2048 THE RESERVE  
OF ISLAND LAKE L 46110 P 828