



SUBJECT: Approval of a Completion Agreement with Mirage Development, LLC for SP 15-0076, the Montebello Estates residential development located north of 9 Mile Road and West of Novi 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

Background Information: City Council is being asked to consider a request from Mirage Development to approve a Completion Agreement for the Montebello Estates residential development, SP15-0076 until July 1, 2023.

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 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 Montebello Estates development is comprised of (31) single family home sites established as part of a site condominium. The project is located north of 9 Mile Road and west of Novi Road. There are (10) completed homes in the development, (12) units are under construction with (9) units vacant.

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 plus extension of issuance of the initial permit for any improvements. Staff has worked with the developer through material and resource challenges to complete as many items as possible and reduce the incomplete work.

As a condition of the 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.

The City holds a Performance Guarantee of \$314,141.50 with reduction awaiting approval of this document. The agreement requires a new total amount of \$283,221.50 to protect the current residents, future residents and the City of Novi from potential deterioration and escalation of material and installation costs during the requested 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.
- Installation of the remaining (100) street trees within the development prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by July 1, 2023.
- Replacement of (4) woodland replacement trees prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by July 1, 2023.
- Replacement of missing or compromised site landscaping prior to issuance of the final (3) Certificates of Occupancy for homes and in all events by July 1, 2023.
- Repairs and completion of all outstanding utility, pavement, curb, installation of final pavement wearing course and other incomplete site work prior to issuance of the final Certificate of Occupancy for homes and in all events by July 1, 2023
- Completion of all work and Right of Way restoration prior to issuance of the final Certificate of Occupancy for homes and in all events by July 1, 2022.
- Continued monitoring of Wetland impacts a required by the Wetland Permit.

RECOMMENDED ACTION: Approval of a Completion Agreement with Mirage Development, LLC for SP 15-0076, the Montebello Estates residential development located north of 9 Mile Road and West of Novi 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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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

February 1, 2022

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

RE: Montebello Estates
Agreement for Completion and Maintenance of Improvements

Dear Mr. Boulard:

Enclosed please find the proposed Completion Agreement for Montebello 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 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 repairs to the base course and leveling course of paving, curb repairs, and the installation of the final wearing course; the replacement of missing, dead, or dying site landscaping; the installation of the remaining one hundred (100) street trees; the replacement of four (4) dead or diseased woodland replacement trees and the installation, maintenance or removal of tree protection fencing; and the installation and maintenance of soil erosion control measures. City Staff has proposed that the remaining improvements be completed no later than July 1, 2023. The remaining right-of-way restoration is required to be completed on or before July 1, 2022.

The City is required to hold a total performance guarantee of \$283,221.50 in connection with the 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.

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

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

EKS

Enclosure

- C: Cortney Hanson, Clerk (w/Enclosure)
Barb McBeth, City Planner (w/Enclosure)
Lindsay Bell, Planner (w/Enclosure)
Christian Carroll, Planner (w/Enclosure)
Madeleine Kopko, Planner (w/Enclosure)
Ben Peacock, Planning Assistant (w/Enclosure)
Sarah Marchioni, Community Development Building Project Coordinator (w/Enclosure)
Angie Sosnowski, Community Development Bond Coordinator (w/Enclosure)
Ben Croy, City Engineer (w/Enclosure)
Rebecca Runkel, Project Engineer (w/Enclosure)
Humna Anjum, Project Engineer (w/Enclosure)
Victor Boron, Project Engineer (w/Enclosure)
Melissa Morris, Administrative Assistant (w/Enclosure)
Michael Freckelton, Taylor Reynolds & Ted Meadows - Spalding DeDecker (w/Enclosure)
Claudio Rossi, Mirage Development (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

MONTEBELLO ESTATES

**AGREEMENT FOR COMPLETION
AND MAINTENANCE OF IMPROVEMENTS**

AGREEMENT, dated January 29 2022 by and between the City of Novi, a Michigan municipal corporation, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 ("City"), and Mirage Development, LLC, a Michigan limited liability company (hereinafter "Developer"), whose address is 45380 West 10 Mile Road, Suite 135, Novi, Michigan 48375. Developer is the owner and developer of the Montebello Estates Site Condominium ("Development").

Owner is the fee title owner 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 a single-family residential site condominium project pursuant to the provisions of the City of Novi Zoning Ordinance, known as Montebello Estates (the "Project"). The Project contains thirty-one (31) single family home sites. Presently there are ten (10) completed single-family residences in the Project.

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 August 31, 2016, with an expiration date of August 31, 2018. One twelve (12) month extension was granted, through August 31, 2019. Because more than two (2) years has elapsed since the initial permit, no additional extensions are available without City Council approval, and the site improvements have not been completed prior to the date of this Agreement, 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 twelve (12) 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 and 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 \$283,221.50 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 surety bond No. _____ issued by _____ ("Developer") and cash, to guarantee completion and maintenance of improvements the Development, as itemized in Paragraph 3, below, for an initial period of one (1) year the surety bond 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 the Developer to the Community Development Director. As a condition to the termination of the effectiveness of the surety bond, Developer shall be required to provide to the office of the City's Community Development Director, with 60 days advanced written notice, a statement that the surety bond 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 end of the 60-day period, the surety bond 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. Street Trees	\$ 40,000.00 ¹
b. Woodland Replacements	\$ 1,600.00 ²
c. Woodland Fence	\$ 5,000.00
d. Soil Erosion and Sedimentation Control	\$ 12,421.50 ³
e. Landscaping	\$ 2,100.00

¹ No multiplier per ordinance.

² No multiplier per ordinance

³ No multiplier per ordinance.

f. Incomplete Site Work	\$ 138,700.00
g. Right of Way	\$ 5,000.00
h. Wetland	\$ 2,000.00
Subtotal without Multiplier:	\$ 54,021.50
Subtotal with Multiplier:	\$ 152,800 x1.5
	\$229,200.00
	+ 54,021.50
	\$ 283,221.50
Total Performance Guarantee:	\$ 283,221.50

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 the installation of the remaining one hundred (100) street trees within the Development. The remaining street trees shall be installed before the issuance of the final three (3) certificates of occupancy within the Development, and in all events, before July 1, 2023. For two years from the date of completion of the installation of all such trees installed in 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. The maintenance period begins at the time of City inspection and approval of the installations. Replacement of dead, diseased, or dying trees during the maintenance period does not restart the maintenance period.
- b) Improvement Item 3b contemplates and includes the replacement of four (4) woodland replacement trees that are dead or diseased. The remaining four (4) replacement trees shall be installed before the issuance of the final three (3) certificates of occupancy within the Development, and in all events, before July 1, 2023. For two years from the date of completion of the installation of all such trees installed in 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. The maintenance period begins at the time of City inspection and approval of the installations. Replacement of dead, diseased, or dying

trees during the maintenance period does not restart the maintenance period.

- c) Improvement Item 3c contemplates and includes the installation, maintenance, and removal of tree protection fencing in order to protect woodland trees from damage. The tree protection fence shall be maintained and repaired on a continuous basis as necessary until completion of the applicable portion of the development.
- d) Improvement Item 3d contemplates and includes without limitation, (i) the immediate installation of all required soil erosion and sedimentation controls; and (ii) completion of repairs and maintenance of the soil erosion and sedimentation controls within and for the Development on an ongoing basis until issuance of the final certificate of occupancy for the Development. Developer shall renew and 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.
- e) Improvement Item 3e contemplates and includes the replacement of missing, dead or dying site landscaping, for the site. Site Landscaping shall be completed prior to the issuance of the final three (3) certificates of occupancy within the Development, and in all events on or before July 1, 2023. For two (2) years from the date of completion of the installation of all such landscape plantings installed as part of the Development, Owner shall, under this Agreement, maintain the landscape plantings that were so installed, which maintenance shall include the replacement of any dead, substantially dead, diseased, or removed landscape plantings during such two (2) year period. The total financial guarantee includes the posting of an appropriate bond amount pursuant to the applicable City Ordinance, to guarantee replacement of any dead, substantially dead, diseased, or removed site landscaping during the two (2) year period following installation. The maintenance period begins at the time of City inspection and approval of the installations. Replacement of dead, diseased, or dying landscaping materials during the maintenance period does not restart the maintenance period.
- f) Improvement Item 3f includes repairs to the base course and leveling course of paving, curb repairs, and the installation of the final wearing course of paving with respect to the roads located within the Development. Improvement Item 3f shall be completed prior to the issuance of the final certificate of occupancy for units within the Development, and in all events, before July 1, 2023.

- g) Completion of all work and restoration of the public Right of Way prior to the issuance of the final certificate of occupancy for units within the Development, and in all events, before July 1, 2022.
- h) Improvement Item 3h includes the installation and monitoring until such time as they are established, and maintenance of native wetland vegetation within all wetland and watercourse 25-foot setback buffers in the Development using natural re-growth, seed mixes, and/or live plants. Those areas where permanent disturbance or filling was authorized under a permit are excepted from this requirement.

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 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 people 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 h. 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 Developer's 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. It is further agreed that this Agreement shall not prohibit the Developer from seeking and obtaining amendments to the Site Plan as provided by applicable law, and/or from Amending the Master Deed and/or the Development Documents as provided 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 future and successor persons and entities that become 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.

17. Recording.

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

"DEVELOPER"

Mirage Development, LLC, a Michigan limited liability company



By: CLAUDIO ROSSI

Its: MEMBER

STATE OF MICHIGAN)

)ss

COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 20th day of January 2022, by CLAUDIO ROSSI, as the MEMBER of Mirage Development, LLC, a Michigan limited liability company, on its behalf.



Notary Public MARK PAULSON

Oakland County, Michigan

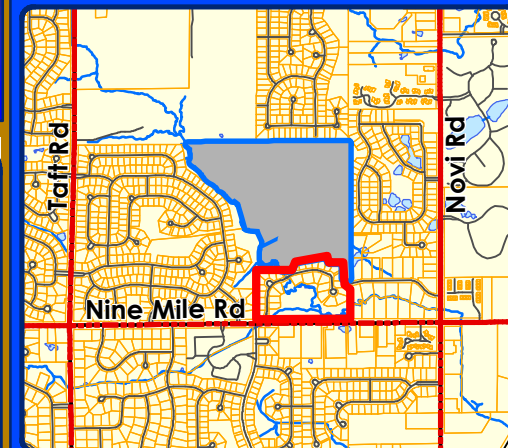
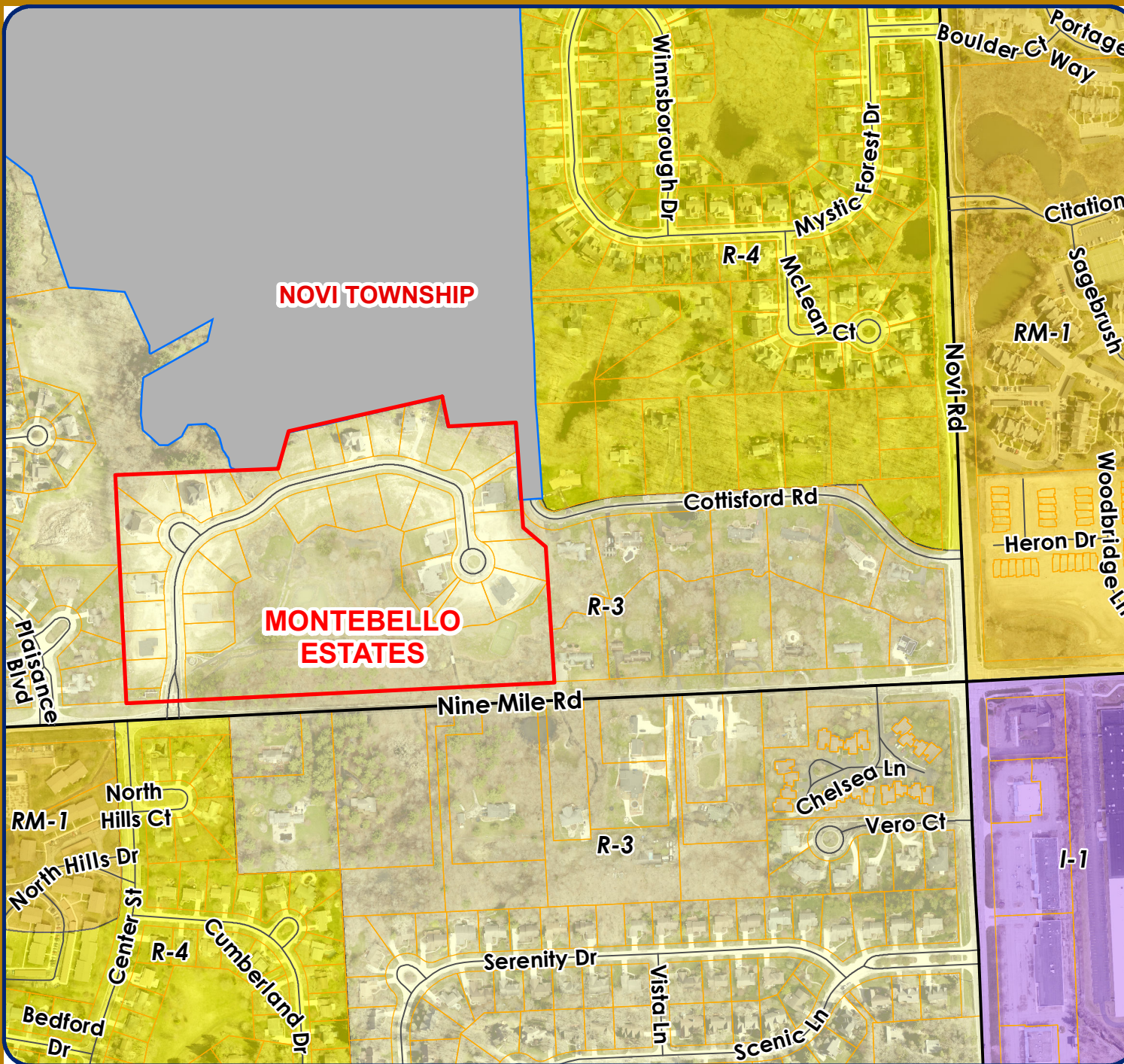
My Commission Expires: 6/3/24

EXHIBIT 1


**T1N, R8E, SEC 27 OAKLAND COUNTY CONDOMINIUM PLAN NO 2172 MONTEBELLO ESTATES L 50223 P
342 1-4-17 FR 452-001 Split on 02/01/2017 from 50-22-27-452-001;**

MONTEBELLO ESTATES

LOCATION



LEGEND

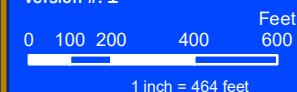
 Subject Property



City of Novi

Dept. of Community Development
City Hall / Civic Center
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Ben Peacock
Date: 2/1/2022
Project: MONTEBELLO ESTATES
Version #: 1



MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.