



CITY of NOVI CITY COUNCIL

Agenda Item H
May 23, 2016

SUBJECT: Acceptance of a Conservation Easement from Mirabella Estates Condominium Association for wetland conservation areas offered as a part of the Mirabella Estates development, located on the west side of Meadowbrook Road north of Eight Mile Road in Section 35 of the City.

SUBMITTING DEPARTMENT: Community Development, Planning Division *Burb*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Mirabella Estates Condominium Association, a Michigan non-profit corporation is acting as the successor/developer to the original developer Mirabella Estates, LLC, which developed residential site condominiums on 7.98 acres of land located on the west side of Meadowbrook Road north of Eight Mile Road. The current zoning of the property is R-1, One Family Residential. The site plan was approved on September 25, 2003, and the City began its close-out process for the development in 2014.

The purpose of this Conservation Easement is to protect the wetland areas, including without limitation the existing stream and buffer therein, as shown on the attached and incorporated Exhibit B.

The easement has been reviewed by the City's professional staff and consultants. The easement is currently in a form acceptable to the City Attorney's office for acceptance by the City Council.

RECOMMENDED ACTION: Acceptance of a Conservation Easement from Mirabella Estates Condominium Association for wetland conservation areas offered as a part of the Mirabella Estates development, located on the west side of Meadowbrook Road north of Eight Mile Road in Section 35 of the City.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

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

LOCATION MAP

Mirabella Estates

Conservation Easement



Legend

- Freeway
- Major Streets
- Minor Streets
- Railroad
- Tax Parcels



City of Novi

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

Map Author: Adrianna Jordan
Date: 04/27/16
Project: Mirabella Estates Conservation Easement
Version # 1



MAP INTERPRETATION NOTICE

Map information depicted is not intended to be used as a substitute for any official city utility service. This map was prepared to meet the requirements of the Michigan State Land Use Planning Act. Boundaries, measurements and other information are derived from the most current available data and are not guaranteed to be accurate. The City of Novi is not responsible for any errors or omissions. This map is for informational purposes only. For more information, please contact the City GIS Manager at 248-763-4300 and accurate information related to this map.

CITY ATTORNEY LETTER



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331

Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.jrsjlaw.com

May 13, 2016

Barb McBeth
City Planner
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

**RE: Mirabella Estates (Formerly Meadowbrook 8) JSP01-72
Conservation Easement**

Dear Ms. McBeth:

We have received and reviewed the revised Conservation Easement for the Mirabella Estates Development. The conservation Easement is required with respect to preservation of remaining on-site wetlands. The original executed Conservation Easement appears consistent with the requirements set forth in the City wetland consultant's report. Subject to review and approval of the exhibits by the City's Planner for consistency with the approved site plan, the Conservation Easement may be placed on an upcoming City Council Agenda for acceptance.

Should you have any questions or concerns relating to the issues set forth above, please feel free to contact me in that regard.

Sincerely,

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

Elizabeth K. Saarela

EKS

C: Maryanne Cornelius, Clerk (w/ Original Enclosure)
Charles Boulard, Community Development Director (w/Enclosure)
Kirsten Mellem, Planner (w/Enclosure)
Theresa Bridges, Construction Engineer (w/Enclosure)
Sheila Weber and Kristin Pace, Treasurer's Office (w/Enclosure)
Sarah Marchioni, Building Permit Coordinator (w/Enclosure)

Barb McBeth, City Planner
May 13, 2016
Page 2

Sue Troutman, City Clerk's Office (w/Enclosure)
David Goldberg, Esquire (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

CONSERVATION EASEMENT

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT made this ____ day of May 2016, by and between Mirabella Estates Condominium Association, a Michigan non-profit corporation, whose address is 339 N. Center Street, Suite #5, Northville, Michigan 48167 (hereinafter the "Grantor"), and the City of Novi, and its successors or assigns, whose address is 45175 Ten Mile Road, Novi, Michigan 48375 (hereinafter the "Grantee").

RECITATIONS:

A. Grantor is the association of condominium unit owners responsible for the administration, operation, management and maintenance of a certain parcel of land situated in Section 35 of the City of Novi, Oakland County, Michigan, described in Exhibit A, attached hereto and made a part hereof (the "Property"). The developer of the Property has received final site plan approval for construction of a residential site condominium development on the Property, subject to provision of an appropriate easement to permanently protect the wetland areas located thereon from destruction or disturbance. Grantor desires to grant such an easement in order to protect the area.

B. The Conservation Easement Areas (the "Easement Areas") situated on the Property are more particularly described on Exhibits B and C, attached hereto and made a part hereof, the second page of which contains a drawing depicting the protected area.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), in hand paid, the receipt and adequacy of which are hereby acknowledged, Grantor hereby reserves, conveys and grants the following Conservation Easement, which shall be binding upon the Grantor, the owners of the respective condominium units affected hereby, and the City, and all of their respective heirs, successors, assigns and/or transferees and shall be for the benefit of the City, all Grantors and purchasers of the Property and their respective heirs, successors, assigns and/or transferees. This Conservation Easement is dedicated pursuant to subpart 11 of part 21 of the Natural Resources and Environmental Protection Act being MCL 324.2140, *et seq.*, upon the terms and conditions set forth herein as follows:

1. The purpose of this Conservation Easement is to protect the wetland areas, including without limitation the existing stream and buffer therein, as shown on the attached and incorporated Exhibit B. The subject areas shall be perpetually preserved and maintained, in their

natural and undeveloped condition, unless authorized by permit from the City, and, if applicable, the Michigan Department of Environmental Quality and the appropriate federal agency.

2. Except for and subject to the activities that have been expressly authorized by permit, there shall be no disturbance of the wetlands, including without limitation the existing stream and buffer therein, and/or vegetation within the Easement Area, including altering the topography of; placing fill material in; dredging, removing or excavating soil, minerals, or trees, and from constructing or placing any structures on; draining surface water from; or plowing, tilling, cultivating, or otherwise altering or developing, and/or constructing, operating, maintaining any use or development in the Easement Area.

3. No grass or other vegetation shall be planted in the Easement Areas after the date of this Conservation Easement with the exception of plantings approved, in advance, by the City in accordance with all applicable laws and ordinances.

4. This Conservation Easement does not grant or convey to Grantee, or any member of the general public, any right of ownership, possession or use of the Easement Area, except that, upon reasonable written notice to Grantor, Grantee and its authorized employees and agents (collectively, "Grantee's Representatives") may enter upon and inspect the Easement Area to determine whether the Easement Area is being maintained in compliance with the terms of the Conservation Easement.

5. In the event that the Grantor shall at any time fail to carry out the responsibilities specified within this Document, and/or in the event of a failure to preserve and/or maintain the wetland areas in reasonable order and condition, the City may serve written notice upon the Grantor setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of the hearing before the City Council, or such other body or official delegated by the City Council, for the purpose of allowing the Grantor to be heard as to why the City should not proceed with the maintenance and/or preservation that has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council, or other body or official designated to conduct the hearing, shall determine that maintenance and/or preservation have not been undertaken within the time specified in the notice, the City shall thereupon have the power and authority, but not obligation to enter upon the Property, or cause its agents or contractors to enter upon the Property and perform such maintenance and/or preservation as reasonably found by the City to be appropriate. The cost and expense of making and financing such maintenance and/or preservation including the cost of notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the Grantor, and such amount shall constitute a lien on an equal pro rata basis as to all of the units within the Property. The City may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within thirty (30) days of a billing to the Grantor, all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each unit, 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 be collected by suit initiated against the Grantor, and, in such event, the Grantor shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

6. Within ninety (90) days after the Conservation Easement shall have been recorded, Grantor, at its sole expense, shall place such signs defining the boundaries of the Easement Area and describing its protected purpose, as indicated herein.

7. This Conservation Easement has been made and given for a consideration of a value less than One Hundred (\$100.00) Dollars, and, accordingly, is (i) exempt from the State Transfer Tax, pursuant to MSA 7.456(26)(2) and (ii) exempt from the County Transfer Tax, pursuant to MSA 7.456(5)(a).

8. Grantor shall state, acknowledge and/or disclose the existence of this Conservation Easement as of the day and year first above set forth.

GRANTOR

Mirabella Estates Condominium Association,
a Michigan non-profit corporation

By: _____

Russell G. Franchi

Its: President

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 5th day of ~~April~~^{May}, by Russell G. Franchi, as the President of Mirabella Estates Condominium Association, a Michigan non-profit corporation, on its behalf.

David A. Goldberg, Notary Public
Oakland County, Michigan
Acting in Oakland County
My Commission Expires: 02-01-2023

GRANTEE

CITY OF NOVI
A Municipal Corporation

By: _____

Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Acting in Oakland County, Michigan
My Commission Expires: _____

Drafted By:
Elizabeth K. Saarela, Esquire
Johnson, Rosati, Schultz & Joppich, P.C.
27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331

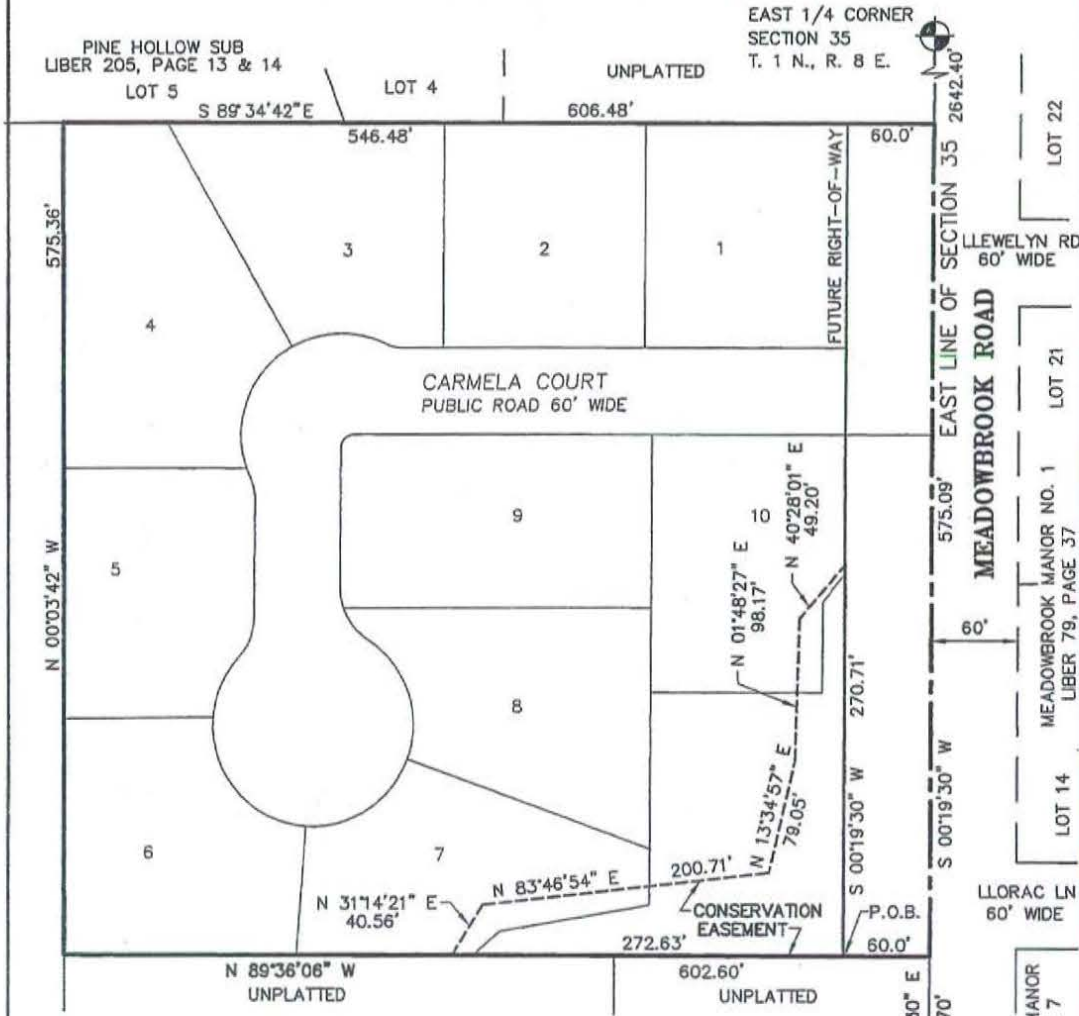
After Recording, Return to:
Maryanne Cornelius, Clerk
City of Novi
45175 10 Mile Road
Novi, Michigan 48375

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Units 1 through 10, inclusive, Mirabella Estates Condominium, according to the Master Deed recorded in Liber 33212, on Page 304, Oakland County Records, and designated as Oakland County Condominium Subdivision Plan No. 1632, together with rights in the General Common Elements and Limited Common Elements, as set forth in the above described Master Deed and Amendments thereto, and as disclosed by Act 59 of the Public Acts of 1978, as amended.

EXHIBIT "B" CONSERVATION EASEMENT



CONSERVATION EASEMENT

LAND IN PART OF THE SOUTHEAST 1/4 OF SECTION 35, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 35, TOWN 1 NORTH, RANGE 8 EAST, AND PROCEEDING ALONG THE EAST LINE OF SAID SECTION 35 N 00°19'30" E 534.70 FEET; THENCE N 89°36'06" W 60.00 FEET TO THE POINT OF BEGINNING; THENCE N 89°36'06" W 272.63; THENCE N 31°14'21" E 40.56 FEET; THENCE N 83°46'54" E 200.71 FEET; THENCE N 13°34'57" E 79.05 FEET; THENCE N 01°48'27" E 98.17 FEET; THENCE N 40°28'01" E 49.20 FEET; THENCE S 00°19'30" W 270.71 FEET TO THE POINT OF BEGINNING.

ARPEE/DONNAN, INC.
 LAND SURVEYING • ENGINEERING • MAPPING
 32233 SCHOOLCRAFT, SUITE 103 (734) 953-3335
 LIVONIA, MICHIGAN 48150 FAX (734) 953-3324

EXHIBIT "B"
 MIRABELLA ESTATES
 CITY OF NOVI, OAKLAND
 COUNTY, MICHIGAN

DATE: 09/05/14
FB: DRAWN:
PROJ. NO: 14020
SHEET 2 OF 2

EAST 1/4 CORNER SECTION 35 2642.40'
 UNPLATTED
 LOT 22
 LLEWELYN RD 60' WIDE
 LOT 21
 MEADOWBROOK ROAD
 MEADOWBROOK MANOR NO. 1 LIBER 79, PAGE 37
 LOT 14
 LLORAC LN 60' WIDE
 MEADOWBROOK MANOR LIBER 79, PAGE 7
 LOT 13
 SOUTHEAST CORNER SECTION 35 T. 1 N., R. 8 E.
 SCALE: 1 IN. = 100 FT.