

4-1-05  
RECIPROCAL TEXT

## EXCHANGE AGREEMENT

This Exchange Agreement ("Agreement") is made by Anthony F. Lombardo, not individually, but on behalf of an entity to be designated by him, and without personal liability whatsoever ("Lombardo") and the City of Rochester Hills, a Michigan municipal corporation (the "City"), on the following terms:

### RECITALS

Lombardo owns or has the right to acquire the real property located in the City of Rochester Hills, County of Oakland, State of Michigan, legally described on the attached Exhibit A and which is commonly known as 820 N. Adams Road and 854 N. Adams Road and identified by tax parcel identification numbers 70-15-08-100-007 and 70-15-08-100-006 (the "Adams Road Property"). The City owns real property located in the City of Rochester Hills, County of Oakland, State of Michigan, legally described on the attached Exhibit B and which is commonly known as vacant land off of Meadowfield Drive and identified by tax parcel identification number 70-15-22-226-016 (the "Meadowfield Drive Property"). Lombardo and the City intend to exchange the Adams Road Property for the Meadowfield Drive Property. The parties are entering into this Agreement to formalize their understanding.

The parties agree as follows:

#### 1. Adams Road Conveyance

Subject to the terms and conditions of this Agreement, at the Closing (as defined in paragraph 8 of this Agreement), Lombardo shall execute and deliver to the City a warranty deed conveying marketable title to the Adams Road Property together with all improvements, appurtenances, hereditaments and tenements thereon and thereto. The value of the Adams Road Property shall be considered to be One Million Six Hundred Thousand and 00/100 (\$1,600,000.00) Dollars, as established by the Purchase Agreement for the Adams Road Property (the "Williams Purchase Agreement") dated June 22, 2004, by and between Lombardo, as purchaser, and Marvin Williams and Carol L. Williams, as Seller (hereinafter collectively referred to as the "Williams"), a copy of which will be delivered by Lombardo to the City at the time this Agreement is executed by all parties. The Adams Road Property shall be transferred subject to easements and building and use restrictions of record.

#### 2. Meadowfield Drive Conveyance

Subject to the terms and conditions of this Agreement, at the Closing, the City shall execute and deliver to Lombardo a warranty deed conveying marketable title to the Meadowfield Drive Property together with all improvements, appurtenances, hereditaments and tenements thereon and thereto. The value of the Meadowfield Drive Property shall be considered to be One Million Nine Hundred Seventy-Five Thousand and 00/100 (\$1,975,000.00) Dollars. The Meadowfield Drive Property shall be transferred subject to easements and building and use restrictions of record.

3. **Payment by Lombardo**

Lombardo shall pay Three Hundred Seventy-Five Thousand and 00/100 (\$375,000.00) Dollars to the City, which represents the difference between the values of the Meadowfield Drive Property and the Adams Road Property. The difference shall be paid in cash at the Closing of the conveyance of the Meadowfield Drive Property. Within five (5) days of the Effective Date, Lombardo shall deposit the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) ("Deposit") in cash or bank check, as an earnest money deposit with the Title Company (as defined below). The Deposit shall be applied to reduce the funds due from Lombardo to the City at Closing, or shall be refunded to Lombardo or retained by the City in accordance with the terms of this Agreement.

4. **Taxes**

A. **Real Estate Taxes and Assessments for Adams Road Property**

Any unpaid real estate taxes, general and special assessments (including all installments due prior to or after the Closing) and water and sewer use charges that have become a lien against the Adams Road Property, that have been assessed against the Adams Road Property or which have become due and payable as of the date of the Closing shall be paid by Lombardo. Current real estate taxes (excluding any assessments or special assessments) consisting of the tax bills which have first become due and payable during the 12 months immediately preceding the date that full possession of the Adams Road Property is delivered to the City shall be prorated and adjusted as of such date in accordance with the due-date basis (i.e. on the assumption that such taxes are paid in advance) of the municipality or taxing unit in which the Adams Road Property is located.

B. **Real Estate Taxes and Assessments for Meadowfield Drive Property**

Any unpaid real estate taxes, general and special assessments (including all installments due prior to or after the Closing) and water and sewer use charges that have become a lien against the Meadowfield Drive Property, that have been assessed against the Meadowfield Drive Property or which have become due and payable as of the date of the Closing shall be paid by the City. Current real estate taxes (excluding any assessments or special assessments) consisting of the tax bills which have first become due and payable during the 12 months immediately preceding the date that full possession of the Meadowfield Drive Property is delivered to Lombardo shall be prorated and adjusted as of such date in accordance with the due-date basis (i.e. on the assumption that such taxes are paid in advance) of the municipality or taxing unit in which the Property is located.

## 5. Evidence of Title and Title Examination

Within twenty (20) days of the Effective Date, each party (the "Transferor") shall furnish, at such Transferor's sole cost and expense, to the other party (the "Transferee") a commitment for an owner's policy of title insurance dated after the Effective Date in favor of the Transferee issued by the Philip F. Greco Title Company ("Title Company") in the amount of the respective value of the property being conveyed pursuant to this Agreement by the Transferor, covering such property without standard exceptions and subject only to Permitted Encumbrances (as hereinafter defined) including a tax parcel endorsement, an access endorsement, a comprehensive endorsement, a contiguity endorsement, if applicable, a survey endorsement and a zoning endorsement. Lombardo is required to obtain, at its cost, a survey satisfactory to the Title Company for the above endorsements and for the issuance of title insurance without standard exceptions and Transferee shall pay the premium, if any, for any of such endorsements. The legal description embodied in said title commitment shall conform in all respects to any survey which Lombardo may obtain.

Transferee shall have thirty (30) days after having received the title commitment to notify Transferor, in writing, indicating in reasonable detail and specifying the nature of the defects claimed with respect to any objections to the marketable fee simple title to the respective property as reflected in said title commitment. As used herein, "Permitted Encumbrances" shall mean and include those covenants, restrictions and easements acceptable to Transferee in Transferee's sole discretion. In the event Transferee notifies Transferor of any objection to the title of the respective property in accordance with the terms of this Agreement, Transferor shall have the right to cure such objection(s) and to evidence such cure to Transferee, in a manner satisfactory to Transferee on or before thirty (30) days of the date of Transferee's notification to Transferor of its objections to title.

In the event said objection(s) have not been cured by Transferor within the time frame referenced in the preceding paragraph, Transferee shall have the option to (i) accept the respective property subject to such exceptions, (ii) terminate this Agreement or (iii) bond off or pay off such exception, at or before closing, at Transferor's expense, utilizing and offsetting the amount, if any, which Transferee owes to Transferor for such respective property if necessary or desirable, and close pursuant to this Agreement. If Transferee terminates this Agreement, the Deposit shall be immediately returned to Lombardo.

Transferor agrees that from and after its acceptance hereof, Transferor shall not further encumber the property by mortgage or mortgages, claims, liens or any other encumbrances, and further Transferor agrees to indemnify Transferee from and against any loss, damage, or expense incurred or suffered by Transferee from any such encumbrance(s). The provisions of this paragraph shall survive the Closing.

**6. Due Diligence**

**A. Contingency Period for Meadowfield Drive Property**

For a period of 180 days from the Effective Date of this Agreement (“Lombardo Contingency Period”), Lombardo shall have the right to enter upon, access and/or evaluate the Meadowfield Drive Property for all purposes relative to Lombardo’s environmental inspection, preliminary site planning, engineering, zoning, and for any other physical, legal, or other inspection or evaluation whatsoever of the Meadowfield Drive Property, or for any other purpose related to the Meadowfield Drive Property deemed necessary at Lombardo’s sole discretion and at Lombardo’s sole cost, including, but not limited to, any and all matters related to any future use of the Meadowfield Drive Property by Lombardo. Such activities shall include, but not be limited to all environmental testing, topographical surveys, wetland studies, soil borings and testings of such other ecological environmental engineering and other testing as Lombardo deems appropriate. Lombardo agrees to restore all areas of the Meadowfield Drive Property disturbed by such testing reasonably similar to their previously existing condition. Within 10 days after execution of this Agreement, the City shall promptly deliver to Lombardo all of the City’s records and documents regarding the Meadowfield Drive Property including, but not limited to, surveys, site plans, engineering drawings, soil studies, environmental reports or assessments or any other documents or records reasonably required by Lombardo for Lombardo’s review of the Meadowfield Drive Property. Lombardo, at his option and at his sole cost, may obtain recertification of any environmental site assessment previously obtained by the City for the Meadowfield Drive Property. Notwithstanding anything to the contrary in this Agreement, Lombardo may elect in its sole discretion to extend the Lombardo Contingency Period up to an additional ninety (90) days upon Lombardo providing the City with written notice of such election prior to the expiration of the Lombardo Contingency Period. For the purpose of this Agreement, any reference to the Lombardo Contingency Period shall include the extended ninety (90) day period if Lombardo makes such election to extend the Lombardo Contingency Period pursuant to this paragraph.

**B. Cooperation by the City**

The City hereby acknowledges that Lombardo intends to develop the Meadowfield Drive Property as a Planned Unit Development (“PUD”) consisting of 58 ranch style residential condominium units under the City’s Code of Ordinances, Article VI, District Regulations, Division 18, based upon: a) the innovative design of the ranch style condominiums and the lack of similar type housing in the City; b) the fact that the Meadowfield Drive Property is a vacant parcel that is currently surrounded by development; and c) other potential PUD qualifying criteria. The City hereby agrees upon the request of Lombardo and while this Agreement shall remain in full force and effect to execute in its name, alone or together with Lombardo, all site plan applications, master deeds, plats, zoning/rezoning petitions, variance petitions, special land use agreements, parcel division/combination applications, letters of authorization and any and

all other documents, petitions, applications, dedications, easements for utilities, rights-of-way and such other similar instruments or documents which may be required or appropriate for development of the Meadowfield Drive Property by Lombardo as a PUD. Lombardo agrees to pay all applications and filing fees and the fees of all professionals retained by Lombardo in connection with the actions described in this Paragraph 6. B. and agrees to indemnify and hold the City harmless from all such fees. Notwithstanding anything to the contrary in this Agreement, the cooperation and/or execution of any documents by the City pursuant to this Paragraph 6. B. shall not be construed as the City's approval of any such applications, petitions, requests or documents, unless such documents specifically so state that the City has approved such applications, petitions, requests or documents.

**C. Contingency Period for Adams Road Property**

For a period of 60 days from the Effective Date of this Agreement (the "City Contingency Period"), the City shall have the right to enter upon, access and/or evaluate the Adams Road Property for all purposes relative to the City's environmental inspection, preliminary site planning, engineering, zoning, and for any other physical, legal, or other inspection or evaluation whatsoever of the Adams Road Property, or for any other purpose related to the Adams Road Property deemed necessary at the City's sole discretion and at the City's sole cost, including, but not limited to, any and all matters related to any future use of the Adams Road Property by the City. Such activities shall include, but not be limited to all environmental testing, topographical surveys, wetland studies, soil borings and testings of such other ecological environmental engineering and other testing as the City deems appropriate. The City agrees to restore all areas of the Adams Road Property disturbed by such testing reasonably similar to their previously existing condition. Within 10 days after execution of this Agreement, Lombardo shall promptly deliver to the City all records and documents regarding the Adams Road Property which are in the possession of Lombardo including, but not limited to, surveys, site plans, engineering drawings, soil studies, environmental reports or assessments or any other documents or records pertaining to the Adams Road Property which are in the possession of Lombardo. The City, at its option and at its sole cost, may obtain recertification of any environmental site assessment previously obtained by Lombardo for the Adams Road Property. Notwithstanding anything to the contrary in this Agreement, all rights of the City pursuant to this paragraph are subject to and contingent on Lombardo having such rights under the Williams Purchase Agreement and on such rights being assignable by Lombardo to the City.

If, during the City Contingency Period, the City, shall decide, in its sole and absolute discretion, (i) that the Adams Road Property is unsatisfactory for the City's intended use or needs; or (ii) that the City is not satisfied with the results of the inspections and other work done during the City Contingency Period, including without limitation, approval of, and satisfaction with, all survey, environmental conditions, governmental approvals, utilities, suitability for construction, ingress and egress, soil tests and conditions, flood plain issues, wetland studies, zoning, economic feasibility, land

division drainage, reciprocal easements and all on and off property sign agreements, then the City may at its option, terminate this Agreement. In the event the City terminates this Agreement pursuant to this paragraph, then the Deposit shall be immediately returned to Lombardo and this Agreement shall be null and void, and both parties shall be released from further liability hereunder. The foregoing conditions of this paragraph 6.C. shall be deemed satisfied unless the City delivers to Lombardo written notice of objection or termination prior to the expiration of the City Contingency Period.

## 7. Contingencies

The closing of the Adams Road Property and Meadowfield Drive Property shall be contingent on the following contingencies being met to the satisfaction of Lombardo, as determined by Lombardo in Lombardo's sole discretion:

A. A preliminary site plan for a PUD for the Meadowfield Drive Property consisting of 58 ranch style residential condominium units, which is satisfactory to Lombardo, in its sole discretion, and which is submitted for approval by Lombardo to the City, is accepted and approved by both the City's Planning Commission and the City Council for the City.

B. Lombardo acquiring the Adams Road Property from Carol L. Williams and Marvin Williams, or their successors, assigns, executors or administrators, on or before the Closing, pursuant to the terms of a Purchase Agreement dated June 22, 2004 by and between Marvin Williams and Carol Williams, as Seller, and Anthony F. Lombardo, not individually, but on behalf of an entity to be designated by him, and without personal liability whatsoever, as Purchaser.

C. The City shall be in compliance with all terms and conditions of this Agreement and shall not be in breach of any representations, warranties, terms, covenants or promises contained herein and shall have delivered to Lombardo all documents required to be delivered by the City under this Agreement.

D. No actions or proceedings, whether legal or administrative, shall be instituted before a court or any other governmental body or by a public authority or agency concerning or in any way relating to the Meadowfield Drive Property or the transactions contemplated by this Agreement.

E. If, during the Lombardo Contingency Period, Lombardo, shall decide, in his sole and absolute discretion, (i) that the Meadowfield Drive Property is unsatisfactory for Lombardo's intended use or needs; or (ii) that Lombardo is not satisfied with the results of the inspections and other work done during the Lombardo Contingency Period, including without limitation, approval of, and satisfaction with, all survey, environmental conditions, governmental approvals, utilities, suitability for construction, ingress and egress, soil tests and conditions, flood plain issues, wetland studies, zoning, economic feasibility, land division drainage, reciprocal easements and all on and off property sign

agreements, then Lombardo may at his option, terminate this Agreement. In the event that Lombardo terminates this Agreement pursuant to this Paragraph 7.E., then the Deposit shall be immediately returned to Lombardo and this Agreement shall be null and void, and both parties shall be released from further liability hereunder. The foregoing conditions of this Paragraph 7.E. shall be deemed satisfied unless Lombardo delivers to the City written notice of objection or termination prior to the expiration of the Lombardo Contingency Period.

**8. Closing**

Provided all of the contingencies of Paragraph 7 of this Agreement have been met and provided this Agreement has not been terminated pursuant to the terms of this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall occur within thirty (30) days after the expiration of the Lombardo Contingency Period. The time and place of the Closing shall be as agreed by the parties. On or before the Closing, each party shall provide the other with a resolution, reasonably satisfactory to the other party authorizing the execution of this Agreement by such party and the consummation of the exchange and naming the person or persons authorized to execute the closing documents. The City and Lombardo each agree to execute and/or deliver such agreements, documents and instruments and to take such other actions on or before the Closing as may be reasonably requested by the other party to carry out the provisions and intent of this Agreement. Notwithstanding anything to the contrary in this Agreement, Lombardo and the City may mutually agree to have the Title Company prepare the closing documents in which case the parties shall share equally in the costs charged by the Title Company for the preparation of such documents.

**9. Possession**

Each party shall tender possession of that party's property at the Closing.

**10. Representations and Warranties**

**A. Representations and Warranties for Meadowfield Drive Property**

The City makes the following representations and warranties to Lombardo, which representations and warranties shall be deemed material to the transaction and have been relied upon by Lombardo in connection herewith and, all of which shall survive the Closing:

- i. Based upon the present actual knowledge of the City without independent inquiry, the City has not used, generated, treated, stored, handled, or disposed of, on, under or about the Meadowfield Drive Property any Contaminant or Hazardous Substance (as defined below) except in compliance with Environmental Laws and Regulations (as defined below). The City hereby further represents and warrants to Lombardo that, based upon the present actual knowledge of the City without independent inquiry, no third party has used,

generated, treated, stored, handled, or disposed of, on, under or about the Meadowfield Drive Property any Contaminant or Hazardous Substance (as defined below) except in compliance with Environmental Laws and Regulations (as defined below).

ii. Based on the present actual knowledge of the City without independent inquiry, there are no underground storage tanks (USTs) as defined by Environmental Laws and Regulations (as defined below) on or below the Meadowfield Drive Property used, or used in the past, except in compliance with Environmental Laws and Regulations (as defined below).

iii. Based upon the present actual knowledge of the City without independent inquiry, the City has not withheld any relevant facts or information in connection with the environmental condition of the Meadowfield Drive Property.

**B. Representations and Warranties for Adams Road Property**

Lombardo makes the following representations and warranties to the City, which representations and warranties shall be deemed material to the transaction and have been relied upon by the City in connection herewith and, all of which shall survive the Closing:

i. Based upon the present actual knowledge of Lombardo without independent inquiry, Lombardo has not used, generated, treated, stored, handled, or disposed of, on, under or about the Adams Road Property any Contaminant or Hazardous Substance (as defined below) except in compliance with Environmental Laws and Regulations (as defined below). Lombardo hereby further represents and warrants to the City that, based upon the present actual knowledge of Lombardo without independent inquiry, no third party has used, generated, treated, stored, handled, or disposed of, on, under or about the Adams Road Drive Property any Contaminant or Hazardous Substance (as defined below) except in compliance with Environmental Laws and Regulations (as defined below).

ii. Based on the present actual knowledge of Lombardo without independent inquiry, there are no underground storage tanks (USTs) as defined by Environmental Laws and Regulations (as defined below) on or below the Adams Road Property used, or used in the past, except in compliance with Environmental Laws and Regulations (as defined below).

iii. Based upon the present actual knowledge of Lombardo without independent inquiry, Lombardo has not withheld any relevant facts or information in connection with the environmental condition of the Adams Road Property.



### C. Definitions

The term "Environmental Laws and Regulations" shall mean any United States, State of Michigan, or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, demand, requirement, order, writ, decree, injunction, guidance, policy, or other authorization, pronouncement, promulgation, standard or mandate (including, but not limited to, those of the United States Environmental Protection Agency and the Michigan Department of Environmental Quality) relating to:

i. emissions, discharges, releases or threatened release of any Contaminant or Hazardous Substances (as defined below), including petroleum and petroleum products and derivatives into the ambient air, surface water, groundwater, soils, subsurface soils, publicly owned treatment works, septic systems or land;

ii. the use, treatment, storage, disposal, manufacture, sale, transportation, shipment or handling of polychlorinated biphenyls ("PCB") or petroleum or petroleum products and derivatives;

iii. the installation, existence, or removal of or exposure to asbestos, asbestos fibers or friable asbestos;

iv. the use, treatment, storage, disposal, handling, manufacture, sale, transportation, or shipment of any hazardous waste, toxic waste, petroleum or petroleum product/waste, solid waste, material, pollutant or contaminant, substance, hazardous substance, product or by-product as defined in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA"), 42 USC §9601 *et. seq.*; the Resource Conservation Recovery Act ("RCRA"), 42 USC §6901 *et. seq.*; the Toxic Substances Control Act ("TSCA"), 15 USC §2601 *et. seq.*; the Hazardous Materials Transportation Act 49 USC §1801, *et. seq.*; the National Historic Preservation Act, 16 USC §1451, *et. seq.*; Rivers and Harbors Act of 1899, 33 USC §401, *et. seq.*; the Clean Water Act, 33 USC §1251, *et. seq.*; the Flood Disaster Protection Act, 42 USC §4001 *et. seq.*; the National Environmental Policy Act, 42 USC §4321 *et. seq.*; the Clean Air Act, 42 USC §7401, *et. seq.*; Safe Drinking Water Act; 42 USC §300f *et. seq.*; the Emergency Planning and Community Right-to-Know Act, 42 USC §11001 *et. seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC §136 *et. seq.*; the Michigan Natural Resources and Environmental Protection Act", MCL 324.101 *et. seq.*, and all amendments thereto and the regulations adopted and publications promulgated pursuant to said laws; or

v. pollution, contamination or the protection of health, safety, natural resources, or the environment; or

- vi. the use, installation and management of any UST.

The term "Contaminant or Hazardous Substance" shall mean any material or substance in any way governed by any Environmental Laws or Regulations including, but not limited to, materials or substances set forth in, or in any way governed by, the Comprehensive Environmental Response Compensation and Liability Act (including its amendments), 42 USC §9601 et. seq.; the Federal Water Pollution Control Act (including its amendments), 33 USC §1251 et. seq.; the Toxic Substances Control Act, 15 USC §2601 et. seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et. seq.; the Safe Drinking Water Act, 42 USC §300f et. seq., and all provisions of the Natural Resources and Environmental Protection Act, MCL 324.101 et. seq., including petroleum, petroleum products and waste oils of any kind.

## 11. **General Representations and Warranties**

### A. **The City's Representations and Warranties**

The City makes the following representations and warranties to Lombardo, which representations and warranties shall be deemed material to the transaction and have been relied upon by Lombardo in connection herewith and, all of which shall survive the Closing:

- i. At the Closing, the City shall have good marketable fee simple title to the Meadowfield Drive Property. To the best of the City's knowledge without independent inquiry, the Meadowfield Drive Property is free and clear of all liens, claims and encumbrances, except as disclosed in the title commitment referred to herein which has been provided to Lombardo. Any installments for assessments (special or otherwise) on the Meadowfield Drive Property that have become a lien on the Meadowfield Drive Property or which have become due and payable as of the date of the Closing, shall be paid and fully discharged by the City prior to the Closing.

- ii. The City has full power and authority under the terms of its governing documents to enter into this Agreement and to perform and carry out all obligations, covenants and provisions hereof. The City's authority shall be evidenced by documentation satisfactory to Lombardo's counsel.

- iii. The City will not cause, suffer, or permit waste, depletion or any adverse change in the physical condition of any part of the Meadowfield Drive Property to occur prior to the Closing.

- iv. The City has received no notice from any governmental agency of any violations of any building or use restrictions, zoning ordinances or other ordinances, rules or regulations affecting the Meadowfield Drive Property.

v. To the best of the City's knowledge without independent inquiry, there are no material defects to the Meadowfield Drive Property which would not be apparent upon a careful inspection of the same which would prevent Lombardo from developing and constructing residences on the Meadowfield Drive Property including, but not limited to, defects to the soil which would prevent a residence from being constructed on such Meadowfield Drive Property.

vi. To the best of the City's knowledge without independent inquiry, there is no condition existing with respect to the Meadowfield Drive Property or any part thereof, which violates any federal, state or local governmental regulation or law, and the City has received no notice and has no other knowledge and information of any pending or contemplated condemnation action.

vii. The City has not entered into any other agreements of sale for the Meadowfield Drive Property or any part thereof and to the best of the City's knowledge without independent inquiry, there are no pending or threatened lawsuits, administrative actions or examinations, claims or demands whatsoever relating to the Meadowfield Drive Property before any court, or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof.

viii. To the best of the City's knowledge without independent inquiry, all information, heretofore or hereafter provided to Lombardo is and shall be complete, true and accurate, in all material respects.

ix. The City has not contracted for the furnishing of labor or materials to the Meadowfield Drive Property which will not be paid in full prior to the Closing, or which would give rise to a claim of a construction lien. The City shall indemnify Lombardo from all loss, claims and costs which Lombardo may incur from the imposition of construction liens, if any, arising from the acts or omissions of the City, its agents or contractors.

x. To the best of the City's knowledge without independent inquiry, no federal, state or local taxing authority has asserted any tax deficiency, lien or assessment against the Meadowfield Drive Property which has not been paid or the payment for which adequate provision has not been made, to Lombardo's satisfaction.

xi. The City is not a foreign "person" as defined in Section 1445 of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder.

xii. To the best of the City's knowledge without independent inquiry, the Meadowfield Drive Property has full and free access to, and from at least one

public highway, street or road including Meadowfield Drive, and to the best of the City's knowledge without independent inquiry, there is no pending or threatened governmental or private proceeding which would impair or result in the termination of such access.

xiii. The City shall pay for all past and future personal property, single business, use, sales, income, unemployment or other taxes associated with any business which was operated on the Meadowfield Drive Property by the City or any entity in which the City is a member, shareholder, partner, director, officer, manager, employee or agent of such entity.

xiv. The City has not and will not from and after the date hereof enter into any leases or otherwise encumber the Meadowfield Drive Property, enter into any agreements which would be binding upon Lombardo after its acquisition of the Meadowfield Drive Property or which would affect Lombardo's title to or right to possession of the Meadowfield Drive Property or perform any act which would materially change the current status of the Meadowfield Drive Property or in any manner materially impair or diminish the value of the Meadowfield Drive Property.

xv. The Meadowfield Drive Property is not qualified agricultural property as defined in the Agricultural Property Recapture Act, P.A. 2000, No. 261, MCL 211.1001 et seq.

xvi. To the best of the City's knowledge without independent inquiry, the Meadowfield Drive Property consists of approximately 9.58 acres.

xvii. The representations and warranties made in this Paragraph 11.A. shall be correct in all material respects on the date of execution of this Agreement and on and as of the Closing and shall survive the Closing.

#### **B. Indemnity of the City**

The City hereby agrees to indemnify, defend, save and hold harmless Lombardo from any and all liabilities, claims, actions, demands, penalties, losses, costs, expenses (including, without limitation, reasonable attorney fees), lawsuits, costs of any settlement or judgment, and claims of any and every kind whatsoever which may now or in the future be paid, incurred or suffered by or against Lombardo or any assignee of Lombardo for, with respect to, or as a direct or indirect result of a breach of any of the representations and warranties contained in paragraphs 10.A. and 11.A. of this Agreement. This indemnity shall survive the Closing.

**C. Lombardo's Representations and Warranties**

Lombardo makes the following representations and warranties to the City, which representations and warranties shall be deemed material to the transaction and have been relied upon by the City in connection herewith and, all of which shall survive the Closing:

i. At the Closing, Lombardo shall have good marketable fee simple title to the Adams Road Property. To the best of Lombardo's knowledge without independent inquiry, the Adams Road Property is free and clear of all liens, claims and encumbrances, except as disclosed in the title commitment referred to herein which has been provided to the City. Any installments for assessments (special or otherwise) on the Adams Road Property that have become a lien on the Adams Road Property or which have become due and payable as of the date of the Closing, shall be paid and fully discharged by Lombardo prior to the Closing.

ii. Lombardo has full power and authority under the terms of its governing documents to enter into this Agreement and to perform and carry out all obligations, covenants and provisions hereof. Lombardo's authority shall be evidenced by documentation satisfactory to the City's counsel.

iii. Lombardo will not cause, suffer, or permit waste, depletion or any adverse change in the physical condition of any part of the Adams Road Property to occur prior to the Closing.

iv. Lombardo has received no notice from any governmental agency of any violations of any building or use restrictions, zoning ordinances or other ordinances, rules or regulations affecting the Adams Road Property.

v. To the best of Lombardo's knowledge without independent inquiry, there are no material defects to the Adams Road Property which would not be apparent upon a careful inspection of the same which would prevent the City from developing and constructing residences on the Adams Road Property including, but not limited to, defects to the soil which would prevent a residence from being constructed on such Adams Road Property.

vi. To the best of Lombardo's knowledge without independent inquiry, there is no condition existing with respect to the Adams Road Property or any part thereof, which violates any federal, state or local governmental regulation or law, and Lombardo has received no notice and has no other knowledge and information of any pending or contemplated condemnation action.

vii. Lombardo has not entered into any other agreements of sale for the Adams Road Property or any part thereof and to the best of Lombardo's knowledge without independent inquiry, there are no pending or threatened

lawsuits, administrative actions or examinations, claims or demands whatsoever relating to the Adams Road Property before any court, or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof.

viii. To the best of Lombardo's knowledge without independent inquiry, all information, heretofore or hereafter provided to the City is and shall be complete, true and accurate, in all material respects.

ix. Lombardo has not contracted for the furnishing of labor or materials to the Adams Road Property which will not be paid in full prior to the Closing, or which would give rise to a claim of a construction lien. Lombardo shall indemnify the City from all loss, claims and costs which the City may incur from the imposition of construction liens, if any, arising from the acts or omissions of Lombardo, its agents or contractors.

x. To the best of Lombardo's knowledge without independent inquiry, no federal, state or local taxing authority has asserted any tax deficiency, lien or assessment against the Adams Road Property which has not been paid or the payment for which adequate provision has not been made, to the City's satisfaction.

xi. Lombardo is not a foreign "person" as defined in Section 1445 of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder.

xii. To the best of Lombardo's knowledge without independent inquiry, the Adams Road Property has full and free access to, and from at least one public highway, street or road including Adams Road, and to the best of Lombardo's knowledge without independent inquiry, there is no pending or threatened governmental or private proceeding which would impair or result in the termination of such access.

xiii. Lombardo shall pay for all past and future personal property, single business, use, sales, income, unemployment or other taxes associated with any business which was operated on the Adams Road Property by Lombardo or any entity in which Lombardo is a member, shareholder, partner, director, officer, manager, employee or agent of such entity.

xiv. Lombardo has not and will not from and after the date hereof enter into any leases or otherwise encumber the Adams Road Property, enter into any agreements which would be binding upon the City after its acquisition of the Adams Road Property or which would affect the City's title to or right to possession of the Adams Road Property or perform any act which would

materially change the current status of the Adams Road Property or in any manner materially impair or diminish the value of the Adams Road Property.

xv. The Adams Road Property is not qualified agricultural property as defined in the Agricultural Property Recapture Act, P.A. 2000, No. 261, MCL 211.1001 et seq.

xvi. To the best of Lombardo's knowledge without independent inquiry, the Adams Road Property consists of approximately 10 acres.

xvii. The representations and warranties made in this Paragraph 11.C. shall be correct in all material respects on the date of execution of this Agreement and on and as of the Closing and shall survive the Closing.

#### **D. Indemnity of Lombardo**

Lombardo hereby agrees to indemnify, defend, save and hold harmless the City from any and all liabilities, claims, actions, demands, penalties, losses, costs, expenses (including, without limitation, reasonable attorney fees), lawsuits, costs of any settlement or judgment, and claims of any and every kind whatsoever which may now or in the future be paid, incurred or suffered by or against the City or any assignee of the City for, with respect to, or as a direct or indirect result of a breach of any of the representations and warranties contained in paragraphs 10.B. and 11.C. of this Agreement. This indemnity shall survive the Closing.

#### **12. Condition of Property**

Subject to the representations and warranties made in this Agreement, each party has had the opportunity to inspect the property to be received and agrees to accept that property in "as is" condition.

#### **13. Risk of Loss**

Each party shall bear the risk of loss or damage to that party's property, subject to ordinary wear and tear, until the time of the respective closing.

#### **14. Costs**

Each party shall pay for the revenue stamps and transfer taxes on the deed executed by that party, and each party shall pay for the recording of the deed that party receives.

#### **15. The City's Default**

In the event of any default hereunder by the City, Lombardo shall have the right to terminate this Agreement by written notice to the City and receive an immediate refund of the

Deposit, if any, plus any and all damages which Lombardo has incurred as a result of such default, or Lombardo may specifically enforce the City's obligations under this Agreement.

**16. Lombardo's Default**

In the event of any default hereunder by Lombardo, the City shall have the right to terminate this Agreement by written notice to Lombardo and shall be entitled to retain the Deposit, if any, as liquidated damages as the City's sole and exclusive remedy against Lombardo.

**17. Notices**

Any notice, request, demand, consent, approval or other communication given hereunder or under any of the instruments or documents referred to or contemplated hereby or in connection herewith shall be in writing; and shall be personally delivered or sent by registered or certified mail, return receipt requested, with postage and fees prepaid addressed to the parties hereto to receive such notice at its respective addresses set forth below or by facsimile transmission. Any party may by notice given as aforesaid, change its address for any subsequent notice. Any notice delivered by either party under this paragraph shall be effective on the earlier of the date of actual delivery (which shall be deemed to include confirmed facsimile transmissions) or two (2) business days after mailing or upon receipt if sent by facsimile transmission. Any notice by either party shall be sufficient if signed on behalf of said party by any partner or officer thereof.

If to Lombardo: Anthony F. Lombardo, not individually,  
but on behalf of an entity to be designated by him  
6303 26 Mile, Suite 200  
Washington, MI 48094

With a copy to: O'Reilly Rancilio P.C.  
Attention: Lawrence M. Scott  
12900 Hall Road, Suite 350  
Sterling Heights, MI 48313-1151

If to the City: City of Rochester Hills  
Attention: Mayor Pat Somerville  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

With a copy to: Beier Howlett, PC  
Attention: Mr. John D. Staran  
200 E. Long Lake Rd., Suite 110  
Bloomfield Hills, MI 48304



**18. Severability**

Whenever possible, each provision of this Agreement and all related documents shall be interpreted in such a manner as to be valid under applicable law, but to the extent any provision is invalid or prohibited under applicable law such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provisions of this Agreement.

**19. Assignability; Binding Upon Parties**

Lombardo shall be permitted to assign this Agreement or any of its rights, title or interest in this Agreement to a related party or entity to be formed by Lombardo (hereinafter "Assignee") and the undersigned Lombardo shall have no personal liability under this Agreement, so long as Lombardo remains a minimum 51% interest-holder in Assignee and Assignee will assume all obligations of this Agreement. Assignee shall provide a resolution of its Board of Directors and/or Members authorizing this assignment. Otherwise, this Agreement shall be binding upon the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

**20. Brokers**

The City represents to Lombardo that the City has not utilized the services of, or become obligated to pay a commission to, a real estate broker in connection with the sale contemplated by this Agreement and the City agrees to indemnify Lombardo in the event any claim for brokerage commission is made by any party in connection with the sale, other than as result of any agreement which Lombardo has entered into with such party. Lombardo represents to the City that Lombardo has not utilized the services of, or become obligated to pay a commission to, a real estate broker in connection with the sale contemplated by this Agreement and Lombardo agrees to indemnify the City in the event any claim for brokerage commission is made by any party in connection with the sale as a result of any agreement which Lombardo has entered into with such party.

**21. Binding Nature and Final Agreement**

This Agreement sets forth the entire Agreement between the parties and shall be binding on and shall inure to the benefit of the parties and their respective heirs, successors, personal representatives, and assigns. No understandings or agreements shall be binding on either party unless set forth in this Agreement.

**22. Interpretation**

No provision in this Agreement shall be interpreted for or against any party because that party or that party's attorney drafted the provision.

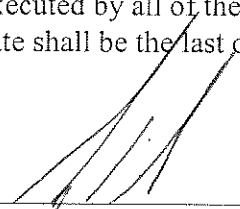
23. **Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

24. **Effective Date**

This Agreement shall become effective when executed by all of the parties listed below and for the purpose of this Agreement, the Effective Date shall be the last of the dates indicated by the signatures below.

Dated: 03-28-05, 2005

  
\_\_\_\_\_  
Anthony F. Lombardo, not individually, but on behalf of an entity to be designated by him and without personal liability whatsoever

CITY OF ROCHESTER HILLS,  
a Michigan municipal corporation

Dated: \_\_\_\_\_, 2005

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

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

**ACKNOWLEDGMENT OF DEPOSIT**

The undersigned hereby acknowledges that it has received from Lombardo the above referenced Deposit as outlined in Paragraph 3. The Deposit shall be applied to reduce the funds due at Closing, or shall be refunded to Lombardo or retained by the City in accordance with the terms of this Agreement.

PHILIP F. GRECO TITLE COMPANY,  
a Michigan corporation

Dated: \_\_\_\_\_, 2005

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

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

## EXHIBIT A

Land located in the City of Rochester Hills, County of Oakland, State of Michigan:

The South 5 Acres of the North 20.79 Acres of the West 1087.90 feet of the Northwest ¼ of Section 8, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan. Being more particularly described as commencing at the Northwest corner of said Section 8; thence South 01°58'24" West 632.20 feet along the West line of said Section 8, to the point of beginning; thence proceeding South 01°58'24" West 200.18 feet along the West line of said Section 8 to a point; thence South 87°56'24" East 1087.90 feet to a point on the West line of "Shadow Woods Subdivision No. 2", a plat recorded in Liber 163 of Plats, on Pages 13 thru 16, of Oakland County Records; thence North 01°58'24" East 200.18 feet along the West line of said "Shadow Woods Subdivision No. 2", to a point; thence North 87°56'24" West 1087.90 feet to the point of beginning. Containing 5.000 Acres (Gross Area).

Commonly known as 854 N. Adams Road  
Tax Identification No. 15-08-100-006

The South 5 Acres of the North 25.79 Acres of the West 1087.90 feet of the Northwest ¼ of Section 8, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan.

Commonly known as 820 N. Adams Road  
Tax Identification No. 15-08-100-007

Legal Description of Overall Parcel as Written by Atwell-Hicks:

A parcel of land in the Northwest ¼ of Section 8, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County, Michigan, described as commencing at the Northwest corner of said Section 8; thence S01°58'24" W 632.20 feet along the West line of said Section 8 for a Place of Beginning; thence S87°56'24" E 1087.90 feet to the West line of Shadow Woods Sub No. 2, as recorded in Liber 163, Pages 13 thru 16, Macomb County Records; thence S01°58'24" W 400.36 feet along said West line; thence N87°56'24"W 1087.90 feet to the West line of said Section 8; thence N01°58'24" W 400.36 feet along the West line of said Section 8 to the place of beginning, containing 10.00 acres of land, more or less.

## EXHIBIT B

Land located in the City of Rochester Hills, County of Oakland, State of Michigan:

T3N, R11E, SEC 22 PART OF NE 1/4 BEG AT PT DIST N 87-19-12 E 915.46 FT & S 02-34-56 E 810 FT FROM N 1/4 COR, TH N 87-19-12 E 500 FT, TH S 02-34-56 E 627.34 FT, TH S 87-00-55 W 140 FT, TH S 02-34-56 E 280 FT, TH S 87-00-55 W 150.89 FT, TH ALG CURVE TO LEFT, RAD 698.56 FT, CHORD BEARS S 78-17-45 W 211.80 FT, DIST OF 212.62 FT, TH N 02-34-56 W 942.10 FT TO BEG 9.58 AL. 9045 P. 240 & 241

Tax Identification No. 15-22-226-016