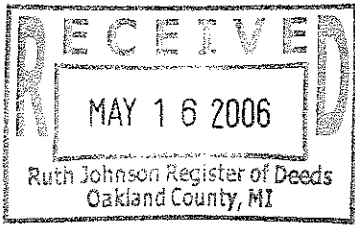


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PAID RECORDED - OAKLAND COUNTY  
RUTH JOHNSON, CLERK/REGISTER OF DEEDS



**PLANNED UNIT DEVELOPMENT AGREEMENT  
BETWEEN LOMBARDO ROCHESTER HILLS, LLC AND  
THE CITY OF ROCHESTER HILLS**

This Planned Unit Development Agreement ("Agreement") is made this 10<sup>th</sup> day of April, 2006, by and between **Lombardo Rochester Hills LLC**, ("**Lombardo**"), whose address is 6303 26 Mile Road, Suite 200, Washington, Michigan 48094 and the **City of Rochester Hills**, a Michigan municipal corporation ("**City**") whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

(Handwritten initials)

**RECITALS**

A. Lombardo is one of many companies of Lombardo Companies, which have been developing and constructing residential homes and condominiums for more than 40 years in the metropolitan Detroit area.

B. The City owned certain real property located in Section 22 of the City of Rochester Hills, County of Oakland, State of Michigan, legally described on attached Exhibit A and identified by Tax Parcel Identification Number 70-15-22-226-016 ("**Meadowfield Drive Property**"), which property is surrounded by property uses including a child care center, apartments, condominiums, and a shopping center.

#

C. The City also owns approximately 25 acres of undeveloped land off of Adams Road in Section 8 referred to as "Eugene S. Nowicki Park" ("**Nowicki Park**"), which the City wishes to expand.

D. In late 2004, Lombardo approached City officials about possibly exchanging certain real property that Lombardo was in a position to acquire located in Section 8 adjacent to Nowicki Park, legally described on attached Exhibit B and which is identified by Tax Parcel Identification Numbers 70-15-08-100-007 and 70-15-08-100-006 (collectively referred to as ("**Adams Road Property**")) for the Meadowfield Drive Property, so that the City could expand Nowicki Park and Lombardo could develop a ranch style condominium development on the Meadowfield Drive Property comprised of high quality, high value condominium units that would be affordable and desirable for citizens to own and occupy within the City.

(Ex B)

OK-OK

E. Following discussions with City officials, the City and Lombardo reached an agreement to exchange the Meadowfield Drive Property for the Adams Road Property which was incorporated into a written exchange agreement ("**Exchange Agreement**"), which the City Council approved on April 6, 2005, and the Mayor executed on April 25, 2005 on behalf of the City.

F. On September 26, 2005, the City and Lombardo closed the property exchange contemplated by the Exchange Agreement at which time the City obtained ownership of the Adams Road Property and received the sum of Three Hundred Seventy Five Thousand dollars (\$375,000.00) from Lombardo in exchange for the City conveying the Meadowfield Drive Property to Lombardo.

G. As a result of the City acquiring the Adams Road Property pursuant to the Exchange Agreement, the City can expand Nowicki Park and Lombardo will be able to develop a high quality ranch style residential condominium development ("**Meadowfield Development**") that will help meet a housing need within the City.

H. On May 13, 2005, Lombardo submitted to the City preliminary site plan and elevations for the Meadowfield Development attached as Exhibit C, ("**Preliminary Plans**") that the City reviewed and found to be generally acceptable, subject to final review and approval as part of the site plan review process.

I. The City has adopted a master land use plan ("**Master Plan**") to guide the future development and redevelopment of property within the City, which includes, among other things, goals relating to meeting the future housing and recreation needs of the residents of the City.

J. The Master Plan recommends, among other goals, that the City encourage the development of a diverse range of housing to meet different demographic populations within the City, as well as acquire and develop additional parkland within the northwest quadrant of the City where the Adams Road Property is located.

K. Lombardo and the City believe that the exchange of the Meadowfield Drive Property for the Adams Road Property is mutually beneficial to the City, Lombardo, and the citizens of the City.

L. Lombardo's proposed development of the Meadowfield Drive Property with ranch style condominiums does not strictly comply with the restrictive uses permitted by the Zoning Ordinance with respect to properties zoned "Special Purpose" under the City of Rochester Hills Zoning Ordinance ("**Zoning Ordinance**"), making this development eligible to be reviewed and approved as a planned unit development ("**PUD**") under the Planned Unit Development provisions of the Zoning Ordinance, Sections 138-1001, *et. seq.*, of the Code of Ordinances of the City (referred to as the "**PUD Ordinance**"), a copy of which is attached as Exhibit D.

M. The Exchange Agreement acknowledges that Lombardo will design and develop the Meadowfield Development as a PUD in accordance with the PUD Ordinance which is part of

the City Zoning Ordinance.

N. As requested by the City, Lombardo has prepared the Preliminary Plans to meet the requirements of the PUD Ordinance and other applicable City Code and Ordinances standards, which revised plans are attached as Exhibit E ("**Final PUD Plan**").

O. This Agreement and the Final PUD Plan comprise a PUD that satisfies the qualifying conditions of the PUD Ordinance by (i) providing an innovative design of ranch style condominium housing within the community, (ii) developing a vacant parcel of property currently surrounded by developed apartments, condominiums, commercial buildings and uses, and a shopping center, (iii) achieving economy and efficiency in the use of land in developing a high quality, compact residential development within walking distance of these developed commercial uses, and (iv) by meeting the housing needs of a particular segment of the citizens of the City, specifically empty nesters and senior citizens, who will be ideal prospective purchasers of the ranch style condominium units in the Meadowfield Development, fulfilling in part, one of the continuing goals of the City Master Plan.

P. By consummating the Exchange Agreement transaction, the City has acquired the Adams Road Property, which will facilitate the expansion of parkland within the northwest quadrant, thereby fulfilling in part another of the continuing objectives of the City Master Plan.

Q. The PUD has undergone preliminary review by the Rochester Hills Planning Commission ("**Planning Commission**") and City Council.

R. The Planning Commission, after giving proper notice, held a public hearing on December 20, 2005, at which the Final PUD Plan and this Agreement were considered, and comments and recommendations of the public were received and heard.

S. The City Council, at a meeting duly held on March 1, 2006, adopted a resolution approving the Final PUD Plan and this Agreement.

T. The PUD Ordinance requires the execution and recording of this Agreement in connection with the final approval of the PUD, setting forth the conditions upon which such approval is based.

U. The City desires to ensure that the Meadowfield Drive Property is developed and used in accordance with the approved Final PUD Plan and all applicable laws and regulations.

NOW THEREFORE, Lombardo and the City, in consideration of the mutual covenants, promises, and conditions described in this PUD Agreement, and with the express understanding that this Agreement contains important and essential terms as part of the final approval of the PUD, agree as follows:

1. **Incorporation of Recitals.** The parties acknowledge and represent that the foregoing recitals are true and accurate and binding upon the parties, and are incorporated into this Agreement.

2. **PUD Approval.**

a. The parties acknowledge and agree that the development of the Meadowfield Development has been granted final PUD approval by the City Council in accordance with the PUD Ordinance, subject to the terms of this Agreement and final site plan review required by the Zoning Ordinance. Approval of the PUD includes approval of the Final PUD Plan and this Agreement and all Exhibits attached to this Agreement, which take precedence over and supersede any and all prior reports, agreements, plans and other submissions to and/or approvals by the City relative to the Meadowfield Development.

b. Lombardo's rights to develop the Meadowfield Drive Property as provided for in this Agreement and the Exhibits attached to this Agreement are fully vested upon the City's execution of this Agreement, subject only to Lombardo obtaining (i) site plan approval from the Planning Commission, (ii) engineering plan approval, (iii) a Land Improvement Permit and, (iv) building permits. Except as otherwise provided in this Agreement, regulations governing permitted uses of land, density, design, improvement and construction standards and specifications applicable to development of the property shall be the regulations in force at the time. This Agreement shall not prevent the City from applying new or amended regulations that do not conflict with the terms of this Agreement. In the event that any part of this Agreement or the Final PUD Plan is inconsistent in any way with the Zoning Ordinance or City Code of Ordinances in existence as of the date of this Agreement (which for these purposes includes the New PUD Ordinance attached as Exhibit D) or any City Ordinance that is enacted at any future time, then this Agreement and the Final PUD Plan shall control. Notwithstanding the foregoing to the contrary, Lombardo shall have no obligation to further develop all or any portion of the Meadowfield Drive Property.

### 3. Zoning.

a. The parties acknowledge that the Meadowfield Drive Property is zoned "Special Purpose" pursuant to Section 138-931 *et. seq.* of the City's Zoning Ordinance, and that the use of the Meadowfield Drive Property by Lombardo for development of the Meadowfield Development of ranch style condominium units in close proximity to shopping, banking and other commercial services meets the spirit if not the literal requirements of the Special Purpose zoning classification by providing housing that will in all likelihood be attractive to empty nesters and senior citizens, which uses are similar to the permitted conditional use of housing for the elderly allowed Section 138-933(2) of the Zoning Ordinance.

b. The City grants conditional land use approval for the development of the Meadowfield Development generally in accordance with the Final PUD Plan for the one story condominium development comprised of no more than 15 buildings and 58 units, without any other use approval by the City being required. The parties further agree that development of the Meadowfield Development generally in accordance with the Final PUD Plan is permitted by the City, without any further review, recommendation and/or approval of the Planning Commission, City Council or any other person, board, committee or department of the City, except for final site plan review and approval by the Planning Commission, engineering plan approval, a Land Improvement Permit and building permits. It has also been determined by the City that the development of the Meadowfield Development generally in accordance with the Final PUD Plan should provide adequate protection to the neighborhood and to abutting properties.

c. No subsequent zoning or other action by the City shall impair the rights of Lombardo hereunder, and any further development of the Meadowfield Drive Property by Lombardo generally consistent with the Final PUD Plan that does not increase the density of the Meadowfield Drive Property shall be deemed to be a lawful, conforming use.

4. **Development Sequence.** The parties agree and acknowledge that the Final PUD Plan represents the current intent of Lombardo to develop the Meadowfield Drive Property, with the knowledge and market condition information possessed by Lombardo as of the present date. The parties acknowledge that housing market conditions may change over time, which could cause Lombardo to change his plans and or timing with respect to the development of the Meadowfield Development. The parties further acknowledge that the buildings and improvements as shown on the Final PUD Plan may be constructed, if at all, at different dates in the future, and that Lombardo may elect to develop such improvements in the order and at such times as it determines necessary and appropriate, in his discretion, if at all. Site improvements reasonably necessary or reasonably related to any particular building, including without limitation road improvements, storm drainage facilities, parking lots and/or structures, sidewalks and landscaping, will be made at the time of construction of such particular building, as determined through the site plan process. Development of the Meadowfield Drive Property shall commence within six months of receiving all necessary approvals from the City. Unless Lombardo provides the City with a written request for an extension and is granted an extension by the City, all public infrastructure improvements and internal site improvements shall be completed within 3 years of the date of the pre-construction meeting. The City shall not withhold approval of an extension requested by Lombardo if Lombardo's failure to meet the time limitations was caused by economic conditions or other factors beyond Lombardo's control in spite of Lombardo's diligent efforts to meet such time limitations.

5. **Inapplicability of Land Division Requirements.** The City acknowledges that Lombardo intends to develop the Meadowfield Drive Property as a condominium which will not require separate land division approval. The granting of approval of the Final PUD Plan under this Agreement and securing of final site plan approval shall be deemed to satisfy any additional requirements under the Zoning Ordinance or City Code relating to development of condominiums.

6. **General Requirements of the Condominium Development.** Lombardo agrees that the Meadowfield Development will be developed with the following requirements:

- a. The development shall be a residential condominium comprised of one story ranch style residences.
- b. All units shall have a minimum living area of 1410 square feet per unit.
- c. All units shall have attached 2 car garages.
- d. All units shall have brick on all four sides.
- e. A five foot (5') wide concrete sidewalk shall be installed (i) within the right of way of Meadowfield Drive adjacent to the south property line of the Meadowfield Drive Property, (ii) within the right of way of Meadowfield Drive along the

adjacent day care center property, and (iii) on the east side of the private street providing access from Meadowfield Drive into the Meadowfield Drive Property.

f. There will be a maximum of 15 buildings.

g. There shall be a maximum of 58 units.

h. The development shall have a paved private road, with a maintenance agreement to be approved by the City (either as part of the Master Deed or in a separate document meeting City requirements).

i. All buildings will be located at least thirty feet (30') from any perimeter property line, and at least fifteen feet (15') from any other building where the buildings are corner to corner, and at least twenty four feet (24') where the buildings are face to face.

j. Lombardo shall install landscape screening between the Meadowfield Development and adjacent uses as set forth on the Landscape Screening Plan prepared by Atwell Hicks dated June 10, 2005, last revised December 12, 2005, attached as Exhibit F, which includes a twenty foot (20') landscape buffer not required by the Zoning Ordinance between the Meadowfield Development and the B-3 and B-2 commercial uses. City agrees to waive the requirement of Type B screening between the Meadowfield Development and the adjacent RM-1 multi-family development. The twenty foot (20') landscape buffer installed by Lombardo shall be maintained by the condominium development (either as part of the Master Deed or in a separate document meeting City requirements).

k. The development shall comply with the Tree Conservation and Wetland Regulations of the City Code.

l. A storm detention basin meeting City requirements will be installed by Lombardo, and maintained by the condominium development in accordance with maintenance provisions satisfactory to the City (either a part of the Master Deed or in a separate document meeting City requirements).

m. Any identification signage shall comply with applicable City Codes and be maintained by the condominium development (either as part of the Master Deed or in a separate document meeting City requirements).

n. The Master Deed shall contain architectural control standards and building and use restrictions satisfactory to the City, in substantial conformance with those attached as Exhibit G.

o. The length of the dead end cul-de-sac will exceed the City maximum length of six hundred feet (600') by approximately two hundred sixty-eight feet (268').

7. **Setbacks.** The City by this Agreement modifies the minimum setback of fifty feet (50') to thirty feet (30') along the entire perimeter of the Meadowfield Drive Property.

Lombardo agrees to maintain a minimum setback between buildings of fifteen feet (15') when the buildings are corner to corner or of twenty four feet (24') when the buildings are face to face.

8. **Landscaping.** Lombardo agrees to install a substantial amount of landscaping within the Meadowfield Development in substantial conformance with the Landscape Plan prepared by Atwell Hicks dated June 10, 2005, last revised December 12, 2005, attached as Exhibit H. Lombardo and/or the condominium development shall have the right to exceed the landscaping set forth on the attached plan, or substitute comparable landscaping in the event a particular species is not commercially available with obtaining further approval from the City.

9. **Cul-de-sac Length.** The City by this Agreement modifies the maximum cul-de-sac length of a street from six hundred feet (600') to the length of the private street shown on the final PUD, approximately eight hundred sixty-eight feet (868').

10. **Open Space.** The Meadowfield Development has preserved 4.25 acres (or 44% of the site) as open space. Lombardo or the condominium development shall not construct any permanent buildings or structures within the open space area without the prior written permission of the City.

11. **Wetland and Storm Drainage Requirements.**

a. *Wetlands* Lombardo shall comply with any applicable requirements of the City Code or of the Michigan Department of Environmental Quality ("MDEQ") relating to wetlands.

b. *Storm Detention Basin* Lombardo agrees to construct a storm detention basin in the location approved by the City in accordance with requirements of the City Engineer. Lombardo shall maintain the storm detention basin in compliance with applicable standards until the condominium association is turned over to unit owners, at which time the condominium association shall be responsible for such maintenance. Developer shall execute and deliver to the City a maintenance agreement for the storm water drainage system and facilities in a form satisfactory to the City prior to issuance of any building permits.

c. *Fencing of Storm Detention Basin* If the storm detention basin required for the development cannot be reasonably designed and constructed in the area of the site set aside by Lombardo for such detention basin, with a slope of 1:6 or flatter, Lombardo agrees to install a decorative fence around the storm detention basin in accordance with current City requirements.

12. **Parking.** The City acknowledges that the Final PUD Plan provides parking in excess of the number of parking spaces required by the Zoning Ordinance and City Code.

13. **Minor Modifications.** The Meadowfield Development may be developed over a period of time during which there may arise a need to make minor changes to the Final PUD Plan. Changes to the Final PUD Plan determined by the City Planning Department to be minor

may be reviewed and approved by City Staff. The following are examples only of minor changes that may be approved by City Staff, and are not an exclusive list: (a) reduction in the footprint or height of any building; (b) an increase in the footprint of any building of no more than fifteen percent (15%) of the size of the building footprint as indicated on the Final PUD Plan, provided that the increase in the footprints of all buildings as shown on the Final PUD Plan are not increased by more than ten percent (10%) in the aggregate; (c) relocations of any building such that the relocation is in the general vicinity of the footprint of such building as shown on the Final PUD Plan; and (d) internal rearrangement of parking areas, roads, sidewalks, storm drainage facilities and other utilities. Any modification sought by Lombardo that exceeds the authority granted to City Staff in this Section, in the judgment of City Staff, shall be submitted to the Planning Commission for review and approval, with Lombardo having the right to appeal the Planning Commission's determination to City Council.

14. **Site Plan Review.** Lombardo shall submit site plans and obtain approval for the Meadowfield Development within two (2) years of the date of this Agreement unless extended in writing by agreement of the City and Lombardo. The City shall not withhold approval for a reasonable extension requested by Lombardo if despite Lombardo's diligent efforts Lombardo is unable to meet the time limitations due to economic conditions or other factors beyond Lombardo's control. If Lombardo has not submitted and obtained site plan approval within the prescribed time period (including any extensions), then the City may terminate this Agreement if after giving Lombardo notice and an opportunity to explain the delays with respect to development of the Project, the City determines that Lombardo has not diligently proceeded in good faith with developing the Meadowfield Development. Site plan review for all improvements to be constructed on the Meadowfield Drive Property or the addition to or modification of any buildings or improvements shall be submitted to the Planning Commission for review pursuant to the normal process set forth in the Zoning Ordinance. Lombardo shall have the right to appeal the Planning Commission's determination to City Council. Any site plan submitted by Lombardo shall comply with all applicable fire department, engineering and floodplain rules, regulations and design standards of the City and shall demonstrate that sufficient storm drainage and sanitary sewer capacity exists. The City and Lombardo agree to work together in good faith with respect to the foregoing requirements so as to both accommodate the policies of the City and implement the intent of the Final PUD Plan and PUD Agreement.

15. **Building Permits.** The procedure for the City to review plans and construction drawings for clearing, grading, utilities, landscaping, building and related approvals and permits requested by Lombardo for the construction of any improvement on the Meadowfield Drive Property, shall be performed as follows:

a. The City shall review and approve construction drawings and plans submitted by Lombardo to the City for review and issue the required land improvement permits, building permits and other permits and approvals in an expedient manner, provided that said plans and drawings comply with the Final PUD Plan, this Agreement, and the City's rules and design standards to the extent such rules and design standards are not inconsistent with the Final PUD Plan or this Agreement, otherwise this Agreement and the Final PUD Plan shall control.

b. The City shall, in an expedient manner after City review and approval,



promptly and diligently transmit to appropriate agencies the plans for water, and sanitary sewer for permit processing. Once Lombardo has obtained all pertinent approvals and permits and a pre-construction meeting is held with the City, Lombardo may commence construction of the public utilities.

c. It is the intent of the parties that review comments for resubmission shall be made by the City and its planning and engineering departments within two (2) weeks after submission of all documents normally required. Any review required pursuant to this Agreement by the Planning Commission or City Council shall be placed on the next available agenda of the Planning Commission or City Council after review is completed by the City Staff.

d. So long as Lombardo is acting with due diligence, makes an initial submission of "as built" plans for site improvements completed at the time of submission, and Lombardo's escrow account with the City for the payment of review and inspection fees is current, the City shall not deny Lombardo the right for temporary occupancy permits for the reasons that improvements are not completed, if such do not relate to health or safety concerns such as lack of watermains, sanitary sewers, or access.

e. The City agrees to cooperate with and support requests by Lombardo to any governmental agency or authority with jurisdiction over the Meadowfield Development, for permits, approvals or consents to facilitate the development and construction of the Meadowfield Development generally in accordance with this Agreement and the Final PUD Plan. The City agrees to execute and deliver letters of support that may be reasonably requested by Lombardo for such permits, approvals or consents, and to cooperate with Lombardo by having the applicable city staff or consultants communicate such support to such governmental agency or authority.

16. **Consents/Approvals.** Whenever the consent, approval or permit issuance of the City Council, Planning Commission or any City commission, department, staff, attorney or representative is required, such consent, approval or permit issuance shall not be unreasonably delayed, conditioned or withheld.

17. **Sale of Property.** Lombardo shall have the right to sell, transfer, assign and/or mortgage all or any portion of the Meadowfield Drive Property, including any completed condominium units. In the event all or any portion of the Meadowfield Drive Property changes ownership or control prior to completion of the condominium development, the terms and conditions of this Agreement shall be binding on any successor owner of all or any portion of the Meadowfield Drive Property. In the event the Meadowfield Drive Property, or any part, is transferred so that the Meadowfield Drive Property, in its entirety, is owned by more than one person or entity, any breach of this Agreement or violation of any applicable provision of the City Code of Ordinances occurring on any part of the Meadowfield Drive Property will be the sole responsibility and liability of the person or entity who or which owns that part of the Meadowfield Drive Property on which the breach or violation occurs and will have no effect whatsoever on the other portions of the Meadowfield Drive Property or the owners of such other portions. The City acknowledges and represents that this Agreement may be relied upon for the future land use and development of the Meadowfield Drive Property by Lombardo and its successors, assigns, and transferees. Lombardo agrees that the Property shall be used only as set

forth in this Agreement and the Final PUD Plan.

18. **Zoning Board of Appeals.** The Zoning Board of Appeals shall have the authority to hear and decide appeals by Lombardo for variances from the Zoning Ordinance. However, the Zoning Board of Appeals shall not have the authority to change conditions, restrictions or limitations contained in the PUD Agreement, or make interpretations or amendments to the PUD Agreement or the PUD Final Plan or written conditions, which rights are reserved to the City Council. No variance may be requested from, nor granted by ZBA if the modification is not in compliance with the area and density requirements in the Agreement or if it will materially affect the overall character of the PUD Plan.

19. **Easements.** Lombardo agrees to convey public utility easements to the City for the public sanitary sewer and public water main and related facilities as such easements are shown on the Condominium Subdivision Plan for the Development. In addition, if requested by the City in the future, the Developer or Association, as the case may be, shall grant a second emergency access at the location depicted on site plan sheet CP-03.

20. **Penalties for Failure to Comply with Development Deadlines.** If Lombardo fails to meet the time limitations for submitting and obtaining site plan approval for the Meadowfield Development as set forth in Section 14, (including any extensions) or fails to construct it within the time limitations set forth in Section 4 of this Agreement (including any extensions), the City may, after giving Lombardo notice and an opportunity to explain his failure to meet the deadline, terminate the Agreement if the City determines that Lombardo has not diligently proceeded in good faith with the development.

21. **Integration/Amendments, Modification.** This Agreement and its Exhibits set forth the entire agreement between the parties relative to the subject matter hereof. No prior or contemporaneous oral or written representations, statements, promises, agreements or undertakings made by either party or agent of either party that are not contained in this Agreement shall be valid or binding. Except for minor modifications of the final PUD plan authorized by Section 13 of this Agreement, this Agreement may not be amended except in writing following the procedures set forth in Section 138-1009 of the Zoning Ordinance. After approval of the amendment, the amendment shall be recorded in the same manner as this Agreement. Amendments to the Final PUD Plan may be submitted by Lombardo for review and recommendation by the Planning Commission and approval by City Council. Remedial amendments to correct errors and omissions may be approved and executed by the Mayor so long as they are consistent with the spirit and intent of this Agreement, in the Mayor's reasonable judgment.

22. **Severability.** It is understood and agreed by the parties that if any part, term or provision of this Agreement is finally held by the courts to be illegal or in conflict with any statute, ordinance, rule, regulation or other applicable law, the validity of the remaining portions or provisions of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid. If changes in federal or state laws or regulations enacted after the date this Agreement has been executed operate to prevent compliance with parts of the contract, or render compliance impractical or unreasonably difficult, the inconsistent provisions of the Agreement shall be modified, deleted or suspended as necessary to conform to such changes in

federal or state law.

23. **Governing Law.** This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. Any and all suits for any and every breach of this Agreement may be instituted and maintained in any court of competent jurisdiction in the County of Oakland, State of Michigan.

24. **Waiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

25. **General Remedies.** In addition to the specific penalties outlined in Section 20, in the event that a party believes that the other party is not acting reasonably or in conformity with this Agreement, then the aggrieved party may petition the Oakland County Circuit Court to enforce or terminate this Agreement, as appropriate, or to otherwise resolve such dispute and the parties shall make themselves immediately available for a hearing on a date to be set by the Court. In the event that the Court finds that party has not acted in good faith or in conformity with this Agreement, then the Court may order reasonable costs and attorney fees incurred to the prevailing party. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

26. **Inconsistency.** To the extent that the Agreement and/or its Exhibits conflict with City Ordinance requirements, the terms of this Agreement and its Exhibits will control. Any clerical errors or mistakes in this Agreement or its Exhibits may be corrected by any of the parties, and all parties agree to cooperate in making such corrections in order to effectuate the intent of the parties in entering into this Agreement. In all events any reference to the City Code of Ordinances shall mean the existing Ordinances of the City at time of execution of this Agreement, with the exception of the PUD Ordinance, which shall mean the New PUD Ordinance provisions attached as Exhibit D.

27. **Authority.** The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals and the authority to bind each party to this Agreement according to its terms. Further, each of the parties represents that the execution of this Agreement has been duly authorized and is binding on such party.

28. **Limitation of City's Liability.** This PUD is a private undertaking, and the parties understand and agree that: (a) this PUD is private development; (b) the City has no interest or responsibilities for or duty to third parties concerning any improvements on the Meadowfield Drive Property except and only until such time that the City accepts any public improvements pursuant to this Agreement and the Final PUD Plan; (c) Lombardo shall have full and exclusive control of the Meadowfield Drive Property subject to the limitations and obligations of Lombardo under this Agreement; and (d) the contractual relationship between the City and Lombardo is such that Lombardo is an independent contractor and not an agent, partner or joint venturer of or with the City.

29. **Public Benefit.** The City and Lombardo acknowledge that there are the following substantial benefits which are derived from development of the Meadowfield Drive Property as a PUD:

a. A vacant parcel of Special Purpose property with limited development potential will be developed with attractive, one story ranch style condominium units that will meet a housing need within the community.

b. The residences that will be constructed will be within walking distance of an existing shopping center, with retail stores and service uses.

c. Lombardo will take a parcel of land that generates no tax revenue and put it to productive tax, generating tax revenue to the City while eliminating current upkeep and maintenance obligations of the City.

d. The City has obtained an additional ten (10) acres of parkland contiguous to the existing Nowicki Park to serve the northwest quadrant without the expenditure of public funds.

e. The City has received an additional \$375,000.00 in cash as part of the Exchange Agreement.

f. The acquisition of additional parkland and the construction of innovative housing help accomplish two distinct objectives of the Master Plan.

30. **Binding Effect.** This Agreement shall not be effective until the effective date of the City's Ordinance rezoning the Property to PUD, or until the Agreement is recorded in the office of the Oakland County Register of Deeds and a certified copy of the recorded Agreement has been delivered to the City, whichever occurs later. This Agreement shall run with the land and bind the parties, their heirs, successors, and assigns. It is also understood that the members of the City Council and/or the City Administration and/or its departments may change, but the City shall nonetheless remain bound by this Agreement.

This Agreement has been executed on the dates set forth below.

**LOMBARDO:**

**Lombardo Rochester Hills LLC**  
a Michigan limited liability company

By: Lombardo Management, Inc.,  
a Michigan corporation

Its: Manager

By: \_\_\_\_\_  
Anthony F. Lombardo

Its: President

STATE OF MICHIGAN    )  
                                  )ss  
COUNTY OF MACOMB    )

The foregoing was acknowledged before me on March 27 2006, by Anthony F. Lombardo, President of Lombardo Management, Inc., a Michigan corporation, Manager of Lombardo Rochester Hills LLC, a Michigan limited liability company, on behalf of the company.

Karen M Adams  
Notary Public  
Acting in Macomb County, Michigan  
My Commission expires: Dec 1, 2012

**KAREN M. ADAMS**  
Notary Public, State of Michigan, County of Macomb  
My Commission Expires: December 1, 2012  
Acting in the County of Macomb

CITY:

CITY OF ROCHESTER HILLS, a Michigan municipal corporation

By: James Rosen  
James Rosen  
Its: Mayor pro tem, for Mayor Pat Somerville

and  
By: Jane Leslie  
Jane Leslie  
Its: City Clerk

STATE OF MICHIGAN     )  
  )ss  
COUNTY OF OAKLAND    )

The foregoing was acknowledged before me on April 10, 2006, by <sup>James Rosen, Mayor pro tem for Mayor Pat Somerville</sup> Pat Somerville and Jane Leslie, Mayor and City Clerk respectively of the City of Rochester Hills, a Michigan municipal corporation, on behalf of the corporation.

Parvathy Olem  
Notary Public  
Oakland County, Michigan  
Acting in Oakland County, Michigan  
My Commission expires: April 15, 2012

Prepared by ~~and when~~  
~~recorded return to:~~

Lawrence M. Scott, Esq.  
O'Reilly Rancilio P.C.  
12900 Hall Road, Suite 350  
Sterling Heights, Michigan 48313

When recorded return to:  
City of Rochester Hills  
1000 Rochester Hills Dr.  
Rochester Hills, MI 48309

**INDEX OF EXHIBITS**

Exhibit A	Legal Description of Meadowfield Drive Property
Exhibit B	Legal Description of Adams Road Property
Exhibit C	Preliminary PUD Site Plan and Elevations
Exhibit D	New PUD Ordinance Provisions
Exhibit E	Final PUD Plans including Elevations
Exhibit F	Screening Plan
Exhibit G	Proposed Building and Use Restrictions
Exhibit H	Landscape Plan

**EXHIBIT A**  
**Legal Description of Meadowfield Drive Property**

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

**EXHIBIT B**  
**Legal Description of Adams Road Property**

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  $\frac{1}{4}$  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  $01^{\circ}58'24''$  West 632.20 feet along the West line of said Section 8, to the point of beginning; thence proceeding South  $01^{\circ}58'24''$  West 200.18 feet along the West line of said Section 8 to a point; thence South  $87^{\circ}56'24''$  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  $01^{\circ}58'24''$  East 200.18 feet along the West line of said "Shadow Woods Subdivision No. 2", to a point; thence North  $87^{\circ}56'24''$  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  $\frac{1}{4}$  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



LIBER 37565 P800

**EXHIBIT C**  
**Preliminary PUD Site Plan and Elevations**