

## CONSERVATION AND TRAIL EASEMENT AND RESTRICTIONS

THIS CONSERVATION AND TRAIL EASEMENT AND RESTRICTIONS is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by Green Valley Greenhouse, Inc., a Minnesota corporation, (the “Owner”) to and in favor of the **CITY OF RAMSEY**, a municipal corporation under the laws of the State of Minnesota (hereinafter called “City”).

WHEREAS, Minnesota Statutes section 84C.02 authorizes the grant by private citizens of non-possessory, conservation easements, to protect natural, scenic and open space values, and the authorized grantees include any governmental body empowered to hold an interest in real property under the laws of the State of Minnesota; and

WHEREAS, the City is a: (i) governmental body empowered to own interests in real estate and (ii) is a charter city under Minnesota Statutes; and

WHEREAS, preservation of the Easement Areas defined below will further City goals adopted by the City as Resolution #19-109 and is summarized as follows:

(Resolution #19-109)

WHEREAS, Ramsey City Council desires to protect ecologically significant open space associated with Trott Brook, and in furtherance thereof entered into an Agreement with the State of Minnesota for the purpose of acquiring from willing landowners, Conservation and Trail [where applicable] Easements; and

WHEREAS, open spaces are vital to our ecological, economic, and physical health; and

WHEREAS, open space and natural features are an important element to community identity in the City; and

WHEREAS, the Ramsey City Council desires to protect ecologically significant areas within the City; and

WHEREAS, Trott Brook is a high quality, ecologically significant area that creates a large natural corridor across the City; and

WHEREAS, preservation of the Easement Areas will further goals of the State of Minnesota’s Metro Conservation Corridor program, the purpose of which is to accelerate the restoration of Minnesota’s fish and wildlife by reestablishing a network of statewide corridors that connect core units of high quality habitat for the purpose of sustaining and enhancing fish and wildlife populations, and restoring the integrity of natural communities that are sustainable with human activities; and

WHEREAS, the Owner owns a parcel of land in the City legally described in Exhibit A attached hereto and made a part hereof (the “Owner Tract”), and wishes to grant to the City a Conservation and Trail Easement and Restrictions (the “CTE & R”) over part of the Owner Tract, consistent with the above referenced State program and City policies, and United States Internal Revenue Code (IRC) 170 (h);

WHEREAS, the CTE & R will provide the City a space to construct or place a future trail through the area and will satisfy part of the Park & Trail Dedication requirement for the planned expansions of Green Valley Greenhouse via Conditional Use Permit approved via Resolution 18-178.

NOW THEREFORE, for good and valuable consideration, the Owner, pursuant to the aforementioned Statutes, Policies and Code conveys to the City, its permitted successors and assigns, the CTE & R. TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto, forever upon the following terms and conditions.

**THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO THE CTE & R AND EASEMENTS AREAS:**

**1. Scope of Easement.**

- A. **Purpose.** The purpose of this CTE & R is to preserve and protect in perpetuity the Conservation Values of the Easement Areas by confining the development, management and use of the Easement Areas to activities that are consistent with the preservation of the Conservation Values, by prohibiting activities that significantly impair or interfere with the Conservation Values, and by providing for remedies in the event of any violation of this CTE & R (the “Purpose”).

The terms of this CTE & R are specifically intended to provide a significant public benefit by:

- Preserving the open and natural character of the Easement Areas for scenic enjoyment by the general public from views from private properties and streets and by use of the general public when accessing the Easement Areas by trail.
- Providing wildlife a contiguous corridor for habitat which connects to other areas of open space, streams and wetlands.
- Protecting water quality by maintaining a natural buffer between Trott Brook and the adjoining land uses.
- Providing a space for a future Trott Brook Trail corridor.

(the “Conservation Values.”)

- B. **Land Burdened.** The CTE & R burden, and run over, on and across, the tracts of land lying and being in the County of Anoka and State of Minnesota, described and depicted in Exhibit B attached hereto and made a

part hereof (the “Easement Areas”), which Easement Areas are part of the Owner Tract.

2. **Owner’s Covenants**. The Owner agrees that:
- A. **Inconsistent Activity Prohibited**. Any activity on or use of the Easement Areas that is inconsistent with the purposes of this CTE & R is prohibited. This prohibition specifically includes any intrusion or future development that would interfere with the essential scenic quality of the Easement Areas or the visual enjoyment of the open and natural character of the Easement Areas by the general public.
  - B. **Industrial and Commercial Activity**. No industrial or commercial use of the Easement Areas shall be permitted except a home business use may count the total area of the land, including the Easement Areas, for gross area computations as it may be necessary, or other use specifically permitted in Section 3 of this CTE & R.
  - C. **Agricultural Use**. No agricultural use of the Easement Areas shall be permitted. This includes tilling, plowing, commercial cultivation of row crops, livestock grazing or production, haying or feedlots.
  - D. **Residential Development**. No residential use or development of the Easement Areas shall be permitted except as specifically permitted in Section 3 of this CTE & R.
  - E. **Right of Way**. No right of way shall be granted across the Easement Areas in conjunction with any industrial or commercial use.
  - F. **Mining**. No mining, drilling, exploring for or removing of any minerals from the Easement Areas shall be permitted.
  - G. **Transfer of Development Rights**. No portion of the Easement Areas may be used to satisfy land area requirements for other property not subject to this CTE & R for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use.
  - H. **No Structures and Improvements**. No temporary or permanent buildings, structures, signs, billboards or other advertising of any kind, shall hereafter be erected or placed on or above any part of the Easement Areas without the prior written approval of the City; and no structure within the Easement Areas, even if approved by the City, shall ever be used for residential or commercial purposes, except the following:
    - i. **Utilities**. Utility systems and facilities may be installed, maintained, repaired, extended and replaced to serve those properties adjacent to the CTE & R where the City determines that there is not a more practical

manner to serve such properties. This includes, without limitation, all systems and facilities necessary to provide power, fuel, water, waste disposal and communication.

Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be timely restored to a condition consistent with the Conservation Values of this CTE & R.

- ii. Signs. No billboards or other signs may be placed or erected on the Easement Areas except for small, unlighted, non-commercial signs for informational or interpretive purposes that have been approved in writing by the City.
- I. Roads and Trails. Public roads or other public rights of way may be established or constructed on the Easement Areas but only upon written City approval. City approval shall not be granted until the City has conducted a public hearing on the subject at which hearing the Conservation Values shall be considered together with the necessity of the proposed public right of way. The City shall have the right to establish recreational trails within the Easement Areas consistent with City policies.
- J. Topography and Surface Alteration. No alteration or change in the topography of the surface of the Easement Areas shall be permitted. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to activities or uses specifically permitted by this CTE & R. This does not prohibit however, the City from conducting the above actions when there is a public benefit and is in the normal course of municipal affairs.
- K. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species shall be permitted except as follows:
  - i. In conjunction with horticultural activities, or habitat management as specifically permitted in Section 3 of this CTE & R.
  - ii. As reasonably required to construct and maintain permitted structures, roads and other improvements and provided that vegetation shall be restored following any construction to a condition consistent with the Conservation Values of this CTE & R.
  - iii. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.

L. Water. No alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water shall be permitted except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands as approved in writing by the City.

No activities on or uses of the Easement Areas that cause erosion or are detrimental to water quality or purity shall be conducted or permitted within the Easement Areas.

M. Dumping and Composting. No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Easement Areas. However, burning for the purpose of habitat and noxious weed control and composting may be permitted upon written City approval.

N. Vehicles. Snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other types of motorized recreational vehicles may not be operated on the Easement Areas. Limited off-road use of motorized vehicles is allowed in conjunction with habitat restoration or enhancement as permitted in Section 3 of this CTE & R. This subsection is not intended to otherwise limit the use of motorized vehicles on roads or trails permitted under this CTE & R for maintenance, patrol and emergency operations.

**3. Reservations**. The Owner reserves the following rights:

A. Right to Convey. The Owner may sell, gift, lease, bequeath, devise, mortgage or otherwise encumber or convey the Easement Areas.

i. Any conveyance or encumbrance of the Easement Areas is subject to this CTE & R.

ii. The Owner shall reference this CTE & R in any deed or other document by which the Owner conveys title to the Easement Areas.

B. Subdivision. The Easement Areas may be subdivided into lots and configurations pursuant to the City's subdivision regulations. Each parcel or lot shall remain subject to the terms and conditions of this CTE & R.

This right to subdivide the Easement Areas does not include the right to construct any buildings or structures on the Easement Areas except as to those otherwise permitted by this CTE & R.

- C. Recreational and Educational Uses. The Easement Areas may be used for hiking, cross-country skiing, horseback riding, camping, nature observation or study, and other similar low impact recreational and educational programs or activities by the Owner. Any recreational or educational program or activity undertaken pursuant to this subsection must be exercised in a manner which is consistent with the Conservation Values set forth in this CTE & R.
- D. Habitat. The Easement Areas may be used to maintain, restore or enhance habitat for wildlife and native biological communities in accordance with a management plan approved by the City in writing.

4. **City Rights**. In order to accomplish the purposes of this CTE & R, the City is granted the following rights:

- A. Other Sections. Those rights, uses and activities set forth in other sections of this CTE & R.
- B. Signs. The right to place on the Easement Areas signs that identify the land as protected by this CTE & R.
- C. Right to Enter. The right to enter the Easement Areas upon reasonable notice to the Owner for the following purposes:
  - i. To inspect the Easement Areas and to monitor compliance with the terms of this CTE & R.
  - ii. To obtain evidence for use in seeking judicial or other enforcement of this CTE & R.
  - iii. To survey or otherwise mark the boundaries of all or part of the Easement Areas in order to determine whether there has been or may be a violation of this CTE & R. Any survey or boundary demarcation completed under this subsection will be at the City's expense.
  - iv. Ecological Management. To manage or control diseased trees, noxious weeds and invasive species.
  - v. To otherwise exercise its rights under this CTE & R.

5. **Remedies**. All rights and remedies under Minnesota Statutes 84.65 and 84C.03 and as from time to time amended are available to the City to enforce this CTE & R. Also, if there is a violation or breach of this CTE & R, the City may institute suit(s) to enjoin any violation of the CTE & R by instituting proceedings for ex parte, temporary and/or permanent injunction including prohibitory and/or mandatory injunctive relief and to require restoration of the Easement Area to the condition and appearance that existed prior to the violation complained of. The City shall also have available all legal and other equitable remedies to enforce Owner's obligations hereunder. Enforcement remedies shall comply with the following conditions:

- A. Notice. The City may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, and a reasonable opportunity to correct the violation. This provision shall not apply if, in the sole discretion of the City, immediate judicial action is necessary to prevent or mitigate significant damage to the Easement Areas or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- B. Discretionary Enforcement. Enforcement of the terms of this CTE & R is solely at the discretion of the City. The City does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this CTE & R by any delay or prior failure of the City in discovering a violation or initiating enforcement proceedings.
- C. Acts Beyond Owner's Control. The City may not bring any action against the Owner for any change to the Easement Areas resulting from causes beyond the Owner's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner or the Owner's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.
- D. Right to Report. In addition to other remedies, the City has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

**6. Limited Assignment**. The City's rights under this CTE & R may be assigned or transferred only to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law.

As a condition of any assignment or transfer, the City shall require any future holder of this CTE & R to continue to carry out the Conservation Values of this CTE & R in perpetuity.

The City will notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the assignee.

**7. Amendment**. Under appropriate circumstances, this CTE & R may be amended upon agreement of Owner and City. However, no amendment will be allowed if, in the sole and exclusive judgment of the City, it (i) does not further the Purpose, (ii) will adversely impact the

Conservation Values, (iii) affects the perpetual duration of the CTE & R, or (iv) affects the validity of the CTE & R under Minnesota law. Any amendment must be in writing and recorded in the same manner as the CTE & R to be effective.

**8. Warranties.** The Owner represents and warrants as follows:

- A. The Owner is the sole owner of the Easement Areas in fee simple and has the right and ability to convey this CTE & R to the City.
- B. The Easement Areas is free and clear of all encumbrances other than those subordinated to this CTE & R, the lien of property taxes, special assessments, and the Permitted Encumbrances, if any listed on Exhibit C, attached hereto.
- C. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Easement Areas that is in violation of a federal, state or local environmental law and will defend, indemnify and hold the City harmless against any claims of contamination from such substances.

**9. Real Estate Taxes.** The Owner shall pay all property taxes and assessments levied against the Easement Areas.

**10. Ownership Costs and Liabilities.** The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the Easement Areas. To the extent allowed by law, the City shall defend, indemnify and hold the Owner harmless from any and all liability for any property damage or personal injury caused by use of the public of the areas within the CTE & R. Notwithstanding the preceding sentence, nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by the Owner, the Owner's successors or assigns and or any other third party, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statute Chapter 466. The Owner will maintain liability insurance on the Easement Areas consistent with the remainder of the Owner's Tract.

**11. Notice and Approval.** Any notice or request for approval required by this CTE & R must be in writing and is subject to the following:

- A. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner:  
Green Valley Greenhouse, Inc.  
6530 Green Valley Rd  
Ramsey MN 55303

To the City:  
City of Ramsey  
7550 Sunwood Drive NW  
Ramsey MN 55303

- B. Timing. Unless otherwise specified in this CTE & R, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
- C. Content. The notice or request for approval must include sufficient information to allow the City to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this CTE & R. At a minimum this shall include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Easement Areas.
- D. Approval. The City may withhold its approval if it determines that the proposal is inconsistent with the terms or purposes of this CTE & R or lacks sufficient information to allow the City to reach an informed decision. The City may condition its approval on the Owner's acceptance of modifications, which would, in the City's judgment, make the proposed activity consistent with the CTE & R or otherwise meet any concerns. Failure of the City, or its successors or assigns shall not constitute an approval under any circumstances.

**12. Covenants Run With Land**. This CTE & R shall run with and burden the Easement Areas in perpetuity. The terms, covenants and conditions hereof shall run with the land and shall be binding on all present and future owners of the Easement Areas, and shall inure to the benefit of the City, its permitted successors and assigns. This CTE & R creates a property right immediately vested in the City and its successors and assigns that cannot be terminated or extinguished except as set out herein.

**13. Extinguishment**. If circumstances arise in the future that render the Purpose of this CTE & R impossible to accomplish, this CTE & R Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceeding in a court of competent jurisdiction. The parties hereto agree that economic hardship on the part of the Grantee, or the owners, heirs, successors or assigns shall not be sufficient grounds for extinguishment or termination of this Easement.

**14. Definitions**. Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Easement Areas identified above and their personal representatives, heirs, successors and assigns in title to the Easement Areas. The term "City" includes its successors or assigns to its interest in this CTE & R.

**15. Termination of Rights and Obligations**. A party's rights and obligations under this CTE & R terminate upon the transfer or termination of that party's interest in this CTE & R or the Easement Areas, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.

**16. Recording**. The City will record this CTE & R in a timely manner with the Anoka County Recorder. The City may re-record this CTE & R or any other documents necessary to protect its rights under this CTE & R or to assure the perpetual enforceability of this CTE & R.

17. **Controlling Law and Construction.** This CTE & R shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its Conservation Values and to the policies and purposes of Minnesota Statutes Chapter 84C.

18. **Severability.** A determination that any provision or specific application of this CTE & R is invalid shall not affect the validity of the remaining provisions or any future application.

19. **Additional Documents.** The Owner agrees to execute or provide any additional documents reasonably needed by the City to carry out in perpetuity the provisions and the intent of this CTE & R, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.

20. **Entire Agreement.** This document sets forth the entire agreement of the parties with respect this CTE & R and supersedes all prior discussions or understandings.

IN TESTIMONY WHEREOF, Owner has caused these presents to be executed the day and year first above written.

OWNER:

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