

CITY OF ROCHESTER HILLS GREEN SPACE PERPETUAL CARE TRUST AGREEMENT

DIVISION 1 - GENERAL PROVISIONS

Sec. 1.1. Purpose.

The City of Rochester Hills desires to establish a perpetual care trust to hold and manage the assets of the special revenue fund previously established for the green space properties and natural features owned and/or controlled by the City.

In September 2005, Rochester Hills' residents passed a 0.3 mill 10-year millage to acquire and preserve natural green space in their community. The Rochester Hills City Council created a special revenue fund for these assets and established a nine member Green Space Advisory Board to develop strategies and make recommendations regarding the expenditure of the millage funds to (1) expand the Clinton River Greenway and other trail corridors; (2) to permanently preserve natural green spaces, wildlife habitats and scenic views; and (3) to protect woodlands, wetlands, rivers and streams.

In November 2013, Rochester Hills residents voted to approve revising the permissible use of the tax revenues derived from the millage, so that the tax revenues may also be used for the stewardship of the green space properties, which includes the protection, care and maintenance of, and to improve pedestrian accessibility to and within the green spaces properties owned, acquired or controlled by the City.

The Trust is intended to be tax exempt under Section 115 of the Internal Revenue Code of 1986, as amended. The City intends the trust fund to be in conformance with all applicable federal statutes and regulations, state and local law.

Sec. 1.2. Short title.

This Article may be known and cited as the City of Rochester Hills Green Space Perpetual Care Trust Fund ("Trust").

Sec. 1.3. Definitions.

For the purposes of this Article, the following words shall have the meanings respectively ascribed to them by this section:

Assets means any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested in accordance with the Public Employee Retirement System Investment Act, Michigan Public Act 314 of 1965 as amended ("PA 314").

City means the City of Rochester Hills, Michigan.

Code means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection.

Contributions/Deposits means the amount collected from the millage passed by the residents of the City of Rochester Hills. This may also refer to amounts contributed by individuals/entities unrelated to or in addition to the amounts mentioned above.

Green Space Properties are parks and natural areas owned and/or controlled by the City which consist of green spaces and natural features, including but not limited to significant watercourses and land held under conservation easements consistent with the ballot language adopted by the voters on November 5, 2013.

Investment Manager means an investment manager(s) selected by the Board of Trustees.

Special Revenue Fund means the assets set aside in this Trust Fund for the operation and maintenance of the green space properties/parks owned and/or controlled by the City.

Trust means the City of Rochester Hills Green Space Perpetual Care Trust Fund.

Trustees or Board of Trustees refers to the Board of Trustees established in Section 2.4 of this Article.

Trust Year means the period commencing on January 1 and ending on December 31.

Sec. 1.4. Interpretation and law; construction.

The Board of Trustees shall promptly submit this Trust to the Internal Revenue Service for appropriate rulings under the Code and all expenses incident thereto shall be borne by the Trust. The City Council may make any modifications, alterations, or amendments to the Trust document that are necessary to obtain and retain approval of the Secretary of the Treasury or his delegate as may be necessary to establish and maintain the status of the Trust under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder.

Any modification, alteration, or amendment of the Trust document may be made in accordance with this Section, if necessary or appropriate. A certified copy of the Ordinance adopted by the City Council making such amendment shall be delivered to the Board of Trustees.

Where not governed by Michigan law, the Trust shall be construed and enforced according to the applicable federal laws, and all provisions hereof shall be administered according to such federal laws. If any provisions of the Trust shall be for any reason invalid or unenforceable, the remaining provisions nevertheless shall be carried into effect.

Sec. 1.5. Notice.

Notice given to all parties shall, unless otherwise specified herein, be sufficient if in writing and delivered or sent by prepaid first class mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under the Trust shall be sufficient if delivered in person or prepaid first class mail.

Sec. 1.6. Reporting and disclosure.

The City and the Trustees, or their respective designees, shall complete and provide to the appropriate government agencies any reports as may be required by the Code and applicable federal, state or local law.

The Trustees shall be designated the investment officer and shall prepare the annual special revenue fund report as required under the Investment of Surplus Funds of Political Subdivisions Act, Michigan Public Act 20 of 1943, as amended. This report shall be made available to all citizens of the City and shall include:

- (i) The name of the special revenue fund.
- (ii) The special revenue fund's investment fiduciaries.
- (iii) The special revenue fund's assets and liabilities.
- (iv) The special revenue fund's funded ratio.
- (v) The special revenue fund's investment performance.
- (vi) The special revenue fund's expenses.

Sec. 1.7. Amendments.

The provisions of the Trust may be amended at any time by ordinance(s) adopted by the City Council in accordance with applicable law and the tax exempt status of the trust.

Sec. 1.8. Valuation.

The Board of Trustees shall receive quarterly reports from the Trust's Custodian that show cost and marked to market valuation of the Trust's investments.

Sec. 1.9. Year-end reports.

Within one-hundred eighty (180) days after the end of each Trust Year, a written report shall be prepared and maintained on file by the Trustees showing the assets held under the Trust, a schedule of all receipts and disbursements, and all material transactions of the Trust during the preceding year. This report shall be in a form and shall contain other information as the Board of Trustees requires. The report shall also contain such information as is necessary to enable the Board to prepare its accounting due under the Trust.

DIVISION 2 - TRUST PROVISIONS

Sec. 2.1. Establishment of Trust.

The Trust established in this Article shall be irrevocable and shall conform to all applicable sections of the Internal Revenue Code, the statement of purpose in Division 1 of this Article, and all statutes, ordinances, rules, regulations and judicial decisions interpreting the foregoing provisions.

The Trust shall consist of Contributions/Deposits, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of the Trust.

The Board of Trustees shall receive and accept for the purposes hereof all property paid to it by or at the direction of the City and shall hold, invest, reinvest, manage, administer, and distribute property and the increments, proceeds, earnings, and income thereof for the exclusive benefit of the Green Space Properties.

Sec. 2.2. Use of trust assets.

(a) The Trust assets shall not be used for or diverted to purposes other than to provide funding for the general care, maintenance and improvement of Green Space Properties and funding for the purchase of land and interests in land, contemplated under the Trust, except for any administrative expenses for which the Trust is liable. A portion of net earnings may be used for payment for reasonable and necessary professional services and costs and expenses related to assist the Board of Trustees in the operation of the Trust.

(b) All income, profits, contributions, deposits, and any and all monies, securities and properties of any kind at any time received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the uses and purposes hereof.

Sec. 2.3. Exclusive benefit trust payments.

(a) The Board of Trustees shall have responsibility for making payments from the Trust Fund. The Board of Trustees shall ensure that any payment directed under this Section conforms to the provisions of the Trust Agreement and the provisions of any applicable law.

(b) Payments from the Trust shall be made by check or electronic funds transfer. The Board of Trustees shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.

(c) This Trust is created for the sole purpose to fund and accumulate assets for the general care, maintenance and improvement of the Green Space Properties and to fund the purchase of land and interests in land for Green Space Properties.

(d) Any income and earnings of the Trust Fund shall be used to pay expenses and fees of the Trust. The Trust Fund shall continue to be held by the Board of Trustees in trust and dealt with in accordance with the provisions of the Trust. At no time prior to termination shall any part of the Trust Fund be used for, or diverted to, purposes other than for the exclusive benefit of providing for the general care, maintenance and improvement of the Green Space Properties.

(e) The principal of the perpetual care fund may not be used for the general care, maintenance and improvement of green spaces and natural features owned, acquired or controlled by the City, in addition to funding the purchase of land and interests in land unless a quorum of the Trustees determine there is sufficient principal to earn income, assuming a reasonable return on investment of the principal, sufficient to care for general care, maintenance and improvement of green spaces and natural features owned, acquired or controlled by the City, in addition to funding the purchase of land and interests in land without the expenditure of any City funds, for a reasonable period of time. The principal used shall be limited to the excess of principal not expected to be needed in order to earn income for maintenance of the green space and natural features for the next reasonable period of time.

Sec. 2.4. Board of Trustees.

The general administration, management and responsibility for the proper operation of the Trust and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing, which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

The Board of Trustees shall consist of one member of the Green Space Advisory Board who shall be appointed by and serve at the pleasure of the Green Space Advisory Board, the City Finance Director, and shall also include one City Councilmember who shall be appointed by and serve at the pleasure of the City Council.

Each Trustee shall be a fiduciary and have fiduciary responsibilities under applicable law and shall act prudently and in the best interests of the Trust. Each Trustee will receive and hold the Trust as Trustees by virtue of the terms, conditions and provisions of the Trust and for the purposes, uses and trusts and with the powers and duties herein set forth.

Sec. 2.5. Administration.

(a) The principal office and site of the Trust shall be 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033. The Board of Trustees shall have the power to move the principal office of the Trust to another location and to establish other offices, as they deem necessary.

(b) Consistent with applicable state and federal law, the Board of Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other subjects as shall be deemed necessary and proper by the Trustees. All such rules and regulations shall be reduced to writing and shall be kept in the permanent office of the Trust and available for inspection by the City and the Participants. Any such rule or regulation promulgated by the Trustees shall be adopted, repealed or amended by an affirmative vote of two (2) Trustees. If any rule or regulation of the Trust is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation shall be deemed voided and all other rules and regulations of the Trust shall remain in full force and effect.

(c) A written instrument signed by the Trustees shall be evidence of the action of the Trustees. Any such instrument so signed shall be conclusively presumed to be authentic and all facts and matters stated therein shall be conclusively presumed to be true, and persons, including any person doing business with the Trustees, may rely on such instrument for all purposes.

(d) In the event of any suit brought against the Board of Trustees arising out of the acts within the scope and powers and duties of the Board of Trustees, or in the event of any lawsuit brought by the Trustees as authorized by this Article, the cost of the defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.

(e) The Board of Trustees may employ or contract with individuals and/or entities to perform whatever activities are required to carry out the purpose of the Trust regarding the general care, maintenance and improvement of the Green Space Properties. Such activity could include but not be limited to, creating public awareness of the economic value of green spaces, and providing for continuing education and communication about green space activities in order to increase citizen stewardship awareness. To promote bio-diversity through removal of invasive species and restoration of native plant materials. To preserve and protect public lands through conservation easements, steep slope ordinances, shoreline erosion abatement, wetland preservation, maintaining rivers and streams and expanding the Clinton River Greenway and other trail corridors. To make recommendations to the City Council as to assure that lands under control of the city are protected with a land management plan.

In addition thereto, the Board of Trustees may, if they desire, contract with an administrator to perform such clerical and administrative duties as they may, in their discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. The administrator so appointed, or with whom the contract was made, may be assigned the activities of receiving the City's reports, entering the information of those reports on permanent records, maintaining such records, receiving Contributions or deposits in the form of checks or drafts solely for the purpose of forwarding the Contributions to the Trust's bank accounts, preparation of governmental

reports, the preparation of checks for the payment of obligations of the Trust, and all related activities and other activities necessary to help administer the Trust. The Board of Trustees are further authorized to enter into contracts with such administrator for the administration of the Trust for whatever periods, in their discretion, the said Board of Trustees deem advisable. The Trustees shall be entitled to rely on the reports and recommendations of said administrator or any actions taken by said administrator with the authority granted him or her. The Board of Trustees shall not be responsible for any act taken with respect to the appointment, designation, retention, discharge, or employment of such administrator which is taken prudently and in good faith. Under no circumstances shall said administrator have control or authority with respect to the management of the Trust or its assets. The administrator shall not be clothed with any type of authority or power which will constitute the administrator as a fiduciary. Said administrator will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice. In the event of the administrator's discharge, the Board of Trustees shall require the administrator to return all necessary books, records and documents in the possession of said administrator which are necessary for the proper administration, handling and operation of the Trust. If the Board of Trustees have appointed, employed, hired or contracted with an administrator, a provision to this effect shall be incorporated in the written agreement between the Board of Trustees and administrator. The Board of Trustees may, in their discretion, assign certain administrative duties to the City; provided, however, that the direction and management of such activities shall be within the exclusive control of the Board of Trustees.

(f) The Board of Trustees may employ (an) investment manager(s) to manage the assets of the Trust. Such investment manager(s) must be registered under the Investment Advisor's Act of 1940, as amended, and must meet any applicable state and federal requirements to act as investment manager. Such appointment may include the power to acquire and dispose of the assets of the Trust; provided, however, that if any state or federal agency promulgates any rules with respect to limitation of liability on the part of the Trustees in choosing an investment manager or counselor, then the Trustees shall follow said regulations to the extent that they can maximize the protection available to them. If the Trustees chose an investment manager or investment counselor, they shall enter into a written agreement with said investment manager or investment counselor or bank or insurance company, if such institutions act in such capacity, which will provide for the investment or reinvestment of the assets of the Trust; and upon such execution, the Trustees may convey, if it is so provided, to such investment manager, investment counselor, bank or insurance company, any assets of the Trust so that said investment manager or counselor may engage in such transactions which are legal for trust funds in the State of Michigan and in the United States and which are prudent for the Trustees to undertake. Specifically, in accordance with Section 7a of Michigan Public Act 20 of 1943, the assets of the fund shall be invested in accordance with Public Act 314 of 1965, as amended. The Trustees shall not be liable for the acts or omissions of such investment manager, investment counselor, bank or insurance company or under any obligation to invest or otherwise manage the assets of the Trust, which assets are subject to the management of such investment manager, investment counselor, bank or insurance company. The Trustees may, if they deem proper in their discretion, or if the

circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institution, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provisions of the agreement or agreements between the Trustees and the fiduciary.

(g) The Board of Trustees may employ legal counsel with whom they may seek advice, consult with, require attendance at Trustees' meeting and to represent the Trustees whenever necessary, including the preparation of any documents, legal or otherwise, which may have any legal consequences. In choosing said counsel, the Trustees may, with prudence, give consideration to the developed skills and expertise of the attorney and experience and reputation he/she has achieved. The Trustees may rely upon the opinion of such counsel so chosen in respect to any action taken or suffered by the Trustees hereunder in good faith, in accordance with the opinion of said counsel, and the Trustees shall not be liable therefor.

(h) The Board of Trustees may employ an independent certified or licensed public accountant or actuary to perform services as may be required by the Board of Trustees.

(i) The Board of Trustees may authorize the purchase of insurance for the Board of Trustees to cover liability or losses occurring for any reason, including but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees.

Sec. 2.6. Board of Trustees Meetings.

(a) The Board of Trustees shall meet at least once in each calendar year. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The Secretary of the Trustees or his or her designee, shall be responsible for giving notice of the time and place of such meetings to the other Trustees.

(b) Special meetings of the Board of Trustees may be held at the call of one Trustee with or without notice to the other Trustees, as long as the other Trustees consent in writing thereto.

(c) All meetings shall be public, and notice of all meetings, both regular and special, shall be given in accordance with applicable law.

(d) Two (2) Trustees shall constitute a quorum.

(e) All decisions shall be made by at least two (2) affirmative votes.

Sec. 2.7. Compensation.

The Trustees shall not receive any compensation for performing any services for the Trust. Each Trustee shall be reimbursed for any expenses properly and actually incurred in the performance of his or her duties to the Trust. Included in such reasonable expenses properly and actually incurred in the performance of services to the Trust is the

attendance at educational meetings and seminars organized and designed to instruct the Trustees in the proper performance of their duties as Trustees and fiduciaries and to instruct, familiarize and acquaint the Trustees with all the provisions of all applicable laws. Reasonable costs and expenses will follow the City's established travel policy related to the participation in such educational conferences conducted and carried out for the purposes expressed herein.

Sec. 2.8. Trustees powers and responsibilities.

The Board of Trustees shall hold all the powers of Trustees that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by federal law and regulations. It is intended that the Trust shall be tax exempt and shall qualify under the Internal Revenue Code, particularly Section 115, and any amendments of the Code applicable to trusts of this type. The Trustees shall have the continuing power and duty to propose to the City amendments to this Article, which amendments will be accomplished by ordinance which will include incorporation into this Article, to amend the Trust to the extent it becomes necessary to qualify said Trust under the Internal Revenue Code and to continue the tax exempt status of the Trust. The Board of Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service or the courts with respect to the Trust. In the case of amendments to the Internal Revenue Code or changes of regulations by the Internal Revenue Service, the Board of Trustees are empowered to take all necessary action authorized by this Article and federal and state laws and regulations to continue the qualifications of the Trust as a qualified Trust. The Board of Trustees is also authorized to take all necessary action to maintain the Trust in compliance with applicable federal and state law. The Trustees shall have exclusive responsibility for the investment, management and control of Trust assets. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

(a) To make rules and regulations with respect to the Trust not inconsistent with its purpose or the Code and to amend or rescind such rules and regulations;

(b) To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person claiming rights under the Trust;

(c) Subject to and consistent with the Code, to construe and interpret the Trust and to correct any defect, supply any omissions, or reconcile any inconsistency in the Trust;

(d) Subject to and consistent with the Code, to construe and interpret the Trust (except as to administrative issues) and to correct any defect, supply any omission, or reconcile any inconsistency with respect to the same;

(e) To acquire by purchase, exchange, subscription, or other means, any security or other property and to retain the security or other property in trust; provided, however, the Board shall not maintain the indicia of ownership of any Trust asset outside the jurisdiction of the district courts of the United States;

(f) To invest Trust assets, including appointment of investment managers for specified portfolios;

(g) To adopt investment policies, guidelines, restrictions, and requirements;

(h) To sell at public or private sale for cash or on credit, convey, lease for long or short term or convert, redeem, exchange, or abandon all or any part of the Trust Fund;

(i) To hold part or all of the Trust Fund un-invested as may be appropriate to provide reasonable liquidity for the Trust;

(j) To contract for, purchase, or otherwise procure insurance and investment products;

(k) To take, renew, extend, foreclose, or otherwise deal with any mortgage or other security; to reduce interest on obligations held by it; to bid in property foreclosure; and to take deeds in lieu of foreclosure, with or without paying a consideration therefore;

(l) To exercise, or by general or limited power of attorney, or to refrain from exercising any right, including the right to vote, incident to any security or other property held by them;

(m) To register any Trust asset in the name of the Trust, in the name of its agent or in the name of a nominee or to hold any instrument in bearer form (but the books and records of the Trust shall at all times show that such investments are part of the Trust Fund);

(n) To consult with and rely on the advice of legal counsel;

(o) To employ suitable agents in furtherance of duties hereunder;

(p) To make, execute, acknowledge, and deliver any and all instruments necessary or appropriate to carry out the powers herein granted;

(q) To collect any and all money and other property due to the Trust and to issue full discharge therefore;

(r) To consent to or participate in a reorganization, recapitalization, consolidation, or merger;

(s) To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund; and

(t) To take all actions consistent with this Trust Agreement necessary or appropriate to administer or carry out the purposes of the Trust; provided, however, the Board need not take any action unless in its opinion there are sufficient Trust assets available for the expense thereof.

(u) The Board of Trustees shall have the right and duty to enforce the performance of all obligations provided for in the Trust. The Trustees shall immediately

notify the City and the administrator of a delinquency, mistake or discrepancy in any report or Contribution/Deposit.

(v) The Board of Trustees shall maintain proper books of accounts and records of administration of the Trust, including the minutes of all meetings, and make them available for inspection at the permanent office of the Trust during reasonable business hours by the City. The Trustees shall compile and furnish to each individual Trustee copies of all records which they individually or collectively require to properly discharge their duties. The City shall be entitled to receive from the Trustees records relating to the activities of the Trust.

(w) The Board of Trustees shall cause an annual audit to be made of the Trust by a firm of independent certified or licensed public accountants, and a copy of such audit shall be made available at the principal office of the Trust for inspection by interested persons. Such audit shall contain a summary of the assets and liabilities of the Trust, a resume of the operations for the preceding year, together with such other data as the Trustees request or is required by law.

(x) The Board of Trustees shall make reports to and file such information with the Internal Revenue Service, or any other appropriate public authority as may be required by state or federal law.

(y) The Board of Trustees may assign or allocate specific responsibilities or duties among the Trustees, or appoint committees for the purpose of overseeing any activity or pursuing or investigating any activity or transactions in which the Board of Trustees are interested. The Trustee or committee of Trustees may be assigned the responsibility to take action without prior approval by the remainder of the Board of Trustees. Any such action taken under such circumstances shall be valid, proper and not a breach of fiduciary responsibility of the Trustee or committee so appointed and so acting. The Board of Trustees may rely on the report of the individual Trustee or committee of Trustees who prepared the report or recommended the action which was undertaken by the full Board of Trustees after receiving the report of the Trustee or committee of Trustees. No Trustee shall be liable for the acts of any Trustee or committee of Trustees under these circumstances because of any act or omission on the part of the Trustee or committee of Trustees to whom such responsibilities, obligations or duties have been assigned or allocated, unless he or she participates with the knowledge that such act or omission is a breach of fiduciary responsibility or if he or she has knowledge of a breach by such other fiduciary without making reasonable efforts under the circumstances to remedy the breach.

(z) The Trust may cause the Trustees, or any person, firm or organization with which it deals who has fiduciary responsibilities under the Trust or under that person's, firm's or organization's arrangement with the Board of Trustees, to be bonded in an amount not less than ten (10%) percent of the funds handled, but in no event in excess of Five-Hundred Thousand (\$500,000.00) Dollars, unless an amount over and above that is prescribed by state or federal law. The corporation providing such bond shall meet applicable federal, state and local standards.

Sec. 2.9. Trust liabilities.

(a) Neither the City nor Trustees shall be liable for any debts, liabilities or obligations of the Trust except as set forth in the Trust. Any contribution improperly paid into the Trust by an individual or entity shall be returned by the Trustees upon the request of the individual or entity or upon discovery by the Trustees that such monies have been improperly paid into the Trust.

(b) No part of the Trust shall be subject to alienation, sale, transfer, assignment, pledge or encumbrance charge by any person.

Sec. 2.10. Termination of the trust.

(a) Subject to the limitations of this Article, the parties hereby contemplate that the City may discontinue or modify the provisions of the Trust. The Trust shall continue during such period of time as may be necessary to carry out the provisions of any ordinance requiring payment to the Trust and the Trust shall continue for a period of time sufficient to wind up the affairs of the Trust.

(b) The Trust may be terminated at any time by the Trustees by the execution of an instrument in writing, so long as the termination is not inconsistent with any then-existing ordinance. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.

(c) Upon termination of the Trust and satisfaction of all liabilities of the Trust pursuant to this Trust document, any remaining assets shall be returned to the City to be used for Green Space Properties. Notwithstanding anything contrary in this Trust, in no event will Trust assets be distributed to an entity that is not a state, political subdivision of a state or an entity, the income of which is excluded from gross income under section 115 of the Internal Revenue Code of 1986.

Sec. 2.11. Amendments to the trust.

(a) The provisions of the Trust may be amended at any time, by ordinance adopted by the City Council of the City of Rochester Hills, upon recommendation by the Board of Trustees, provided, however, that such amendments do not adversely affect the tax exempt status of this Trust.

(b) The Trust may not be amended to the extent such amendment would:

- (1) alter the basic purpose of the Trust, as set forth in this Article; or
- (2) conflict with any applicable law or government regulation; or
- (3) cause the use or diversion of any part of the Trust for purposes other than those generally authorized in this Article; or

(c) Despite any provision to the contrary above, or which may be inconsistent herewith, the Board of Trustees may propose amendments and shall have the duty to

propose amendments to the Trust to comply with any rule or regulation of the Internal Revenue Service for qualification under the Internal Revenue Code, for the continuation of tax exemption of the Trust, to obtain a favorable determination letter from the Internal Revenue Service, or to comply with applicable federal and state law.

DIVISION 3 – MISCELLANEOUS

Sec. 3.1. Entire agreement.

The Trust document, including any properly adopted or executed amendments thereof, shall constitute the complete agreement.

Sec. 3.2. Erroneous payments.

If the Board of Trustees makes any payment that according to the terms of the Trust should not have been made, the Board of Trustees may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board of Trustees, the City or from any other appropriate party.

Sec. 3.3. Governing laws.

Except to the extent pre-empted by federal law, the laws of the State of Michigan shall apply in determining the construction and validity of the Trust.

Sec. 3.4. Rules of construction.

Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

Sec. 3.5. Severability.

If any provision of the Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Trust shall continue to be fully effective.

IN WITNESS WHEREOF, the parties hereto have caused this City of Rochester Hills Green Space Perpetual Care Trust Fund Agreement to be duly executed to be effective this _____ day of _____ 20__.

ON BEHALF OF THE
CITY OF ROCHESTER HILLS, MICHIGAN

By: _____

Its: _____

Date: _____

BOARD OF TRUSTEES:

_____ Date: _____

_____ Date: _____

_____ Date: _____

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