

CONSENT AGREEMENT INTERIM USE PERMIT

1.0 Parties. This Consent Agreement/Interim Use Permit ("Agreement") is entered into by and between the City of Lake Elmo, a Minnesota statutory ("City"); and Country Sun Farm & Greenhouses Inc., ("Applicant").

2.0 Recitals.

A. Applicant is the record fee owner of the following described property situated in Lake Elmo, MN ("Property"):

See Exhibit A.

More commonly known as 11211 60th Street North.

B. The Property is zoned Agricultural and Rural Residential.

C. Interim uses are allowed in the Agricultural and Rural Residential zoning district subject to the regulations contained in Lake Elmo City Code Section 154.019.

D. Applicant has requested that the City allow the Property to be used for Agricultural Sales in the sales building and attached greenhouses as identified on Map #1 / Site Plan attached as Exhibit B (Site Plan):

E. On the 29th day of June, 2011, Applicant submitted a completed application for an Interim Use Permit.

F. On the 8th day of August, 2011, the Lake Elmo Planning Commission, at a public hearing, reviewed the Interim Use Permit application, city staff comments and reports, Applicant's comments and reports, public comments, and recommended approval of the interim agricultural sales use subject to certain conditions.

G. On the 28th day of August, 2011, the Lake Elmo City Council reviewed the Interim Use Permit application, city staff comments and reports, Applicant's comments and reports, public comments, and the recommendations of the Lake Elmo Planning Commission, and denied the interim use permit requested

H. On the 20th day of September, 2011, the Lake Elmo City Council reconsidered the Interim Use Permit application along with city staff comments and reports, Applicant's comments and reports, public comments and the recommendations of the Lake Elmo Planning Commission and agreed to authorize the interim use subject to the terms and conditions as specified in Section 154.019 of the Zoning Ordinance and Resolution 2011-040 approving the interim use permit.

- I. On July 2, 2013 the Lake Elmo City Council approved a request to renew the Interim Use Permit for an additional ten years, and authorized the Mayor to execute a consent agreement with the Applicant that includes the new termination date.

3.0 Terms and Conditions. The Lake Elmo City Council and Applicant, for itself, and its successors and assigns, agree that the interim agricultural sales use shall be subject to the following conditions:

- A. The Applicant, and its successors and assigns, shall have no entitlement to future re-approval of the Interim Use Permit.
- B. The operator must be able to demonstrate at all times to the city that there is sufficient access, parking, and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- C. All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- D. All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- E. Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres. It was determined that 149 acres of land will be utilized for calculating trip generation.
- F. Should the property owners sell or utilize any of the 149 acres of land for uses not compatible with an Agricultural Entertainment Business or Agricultural Sales Business or a permitted use, this Interim Use Permit shall be brought back to the City Council for review.
- G. Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with Section 150.001 through 150.003 of the City Code.
- H. There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines.

- I. Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).
- J. Trash containers must be located inside or screened in an acceptable manner.
- K. The Interim Use Permit is to allow the sale of agricultural products that were grown off site, which would include flower and vegetable plants, pumpkins, squash, corn, vegetables, and Christmas trees. Any other items wishing to be sold that are not otherwise grown on site or considered an ancillary item shall require an amendment to the Interim Use Permit.
- L. The addition of any new structures or buildings or expansion of existing structures or buildings, regardless of size, shall require notification to City Staff prior to construction. The City Council will determine if the changes will require an amendment to the Interim Use Permit or to the existing Conditional Use Permit on the site.
- M. The expansion, intensification or alteration of an existing use shall also require notification to City Staff prior to any change in the existing use. In addition, any new uses shall also require advanced notice to City Staff. The City Council will determine if the proposed expansion, intensification or alteration of the existing use or a new use will require an amendment to the Interim Use Permit or to the existing Conditional Use Permit on the site.
- N. Applicant and its successors and assigns, agree that in the event of a full or partial taking of the Property by a governmental unit that the value of the Property taken will be based on its highest and best use as it existed prior to the approval of the Interim Use Permit.
- O. The interim use shall allow an Agricultural Sales Business which allows the sale of agricultural products – flower and vegetable plants, pumpkins, squash, corn, vegetables, and Christmas trees produced off the premises to be sold at the Agricultural Sales Building identified at Country Sun Farm & Greenhouses, Inc.
- P. The applicant must abide by any recommendations or requirements imposed by the Minnesota Department of Transportation concerning their Special Event Traffic Management Plan submitted as part of their application for special event signage along State Highway 36.
- Q. There shall be no impediments to the free flow of traffic at the entrance to the site along State Highway 36, including the collection

of parking or entrance fees when such collection requires vehicles to stop at the entrance.

- R. The applicant shall work with City Staff to maintain a master inventory of all buildings and activities taking place on the premises, including any permitted agricultural activities, agricultural entertainment uses, and all other sales activities associated with the Interim Use Permit. This inventory shall include the building size, location, activity and date of construction among other relevant information.
- S. The Interim Use Permit does not authorize the conduct of any activity that would otherwise require a permit as an Agricultural Entertainment use.
- T. The applicant shall work with a traffic expert to prepare a traffic count study documenting the number of vehicle trips (both daily and peak counts) and peak times associated with the conduct of the Agricultural Sales operation. This traffic study must be submitted with any request to extend the Interim Use Permit beyond the initial termination date.
- U. The Interim Use Permit is valid until any one of the events listed below occurs:
 - 1. For ten (10) years from the initial termination date of the Interim Use Permit (September 20, 2023);
 - 2. Upon the sale of the property or a transfer of ownership to an outside party (non-family member) - the City will review said Permit with prospective and/or new owner(s) for potential renewal without new application.
 - 3. Until a violation of the conditions of this Consent Agreement;
 - 4. Until a change in the City's zoning regulations, which renders the interim use non-conforming; or
 - 5. Until the redevelopment of the Property for a permitted or conditional use as allowed by the City's zoning regulations.
- V. The applicant agrees to work in good faith with the City in efforts to address planning and identification of easement/right-of-way needs for long-term improvements to TH 36 and associated intersections, especially those that minimize impacts on the usage of the rest of the property.

- 4.0 Renewal of Interim Use Permit. The interim use permit may be renewed by the Council upon the occurrence of either events listed in Section (U, 1) or (U, 2) above. With the exception of (U, 2), a renewal application shall be requested in accordance with Section 154.019 (J) of the City Code.
- 5.0 Acknowledgement of the Conditional Use. Any Conditional Use Permit that was previously issued for the Property is allowed to continue in conjunction with the Interim Use Permit.
- 6.0 Acknowledgement and Consent. Applicant acknowledges that this is a legally binding agreement and that Applicant has had an opportunity to review the Agreement with legal counsel. Applicant consents to the terms of this Agreement and its restrictions on the use of the Property and the Interim Use Area.
- 7.0 Effective Date. This Consent Agreement/Interim Use Permit shall be effective upon execution by all parties.

Date: 7/2/13

CITY OF LAKE ELMO

By: _____
Mike Pearson
Mayor

**Country Sun Farm and
Greenhouses, Inc.**

By: _____
Keith Bergmann

Its: _____