

## **Agreement Granting an Irrevocable Term License for Access and Use**

### **Oak Glen Golf Course Buffer & Creek Stabilization**

This license agreement is made by and among Oak Glen LLC, a private Minnesota corporation (Oak Glen), and Brown's Creek Watershed District, a regional governmental unit with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (BCWD).

#### **Recitals**

- A. Oak Glen owns in fee simple certain real property at 1599 McKusick Road North in the City of Stillwater, Washington County, legally described as:

Outlot G, Oak Glen, Washington County, Minnesota

(Outlot G);

- B. Outlot G includes buffer area along Brown's Creek that was planted and established by BCWD in accordance with a September 12, 2011, project agreement between the parties (the 2011 Agreement), under which BCWD also successfully completed work to stabilize the banks of Brown's Creek as it traverses Outlot G;
- C. The parties entered into and recorded on Outlot G and other Oak Glen Golf Course parcels an easement agreement whereby BCWD retained responsibility for maintenance of the buffer area and stabilized streambank for five years from October 22, 2020, and Oak Glen granted to BCWD the right to access Outlot G for six years from October 22, 2020, purposes of maintenance of the buffer area and stabilized streambank (the Easement);
- D. Under the 2011 Agreement and the Easement, Oak Glen agreed to maintain the buffer area and stabilized streambank for 10 years after BCWD's governing board accepted the buffer establishment and streambank stabilization work as complete, and this license agreement does not diminish Oak Glen's rights or responsibilities under the 2011 Agreement and the Easement;
- E. BCWD has identified areas of the streambank on Outlot G that have eroded such that repair is now needed, and - notwithstanding Oak Glen's responsibilities as referenced in paragraph D herein - BCWD wishes to undertake the repair work, which will include field personnel on foot inserting and anchoring hand-cut trunks and branches of woody invasive buckthorn into the creek banks over 170 linear feet along the creek on Outlot G to stabilize the creek bank (the Repair Work);
- F. BCWD has requested and Oak Glen has agreed to grant to BCWD a license to access and use Outlot G for the Repair Work.

G. BCWD is authorized to enter this license agreement by Minnesota Statutes section 103D.33 5, subdivisions 7 and 13.

### **Agreement**

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein, the sufficiency of which the parties hereby acknowledge, Oak Glen and BCWD agree as follows:

1. **Grant of license.** Oak Glen hereby grants and conveys to BCWD, its contractors, agents, successors and assigns an irrevocable term license over, under, upon and across Outlot G for purposes of completing the Repair Work (the License). The License includes the right to ingress and egress and to pass over and through, cross and recross Outlot G, on foot and using small mechanical equipment to access and repair the banks of Brown's Creek for purposes of the Repair Work. BCWD will notify Oak Glen at least 24 hours prior to BCWD's entry onto Outlot G to undertake the Repair Work.
2. **Cost.** As between the parties to this agreement, BCWD will be responsible for all costs of the Repair Work.
3. **Coordination.** The Repair Work will be conducted in coordination with Oak Glen to ensure no material disruption to Oak Glen golf course operations. During the term of the License, Oak Glen will not use Outlot G in any manner that would damage or interfere with or degrade the utility or efficacy of the Repair Work. Oak Glen may use and enjoy Outlot G for all other purposes, but such use and enjoyment are subject to the restrictions stated herein and the temporary right of BCWD to use Outlot G for the purposes herein expressed.
4. **No public access or use.** No right of access or use of Outlot G is granted to the general public by this License.
5. **Continuing Maintenance.** After completion of the Repair Work, BCWD will prepare inspection and maintenance guidelines for review and approval by Oak Glen, such approval not to be unreasonably withheld. Oak Glen will inspect and maintain the buffer area and creek banks on Outlot G in accordance with the approved guidelines and in ongoing consultation with BCWD. The continuing maintenance is not part of the Repair Work.
6. **Term.** The License granted hereunder will expire September 15, 2026, or on notification by BCWD that the License is no longer needed, whichever occurs sooner. The License is irrevocable by Oak Glen prior to expiration on its terms, and does not diminish or supplant BCWD's rights to access Outlot G and other Oak Glen property under the Easement. All other rights, obligations and duties hereunder will survive termination of the License, including but not limited to BCWD's obligation under paragraph 5.

7. **Golf Course Property restoration; release of liability for preexisting conditions.** In the event Outlot G is damaged by the Repair Work, BCWD will promptly repair or restore Outlot G to the extent reasonably practicable or to a condition agreed on by Oak Glen. BCWD will repair, seed or plant disturbed or damaged areas with vegetation suitable for the established and customary uses of Outlot G. Oak Glen agrees and acknowledges that by execution of this agreement BCWD assumes no liability or responsibility of any kind for environmental conditions on Outlot G or for the completion of any actions required by any regulatory authority. Oak Glen will indemnify, defend and hold BCWD harmless from all costs, liabilities and responsibilities arising from the existing condition of Outlot G, except for those costs, liabilities and responsibilities arising out of BCWD's actions or breach of this agreement.
8. **Insurance.** BCWD will require its contractors, agents, successors and assigns to carry commercial general liability coverage or self-insure for injury to or death of a person or persons and for damage to property occasioned by the performance of the Repair Work. Oak Glen will remain solely responsible for maintaining liability and other insurance for its own uses of and authority over Outlot G.
9. **Delivery of notices.** All notices required or permitted under this agreement will be in writing and will be deemed delivered when delivered by electronic mail or in hard copy to the following:  

**Oak Glen LLC:**  
Jason Whitehill  
1599 McKusick Rd N  
Stillwater, MN 55082  
jason@oakglengolf.com

**BCWD:**  
Administrator  
Brown's Creek Watershed District  
455 Hayward Avenue North  
Oakdale MN 55128  
651-330-8220  
KKill@mnwcd.org
10. **Severability.** If any one or more of the provisions of this agreement, or the applicability of any such provision to a specific situation, is held invalid or unenforceable, such provision will be modified to the extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this agreement and all other applications of any such provision will not be affected thereby.

11. **Governing law; venue.** This agreement will be construed and governed by the laws of the State of Minnesota. Venue for any claim will be Washington County, Minnesota.
12. **No waiver of immunity.** No provision of this agreement will be interpreted as a waiver of any statutory or common law immunity by or limitation of liability available to BCWD, all such immunities and limitations being expressly reserved by BCWD.

IN WITNESS WHEREOF, the undersigned have executed this agreement with the intent to be legally bound by its terms as of the date this agreement is fully executed by both parties.

**Oak Glen LLC**

\_\_\_\_\_  
Jason Whitehill, General Manager

Date: \_\_\_\_\_

**Brown's Creek Watershed District**

\_\_\_\_\_  
Karen Kill, administrator

Date: \_\_\_\_\_

*Approved as to form and execution*

\_\_\_\_\_  
*BCWD counsel*