

LIMITED USE AGREEMENT

THIS AGREEMENT made and entered into as the ____ day of _____, 2022 by and between the City of Baxter, a Minnesota municipal corporation (“City”) and Country Club Estates Homeowner Association, Inc. (“Owner”).

WITNESSETH:

WHEREAS, Owner is the owner of the land legally described as follows:

Lot 31, Block 1, Country Club Estates

WHEREAS, the City has obtained a drainage easement from the adjacent property to assist with stormwater drainage needs of Owner; and

WHEREAS, Owner has agreed to maintain this area as part consideration for said easement; and

WHEREAS, the City Council approved private maintenance of the right-of-way (“improvements”) as long as Owner entered into this Limited Use Agreement.

NOW, THEREFORE, it is stipulated and agreed by and between the parties hereto as follows:

1. **Improvements and Area.** Owner shall mow and maintain the city easement area as described below. No other improvements are allowed in the subject right-of-way area.

The South 40.00 feet of the East 200.00 feet of Government Lot 4 and the South 40.00 feet of the West 240.00 feet of Government Lot 3, all in Section 5, Township 133, Range 28.

In addition thereto, the City shall allow Owner to connect their private stormwater system to the City catch basin along Golf Course Road. This system may freeze and back up but Owner waives any claims against the City for the maintenance or use of this connection and acknowledges that the City may require Owner to disconnect at any time if needed for City wide drainage needs.

2. **Maintenance.** Owner shall at all times keep and maintain the area used for the improvements in a good state of repair and agrees to indemnify and save harmless the City, its officers, agents and employees from any claim for personal injury, property damage or death occasioned by the location or maintenance of the City property. Owner also waives and releases the City from any claims which Owner may have against the City for damage to the encroachments resulting from activities conducted by the City on the City property except for such gross negligence or willful acts of the City (which proximately cause damage to the improvements) for which the City would be (according to then applicable municipal or state laws) otherwise liable to similarly suited property owners. Nothing in his Agreement shall be construed as a waiver by the City of any immunity, defenses, or other limitations on liability to which the City is entitled by law, including but not limited to the minimum monetary amounts on liability established by Minnesota Statutes Chapter 466.

3. **Termination.** The City may terminate this Agreement at any time, for good cause as determined by the City Council, by giving the Owner a 180-day written notice of termination. Owner hereby releases and waives any claim, which they may have for damages resulting from the termination of this Agreement including the impact that the removal of the signs may have on the businesses or on their ability to legally continue. The Owner also indemnifies and holds the City harmless from any third party claims in the event of termination of this Agreement. Unless the Improvements are removed from the City Property during that period, the Improvements, which are located on City property, shall become the exclusive property of the City. The City may remove the Improvements and assess the cost in the form of a lien against the Subject Property and may levy a special assessment in the manner provided by Minnesota Statutes Chapter 429. Owner acknowledges that the removal of the improvements from City Property shall constitute a benefit to the Subject Property for the purposes of Minnesota Statutes Chapter 429. Owner hereby waives the right to object to the aforementioned special assessment pursuant to Minnesota Statutes Chapter 429.

4. **Successors and Assigns.** Subject to the termination provisions of this Agreement, this Agreement may be assigned to any successor or assignee of any or all of the Owner's or the City's interest in the Subject Property or City Property, respectively.

5. **Recording.** Owner shall properly record this Agreement among the land records for the property described above and pay any staff costs to process this request.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

J. Brad Person

BREEN & PERSON, LTD.

P. O. Box 472

Brainerd, Minnesota 56401

218/828-1248