

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE
AGREEMENT WITH SPILLWAY, LLC., TO PERMIT
IMPROVEMENTS IN THE VILLAGE'S RIGHT-OF-WAY.**

WHEREAS, Spillway, LLC, proposes to erect certain improvements within a portion of the right-of-way of Cleveland Street; and

WHEREAS, Council has been advised that the placement of the proposed improvements in a portion of the Cleveland Street right-of-way will not hinder the ordinary course of vehicular and pedestrian traffic and would be necessary for the Spillway to utilize its property in an economically feasible manner; and

WHEREAS, it is necessary for a license agreement to be entered into between the Village and Spillway, LLC for this purpose which permits Spillway to construct improvements in the Cleveland Street right-of-way without hindering traffic.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:

SECTION 1. That the Mayor is authorized and directed to enter into a license agreement with Spillway, LLC for the construction of certain private improvements within a portion of the right-of-way of Cleveland Street in a form that is substantially in accordance with the License Agreement attached hereto and incorporated herein. The Mayor may execute such further documentation and perform such additional actions as may be necessary to carry out the purposes of the license agreement.

SECTION 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: November 11, 2013



Council President

Submitted to the Mayor for
his approval on this

12 day of November, 2013

LICENSE AGREEMENT

This License Agreement ("Agreement") is made as of this 12 day of November 20 , between the Village of Chagrin Falls, Ohio, an Ohio municipal corporation ("Licensor"), whose address is 21 Washington Street, Chagrin Falls, Ohio 44022 and Spillway, LLC, an Ohio limited liability company ("Licensee"), whose mailing address is 94 Center Street, Chagrin Falls, Ohio 44022.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration received to the full satisfaction of Licensor and in further consideration of the covenants, promises and agreements set forth herein, the parties agree as follows:

1. Subject to the terms and conditions set forth in this Agreement, Licensor grants to Licensee a nonexclusive license (the "License") to enter upon and use the real property of Licensor located within a portion of the Licensor's right-of-way, specifically the portion of Cleveland Street graphically depicted in the "to scale" diagram attached hereto as Exhibit A and incorporated herein by reference (the "Licensed Premises"), for the purpose of erecting and/or installing and maintaining _____ (the "Improvements") as part of the Spillway project located at 218 Cleveland Street in the Village of Chagrin Falls.
2. The License will commence upon approval of this License Agreement by Licensor's Village Council and execution thereof by both parties. Either Licensor or Licensee may terminate this License Agreement effective upon thirty (30) days written notice to the other party. Upon termination of the License, Licensee's right to enter upon and use the Licensed Premises for the purposes authorized herein shall cease.
3. The Improvements Licensee erects on the Licensed Premises shall be in compliance with the Planning and Zoning Code of the Licensor as well as all other applicable rules, regulations, ordinances and laws. Prior to erecting the Improvements, Licensee shall have obtained (a) the approval of the Licensor, and (b) a zoning certificate indicating such approval.
4. The parties acknowledge and agree that the Licensed Premises are part of a public right-of-way and, as such, may be needed for a public improvement. Some or all of the Improvements may need be removed at the Licensee's cost.
5. Upon completion of any installation, maintenance or repair of the Improvements, Licensee shall restore all such disturbed or affected area outside the Licensed Premises.
6. Licensee shall repair and maintain the Improvements and the Licensed Premises in a good, safe and clean manner, in compliance with all applicable laws and regulations of the appropriate governmental authorities, all at Licensee's sole cost and expense. Licensee shall not commit any waste, cause any damage to the Licensed Premises, or use the Licensed Premises for purposes other than those specified above. Licensee shall not interfere with the street lighting, pedestrian or vehicular access and free passage, hydrants, public utilities, snow removal, and any other public installations and maintenance of public installations.

7. Licensee shall indemnify and hold Licensor, its officials, employees, and agents, harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs and expenses including, but not limited to, reasonable attorney's fees occurring, arising out of, or related to Licensee's Improvements on the Licensed Premises or any other use of the Licensed Premises by Licensee, its agents, employees, contractors or invitees, or otherwise, arising in connection with the License granted to Licensee herein. Additionally, Licensee shall hold Licensor, its officials, employees, and agents, harmless from any damages to Licensee's cul-de-sac retaining wall or the Licensed Premises caused by actions of Licensor, its employees, agents, or contractors, acting within the scope of their employment with the Licensor.

Without limiting the foregoing, Licensee shall not suffer or permit any mechanics' or materialmen's liens to be filed against the Licensed Premises by reason of any work, labor, services, materials or equipment supplied or claimed to have been supplied to Licensee or any contractor or subcontractor of Licensee. If any mechanic's or materialman's lien is filed against the Licensed Property, then Licensee shall, promptly after notice of filing, either (i) cause the same to be discharged of record by deposit in court or bonding or (ii) furnish Licensor with indemnification or other security against loss or damage arising from the lien in form and substance reasonably satisfactory to Licensor. If Licensee learns of any claim or action pertaining to mechanics' or materialmen's liens, Licensee shall give prompt notice of the same to Licensor.

8. Licensee shall procure and maintain at Licensee's sole expense a policy of liability insurance covering the Licensed Premises with policy limits of not less than \$1,000,000 per occurrence for bodily injury, death, and property damage and naming Licensor as an additional insured. Licensee shall deliver to Licensor a certificate of this insurance upon execution of this Agreement. Such policies shall provide that they shall not be cancelled or terminated without at least thirty (30) days' prior written notice to Licensor at the address for notices to Licensor provided herein.

9. This Agreement shall not be assigned by Licensee without the prior written consent of Licensor. Any assignment without such consent of the Licensor shall be void and of no force and effect.

10. Upon the termination of this License, Licensor shall remove the Improvements erected by Licensee within the Licensed Premises and restore the Licensed Premises to its condition at the commencement of this License.

11. All promises made in this Agreement, including but not limited to indemnification and insurance coverage provisions, shall survive the termination or expiration of this Agreement.

12. This written Agreement constitutes the entire understanding between the parties, superseding all previous negotiations and discussions, and no modification or alteration of this Agreement shall be binding unless it is in writing and signed by both parties.

13. Any notice to be given by either party to the other pursuant to the provisions of this Agreement shall be deemed to have been given when deposited in the U.S. Mail, registered or

certified, return receipt requested, addressed to the other party at the address stated above or at such other address as each may designate by written notice to the other in the foregoing manner.

14. This Agreement shall be governed by the laws of the State of Ohio.

15. In the event any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.

16. Each person executing this Agreement warrants and represents that he or she is authorized to execute this Agreement on behalf of his or her legal entity.

SIGNED as of the date first written above.

LICENSOR:

Village of Chagrin Falls, an Ohio municipal corporation

By: Thomas Brick
Thomas Brick, Mayor

LICENSEE:

River Walk at Chagrin Falls, LLC, an Ohio limited liability company

By: [Signature]

Print Name: ROBERT J. DARDEN

Its: MEMBER

Approved as to Legal Form:


[Signature]
Stephen L. Byron, Director of Law

STATE OF OHIO)
)
COUNTY OF Cuyahoga)

SS:

BE IT REMEMBERED, That on this 12 day of November, 2013, before me, the subscriber, a Notary Public in and for said county, personally came, **Thomas Brick, Mayor of the Village of Chagrin Falls, Ohio**, the Licensor in the foregoing License Agreement, and acknowledged the signing thereof to be its and his voluntary act and deed individually and in the capacity designated.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

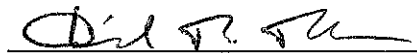

Notary Public
ELIZABETH L. DEBAGGIS
NOTARY PUBLIC - STATE OF OHIO
Recorded in Cuyahoga County
My commission expires Apr. 25, 2016

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

BE IT REMEMBERED, That on this 19 day of NOVEMBER, 2013, before me, the subscriber, a Notary Public in and for said county, personally came, **Spillway, LLC an Ohio limited liability company**, the Licensee in the foregoing License Agreement, by ROBERT J. DARDEN its MEMBER and acknowledged the signing thereof to be his/her voluntary act and deed individually and in the capacity designated.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.


Notary Public

DAVID B. BLOOM
Notary Public - State of Ohio
My Commission Expires July 14, 2014

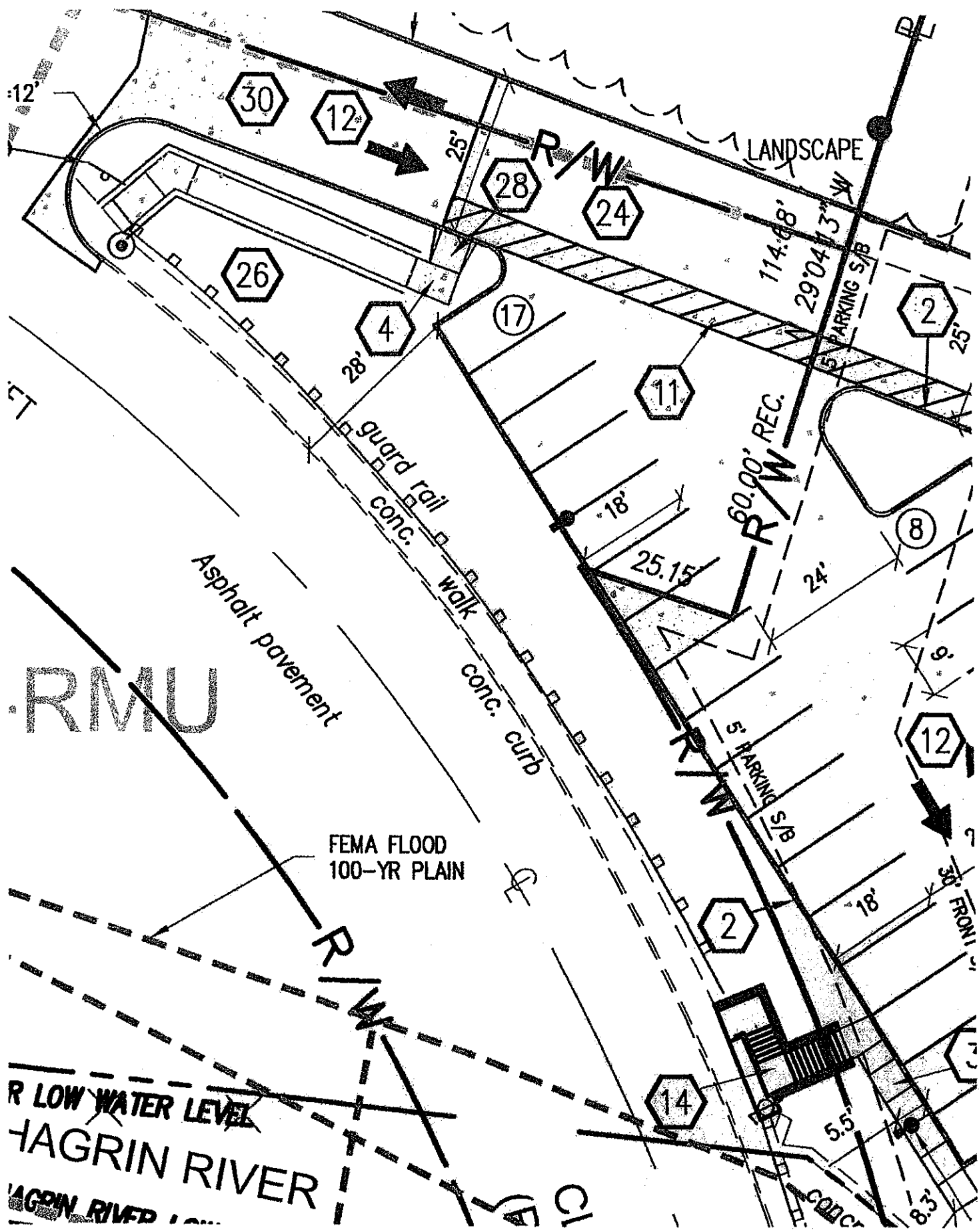


Exhibit A.