

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE
AGREEMENT WITH RIVER WALK AT CHAGRIN FALLS,
LLC.**

WHEREAS, River Walk at Chagrin Falls, LLC, proposes to erect a cul-de-sac retaining wall within a portion of the right-of-way of West Orange Street as part of Phase II of its town homes project; and

WHEREAS, it is necessary for a license agreement to be entered into between the Village and River Walk at Chagrin Falls, LLC for this purpose which provides for the removal of some or all of the cul-de-sac retaining wall should the licensed premises be needed for a future public improvement project.

**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 River Walk at Chagrin Falls, LLC for the construction of a cul-de-sac retaining wall within a portion of the right-of-way of West Orange 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: March 18, 2013



Council President

ORDINANCE NO.: 2013- 17
INTRODUCED BY: MR. HOLDREN

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Submitted to the Mayor for
his approval on this

19 day of March, 2013

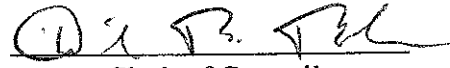
Approved by the Mayor

March 19, 2013



Mayor

I hereby certify that Ordinance No. 2013- 17 was duly enacted on the 18 day of March
 , 2013, by the Council of the Village of Chagrin Falls and posted in accordance with Section
113.01 of the Codified Ordinances of the Village of Chagrin Falls.



Clerk of Council

LICENSE AGREEMENT

This License Agreement ("Agreement") is made as of this 18 day of MARCH 2013, between the Village of Chagrin Falls, Ohio, an Ohio municipal corporation ("Licensor"), whose address is 21 Washington Street, Chagrin Falls, Ohio 44022 and River Walk at Chagrin Falls, LLC, an Ohio limited liability company ("Licensee"), whose address is 7514 Silverleaf Court, Sagamore Hills, Ohio 44067.

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 West Orange 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 a cul-de-sac retaining wall as part of Phase II of the River Walk at Chagrin Falls town homes project located at Williams 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 sixty (60) 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 cul-de-sac retaining wall 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 cul-de-sac retaining wall, 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 cul-de-sac retaining wall may need be removed at the Licensee's cost.
5. Upon completion of any installation, maintenance or repair of the cul-de-sac retaining wall, Licensee shall restore all such disturbed or affected area outside the Licensed Premises.
6. Licensee shall repair and maintain 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 cul-de-sac retaining wall 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. It is agreed that Licensee shall transfer its interest in this Agreement at the time that the River Walk at Chagrin Falls Condominium Association assumes maintenance and control of the common areas of the River Walk at Chagrin Falls Condominiums. Except as provided herein, 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 cul-de-sac retaining wall 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: Robert J. Vitt
Print Name: ROBERT J. VITT
Its: PRESIDENT

Approved as to Legal Form:

Stephen L. Byron
Stephen L. Byron, Director of Law

STATE OF OHIO)
)
COUNTY OF Cuyahoga) SS:

BE IT REMEMBERED, That on this 19 day of March, 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.

Elizabeth L. DeBaggis
Notary Public

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

STATE OF OHIO)
)
COUNTY OF Cuyahoga) SS:

BE IT REMEMBERED, That on this 9 day of April, 2013, before me, the subscriber, a Notary Public in and for said county, personally came, **River Walk at Chagrin Falls, LLC, an Ohio limited liability company**, the Licensee in the foregoing License Agreement, by Albert J. [Signature] its President 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.

Elizabeth L. DeBaggis
Notary Public

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

EXHIBIT A
Diagram of Licensed Premises

PROPOSED RIVERWALK PHASE-2

RETAINING WALL

RETAINING WALL

EX. PATIO
EX. BUILDING
FF.966.86

EX. DRIVE

TERRACE
GARDEN
ENTRY

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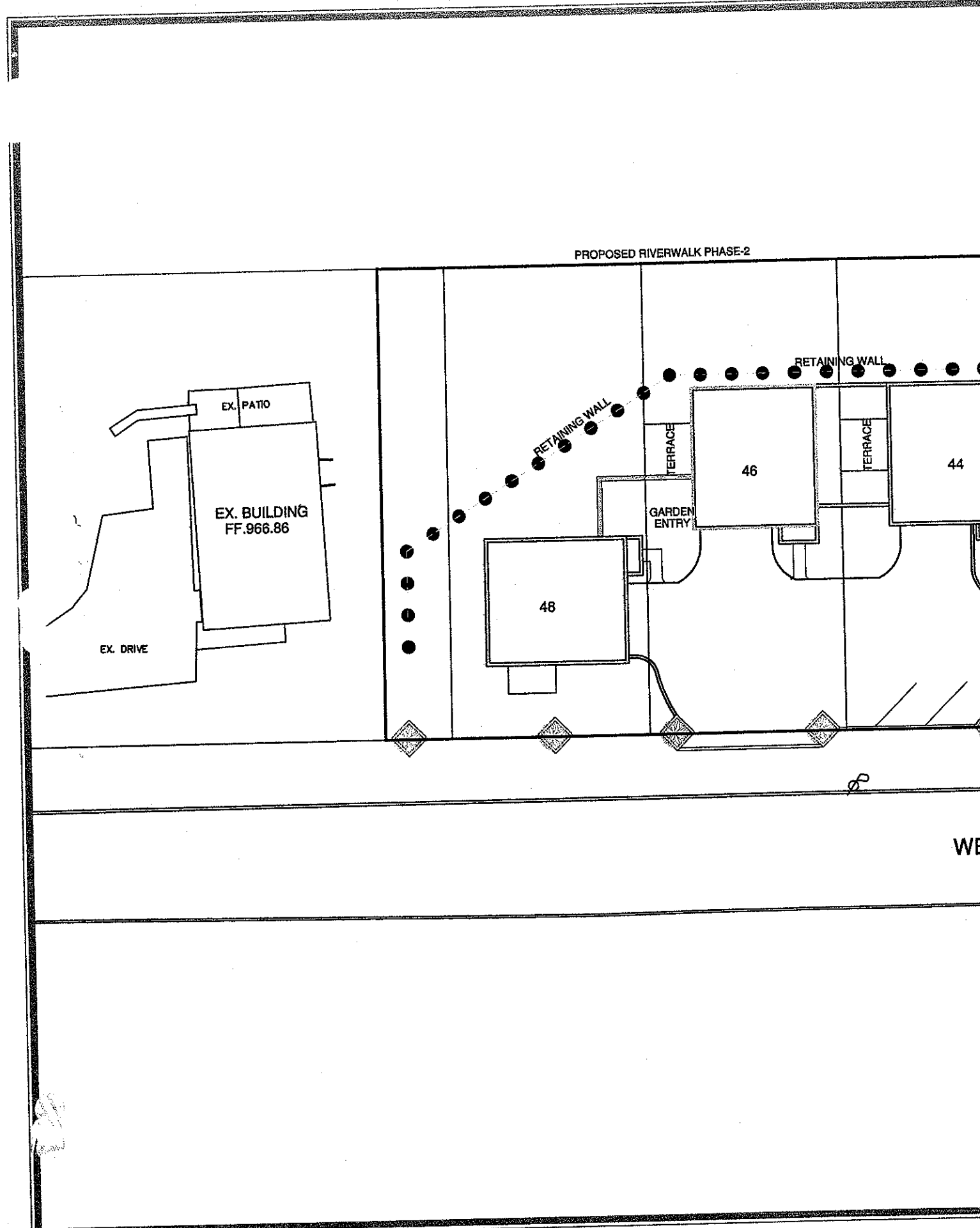
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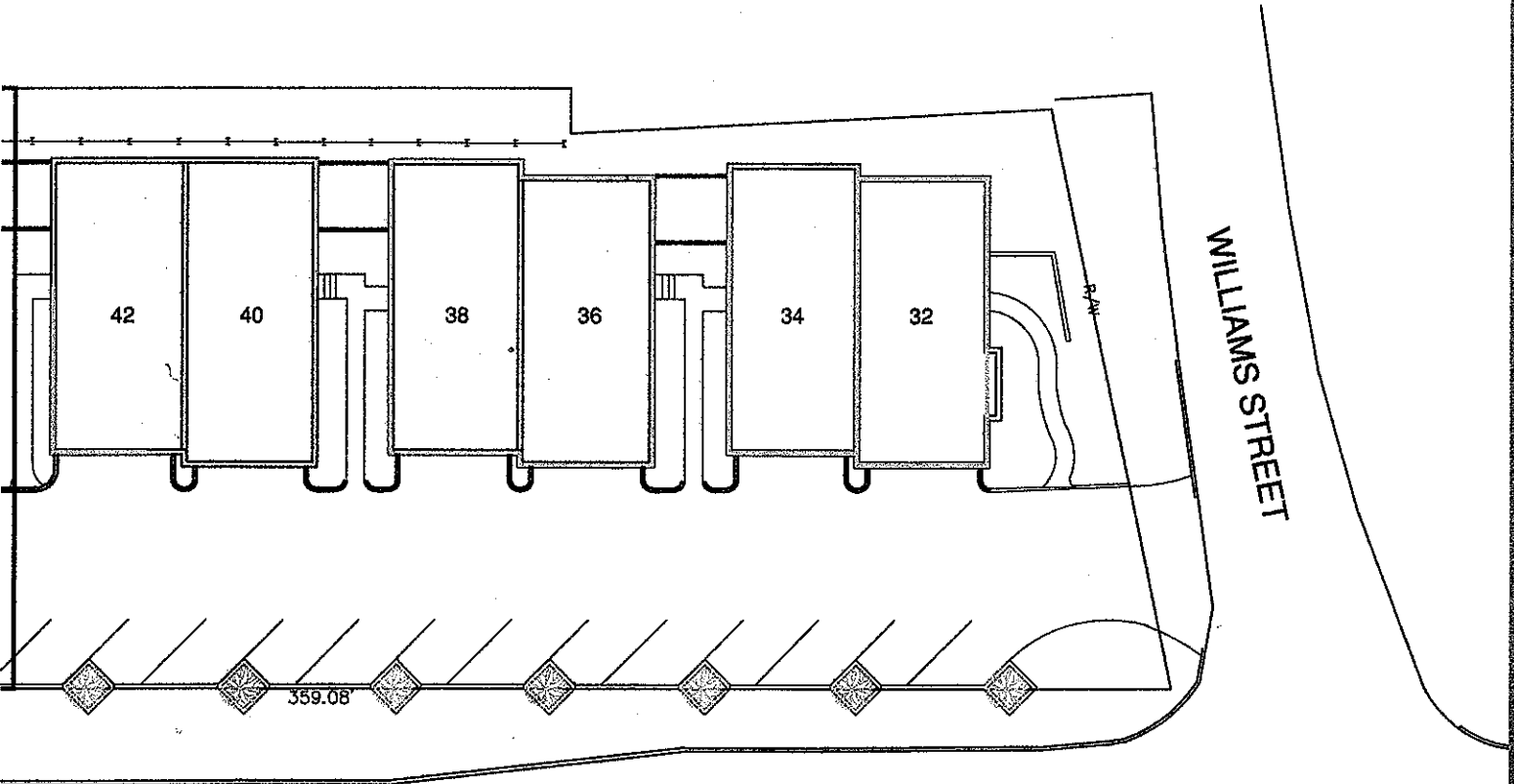
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WE

SD

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RANGE STREET 60'

River Walk
At Chagrin Falls