

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT TO PERMIT THE INSTALLATION OF A SWIMMING POOL AND RELATED APPURTENANCES AT 6604 CHESTWICK DRIVE.

WHEREAS, the City of Hudson holds rights of access to an easement for storm water pond and utility purposes on the property located at 6604 Chestwick Drive and the title owners of said property wish to install an in-ground swimming pool and related appurtenances within the easement area; and

WHEREAS, the City Engineer’s Office has determined that the in-ground swimming pool and appurtenances will not have an adverse effect on the City’s access to and use of the easement area; and

WHEREAS, the request to install an in-ground swimming pool and appurtenances in the easement area does not fall within the authority of the City Manager under Codified Ordinance §230.05 to enter into a license agreement for the use of the easement as it would be for fences and other structures constructed in easement areas; and

WHEREAS, the City’s Storm Water Systems Rules and Regulations, adopted by Council Ordinance, do not list swimming pools as an exception to structures which may be built within storm water easements.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hudson, County of Summit, State of Ohio, that:

Section 1: The City Manager is authorized to enter into a license agreement with the property owners at 6604 Chestwick Drive for the purpose of the installation of an in-ground swimming pool and related appurtenances in a storm water pond and utility easement in a form reasonably similar to the agreement attached hereto as Exhibit 1 and incorporated herein by reference.

Section 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

William A. Currin, Mayor

ATTEST:

Elizabeth Slagle, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on _____, 2014.

Elizabeth Slagle, Clerk of Council

EXHIBIT 1

LICENSE AGREEMENT

This License Agreement (“Agreement”) is made as of this ___ day of _____ 2014, between the City of Hudson, Ohio, an Ohio municipal corporation, whose address is 115 Executive Parkway, Suite 400, Hudson, Ohio 44236, and The Estates at Canterbury Lakes Homeowners’ Association, an Ohio non-profit corporation, whose address is _____ (hereinafter collectively referred to as “Licensors” or individually as the “City” and the “Homeowners’ Association”), and Jeffrey R. Shackelford and Linda D. Shackelford (hereinafter “Licensees”), whose address is 6604 Chestwick Lane, Hudson, Ohio 44236.

W I T N E S S E T H:

WHEREAS, Licensees own lot 20 in The Estates at Canterbury on the Lakes subdivision, also known as 6604 Chestwick Lane, Hudson, Ohio (PPN 30-09820) (hereinafter referred to as the “Property”), and have improved the Property with a single-family dwelling; and

WHEREAS, a Pond and Utility Easement (hereinafter “Easement”) exists at the rear of the Property as set forth on The Estates at Canterbury on the Lakes subdivision plat recorded in the Summit County Records at Reception Number _____ (hereinafter “Plat”); and

WHEREAS, pursuant to the Plat and the Declaration of Easements, Covenants, Conditions and Restrictions for The Estates at Canterbury on the Lakes Subdivision recorded in the Summit County Records at Reception Number 55503037 (hereinafter “Declaration”), Licensors have the right to access the Easement for inspection and maintenance purposes; and

WHEREAS, Licensees desire to construct an in-ground swimming pool, including related equipment and facilities, specifically an aluminum fence, pool deck, tiled waterfall wall, fire pit, water, gas, and electrical lines, part of an outdoor kitchen, and landscaping (hereinafter “Pool and Related Appurtenances”) within a portion of the Easement for their personal use and enjoyment; and

WHEREAS, the parties desire to enter into this License Agreement to set forth the terms and conditions upon which Licensees may construct an in-ground swimming pool, including Pool and Related Appurtenances, and install landscaping within a portion of the Easement; and

WHEREAS, this License Agreement grants an exception to the City of Hudson Storm Water Systems Rules and Regulations.

NOW, THEREFORE, in 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 Licensees a nonexclusive license (the "License"), to enter upon and use a portion of the Easement currently held by the Licensor, as graphically depicted in the "to scale" diagram attached hereto as Exhibit A and incorporated herein by reference (the "Licensed Premises"), for the purpose of constructing, using, and maintaining an in-ground swimming pool, including Pool and Related Appurtenances, and installing and maintaining landscaping.

2. The License will commence upon approval of this License Agreement by Licensor's City Council and execution thereof by both parties. Either Licensor or Licensees may terminate this License Agreement effective upon one hundred twenty (120) days written notice to the other party. Upon termination of the License, Licensees' right to enter upon and use the Licensed Premises for the purposes set forth herein shall cease.

3. Any swimming pool, including Pool and Related Appurtenances, and landscaping Licensees constructs or installs on the Licensed Premises shall be in compliance with the Land Development Code and any other requirements of the Licensor, as well as all other applicable rules, regulations ordinances and laws. Prior to the construction and installation of any such swimming pool, including Pool and Related Appurtenances, and landscaping, Licensees shall have obtained (a) the approval of the Licensor, and (b) a zoning certificate indicating such approval.

4. Licensees shall be responsible, at their own cost, for maintaining the Licensed Premises, and shall ensure that any swimming pool, including Pool and Related Appurtenances, and landscaping are maintained in good and aesthetic condition. Upon completion of any construction, installation, maintenance or repair of the swimming pool, including Pool and Related Appurtenances, or the landscaping, Licensees shall restore all such disturbed or affected area outside the Licensed Premises.

5. Licensees shall keep, 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 Licensees' sole cost and expense. Licensees shall not commit any waste, cause any damage to the Licensed Premises, or use the Licensed Premises for purposes other than those specified above.

6. The License granted herein is subject to, and subordinate to, all restrictions, conditions, reservations, limitations, covenants, and easements of record. As such, Licensees shall not interfere with the rights of the Licensors to access the Licensed Premises for inspection and maintenance purposes related to the Easement.

7. In the event it is necessary for the Licensor, its employees, agents, or contractors, to perform work on the Licensed Premises and it is necessary to remove or disturb the swimming pool, Pool and Related Appurtenances, and/or landscaping thereon to perform said work, upon written notice, Licensees shall promptly remove the swimming pool, Pool and Related Appurtenances, and/or landscaping within the time set forth in the notice and at their sole expense and Licensees may reinstall the swimming pool, Pool and Related Appurtenances, and/or landscaping at their sole expense upon completion of the work. In the event Licensees do not remove the swimming pool, Pool and Related Appurtenances,

and/or landscaping within the time set forth in the notice, Licensor or the entity requiring the removal shall have the authority to do so and the cost of such removal shall be borne by Licensees and paid by Licensees within 30 days of an invoice for the cost being delivered to Licensees.

8. Licensees 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 Licensees' swimming pool, including Pool and Related Appurtenances, and landscaping on the Licensed Premises or any other use of the Licensed Premises by Licensees, their agents, employees, contractors or invitees, or otherwise, arising in connection with the License granted to Licensees herein. Additionally, Licensees shall hold Licensor, its officials, employees, and agents, harmless from any damages to Licensees' swimming pool, including Pool and Related Appurtenances, and landscaping or the Licensed Premises caused by actions of Licensor, its employees, agents, or contractors, acting within the scope of their employment with the Licensor.

In addition to the foregoing, Licensees expressly assume any and all risk of loss or damage to Licensees' personal or real property located in the Licensed Premises or injury to persons, in, upon or about the Licensed Premises caused by flooding.

Without limiting the foregoing, Licensees 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 Licensees or any contractor or subcontractor of Licensees. If any mechanic's or materialman's lien is filed against the Licensed Premises, then Licensees 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 Licensees learn of any claim or action pertaining to mechanics' or materialmen's liens, Licensees shall give prompt notice of the same to Licensor.

9. Licensees shall procure and maintain at Licensees' sole expense a policy of general 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 \$300,000 per occurrence for property damage naming Licensor as an additional insured. Licensees 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 30 days' prior written notice to Licensor at the address for notices to Licensor provided herein.

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

11. Upon the termination of this License, Licensees, at their sole expense, shall remove any swimming pool, including Pool and Related Appurtenances, and landscaping or other improvements constructed or installed by Licensees and restore the Licensed Premises to its condition at the commencement of this License.

12. 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.

13. 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.

14. Any notice or demand as required to be given herein shall be made by hand-delivery or reliable overnight courier to the address of the respective parties set forth above and be deemed given upon delivery.

15. This Agreement shall be governed by the laws of the State of Ohio and any legal actions as a result thereof shall only be in the state courts of Ohio.

16. 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.

SIGNED as of the date first written above.

LICENSORS:

City of Hudson, an Ohio municipal corporation

By: _____
Print name: Jane Howington, City Manager

The Estates at Canterbury on the Lakes
Homeowners' Association, an Ohio non-profit
corporation

By: _____
Print name: _____
Title: _____

LICENSEES:

Jeffrey R. Shackelford

Linda D. Shackelford

Approved as to Legal Form:

R. Todd Hunt, City Solicitor

STATE OF OHIO)
)
COUNTY OF SUMMIT) SS:

BE IT REMEMBERED, That on this ____ day of _____, 2014, before me, the subscriber, a Notary Public in and for said county, personally came, **Jane Howington, City Manager for the City of Hudson, Ohio**, a Licensor in the foregoing License Agreement, and acknowledged the signing thereof to be its and 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

STATE OF OHIO)
)
COUNTY OF SUMMIT) SS:

BE IT REMEMBERED, That on this ____ day of _____, 2014, before me, the subscriber, a Notary Public in and for said county, personally came, _____, in his/her capacity as the duly appointed _____ of **The Estates at Canterbury on the Lakes Homeowners' Association**, a Licensor in the foregoing License Agreement, and acknowledged the signing thereof to be its and 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

STATE OF OHIO)
)
COUNTY OF _____) SS:

BE IT REMEMBERED, That on this ____ day of _____, 2014, before me, the subscriber, a Notary Public in and for said county, personally came, **Jeffrey R. Shackelford**, the Licensee in the foregoing License Agreement, and acknowledged the signing thereof to be his voluntary act and deed individually.

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

Notary Public

STATE OF OHIO)
)
COUNTY OF _____) SS:

BE IT REMEMBERED, That on this ____ day of _____, 2014, before me, the subscriber, a Notary Public in and for said county, personally came, **Linda D. Shackelford**, the Licensee in the foregoing License Agreement, and acknowledged the signing thereof to be her voluntary act and deed individually.

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

Notary Public

EXHIBIT A
Drawing of Licensed Premises