

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT
WITH 15 BELL STREET LLC FOR THE LEASE OF CERTAIN VILLAGE
OWNED REAL PROPERTY LOCATED ON BELL STREET, AND
DECLARING AN EMERGENCY.

WHEREAS, the Village owns certain real property on Bell Street known as permanent parcel #931-13-058 ("subject property"); and

WHEREAS, the subject property consists of a cement pad and has limited use to the Village for municipal purposes other than access to the Chagrin River, passive recreational use (e.g. viewing the Noah Graves dam in the Chagrin River, which is to the north of the subject property), and underground utility use; and

WHEREAS, the adjoining property owner, 15 Bell Street LLC, desires to lease the subject property in order that it may use the property for outdoor dining purposes and passive recreational uses, including access to view Noah Graves dam; and

WHEREAS, this Council, on February 28, 2011, passed Ordinance No. 2011-02 finding and determining that outdoor dining and passive recreation are appropriate uses for the subject property and authorizing the lease of the subject property; and

WHEREAS, the required number of Village electors, in accordance with the Village Charter, filed a petition with the Cuyahoga County Board of Elections submitting Ordinance No. 2011-02 to a referendum vote; and

WHEREAS, a majority of Village electors, at the November 8, 2011, election, voted to approve Ordinance No. 2011-02; and

WHEREAS, Ordinance No. 2011-02 provides that the terms and conditions of the lease of the subject property shall be negotiated by the Village administration and approved by Council via separate legislation; and

WHEREAS, the Village administration negotiated the terms and conditions of a lease agreement with 15 Bell Street LLC; and

WHEREAS, this Council, consistent with the majority vote at the November 2011 election, desires to authorize the Mayor to lease the subject property to 15 Bell Street LLC in accordance with the terms and conditions of the negotiated lease agreement; and

WHEREAS, this Council further finds that there is no other lessor who is positioned to use this property for the proposed purpose.

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

SECTION 1. That the Mayor be and is hereby authorized to enter into a Lease Agreement with 15 Bell Street LLC for the lease of certain Village owned property know as permanent parcel number 931-13-058. A copy of the Lease Agreement is appended hereto and incorporated herein by reference provided that such Lease Agreement shall be amended as determined necessary by the Director of Law to protect the interests of the Village of Chagrin Falls. The Mayor may execute such further documentation and perform such additional actions as may be necessary to accomplish the purposes of the Lease 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 is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of this Village and for the further reason that this Ordinance must be immediately effective so that the Village may provide for the timely lease of certain Village property; wherefore, provided it receives the requisite number of affirmative votes of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be in force after the earliest period allowed by law.

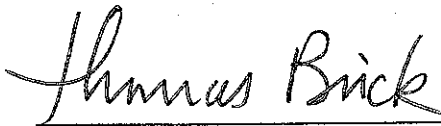
PASSED: June 11, 2012



Council President


Submitted to the Mayor for
his approval on this
12 day of June, 2012

Approved by the Mayor
June 12, 2012



Mayor

I hereby certify that Ordinance No. 2012-24 was duly enacted on the 11 day of June, 2012, 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

LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into on this 12 day of June, 2012 ("Effective Date"), by and between the Village of Chagrin Falls, an Ohio municipal corporation ("Landlord"), whose address is 21 West Washington Street, Chagrin Falls, Ohio 44022, and 15 Bell Street LLC, an Ohio limited liability company ("Tenant"), whose address is 8265 TIMBER TRAIL, Chagrin Falls, Ohio 44023

In consideration of the Premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PREMISES. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the real property shown on the attached Exhibit A and known as Cuyahoga County Auditor's Parcel No. 931-13-058 (the "Premises"). Tenant accepts the Premises in its "As Is" condition and acknowledges that Landlord has made no representations or warranties regarding the condition of the Premises or its suitability for the use contemplated by this Lease.

2. LEASE TERM. The term of this Lease shall be for a period of five (5) years, commencing on the Effective Date and terminating on June 11, 2017, with two five year renewals at the lessee's option (total potential lease term of fifteen (15) years) (the "Lease Term").

3. RENT. Tenant shall pay to Landlord as rent for the Premises an annual amount of Three Thousand Five Hundred Dollars (\$3,500), which amount shall be paid by AUGUST 1, 2012, and by March 1 each year thereafter (the "Rent"). If any payment of Rent is not received by Landlord within five (5) days of when due, Tenant must pay to Landlord a late charge of Twenty-Five Dollars (\$25) per day until Landlord receives the Rent payment. All payments required of Tenant under this Lease will bear interest, beginning on the day after the date due until paid, at the lesser of fifteen percent (15%) per annum or the maximum non-usurious rate (the "Default Rate").

4. TAXES. Tenant shall reimburse Landlord on demand for the amount of all real estate taxes and assessments assessed against the Premises during the Lease Term. Tenant shall also pay any personal property taxes, franchise taxes or business taxes assessed against Tenant's personal property located on the Premises or assessed against Tenant's business. If Tenant fails to pay when due any taxes required by this Section to be paid by Tenant, such payment will bear interest at the Default Rate until paid to Landlord.

5. USE. Tenant shall use the Premises during the Lease Term as an outdoor patio dining area may be operated on any day that the weather permits such operation during each year during the Lease Term and, when not being used for such purpose, Tenant shall remove the furniture and equipment on the Premises that is used for outdoor dining and allow the general public to use the Premises for the purpose of viewing the Chagrin River. Tenant is not authorized to use the land for any use other than outdoor patio dining. Specifically, Tenant shall not have bar operations or outdoor live entertainment on the Premises. Tenant is responsible for complying with all federal, state and local laws and regulations in its use of the Premises, including the American's with Disabilities Act, at its sole cost.

6. MAINTENANCE AND ALTERATIONS.

(a) Maintenance/Repairs. Tenant shall maintain the Premises, including the fences and pavements located on the Premises, in good, clean and safe condition and in compliance with all laws and the Village of Chagrin Falls ("Village") codes during the Lease Term at its sole cost. If any repairs are needed to the Premises, Tenant shall be solely responsible for making those repairs. If Tenant fails to make any repairs or perform any maintenance required by this section, Landlord has the right to make

such repairs or perform such maintenance on Tenant's behalf, and Tenant shall reimburse Landlord on demand for the reasonable cost incurred by Landlord.

(b) Alterations. Tenant agrees to remove the existing HVAC facility from the Premises and will install new pavement and new fencing around the premises in conformance with a plan that is mutually agreeable to the Tenant and the Mayor of the Village. If Tenant desires to make any other alterations to the Premises or the fences located on the Premises, Tenant must provide Landlord with prior written notice of the proposed alterations. Landlord will have the right to approve or disapprove the proposed alterations. If Landlord has not objected within ten (10) days after receiving notice of the proposed alterations, the alterations are deemed approved. If Landlord objects prior to the expiration of the ten (10) day period, then Tenant will work with Landlord to bring the proposal for the alterations before the Village Parks Commission and Village Council for approval.

7. UTILITIES AND SERVICES. Tenant shall pay the cost of all utilities consumed on the Premises. Tenant shall also pay for all trash removal, general custodial and cleaning services utilized on the Premises.

8. INDEMNIFICATION AND LIABILITY. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by Landlord by reason of any injury or damage to any person or property whatsoever, occurring in, on or about the Premises unless such injury or damage is caused by the gross negligence or willful misconduct of Landlord.

9. TENANT INSURANCE. Tenant shall, at its sole cost, obtain and keep in full force and effect from and after the Effective Date, an insurance policy or policies insuring against such risks, and in such amounts, as follows:

(a) commercial general liability insurance insuring Landlord and Tenant against bodily injury (including death) and property damage (including loss of use), against liability arising out of Tenant's use, occupancy, or maintenance of its exclusive portion of the Premises, with minimum limits of liability in the amount of One Million Dollars (\$1,000,000) on account of bodily injury to or death of one person, and Two Million Dollars (\$2,000,000) on account of bodily injury to or death of more than one person as a result of any one accident or disaster, and Two Hundred Fifty Thousand Dollars (\$250,000) property damage insurance, unless Landlord or Landlord's mortgagee require higher limits;

(b) workers' compensation insurance in the maximum amount required by law; and

(c) a commercial fire and extended coverage insurance policy insuring against loss of, or damage to, the Premises, including Tenant's improvements, fixtures and equipment, which insurance shall be in an amount at least equal to the full replacement value of the Premises, including Tenant's improvements, fixtures and equipment. Such policy shall name Landlord as the loss payee.

Tenant shall provide Landlord with proof of coverage promptly upon receipt of Landlord's request for same.

10. LANDLORD INSURANCE. Landlord shall maintain such policies of insurance insuring the Premises, including the fences located on the Premises, as Landlord determines are necessary in its sole discretion. If Landlord maintains any policies of insurance insuring the Premises, or the fences located on the Premises, Tenant shall reimburse Landlord for the reasonable cost of the insurance policies upon demand.

11. WAIVER OF SUBROGATION. Landlord and Tenant, and all parties claiming under each of them, mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance coverage required to be maintained by the terms of this Lease on the Premises or in connection with activities conducted on the Premises, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof. All policies of insurance required to be maintained by the parties hereunder shall contain waiver of subrogation provisions so long as the same are available.

12. QUIET ENJOYMENT. Landlord represents that it has full right and power to execute this Lease and to grant the estate leased herein and that Tenant, upon the performance of all other terms, conditions and covenants herein contained, shall have, hold and peaceably enjoy the Premises during the Lease Term, subject and subordinate to all of the terms, covenants and conditions of this Lease.

13. WAIVER OF JURY TRIAL. THE RESPECTIVE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF SAID PREMISES, AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY.

14. HAZARDOUS MATERIALS.

The term "Hazardous Materials" as used herein shall mean (a) any substance the presence of which requires special handling, investigation, notification or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; (b) any substance which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Federal Insecticide Fungicide and Rodenticide Control Act (7 U.S.C. §136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §11001 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300f et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616, Nov. 9, 1984), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Federal Clean Air Act (42 U.S.C. §7401 et seq.), or any environmental, health or safety laws enforced in the State of Ohio; (c) any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Ohio or any political subdivision thereof; any substance the presence of which on the property causes or threatens to cause an erosion, contamination, drainage or nuisance problem upon the property or to adjacent properties (including on nearby public roads and right-of-way) or poses or threatens to pose a hazard to the health or safety of persons on or about the property; any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons; and (d) any substance which contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation.

Tenant agrees that it shall comply at all times during the Lease Term with all federal, state and local environmental laws and shall not use, permit, hold, release or dispose of any Hazardous Materials on, under or at the Premises or surrounding environment and that Tenant shall not use or permit the use of the Premises or any portion of the Premises as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Materials.

In the event any authority demands any remedial environmental action be undertaken because of any release of a Hazardous Material on the Premises during the Lease Term, Tenant shall, at Tenant's own expense, perform such environmental action.

15. ASSIGNMENT. In no event shall Tenant assign or sublet this Lease without obtaining the prior written consent of Landlord, which consent can be withheld in Landlord's sole discretion.

16. DEFAULT. In the event Tenant is in default of any of the terms or obligations of the Lease, or violates or fails to comply with any of the covenants, terms, or conditions of the Lease, including timely payment of Rent and other charges due under this Lease, Landlord shall have all rights and remedies available at law and in equity, including rights to terminate this Lease or retake possession of the Premises without termination. It is expressly understood and agreed that Tenant shall be and remain liable for all amounts owed to Landlord under this Lease, including Landlord's costs to repossess and relet the Premises. Tenant shall also be and remain liable for any expense incidental to trash removal, utilities, and any other damages and costs which Landlord has sustained by virtue of Tenant's use and occupancy of the Premises or default under the Lease.

17. LIMITATION ON LIABILITY. Landlord shall not be liable to Tenant, its agents, employees, or customers for any damages, losses, compensation, accidents, or claims whatsoever, and nothing in this Lease contained shall be construed as creating any liability whatsoever against Landlord personally, and all personal liability of Landlord, to the extent permitted by law, of every sort, if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder; and that so far as the parties hereto are concerned, the owner of any indebtedness or liability accruing hereunder shall look solely to the Premises for the payment thereof.

If Tenant obtains a money judgment against Landlord under any provisions of or with respect to this Lease or on account of any matter, condition or circumstance arising out of the relationship of the parties under this Lease or Tenant's occupancy of the Premises, Tenant shall be entitled to have execution upon any such final, unappealable judgment only upon Landlord's fee simple estate in the Premises and not out of any other assets of Landlord; and Landlord shall be entitled to have any such judgment so qualified as to constitute a lien only on said fee simple estate.

18. AUTHORITY. The parties hereto warrant to each other that they have full capacity, power and authority to enter into and perform this Lease according to its terms.

19. NOTICES. Any notices required to be given hereunder shall be sent to the parties via hand delivery, certified mail, or nationally recognized over-night courier, return receipt requested, at the addresses set forth above. Notices sent pursuant to this Lease shall be deemed delivered upon receipt or refusal of receipt.

20. RIGHT OF ACCESS. Landlord has the right, at all reasonable times and upon one (1) hour prior notice to Tenant, to enter in the Premises for the purpose of inspecting the same or for performing any work on the Premises. Notwithstanding the foregoing, Landlord has the right to enter the Premises at any time without providing prior notice to Tenant to access the dam or any Village infrastructure that is accessed via the Premises in cases of emergency; Landlord shall repair any damages Premises necessitated by such access, and shall restore the Premises to the condition that existed prior to Landlord's access to the extent such restoration is possible, provided that funds for such restoration have been appropriated, are unencumbered and are available for such repairs and restoration. Landlord shall use reasonable efforts to not interfere with Tenant's use of the Premises.

21. SURRENDER. Tenant shall vacate the Premises on or before the end of the Lease Term and shall surrender the Premises to Landlord in the same condition which existed as of the Effective Date,

reasonable wear and tear excepted.

22. MECHANICS LIENS. Tenant will indemnify and save harmless the Landlord from and against all mechanics liens or claims by reason of repairs, alterations or improvements which may be made by Tenant to the Premises. In the event a mechanic's lien is filed against the Premises, Tenant shall discharge or bond off same within ten (10) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same without inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant.

23. APPLICABLE LAW. This Lease is governed by the laws of the State of Ohio.

24. BINDING EFFECT/ENTIRE AGREEMENT. The provisions contained herein shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Lease and any exhibits attached hereto constitute the entire agreement of the parties. No change, amendment or addition to this Lease shall be effective unless mutually agreed upon in writing.

25. SEVERABILITY. If any term or provision of this Lease or the application thereof to any person or circumstances shall be to any extent invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

26. APPROVAL. The terms and conditions contained herein are subject to approval by the Village Council.

27. NON-WAIVER. No payment by Tenant or receipt by Landlord or its agents of a lesser amount than the Rent stipulated in this Lease shall be deemed to be other than on account of the stipulated Rent nor shall an endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction and Landlord or its agents may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

28. HOLDING OVER. There shall be no privilege of renewal hereunder (except as specifically set forth in this Lease) and any holding over after the expiration by the Tenant shall be from day to day on the same terms and conditions (with the exception of rental which shall be prorated on a daily basis at twice the daily rental rate of the expired Term) at Landlord's option; and no acceptance of Rent by or act or statement whatsoever on the part of the Landlord or his duly authorized agent in the absence of a written contract signed by Landlord shall be construed as an extension of the Term or as a consent for any further occupancy.

29. NUISANCE. Tenant shall not perform any acts or carry on any practice which may injure the Premises or be a nuisance or menace to occupants or tenants of neighboring properties.

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Signature Page To Follow**

The parties have executed this Lease as of the day first above written.

LANDLORD:

Village of Chagrin Falls,
an Ohio municipal corporation

By: Thomas Brick
Its: Mayor, Village of Chagrin Falls
Print Name: Thomas Brick

TENANT:

15 Bell Street LLC,
an Ohio limited liability company

By: [Signature]
Its: MANAGING PARTNER
Print Name: Gregory G. Bumba

STATE OF OHIO
COUNTY OF CUYAHOGA, ss.

The foregoing instrument was acknowledged before me this 12 day of June, 2012, by Thomas Brick the Mayor of the Village of Chagrin Fall, an Ohio municipal corporation, for and on behalf of said municipal corporation.

Elizabeth L. DeBaggis
Notary Public

ELIZABETH L. DEBAGGIS
NOTARY PUBLIC • STATE OF OHIO
Recorded in Geauga County
My commission expires Apr. 25, 2014

STATE OF OHIO
COUNTY OF CUYAHOGA, ss.

The foregoing instrument was acknowledged before me this 26 day of April, 2012, by Gregory Bumba the Managing Partner of 15 Bell Street LLC, an Ohio limited liability company, for and on behalf of said limited liability company.

Carol Rodriguez
Notary Public

CAROL RODRIGUEZ
Notary Public - State of Ohio
My Commission Expires Mar. 18, 2014





CT Consultants
engineers | architects | planners
Since 1922

May 10, 2012

**DESCRIPTION OF LANDS OF
THE VILLAGE OF CHAGRIN FALLS
TO BE LEASED**

Situated in the Village of Chagrin Falls, County of Cuyahoga, and State of Ohio and known as being the easterly 2.50 feet, front to rear, of Sublot No. 79 together with the 10 feet wide alley lying between the easterly line of said Sublot No. 79 and the westerly line of Sublot No. 80 in the Gardner and Hallock Allotment as shown by plat recorded in Volume 2, Pages 37 and 38 of Cuyahoga County Map Records and together being a parcel of land having a frontage of 12.5 feet on the northerly line of Bell Street (formerly known as Front Street), 60 feet in width, and extending back between parallel lines to the Chagrin River as appears by said plat.

The above described parcel of land is comprised of all of the land presently designated by the Cuyahoga County Auditor as Permanent Parcel No. 931-13-058 together with the easterly 2.5 feet, front to rear, of land presently designated as Permanent Parcel No. 931-13-059 as conveyed to the Village of Chagrin Falls by instrument dated May 24, 1946 and recorded in Deed Book Volume 6074, Page 583 of Cuyahoga County Records.

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