

**ORDINANCE NO. 2021-17**  
**INTRODUCED BY: DEBERNARDO**

**4307**

**AN ORDINANCE  
TO AUTHORIZE THE MAYOR TO EXECUTE A DOCUMENT  
AMENDING A LEASE BETWEEN THE VILLAGE OF  
CHAGRIN FALLS AND SWC BAN CASA HOLDINGS, LLC  
FOR PROPERTY KNOWN AS PARCEL NUMBER 931-13-058  
AND DECLARING AN EMERGENCY**

**WHEREAS**, the Village of Chagrin Falls entered into a lease on June 12, 2012 with 15 Bell Street LLC to lease the parcel known as 931-13-058 (“Village Parcel”) on Bell Street (“Lease”); and

**WHEREAS**, the original Lease Tenant, 15 Bell Street LLC, has sold the adjacent property known as 13 Bell Street, Parcel Number 931-13-057 (“13 Bell”) to SWC Ban Casa Holdings, LLC (“SWC”) on December 28, 2017 as evidenced by a deed recorded as Instrument Number 201712280562; and

**WHEREAS**, by virtue of the authority granted to the Mayor in Ordinance No. 2018-03 a First Amendment to the Lease was entered into on the 9<sup>th</sup> day of March, 2018 by and between the Village of Chagrin Falls and SWC; and

**WHEREAS**, SWC has requested that the Village enter into additional amendments to the Lease, including a reduction in the annual Rent and the Council for the Village of Chagrin Falls has determined that amendments to the Lease as requested by SWC and the Chief Executive Officer of the Village are in the best interest of the Village.

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

Section 1 - The Mayor is hereby authorized to enter into the Second Amendment to the Lease as set forth in **Exhibit “A”** attached hereto and made a part hereof, so long as SWC can provide proof to the Mayor and/or Chief Administrative Officer that it is in compliance with Ordinance 2018-03, and Section 1 thereof, regarding liability insurance and liquor liability coverage, naming the Village as an additional insured and that SWC provides such coverage evidence to the Mayor and/or Law Director before the Mayor executes the Second Amendment to Lease.

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.

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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. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the Village and for the further reason that it is necessary to go into immediate effect in order for SWC and its tenant to be able to open its new restaurant at the earliest possible date and to ensure that insurance coverage continues for use of the Village Parcel and for the protection of the Village and its residents; wherefore, provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force after the earliest period allowed by law.

PASSED: April 12, 2021



Erinn Grube, Council President

Submitted to the Mayor for  
his approval on this  
15<sup>th</sup> day of April, 2021

Approved by the Mayor

04/15/2021, 2021



Mayor William Tomko

I hereby certify that Ordinance No. 2021-17 was duly enacted on the 12th day of April, 2021, 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.



David Bloom, Clerk of Council

EXHIBIT "A"

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement ("**Second Amendment**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the Village of Chagrin Falls, an Ohio Municipal Corporation ("**Landlord**") and SWC Ban Casa Holdings, LLC, an Ohio Limited Liability Company ("**Tenant**") whose address is

\_\_\_\_\_.

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. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease, as amended by the First Amendment to Lease Agreement.

2. Landlord and 15 Bell Street LLC ("**15 Bell**") entered into a Lease Agreement on the 12<sup>th</sup> day of June, 2012 ("**Lease**") whereby the Landlord leased to 15 Bell the real property known as Cuyahoga County Auditor's Parcel No. 931-13-058 ("**Premises**").

3. The Village and Tenant entered into a First Amendment to Lease Agreement ("**First Amendment**") whereby the Village consented to the Assignment of the Lease from 15 Bell to Tenant upon the condition that the First Amendment be executed, and the First Amendment was executed on the 9<sup>th</sup> day of March, 2018 by SWC and the Mayor.

4. The Village agrees to reduce the Rent from the current sum of Three Thousand Five Hundred (\$3,500.00) per year to the sum of One Thousand Five Hundred Dollars (\$1,500.00) per year, starting six (6) months after completion of all improvements to the Premises to be made by the Village as set forth in paragraph 6.

5. The reduced Rent will be pro-rated for the first year, depending on the number of months remaining after the improvements are completed. Rent shall continue to be due on March 1 and August 1 of each Lease year. The Rent will be reduced to One Dollar (\$1.00) per year, pro-rated, during the entire time period that Bell Street is closed to Main Street, and Bell Street Park is closed as a result of reconstruction of the North Main Street bridge and the adjacent wing walls, such determination of the Bell Street closure to be made by the Chief

Administrative Officer of the Village. The reduction of Rent during the closure of Bell Street does not reduce, suspend or terminate any other Lease obligations of Landlord and Tenant.

6. The Landlord agrees that once the Chief Administrative Officer of the Village has determined that all zoning and building issues related to use of 13 Bell Street and the Premises have been resolved, and Tenant would otherwise be permitted to use the Premises for outdoor dining, the Chief Administrative Officer shall direct the Village Street Department to excavate the existing concrete pad on the Premises that is in need of replacement and prepare the base for a new pad. The Landlord will then hire a contractor to install a new concrete pad which is estimated by the Landlord to cost Two Thousand Dollars (\$2,000.00). The purpose of the construction of the pad will be to allow for equipment access to the Chagrin River dam as needed. The Landlord will pay for the cost to install the pad which will be installed at a depth to allow for installation of brick pavers on top of the concrete pad using specifications provided by the Village Engineer for Landlord. If approved by the Chief Administrative Officer and the Engineer for the Village, a different base may be installed, if requested by Tenant, so long as Tenant pays for any cost of installation in excess of Two Thousand Dollars (\$2,000.00) for the base, but the base shall be structurally sound in order to permit equipment to access the Chagrin River dam. Landlord agrees to provide used street brick, at no cost, to Tenant to be used for installation of a brick surface on top of the concrete pad or other base permitted by this paragraph. The installation of the brick shall be at the sole expense of Tenant. Landlord will replace the existing temporary fence and gate at the rear of the Premises with a new fence and gate as part of the North Main Street Wing Wall Rehabilitation Project when the bridge work is undertaken.

7. All work to be performed by Landlord shall be subject to weather permitting such work to be performed, issuance of all permits necessary to be obtained by Landlord or Tenant, and subject to force majeure type events beyond the control of Landlord .

8. Except as set forth in this Second Amendment, and the First Amendment, the Lease shall remain in full force and effect. In the event of any conflict between any terms contained in the Lease, the First Amendment, and the Second Amendment, the terms contained in the Second Amendment shall first prevail, then as between the First Amendment and the Lease, the terms contained in the First Amendment shall prevail.

THE REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS



State of Ohio            )  
                                  ) ss:  
County of \_\_\_\_\_)

This is an acknowledgment clause. No oath or affirmation was administered to the signer.

Before me a Notary Public in and for said County and State personally appeared \_\_\_\_\_, on behalf of SWC Ban Casa Holdings, LLC, an Ohio Limited Liability Company, whose identity was known or proven to me and who did sign the foregoing instrument and acknowledged the signing hereof to be their voluntary act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

**My commission expires:** \_\_\_\_\_