

**ORDINANCE 2020-32
INTRODUCED BY: ROGOFF**

4264

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A
DONATION AGREEMENT WITH THE WESTERN
RESERVE LAND CONSERVANCY AND DECLARING AN
EMERGENCY**

WHEREAS, the Village desires to enter into a donation agreement with the Western Reserve Land Conservancy (“WRLC”) whereby WRLC will donate a parcel of land consisting of approximately 0.3 acres to the Village to be used as a public park which is a parcel split from the property known as the Bancroft House property on North Main and Summit and being a part of current Parcel No. 931-12-004;

WHEREAS, the Bancroft House was sold to Little Rooster, LLC containing approximately 0.7 acres and the balance, 0.3 acres, will be donated to the Village, and WRLC and Little Rooster, LLC want to make sure that the donation of the park is in accordance with their intentions, and the Village is willing to receive said park as a donation with the conditions contained within the Agreement.

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

Section 1. The Mayor is directed to enter into the Real Property Donation Agreement (“Agreement”) attached hereto and made a part hereof of as **EXHIBIT “A”** upon the terms and conditions contained therein, and hereby authorizes the Mayor to execute any and all documents necessary to obtain title to the property to be donated as described in the 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.

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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 this Ordinance is necessary in order to acquire the property as soon as possible for conversion into a public park and in order to commence design and committee review work for development of such park; 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: July 27, 2020

Erinn W Grube

Council President, Erinn Grube

Submitted to the Mayor for
approval on this 28thth day of July, 2020

Approved by the Mayor this

07/29/2020

Date

William A. Tomko

Mayor, William Tomko

I hereby certify that Ordinance No. 2020-32 was duly enacted on the 27th day of July, 2020, 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 B. Bloom

Clerk of Council, David Bloom

EXHIBIT “A”

REAL PROPERTY DONATION AGREEMENT

This Real Property Donation Agreement (this “Agreement”) is made as of this 28th day of July, 2020 by Western Reserve Land Conservancy (“WRLC”), to the Village of Chagrin Falls (the “Village”).

RECITALS

1. WRLC and the Village recently became aware of a local developer’s plans to raze the historic Bancroft House and redevelop the Grove Hill property, known as Parcel Number 931-12-004 (the “Property”) in downtown Chagrin Falls Village with multiple contemporary homes, and immediately understood the need to partner to save and protect the Property from demolition and development.
2. Due to significant public outcry within the Chagrin Falls Community and at the Village’s request, WRLC immediately took action by negotiating for control of the Property through the acquisition of Three Summit, LLC, the entity that owned the Property, and coordinating an aggressive fundraising campaign in order to raise sufficient funding for the acquisition.
3. On or about May 15, 2020, having completed a successful fundraising campaign, WRLC acquired ownership of Three Summit, LLC and control of the entire Property.
4. As a result of its acquisition, WRLC currently controls the single parcel that is the Property. WRLC is in the process of completing a lot split of the Property that will create two (2) separate parcels: (a) an approximately 0.7-acre lot containing all of the Property’s improvements (the “Bancroft Home Parcel”) which WRLC intends to sell to a private buyer (the “Bancroft Buyer”) with restrictions that will prevent the demolition and redevelopment of the historic Bancroft Home, and (b) an approximately 0.3-acre vacant lot that WRLC intends to donate, pursuant to this Agreement, to the Village for use as a passive public park (the “Park Parcel”), both parcels are depicted on the attached Exhibit A.
5. WRLC now intends to donate the Park Parcel to the Village, conditioned upon the terms of this Agreement and the Village’s commitment to improve and operate the Park Parcel as a co-branded signature park of WRLC and the Village.

CONCLUDING THE GIFT

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed upon between WRLC and the Village as follows:

1. Title Commitment/Deed. Upon complete execution of this Agreement by the parties (the “Execution Date”), the Village shall obtain from Ohio Real Title Agency, LLC (the “Title Company” and “Escrow Agent”) a written commitment (the “Title Commitment”) for an Owner’s Policy of Title Insurance (the “Title Policy”) to be examined and accepted by the Village. In the event the Village will not accept the condition of title, due to matters of title that impair the intended use of the park Parcel for a park, this Agreement will be terminated. Between the Execution Date and July 30, 2020, the Village shall provide notification to WRLC that it is satisfied with the condition of the Park Parcel and the condition of title,

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and upon such notification, WRLC shall cause to be placed in escrow an executed limited warranty deed (the “**Deed**”) transferring the Park Parcel to the Village, subject to those exceptions to title as identified in the Title Commitment and restrictions to be placed on the Park Parcel, through the Deed, which shall restrict the Park Parcel to only such uses as are consistent with that of passive use public parks. For purposes of this Agreement the term “passive use public park” shall expressly exclude dog parks.

2. Costs and Expenses. The Escrow Agent shall charge to the Village the costs and expenses of closing the donation of the Park Parcel, including but not limited to: (a) the costs of examination of title and the Commitment Fee, (b) the premium for the Title Policy, (c) conveyance fee, if any, and (d) all recording fees (the “Closing Costs”). In addition to the Closing Costs, the Village agrees to reimburse WRLC for the cost to purchase and install decorative cast aluminum black fencing with up to two gates, in an amount not to exceed \$8,000.00, the specific nature and style of which the Village and WRLC shall agree to, approximately along the boundary between the Park Parcel and the Bancroft Home Parcel (the “Fence Costs”). If it is deemed necessary or appropriate, for public safety reasons, to extend this fencing around the east, south and west boundaries of the Park Parcel the parties acknowledge that it will be at the Village’s sole expense when the Park Parcel is improved at a future time.
3. Escrow. On or before August 5, 2020 (the “Closing Date”), and upon payment of all costs and expenses as provided above in paragraph 2, and WRLC’s confirmation of Village’s adherence to the conditions to closing below, the Escrow Agent shall proceed to file the Deed for record with the Recorder of Cuyahoga County, Ohio and shall immediately thereafter issue the Title Policy.
4. Conditions to Closing.
 - (a) In addition to the conditions provided elsewhere in this Agreement, the obligation of WRLC to consummate the transaction contemplated by this Agreement shall be subject to the satisfaction or waiver in writing of each of the following conditions on or before the transfer of the Park Parcel, or other date as specified:
 - i. The Village shall cooperate with the Bancroft Buyer as is reasonably necessary and appropriate to recover the scenic views surrounding the Bancroft Home Parcel through the removal and/or alteration of vegetation located on the Park Parcel. In furtherance of this condition, in addition to considering reasonable requests for such removal and alteration of vegetation submitted by Bancroft Buyer, the Village shall provide Bancroft Buyer with the opportunity to review and comment on any landscape plans providing for the initial installation or removal of trees, it being the intent of the Village to only remove dead or diseased trees, and pine trees that impair the scenic views, and scrub growing on the Park Parcel
 - ii. The Village shall consult with and submit development plans to the Bancroft Buyer during the development and excavation of the Park Parcel to avoid any reasonable concern that there will be any adverse impact to the Bancroft Home Parcel, including subsidence, structural integrity or otherwise.

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- iii. The Village shall cause the installation and provide ongoing maintenance of up to two locked access gates between the Bancroft Home Parcel and the Park Parcel and provide the Bancroft Buyer with secure and with the approval of the Village access through such gates.
 - iv. The Village shall reimburse WRLC for all Fence Costs as described in paragraph 2, subject to the monetary limit set forth in Section 2. WRLC shall provide written estimates for approval by the Village prior to installation of the fencing.
 - v. The Village shall be responsible for the costs associated with the development and ongoing maintenance of the future Village park. WRLC will cooperate with the Village in seeking Nature Works or other park development financing options.
 - vi. The Village acknowledges that without WRLC's emergency intervention it would have been impossible to accomplish the acquisition and preservation of the Property. To memorialize WRLC's extraordinary leadership of and contributions to the Project, the Village and WRLC agree to co-brand the future park. Specifically, WRLC shall be permitted to install signage at its own expense, in cooperation with and by first obtaining the approval of the Village, and to brand the future park as one of WRLC's Signature Parks and Preserves. The Village agrees to allow WRLC's signage to be located in prominent places such as at the corner of Cottage and Main, subject to compliance with the Village Planning and Zoning Code. The Village shall include WRLC's name and brand prominently on any and all signage, kiosks, and any other informational materials associated with the future park. The Village and WRLC shall establish a committee that will serve until the future park is constructed, consisting of four members to recommend to the Village Parks Commission, who then recommends to Village Council the design of the future park (the "Grove Hill Park Committee"). The committee shall receive public input on the design of the park before making its recommendation to the Village Parks Commission. The Grove Hill Park Committee shall be comprised of two members from each entity, with the Village appointees to be named by the Mayor of the Village and confirmed by the Village Council, and in the event of a tie vote on the design recommendation, both committee positions shall be presented to the Village Parks Commission. .
- (b) In the event that any condition described in this paragraph or elsewhere in this Agreement, with respect to the performance of the parties, is not satisfied or waived in writing by WRLC on or before the date on which it is required to be satisfied, WRLC shall have the right to postpone the Closing Date and, therefore, the transfer of the Park Parcel, or to terminate this Agreement, if such performance is not cured within thirty days after receiving written notice of such non-performance, by written notice to the Village and Escrow Agent.

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- (c) Since several of the provisions of this paragraph 4 pertain to the Village and WRLC working with the Bancroft Buyer, for purposes of this Agreement, the Bancroft Buyer, Little Rooster LLC, and its sole member Frank Gallucci, shall be intended third-party beneficiaries to this Agreement and, as such, shall have standing to enforce the provisions hereof as they relate to Bancroft Buyer.
5. Possession. Possession of the Park Parcel will pass to the Village on the date the Deed is filed of record.
6. Tax Proration. All taxes and assessments due and payable as of the date of this Agreement have been satisfied by WRLC. Any future taxes and assessments not yet due and payable shall be the responsibility of the Village until such time as the Village is able to obtain a tax exemption for the Park Parcel.
7. Release. The Village agrees to accept the Property “as is” in its present condition, including but not by way of limitation, any environmental matters.
8. Miscellaneous. This Agreement (a) may be modified only by written instrument executed by both WRLC and the Village; (b) constitutes the entire agreement of WRLC and the Village with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, or representations relating to the subject matter of this Agreement; (c) shall be construed in accordance with and governed by the laws of the State of Ohio; and (d) may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, WRLC and the Village have signed this Agreement as of the date stated on the first page of this Agreement.

WRLC:

WESTERN RESERVE LAND CONSERVANCY

By: _____
Robert B. Owen
Its: Assistant Secretary

VILLAGE:

THE VILLAGE OF CHAGRIN FALLS

07/29/2020
By: _____
William Tomko
Its: _____
William Tomko, Mayor