

# **BRUNSWICK CITY PARKS, RECREATION & COMMUNITY COMMITTEE**

## **Agenda**

**DECEMBER 18, 2017**

**6:40 PM**

or immediately following Planning & Zoning Committee

1. Discussion Items
  - (a) **RES. NO. 129-17** - An emergency resolution authorizing the City Manager to enter into a lease agreement with the Medina County Park District and declaring an emergency - **1st Reading** (To be brought from Parks, Recreation & Community Committee, *Administration/John Piepsny*)
2. General Discussion
3. Adjournment

**THE CITY OF BRUNSWICK**  
**PROPOSED LEGISLATION**



**DATE:** 12/18/2017

**TO:** Vice Mayor Patricia Hanek and Members of City Council

**FROM:** Carl S. DeForest, City Manager  
John Piepsny

**COPY:** Mayor Ron Falconi

**LEGISLATION:** **RES. NO. 129-17** - An emergency resolution authorizing the City Manager to enter into a lease agreement with the Medina County Park District and declaring an emergency - **1st Reading** (To be brought from Parks, Recreation & Community Committee, *Administration/John Piepsny*)

**BACKGROUND:** For the last seven years, the Medina County Park District has had a lease for the operations and management of the Susan Hambley Nature Center with the City of Brunswick. The Medina County Park District is now interested in obtaining a lease of the entire Brunswick Lake Park including the Susan Hambley Nature Center.

**PURPOSE AND EXPLANATION:** The purpose of the suspension of the rules would allow us to enter into the desired Contract start date of February 1, 2018.

**IMPLEMENTATION SCHEDULE:** Contract would start once fully executed for an initial term of 25 years and shall automatically renewal for another successive 25 year terms.

**FINANCIAL INFORMATION:**

**FINANCIAL SUMMARY:** There is no fiscal responsibility to the City Council approved budget.

**RECOMMENDED ACTION:**

|                     |     |
|---------------------|-----|
| One Reading         | No  |
| Two Readings        | No  |
| Three Readings      | Yes |
| Emergency           | Yes |
| Suspension of Rules | Yes |

If emergency or suspension of the rules, why the request?

It is the desire of the administration to have City Council adopt and approve this piece of legislation after 3 readings with suspension of the rules.

**ADDITIONAL  
INFORMATION:**

# LEASE AGREEMENT

This Lease Agreement (the “Lease”) is made and entered into at the City of Brunswick, Ohio this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the City of Brunswick, an Ohio municipal corporation, 4095 Center Road, Brunswick, Ohio 44212, (the “Lessor”), and the Medina County Park District, a political subdivision of the State of Ohio, 6364 Deerview Lane, Medina, Ohio 44256, (the “Lessee”).

## WITNESSETH:

### 1. Subject Premises

Lessor, for consideration of the covenants hereinafter contained on the part of Lessee does hereby let and lease unto the Lessee and its permitted successors and assigns, Brunswick Lake Park in the City of Brunswick, County of Medina, and State of Ohio, known and particularly described in attached Exhibit A which is made apart hereof by reference (the “Premises”, which Premises shall include the existing Susan Hambley Nature Center.)

### 2. Term and Additional Terms

To have and to hold the Premises for the initial term of TWENTY-FIVE (25) years commencing on the Effective Date of this Lease (the “Initial Term”), upon the terms and conditions herein set forth. The term of this Lease shall automatically renew for successive TWENTY-FIVE (25) year terms (each a “Renewal Term”), on the same terms and conditions as provided herein, upon the expiration of the Initial Term or Renewal Term(s), unless otherwise terminated as provided herein, and provided Lessee is not in default hereunder.

### 3. Commencement of Term

The commencement of the Initial Term and the effective date of this Lease shall be midnight of January 1, 2018 (the “Effective Date”). UPON THE EFFECTIVE DATE, LESSEE SHALL

ASSUME ALL DUTIES AND RESPONSIBILITIES FOR THE MAINTENANCE AND UPKEEP OF THE PREMISES, EXCEPT AS PROVIDED BELOW.

#### 4. Lessor's Covenant as to the Dam

Lessor covenants and agrees that during the Initial Term and any Renewal Terms of this Lease, Lessor shall maintain, repair, replace and inspect the existing Brunswick Lake Dam on the Premises and shall save Lessee harmless from any COST OR liability arising therefrom. Lessor shall provide documentation to Lessee that the Premises is continuously and primarily insured by a public liability policy in a minimum amount in keeping with the general liability limits of the Lessor, with the Lessee as a named insured on such policy.

#### 5. Lessee's Covenant to Use as a Public Park

Lessee covenants and agrees that it will use and maintain the Premises as a public park facility of Medina County Park District during the Initial Term and any Renewal Terms of this Lease. The use of the Premises as a public park facility shall include the right to construct, maintain, repair, remove and replace public park improvements of all kinds and the authority to issue and/or license park concessions. Lessee further agrees and covenants that if it and its successors and assigns fail to operate the Premises as a public park facility for a continuous period of more than one (1) year, this Lease, MAY BE TERMINATED AT THE OPTION OF LESSOR WITH NO LESS THAN THIRTY DAYS' NOTICE TO LESSEE. All use of the Premises by Lessee shall cease, Lessee shall immediately vacate the Premises and all improvements to the Premises shall become the sole property of the Lessor.

#### 6. Lessee's Covenant to Limit Future Public Boating on Brunswick Lake

Lessee covenants and agrees that it will not permit any motorized boat or other vehicle use on Brunswick Lake, except with electric trolling motors or other devices approved by both parties hereto. This prohibition as to motorized boats applies to general public use but shall not apply to the Lessee in its administration and maintenance of the lake.

## 7. Covenants Regarding Susan Hambley Nature Center

Lessor shall continue to insure itself against all risks of loss associated with the Susan Hambley Nature Center (the "Center"). During the term(s) of the Lease, Lessor shall provide electric, phone, and internet access at no cost to Lessee. Lessee covenants and agrees to operate the Center in a cost-effective manner to the extent possible. Any abnormal fluctuation of the utilities consumed at the Center shall be promptly investigated by both parties. The Lessee agrees to keep the Center open on a regularly scheduled basis. Lessee further agrees to effectuate, at Lessee's sole cost and expense, all necessary maintenance, repairs and replacements for the normal operation of the Center during the Initial Term and Renewal Term(s) of this Lease as reasonably determined by the parties hereto, which shall include, without limitation, all necessary maintenance, repairs and replacements relative to the structural integrity of the Center, the roof, the parking lot, and systems servicing the Center up to \$25,000 for any single occurrence. Responsibility for repairs exceeding that amount will be negotiated in good-faith by the parties to this Lease and, if necessary, submission to mediation.

## 8. CAPITAL IMPROVEMENTS

THE DEVELOPMENT OF A MASTER PLAN FOR THE PREMISES SHALL COMMENCE WITH THE FORMATION OF AN AD HOC COMMITTEE BY THE LESSOR. THIS COMMITTEE SHALL BEGIN ITS WORK WITHIN SIXTY (60) DAYS OF THE EFFECTIVE DATE OF THIS LEASE AND SHALL CONCLUDE ITS WORK WITHIN ONE HUNDRED TWENTY (120) DAYS OF THE EFFECTIVE DATE OF THIS LEASE. THE COMMITTEE WILL PRESENT A LIST OF RECOMMENDATIONS TO THE LESSEE REGARDING POTENTIAL IMPROVEMENTS TO THE PREMISES. THE WORK OF THE COMMITTEE WILL NOT BE BINDING UPON THE LESSEE. LESSEE SHALL CONSIDER THE RECOMMENDATIONS OF THE AD HOC COMMITTEE IN THE PREPARATION OF ITS MASTER PLAN FOR THE PREMISES. THE LESSEE SHALL PROCEED WITH THE DEVELOPMENT OF A MASTER PLAN ONCE IT HAS RECEIVED THE REPORT FROM THE AD HOC COMMITTEE. BOTH PARTIES ACKNOWLEDGE THAT THE DEVELOPMENT OF A MASTER PLAN REQUIRES OBSERVATIONS OF THE PREMISES THROUGH THE DIFFERENT SEASONS AND WILL TAKE

TIME TO COMPLETE.

NOTHING IN THIS SECTION OBLIGATES THE LESSEE TO INSTALL ANY SPECIFIC CAPITAL IMPROVEMENT. ANY BUILDING PERMITS OR INSPECTIONS REQUIRED BY LESSOR FOR CAPITAL IMPROVEMENTS WILL BE PROVIDED TO LESSEE AT NO COST. ANY CAPITAL IMPROVEMENT SHALL COMPLY WITH ALL APPLICABLE CODES AND REGULATIONS AND SHALL REQUIRE COMPLIANCE WITH ALL ESTABLISHED APPROVAL PROCEDURES OF LESSOR.

#### 9. Mutual Covenant as to Lessee's Right to Terminate Lease

The parties hereto covenant and agree that upon one (1) year or more written notice from Lessee to Lessor, the Lessee may unilaterally terminate this Lease for the reason that then existing circumstances and conditions make it financially impractical for Lessee to meet its obligations under this Lease, except that any negligence or intentional acts of Lessee which lead to such financial impracticality shall not be grounds for the unilateral termination of this Lease by Lessee. After such Lease termination, neither party shall have further rights or obligations under this Lease, except for Lessee's financial responsibility under this Lease for claims, demands, causes of action or judgments which arose prior to the effective date of the Lease termination, all of which shall remain the financial responsibility of the Lessee. Upon receipt of such Lease termination notice, Lessor shall have full right and access to inspect the Premises to ascertain Lessee has complied with the Lease terms and conditions by all means within its reasonable control. Upon Lessee's termination of the Lease as provided herein, all improvements to the Premises shall become the sole property of Lessor.

#### 10. Mutual Covenant as to Lessor's Right to Terminate Lease

The parties covenant and agree that upon one (1) year or more written notice from Lessor to Lessee, Lessor may unilaterally terminate this Lease for the purpose of selling the Premises in order to satisfy in whole or in part a fiscal emergency of the Lessor. It shall not be deemed a fiscal emergency that requires the sale of the Premises and authorizes the termination of this Lease if there is some other feasible means by which the fiscal emergency of Lessor can be

resolved. In the event Lessor exercises its right to terminate this Lease due to a fiscal emergency, the Lessee shall have the right of first refusal to purchase the Premises at the same price as the price offered by Lessor for sale to a third party. Lessor shall submit its offering price in writing to Lessee, and Lessee shall have sixty (60) days to accept or reject the proposed sale price. Failure of Lessee to act on the sale offer within the sixty (60) day period shall be deemed a rejection by the Lessee. If the Lessor wishes to offer the Premises for sale at a lower price than was offered to and rejected by Lessee, then Lessor shall first extend to Lessee in writing the offer of sale at the reduced sale price, and Lessee shall, again, have sixty (60) days to accept the new offer. In ALL cases, the increase in value of the Premises due to capital improvements made by Lessee shall be credited toward the purchase price OR REIMBURSED TO LESSEE FROM PROCEEDS OF THE SALE. In the event of failure to agree upon said increase in value, the matter shall be determined by binding arbitration. Such binding arbitration shall be accomplished by each party appointing one disinterested arbitrator, and the two appointed arbitrators selecting a third arbitrator. The decision of a majority of the three arbitrators shall be binding upon the parties hereto. Each party shall pay the cost of the arbitrator each selects, and the parties shall share equally the cost of the third arbitrator selected.

The parties further covenant and agree that this Lease may be terminated by Lessor in the event of Lessee's uncured default hereunder, in which event Lessee shall immediately vacate the Premises and all improvement thereto shall become the sole property of the Lessor.

#### 11. Approval by Probate Court

This Lease Agreement, to the extent that any part of it may be deemed a gift to the Lessee from the Lessor, shall be subject to the approval of the Medina County Probate Court.

#### 12. Real Estate Taxes and Assessments

Lessee shall pay all real estate taxes and assessments upon the Premises, but both parties hereby covenant to jointly use their best efforts to continue the Premises as a tax- exempt parcel.

#### 13. Utilities

To the extent practical to do so, each party shall pay for, by means of separate meters for each party, the utilities that each party utilizes upon the Premises to fulfill the covenants and obligations of each party under this Lease except as otherwise provided in Section 7. In case it is not practical to provide separate utility meters, the parties shall share such utility costs in an equitable manner.

#### 14. Risk of Loss

Except as provided in Section 7, each party hereby fully assumes all risk of damage, loss, theft or vandalism to the personal property or fixtures owned or operated by the respective parties hereto and for the real property of the Premises under the control of or for which the respective parties have liability, and each party shall save harmless the other party therefrom except in any cases of intentional acts of the other party.

#### 15. Liens

Lessee shall not cause any lien of any kind or description whatsoever to be filed against the Premises. In the event any mechanics' lien or any other lien CAUSED BY LESSEE is filed against the Premises and such lien is not released, bonded or Lessee does not initiate legal action to dispute the validity of same within sixty (60) calendar days of receipt of written notice of same, Lessee shall be in default of this Lease and Lessor, at its option may, in addition to any other remedies provided herein, terminate this Lease. IF LESSOR CAUSES ANY LIEN OF ANY KIND OR DESCRIPTION WHATSOEVER TO BE FILED AGAINST THE PREMISES, THE LESSOR SHALL BE SOLELY RESPONSIBLE TO HAVE SUCH LIEN RELEASED OR BONDED.

#### 16. Waiver of Subrogation Rights

Neither party shall be liable for any insurable damage to property or persons for which the other party is insured, and each party hereby waives the right of subrogation against the other party.

#### 17. Insurance

Both parties agree to carry and maintain public liability insurance, property damage and personal injury insurance in amounts and with companies as each party deems appropriate but in no case in lesser amounts than is carried or would be carried by the party for similar property insured by the party outside of the Premises.

#### 18. Assignment of Interest

Neither party hereto shall assign its interest in this Lease or the underlying fee to the subject Premises to any third party without the prior express written permission of the other party, except to a legally established successor to either party.

#### 19. Default

If either party deems the other party to be in default or violation of the terms and conditions of this Lease, the non-defaulting party shall give the other party not less than thirty (30) days' written notice to correct such default or violation. In case of failure of the other party to obey the thirty (30) days' written notice, the non-defaulting party shall have all rights provided by law to enforce the terms and conditions of this Lease, including but not limited to immediate termination, restraint or action by injunction for all violations, actual, attempted or threatened.

#### 20. Emergency

In case of an emergency requiring immediate action, either party may take such emergency action that is required to protect the Premises, all improvements, fixtures and personal property upon the Premises and the general public. All reasonable expenses incurred by such emergency action shall be the responsibility of and paid for the party responsible for causing the emergency or if none, by the party whose interests were protected in the undertaking of the emergency action.

#### 21. Eminent Domain Proceeding

If the Premises or any part of the Premises are acquired by right of eminent domain or by

a conveyance in lieu thereof, the parties agree that the Lessor shall be deemed to be the owner of the Premises for purposes of participating in the eminent domain proceedings to the extent allowed by law. However, financial receipts for such proceedings shall be divided between the parties in an equitable fashion consistent with the value to each party of property and rights acquired by such proceedings. If the parties are unable to agree upon a division of the financial receipts, then the parties agree to submit the matter to binding arbitration in the manner hereinabove set forth in Section 10.

#### 22. Notices

Whenever notice is required under this Lease, it shall be given in writing to the other party by registered or certified mail at the address first above written or at such other address as either party may, subsequently, designate to the other party or by personal service of the written notice upon a proper official of the other party.

#### 23. Legality

Should anyone or more of the terms and conditions of this Lease be declared void or in violation of law, this Lease shall remain in full force and effect as to the remainder of the terms and conditions.

#### 24. Titles

All titles contained in this Lease are for reference and convenience only and are not part of this Lease.

#### 25. Binding Upon Parties

This Lease and all rights hereunder shall inure to the benefit of the parties hereto and shall be binding upon them and their respective successors and assigns.

#### 26. Ohio Law

Any question, dispute or interpretation of this Lease shall be governed by the law of Ohio.

27. Entire Agreement

This Lease and the exhibits attached hereto and forming a part hereof, and all covenants, promises, agreements and conditions contained herein constitute the entire agreement and understanding between the parties hereto with regard to the subject premises. No subsequent alteration, amendment, change or addition to this Lease shall, be binding upon either party unless reduced to writing and signed by both parties.

28. Quiet Enjoyment

Lessor shall, and the successors and assigns of said Lessor shall, warrant and defend the Lessee in the enjoyment and peaceable possession of the Premises during the Initial Term and Renewal Terms aforesaid if the Lessee shall perform all and singular the covenants herein agreed to be performed on the part of the Lessee.

IN WITNESS WHEREOF the parties have executed this Lease Agreement as of the dated indicated below.

MEDINA COUNTY PARK DISTRICT

CITY OF BRUNSWICK

\_\_\_\_\_  
Thomas K. James, Director

\_\_\_\_\_  
Carl S. DeForest, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
John Jeandrevin, Law Director

\_\_\_\_\_  
Kenneth J. Fisher, Law Director

State of Ohio)

)ss

Medina County)

Before me, a notary public in and for said County and State personally appeared the above named the City of Brunswick by Carl S. DeForest, its City Manager, who acknowledged that he is fully authorized to execute and did sign the foregoing instrument, and that the same is his free act and deed personally and as City Manager of the City of Brunswick.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Brunswick, Ohio, this the \_\_\_\_ day of \_\_\_\_\_ 2017.

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

State of Ohio)

)ss

Medina County )

1.

Before me, a notary public in and for said County and State personally appeared the above named Medina County Park District by Thomas K. James, its Director, who acknowledged that he is fully authorized to execute and did sign the foregoing instrument, and that the same is his free act and deed personally and as Director of the Medina County Park District.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Medina, Ohio, this the \_\_\_\_ of \_\_\_\_\_ 2017.

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

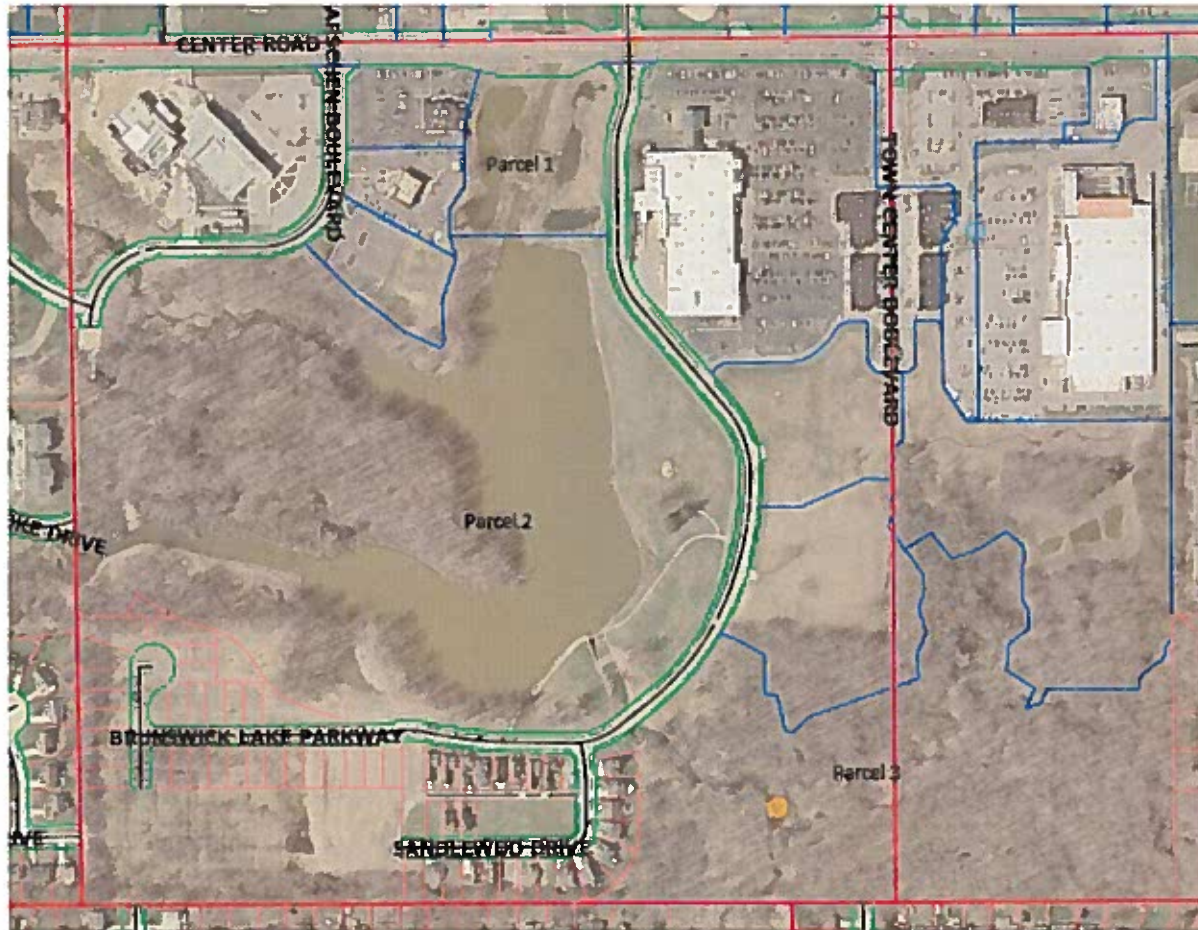
"EXHIBIT A"

- Parcel 1: Medina County Parcel 003-18D-04-012 being 3.703 acres more or less  
Parcel 2: Medina County Parcel 003-18D-04-031 being 40.925 acres more or less  
Parcel 3: Medina County Parcel 003-18D-10-261 being 20.7369 acres more or less



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CITY OF BRUNSWICK, OHIO  
RESOLUTION NO. \_\_\_\_\_

BY:

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO A LEASE AGREEMENT WITH THE MEDINA COUNTY  
PARK DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS: The City owns certain real property known as Brunswick Lake Park, which includes the Susan Hambley nature Center (the "Property");

WHEREAS: Pursuant to its powers under Section 8.01(d) of the Charter, City Council may authorize lease of any real estate not needed for municipal purposes to any organization, except for religious organizations, for the purpose of constructing, maintaining or managing parks, without competitive bidding; and

WHEREAS: The City and the Medina County Park District, a political subdivision of the State of Ohio, are desirous of entering into a Lease Agreement for the Property.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That the City Manager, upon approval of the Director of Law, is hereby authorized to enter into a Lease Agreement, as attached hereto as Exhibit "A", with the Medina County Park District for the Property.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason to allow commencement of the Lease Agreement as of February 1, 2018. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

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PASSED: 1<sup>st</sup> Reading \_\_\_\_\_

2<sup>nd</sup> Reading \_\_\_\_\_

3<sup>rd</sup> Reading \_\_\_\_\_

ADOPTED: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk of Council  
Fijabi Julien-Gallam

CITY OF BRUNSWICK, OHIO  
RESOLUTION NO. 129-17

BY: Mr. Abella, Mr. Capretta and Mr. Salzgeber

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO A LEASE AGREEMENT WITH THE MEDINA COUNTY  
PARK DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS: The City owns certain real property known as Brunswick Lake Park, which includes the Susan Hambley nature Center (the "Property");

WHEREAS: Pursuant to its powers under Section 8.01(d) of the Charter, City Council may authorize lease of any real estate not needed for municipal purposes to any organization, except for religious organizations, for the purpose of constructing, maintaining or managing parks, without competitive bidding; and

WHEREAS: The City and the Medina County Park District, a political subdivision of the State of Ohio, are desirous of entering into a Lease Agreement for the Property.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That the City Manager, upon approval of the Director of Law, is hereby authorized to enter into a Lease Agreement, as attached hereto as Exhibit "A", with the Medina County Park District for the Property.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason to allow commencement of the Lease Agreement as of February 1, 2018. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

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PASSED: 1<sup>st</sup> Reading\_\_\_\_\_

2<sup>nd</sup> Reading\_\_\_\_\_

3<sup>rd</sup> Reading\_\_\_\_\_

ADOPTED: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk of Council  
Fijabi Julien-Gallam, CMC