

**RESOLUTION NO. 41-2018**

**INTRODUCED BY: Mayor James Graven and Council as a Whole**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CERTAIN LEASE AGREEMENT WITH OLMSTED FALLS GARDEN CLUB FOR USE OF THE TYNDALL FALLS FACILITY, AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Olmsted Falls owns certain property located on Tyndall Falls, consisting of a vacant structure formerly used as a storage facility utilized by the city's service department for which the Olmsted Falls Garden Club has expressed an interest in leasing; and

**WHEREAS**, the City of Olmsted Falls, through this Council finds that it is in the best interest of the City to lease the Tyndall Falls facility to the Olmsted Falls Garden Club to facilitate the provision of services of the community/civic group, and maintains landscaping within our city parks. Now therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OLMSTED FALLS, CUYAHOGA COUNTY, OHIO, THAT:**

**SECTION 1.** That the Mayor is hereby authorized to enter into a certain lease agreement for the lease of the city owned property located on Tyndall Falls containing the fundamental terms which are identified on Exhibit "A" attached hereto and incorporated herein.

**SECTION 2.** The Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 3.** This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety and welfare of the residents of Olmsted Falls for the reason that the action taken herein is necessary to timely permit the Olmsted Falls Garden Club to continue with their community/civic duties. It shall therefore take effect immediately upon passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

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*Paul Stibich, Interim Council President*

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
*James Graven, Mayor* \_\_\_\_\_  
*Date*

APPROVED AS TO FORM: \_\_\_\_\_  
*Andrew D. Bemer, Director of Law*

ATTEST: \_\_\_\_\_  
*Angela Mancini, Clerk of Council*

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

	Yea	Nay
Haviland	_____	_____
Stibich	_____	_____
Jones	_____	_____
Gorski	_____	_____
Nicolay	_____	_____
Duncan	_____	_____
Miller	_____	_____

THIS LEASE is made between the Olmsted Falls Garden Club (hereinafter referred to as "Tenant") and the City of Olmsted Falls (hereinafter referred to as "Landlord"), whose address is 26100 Bagley Rd., Olmsted Falls, OH 44138.

1. **PREMISES.** Landlord leases to Tenant, and Tenant leases from Landlord, on the terms and conditions set forth in this Lease, the Tyndall Falls Facility, which consists of a 40 X 80 pole barn, (the "Premises").

2. **TERM.** The term of this Lease shall be fifteen (15) years, commencing on the signing date; with renewable 5 year terms, at the same lease rate and conditions. In the event that Landlord does not wish to renew the lease, at least 1 year notice, in writing, must be given to Tenant.

3. **RENT.** In lieu of monetary rent Tenant agrees to continue their maintenance on the numerous landscape areas throughout the city parks thereby saving the city in personnel costs.

4. **SECURITY DEPOSIT.** Tenant will not be required to deposit with Landlord any funds as security for the performance of this Lease.

5. **EXAMINATION OF PREMISES.** Tenant has examined the Premises and has accepted the same as habitable and satisfactory for the intended purpose. While occupying the Premises, Tenant shall observe and act in accordance with any reasonable rules and regulations that Landlord may adopt.

6. **REPAIR AND MAINTENANCE.** Tenant acknowledges that the Premises are accepted as is, where is. Throughout the term of this Lease, Tenant shall (a) keep the Premises in a safe and sanitary condition. At the termination of this Lease, Tenant shall surrender the Premises to Landlord in the same order and state of cleanliness they were in when Tenant first occupied the Premises. Without limiting the above, Landlord shall maintain interior and exterior of the Premises.

#### 7. **USE AND OCCUPANCY.**

**7.1 Use of the Premises:** The Premises will be used solely as a place of operation for the community supported Garden Club programs. The Premises shall at all times be used and occupied in a safe, careful and proper manner by Tenant and any other occupants or guests. No other trade, business or occupation shall be carried on in the Premises. The Premises shall not be sublet in whole or in part, nor shall this Lease be assigned by Tenant, without the prior written consent of Landlord.

**7.2 Special Conditions:** Tenant will be permitted keyed access to the Premises on a 24 hour, 7 day a week basis.

8. **UTILITIES.** Landlord shall obtain and pay for all utility services including gas, heat, electricity, water and sewer and any other utility used or consumed on the Premises by Tenant.

9. **LANDLORD'S LIABILITY.** To the maximum extent permitted by law, Landlord shall not be liable for any injury or damages to persons or property on or about the Premises, unless (a) caused by the negligence of Landlord or Landlord's employees or agents for which sovereign immunity defenses would not be available; and (b) of such a nature that the loss or injury would not be covered under a standard policy of renter's insurance. If storm, flood, fire, or other catastrophe injures or destroys the Premises, this Agreement will terminate at Landlord's option. Otherwise Landlord will restore the Premises and until the restoration is completed. Tenant shall be responsible for the cost of restoration and repair of any damage to the Premises and the appliances, fixtures and equipment located in the Premises caused by the misuse, abuse or neglect or wrongful acts of Tenant, Tenant's invitees or other lawful occupants of the Premises.

10. **INSURANCE.** Tenant agrees to carry the proper Liability insurance coverage that covers the Tenant and names the Landlord as an additional insured. The insurance policy shall provide that it may not be terminated for any reason without at least 15 days prior written notice to Landlord. Tenant shall provide a certificate of insurance to Landlord at the beginning of the term of this Lease.

13. **SURRENDER.** Upon expiration of the term of this Lease, this Lease will automatically renew on a year-to-year basis unless either party gives at least 365 days written notice of termination of this Lease. Termination shall take place only on the last day of any given year.

14. **AMENDMENTS.** This Lease sets forth the entire agreement of the parties. No alteration of the terms or conditions of this Lease or any oral agreement shall be valid unless in writing signed by both parties.

**LANDLORD: City of Olmsted Falls, Ohio**

**TENANT: Olmsted Falls Garden Club**

\_\_\_\_\_  
By: James P. Graven, Mayor

\_\_\_\_\_  
By: Terry Duncan, President

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

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