

**CITY OF MAPLE HEIGHTS  
COUNCIL MEETING AGENDA**

**Maple Heights Senior Center**

**January 3, 2018**

- 1. Swearing-In of All Members of Council at 7:00 p.m. per Article VII Section 3 of the Charter of the City of Maple Heights**
- 2. Call to Order: Council President Ron Jackson**
- 3. Invocation/Pledge of Allegiance: Councilman Stafford L. Shenett, Sr.**
- 4. Roll Call: Council Clerk Leonette Cicirella**
- 5. Election of Council President Pro Tem per Article VII Section 5 of the Charter of the City of Maple Heights**
- 6. Addendum:**
- 7. Approval of Minutes: June 7, 2017 through August 2, 2017 (Regular Meetings of Council)**
- 8. Communications:**
- 9. Council Committee Reports:**
- 10. Department Reports:**
- 11. Citizen's Comments: 3-minute limitation**
- 12. Legislation:**

**2017-125 AN ORDINANCE AUTHORIZING THE FINANCE DIRECTOR TO PREPARE AND FILE AN AMENDED 2018 CERTIFICATE OF ESTIMATED RESOURCES WITH THE CUYAHOGA COUNTY FISCAL OFFICER, AND DECLARING AN EMERGENCY.**

**Tabled. Reading 2 (Blackwell)**

**2018-01 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH UNION EYE CARE PERTAINING TO GROUP VISION INSURANCE FOR FULL-TIME EMPLOYEES IN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.**

**Reading 1 (Blackwell)**

**2018-02 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SUN LIFE FINANCIAL PERTAINING TO GROUP LIFE INSURANCE FOR FULL-TIME EMPLOYEES IN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.**

**Reading 1 (Blackwell)**

**2018-03 A RESOLUTION AUTHORIZING THE MAYOR AND HUMAN SERVICES DIRECTOR TO FILE AN APPLICATION ON BEHALF OF THE CITY OF MAPLE HEIGHTS FOR FUNDING FROM NOACA THROUGH THE ENHANCED MOBILITY FOR SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAM, FOR THE PURCHASE OF TWO (2) NEW VEHICLES TO PROVIDE TRANSPORTATION SERVICES FOR THE CITY'S SENIOR TRANSPORTATION PROGRAM, AND DECLARING AN EMERGENCY.**

**Reading 1 (Blackwell)**

**2018-04 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH SENIOR TRANSPORTATION CONNECTION TO CONDUCT THE DAY-TO-DAY CALL CENTER AND SCHEDULING OPERATIONS OF THE CITY'S SENIOR TRANSIT OPERATIONS FOR**

**THE CALENDAR YEAR 2018 IN THE AMOUNT OF SEVEN HUNDRED  
TEN DOLLARS (\$710.00) PER MONTH, AND DECLARING AN  
EMERGENCY.**

**Reading 1 (Blackwell)**

**2018-05 A RESOLUTION AMENDING AND RESTATING RESOLUTION  
NO. 2017-122 AUTHORIZING THE MAYOR TO ENTER INTO A  
LEASE AGREEMENT WITH THE BOARD OF PARK COMMISSIONERS  
OF THE CLEVELAND METROPOLITAN PARK DISTRICT FOR  
DUNHAM PARK, AND DECLARING AN EMERGENCY**

**Reading 1 (Blackwell)**

**2018-06 A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A  
REAL ESTATE OPTION AGREEMENT WITH WALLICK ASSET  
MANAGEMENT LLC, AND DECLARING AN EMERGENCY**

**Reading 1 (Blackwell)**

- 13. Expenditures over \$1,000.00**
- 14. Mayor's Report**
- 15. Council & Council President's Reports**
  
- 16. Adjournment**

MAPLE HEIGHTS COUNCIL MEETING  
Maple Heights Senior Center  
15901 Libby Road, Maple Heights, OH 44137

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JANAURY 3, 2018

7:00 p.m.

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**ADDENDUM FOR**  
**REGULAR COUNCIL MEETING**  
**OF JANUARY 3, 2018**

**LEGISLATION:**

**ORDINANCE NO. 2018-07**

**AN ORDINANCE WAIVING FOR THE TIME PERIOD JANUARY 2, 2018 THROUGH DECEMBER 31, 2018 THE ONE HUNDRED PERCENT (100%) ESCROW REQUIREMENT TO CORRECT VIOLATIONS RESULTING FROM POINT OF SALE INSPECTIONS PER CHAPTER 1494 OF THE CODIFIED ORDINANCES OF THE CITY OF MAPLE HEIGHTS TO OFFER AN INCENTIVE TO INDIVIDUALS WHO PURCHASE RESIDENTIAL PROPERTIES AND OCCUPY SUCH RESIDENTIAL PROPERTIES, AND DECLARING AN EMERGENCY**

**Reading 1(Blackwell)**

**ORDINANCE NO.: 2018-07**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**AN ORDINANCE WAIVING FOR THE TIME PERIOD JANUARY 2, 2018 THROUGH DECEMBER 31, 2018 THE ONE HUNDRED PERCENT (100%) ESCROW REQUIREMENT TO CORRECT VIOLATIONS RESULTING FROM POINT OF SALE INSPECTIONS PER CHAPTER 1494 OF THE CODIFIED ORDINANCES OF THE CITY OF MAPLE HEIGHTS TO OFFER AN INCENTIVE TO INDIVIDUALS WHO PURCHASE RESIDENTIAL PROPERTIES AND OCCUPY SUCH RESIDENTIAL PROPERTIES, AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Maple Heights desires to continue an Owner Occupied Homeowner Incentive Program for the period January 2, 2018 through December 31, 2018, which was initially established pursuant to Ordinance No. 2017-08, to promote and encourage individuals to purchase and renovate residential properties by waiving 100% of the escrow requirement to correct violations resulting from the point of sale inspection per Chapter 1494, so long as the purchaser actually occupies such residential property.

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio that:

**Section 1.** For the time period January 2, 2018 through December 31, 2018 the Mayor is hereby authorized to waive the 100% escrow requirement to correct violations resulting from point of sale inspections per Chapter 1494 of the Codified Ordinances for individuals who purchase and renovate residential properties, so long as the purchaser actually occupies such residential property.

**Section 2.** Participants in this Program will be required to sign an affidavit attesting to the fact that the Purchaser will reside in the property as their primary residence for two (2) years commencing upon the issuance of an Occupancy Permit by the Chief Building Official.

**Section 3.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting, on the date indicated below, and that all deliberations of Council and of any of its Committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**Section 4.** This Ordinance constitutes an emergency measure necessary for the general welfare of the residents, and to encourage owner occupied home ownership in the City and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Ordinance No. 2018-07  
Page Two

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, President of Council

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

ATTEST:

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

# Medical Renewal and Review

*Prepared for:*



*Presented by:*

The Fedeli Group  
Crown Centre - Fifth Floor  
5005 Rockside Road  
Independence, Ohio 44131  
(216) 328-8080

# The City of Maple Heights

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## Fully Insured Dental - Options

Dental	Assurant Current/Renewal		MetLife Option 1	
	Network	Non-Network	Network	Non-Network
Deductible				
Single		\$50		\$50
Family		\$150		\$150
Waived for Preventative?	Yes	Yes	Yes	Yes
Waived for Orthodontia?	Yes	Yes	Yes	Yes
Class I	80%	80%	80%	80%
Class II	80%	80%	80%	80%
Class III	80%	80%	80%	80%
Class IV	50%	50%	50%	50%
Adult	Not Covered		Not Covered	
Benefit Waiting Periods	No Waiting Periods		No Waiting Periods	
Annual Maximum	\$1,000		\$1,000	
Lifetime Orthodontia Maximum	\$1,000		\$1,000	
Non-Network Percentile	90th Percentile		Maximum Allowable Charge	
Implants	Not Covered		Class III	
Endodontics	Class II		Class II	
Periodontics	Class II		Class II	
Maximum Rollover	Not Included		Not Included	

  

		<b>Current</b>	<b>Renewal - Revised</b>	
Single	29	\$24.02	\$25.22	\$21.79
EE + Spouse	2	\$49.06	\$51.51	\$46.18
EE + Child(ren)	10	\$54.00	\$56.70	\$50.18
Family	49	\$79.05	\$83.00	\$79.83
<b>Monthly:</b>		<b>\$5,208.15</b>	<b>\$5,468.40</b>	<b>\$5,137.74</b>
<b>Annual:</b>		<b>\$62,497.80</b>	<b>\$65,620.80</b>	<b>\$61,652.88</b>
<b>Compared to Current</b>			5.00%	-1.35%
				6% 2nd Year Cap





## Vision - Options

Vision	Union Eye Care PPO Plan Current/Renewal	MetLife PPO Plan Option 1
	<b>Network</b>	<b>Network</b> <b>Non-Network</b>
<b>Copays</b> Exam Lenses Materials	\$10/\$25 \$10 *No Copay on Frames	\$10      n/a \$25      n/a n/a
<b>Exam</b>	Covered in Full	Covered in Full      Up To \$45
<b>Lenses</b>	(Per Pair)	(Per Pair)
Single	Covered in Full	Covered in Full      Up to \$30
Bifocal	Covered in Full	Covered in Full      Up to \$50
Trifocal	Covered in Full	Covered in Full      Up to \$65
Lenticular	Covered in Full	Covered in Full      Up to \$100
<b>Frames</b>	Up to \$160	Up to \$160      Up to \$70
<b>Contact Lenses</b>		
Medically Necessary	Covered in Full	Covered in Full      Up to \$210
Elective	Up to \$150	Up to \$160      Up to \$105
<b>Frequency</b>		
Exam	24 Months	12 Months
Lenses	24 Months	12 Months
Frames	24 Months	24 Months
<b>RATES</b>		
Single      29 Family      61	<b>Current</b> <b>Renewal</b> \$3.35      \$3.35 \$8.20      \$8.20	<b>2 Year Rate Guarantee</b> \$6.59 \$18.44
<b>Monthly</b> <b>Annual</b> Rate Adjustment Rate Guarantee	<b>\$597.35</b> <b>\$597.35</b> <b>\$7,168.20</b> <b>\$7,168.20</b> 0.00%	<b>\$1,315.95</b> <b>\$15,791.40</b> <b>120.30%</b> <b>2 Year Rate Guarantee</b>



## Life/AD&D - Options

<b>LIFE/AD&amp;D</b>	<b>Sun Life Financial</b> Current	<b>MetLife</b> Option
Benefit	Flat \$25,000	Flat \$25,000
Age Reduction Schedule	To 67% @ Age 70; To 50% @ Age 75 Terminates @ Retirement	To 67% @ Age 70; To 50% @ Age 75 Terminates @ Retirement
Guarantee Issue	\$25,000	\$25,000
<b>Rates</b>		
Volume	\$2,350,000	\$2,350,000
Life Rate Per \$1,000	\$0.18	\$0.161
AD&D Rate Per \$1,000	\$0.02	\$0.040
<b>Monthly</b>	<b>\$470.00</b>	<b>\$472.35</b>
<b>Annual</b>	<b>\$5,640.00</b>	<b>\$5,668.20</b>
Rate Adjustment		<b>0.50%</b> 2 Year Rate Guarantee

\*Be advised that the above rates are for illustrative purposes and are subject to final underwriting. The benefits illustrated above are only a summary of the coverages.

# City of Maple Heights

## Compensation Disclosure

The Fedeli Group's compensation is comprised of consulting fees or commissions. All insurance companies best suited to solving client's problems are contacted. The majority of these companies have set contractual arrangements as to amount and method of payment to The Fedeli Group. Where there is no contractual arrangement, compensation is negotiated with clients to determine the amount of compensation that is appropriate.

The Fedeli Group also has Market Services Agreements (MSA's) with most of its principal insurance markets. Payments under MSA agreements are not client-specific and are based upon such factors as overall volume, growth and service. Payments made to The Fedeli Group under MSA agreements are compensation for services rendered by The Fedeli Group to the insurance markets. Services include national distribution, product development and a wide array of administrative services, as well as the technological investment The Fedeli Group makes to improve efficiency of the placement process for all parties. Amounts paid under MSA agreements to The Fedeli Group, commonly called overrides, would be in addition to any other compensation and do not affect the cost of specific clients.



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## Other Carriers Marketed

Aetna  
Guardian  
Standard  
EyeMed

No Response  
Declined to Quote Life/AD&D  
No Response  
No Response

## Insurance Carrier Quotes

### Disclaimer

All carriers illustrated in this proposal  
reserve the right to re-rate if final enrollment varies +/- 10%.

**RESOLUTION NO. 2018-01**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH UNION EYE CARE PERTAINING TO GROUP VISION INSURANCE FOR FULL-TIME EMPLOYEES IN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.**

**WHEREAS,** The Fedeli Group recommends that the City of Maple Heights contracts for full time employee vision insurance coverage with Union Eye Care as being in the best interests of the City; and

**WHEREAS,** Council desires that Union Eye Care provides the Employee Group Vision Insurance for full-time employees for a period of twelve months, beginning January 1, 2018.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Maple Heights, County of Cuyahoga, and State of Ohio, that:

**Section 1.** Council authorizes and directs the Mayor and the Director of Finance to enter into a contact with Union Eye Care for the Employee Group Vision Insurance Policy beginning January 1, 2018, a copy of which is available in the Human Resources Department.

**Section 2.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting on the date indicated below, and that all deliberations of this Council and of any of its Committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 3.** This Resolution constitutes an emergency measure necessary for the health and welfare of the employees and residents of the city, and to timely renew said policy, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, President of Council

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

Resolution No. 2018-01  
Page Two

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

**RESOLUTION NO. 2018-02**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SUN LIFE FINANCIAL PERTAINING TO GROUP LIFE INSURANCE FOR FULL-TIME EMPLOYEES IN THE CITY OF MAPLE HEIGHTS AND DECLARING AN EMERGENCY.**

**WHEREAS,** The Fedeli Group recommends that the City of Maple Heights contracts for full time employee life insurance coverage with Sun Life Financial as being in the best interests of the City; and

**WHEREAS,** Council desires that Sun Life Financial provides the Employee Life Insurance for full-time employees for a period of twelve months, beginning January 1, 2018.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Maple Heights, County of Cuyahoga, and State of Ohio, that:

**Section 1.** Council authorizes and directs the Mayor and the Director of Finance to enter into a contact with Sun Life Financial for the Employee Group Life Insurance Policy beginning January 1, 2018, a copy of which is available in the Human Resources Department.

**Section 2.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting on the date indicated below, and that all deliberations of this Council and of any of its Committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 3.** This Resolution constitutes an emergency measure necessary for the health and welfare of the employees and residents of the city, and to timely renew said policy, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, President of Council

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

Resolution No. 2018-02  
Page Two

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council



**RESOLUTION NO.: 2018-03**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**A RESOLUTION AUTHORIZING THE MAYOR AND HUMAN SERVICES DIRECTOR TO FILE AN APPLICATION ON BEHALF OF THE CITY OF MAPLE HEIGHTS FOR FUNDING FROM NOACA THROUGH THE ENHANCED MOBILITY FOR SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAM, FOR THE PURCHASE OF TWO (2) NEW VEHICLES TO PROVIDE TRANSPORTATION SERVICES FOR THE CITY'S SENIOR TRANSPORTATION PROGRAM, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Maple Heights, through its Human Services Department and Senior Center provides transportation services for the elderly and persons with disabilities who reside within the community; and

**WHEREAS**, the Director of Human Services and the Senior Center has advised the Mayor and Council that as part of the City's capital projects it is necessary to replace two (2) vehicles for use in its transportation services; and

**WHEREAS**, the Director of Human Services recommends that the City apply for approximately \$80,000.00 in funding to replace such vehicles, from the Northeast Ohio Areawide Coordinating Agency (NOACA) for Cleveland Urbanized Area Federal Transit Administration (FTA) funding from the Enhanced Mobility for Seniors and Individuals with Disabilities Program (Section 5310); and

**WHEREAS**, NOACA is designated recipient of the Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310) program for the Cleveland Urbanized Area authorized to make grants to public bodies, private nonprofit organizations, and other eligible entities; and

**WHEREAS**, the Enhanced Mobility for Seniors and Individuals with Disabilities program will provide eighty percent (80%) federal funds for capital projects such as this to support alternatives to public transportation projects that assist Seniors and Individuals with Disabilities, new or expanded transportation services and alternatives that go beyond the requirements of the Americans with Disabilities Act (ADA) of 1990 for individuals with disabilities; and

**WHEREAS**, the City certifies it will provide at least twenty percent (20%) local matching funds, approximately \$16,000.00, for this capital project to replace two (2) vehicles for use in its transportation services from sources other than federal Department of Transportation funds; and

**WHEREAS**, the Enhanced Mobility for Seniors and Individuals with Disabilities program is paid on a reimbursement basis requiring the applicant to first expend funds then request reimbursement from NOACA, which will, in turn, request the funds from FTA; and

**WHEREAS**, this capital project is included in the Coordinated Public Transit-Human Services Transportation Plan for Northeast Ohio; and

**WHEREAS**, the City of Maple Heights agrees to abide by federal requirements as a sub-recipient of FTA funds, including federal fiscal year 2015 Certifications and Assurances inclusive of provisions of Title VI of the Civil Rights Act of 1964, and all subsequent annual Certifications and Assurances during the length of the agreement, including federal procurement, maintenance, useful life, disposition standards, and ongoing reporting; and

**WHEREAS**, the City of Maple Heights is authorized to execute a contract with NOACA if selected for the Enhanced Mobility for Seniors and Individuals with Disabilities program.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

**Section 1.** The Mayor and Human Services Director are authorized to file an application with NOACA for Cleveland Urbanized Area Federal Transit Administration funding from the Enhanced Mobility for Seniors and Individuals with Disabilities Program (Section 5310), on behalf of the City of Maple Heights for funding for two (2) new vehicles, as more fully set forth in the application on file in the office of the Human Services Director; and further authorizes the Mayor, Finance Director, Human Services Director and/or their authorized representatives to provide, execute and deliver certifications, assurances and such other information as may be required in connection therewith, including execution of a contract with NOACA if selected for funding.

**Section 2.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting on the date indicated below, and that all deliberations of this Council and of any of its Committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 3.** This Resolution constitutes an emergency measure necessary for the public peace, safety and general welfare of the City and for the further reason that it is immediately necessary to approve the filing of the application, which is due by February 2, 2018, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, Council President

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

Resolution No. 2018-03

Page Three

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

**RESOLUTION NO.: 2018-04**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH SENIOR TRANSPORTATION CONNECTION TO CONDUCT THE DAY-TO-DAY CALL CENTER AND SCHEDULING OPERATIONS OF THE CITY'S SENIOR TRANSIT OPERATIONS FOR THE CALENDAR YEAR 2018 IN THE AMOUNT OF SEVEN HUNDRED TEN DOLLARS (\$710.00) PER MONTH, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Mayor and Human Services Director have recommended to Council that the City enter into a contract with Senior Transportation Connection to conduct the day-to-day call center and scheduling operations of the City's senior transit operations at a fixed base rate of Seven Hundred Ten Dollars (\$710.00) per month, as set forth in the attached contract marked as Exhibit A, which is incorporated as if fully rewritten herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

**Section 1.** The Mayor is authorized and directed to enter into a contract with Senior Transportation Connection to conduct the day-to-day call center and scheduling operations of the City's senior transit operations at a fixed base rate of Seven Hundred Ten Dollars (\$710.00) per month, as set forth in the attached contract marked as Exhibit A, which is incorporated as if fully rewritten herein

**Section 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting on the date indicated below, and that all deliberations of this Council and of any of its Committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 3.** This Resolution constitutes an emergency measure necessary for the public peace, safety and general welfare of the City and for the further reason that it is necessary for the daily operation of the City's senior transit, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, Council President

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

**RESOLUTION NO.: 2018-05**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**A RESOLUTION AMENDING AND RESTATING RESOLUTION NO. 2017-122  
AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH  
THE BOARD OF PARK COMMISSIONERS OF THE CLEVELAND  
METROPOLITAN PARK DISTRICT FOR DUNHAM PARK, AND DECLARING AN  
EMERGENCY**

**WHEREAS,** the Board of Park Commissioners of the Cleveland Metropolitan Park District (“Metroparks”) has advised the Mayor that the Metroparks desires to enter into a ninety-nine (99) year lease with the City for Dunham Park to operate and maintain Dunham Park and add it to the Metroparks existing award winning 18 park reservations throughout Northeast Ohio; and

**WHEREAS,** the Metroparks is committed to protecting Dunham Park, like its existing park properties, by implementing natural resource and green infrastructure practices to create and manage urban park spaces more resilient to ecological change and disturbance as part of the surrounding and regional community; and

**WHEREAS,** the Metroparks, in taking over the maintenance and operation of Dunham Park, is committed to strengthening its role and identity in response to changes in demographics and economics and will continue to emphasize conservation education and support the resurgence of the City of Maple Heights; and

**WHEREAS,** the Metroparks addition of Dunham Park will advance connections and trail systems that complete the Emerald Necklace and, in partnership with other agencies and communities, will connect Maple Heights with local, state and regional trail networks, communities and places of interest; and

**WHEREAS,** the Metroparks, in taking over the maintenance and operation of Dunham Park, is committed to improving, expanding and strengthening outdoor experiences and recreation opportunities for the residents of the City of Maple Heights consistent with the Metroparks’ mission, and keep pace with market trends to contribute to the City’s attractiveness as a place to live, work and play; and

**WHEREAS,** the Mayor, City Engineer and City Law Director recommend that Council authorize the Mayor to enter into a Lease Agreement with the Metroparks, which Lease Agreement is attached hereto as Exhibit A and incorporated as if fully rewritten herein; and

**WHEREAS,** Council passed Resolution No. 2017-22 on December 6, 2017 authorizing the Mayor to enter into the Lease Agreement; and

**WHEREAS,** the Metroparks has requested that the City amend Resolution 2017-122 to make clear that the City is entering into the Lease Agreement pursuant to its home rule power under the Charter.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio that:

**Section 1.** Resolution No. 2017-122 is hereby amended and restated as set forth herein. Pursuant to Article II of the Charter and the City's home rule powers, the Mayor is hereby authorized to enter into a Lease Agreement with the Metroparks for Dunham Park to operate and maintain Dunham Park and add it to the Metroparks existing award winning 18 park reservations throughout Northeast Ohio, which Lease Agreement is attached hereto as Exhibit A and incorporated as if fully rewritten herein.

**Section 2.** Pursuant to the City's home rule powers set forth in Article II of the City's Charter, the leasing of Dunham Park shall not be subject to advertisement and competitive bidding and the Mayor is authorized to enter into the Lease Agreement with the Metroparks notwithstanding the requirements of R.C. 721.03.

**Section 3.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting on the date indicated below, and that all deliberations of this Council and of any of its Committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 4.** This Resolution constitutes an emergency measure necessary for the public peace, safety and general welfare of the City and for the further reason to immediately allow the Metroparks to begin maintenance, operations and improvements at Dunham Park, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, Council President

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

Resolution No. 2018-05  
Page Three

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council



**RESOLUTION NO.: 2018-06**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A REAL ESTATE  
OPTION AGREEMENT WITH WALICK ASSET MANAGEMENT LLC, AND  
DECLARING AN EMERGENCY**

**WHEREAS**, Wallick Asset Management LLC (“Wallick”) has proposed to the Mayor that it intends to develop a 46- unit senior living facility in the City on real estate on Lee Road formerly known as the Petiti’s site; and

**WHEREAS**, Wallick needs an option period to study the feasibility of the development project and as part of the option desires to purchase the following six (6) separate but adjoining parcels of real property, improvements, appurtenances and the personal and intangible property connected thereto, located on Lee Road in Maple Heights, **Permanent Parcel Nos.: 781-06-004, 781-06-005, 781-06-006, 781-06-007, 781-06-008, and 781-06-009 (“Lee Road Parcels”)**; and

**WHEREAS**, the Lee Road Parcels are owned by the City through its Land Reutilization Program and the Mayor desires to sell the Lee Road Parcels after the option is fulfilled to Wallick pursuant to R.C. 5722.07 at a fair market value of \$30,000.00, which takes into account that the City is placing certain deed restrictions on the Lee Road Parcels, including use restrictions and building requirements;

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio that:

**Section 1.** The Mayor is hereby authorized to enter into a Real Estate Option Contract with Wallick to develop a senior living facility on the Lee Road Parcels, which Real Estate Option Agreement is attached hereto as Exhibit A and incorporated as if fully rewritten herein.

**Section 2.** Pursuant to R.C. 5722.07 the fair market value of the Lee Road Parcels is \$30,000.00 and pursuant to R.C. 5722.08 all of the proceeds from the sale of the Lee Road Parcels shall be used to maintain the remaining parcels of real property held by the City in its Land Reutilization program.

**Section 3.** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting on the date indicated below, and that all deliberations of this Council and of any of its Committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 4.** This Resolution constitutes an emergency measure necessary for the public peace, safety and general welfare of the City and for the further reason to immediately allow Wallick to begin

investigating the feasibility of developing the site, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, Council President

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

**LEASE AGREEMENT**

**between**

**THE CITY OF MAPLE HEIGHTS**

**and**

**THE BOARD OF PARK COMMISSIONERS OF THE  
CLEVELAND METROPOLITAN PARK DISTRICT**

**for**

**DUNHAM PARK**

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## EXHIBITS

- Exhibit A – Legal Description and Depiction of Dunham Park
- Exhibit B – Form of Estoppel Certificate

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of the \_\_\_ day of \_\_\_, 2018 (the "Effective Date"), by and between CITY OF MAPLE HEIGHTS, OHIO ("Lessor" or "City"), pursuant to Ordinance No. \_\_\_\_, passed on \_\_\_\_, 2018 and the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT, a political subdivision of the State of Ohio ("Lessee"), pursuant to Resolution No. \_\_\_\_, dated \_\_\_\_, 2018.

### RECITALS

A. Lessor is the fee owner of the Leased Premises, consisting of property known as Dunham Park, currently known as Permanent Parcel Numbers 785-19-001, 785-21-001, and 785-21-009.

B. Lessee is authorized to acquire and/or lease land for the conservation of the natural resources of the State and to develop, improve, protect, and promote the use of parks pursuant and subject to the provisions of Chapter 1545 of the Ohio Revised Code.

C. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Leased Premises for such purposes.

NOW, THEREFORE, for the premises set forth above, and in consideration of the mutual promises and agreements hereinafter set forth, Lessor and Lessee agree as follows:

1. Definitions. In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings indicated below:

"Applicable Laws" shall mean all federal, state and local laws, codes, ordinances, rules and regulations applicable to Lessor, Lessee or the Leased Premises.

"Award" means the payment or other award resulting from a Taking from the condemning authority to Lessee attributable to the value of the Improvements.

"Cell Tower Lease" means that certain Option and Land Lease dated August 5, 2014 between Lessor and SBA Towers V, LLC, a Florida limited liability company, as evidenced by a certain Memorandum of Option and Land Lease dated August 5, 2014 and recorded on September 8, 2014 as Instrument No. 201409080010.

"Chief Executive Officer" means the Chief Executive Officer of Lessee, or such other officer, agency, or agencies of Lessee or other governing body as may now or hereafter have jurisdiction over Lessee.

"Cleveland Metroparks Standards" shall mean the generally applicable and common standards and levels of maintenance, repair and operation provided by Lessee from time to time with respect to all parks operated by Lessee, as the same may be modified, changed or altered by Lessee from time to time.

"Commencement Date" means           , 2018, as the same may be postponed pursuant to Section 5.2.



“Effective Date” means the date set forth in the Preamble of this Lease.

“Environmental Law” means any present and future federal, State and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Resource Conservation and Recovery Act that apply to Lessor, Lessee or the Leased Premises and relate to Hazardous Materials.

“Estoppel Certificate” means an estoppel certificate from the tenant under the Cell Tower Lease required to be delivered as a Lease Commencement Condition, a form of which is attached hereto and made a part hereof as **Exhibit B**.

“Existing Improvements” shall mean those buildings and other improvements located upon the Leased Premises as of the Commencement Date.

“Extension Terms” means four (4) periods of twenty-five (25) years each, and each twenty-five (25) year period is referred to herein, individually, as an “Extension Term.”

“Force Majeure” means any act or acts beyond the reasonable control of the affected party, including without limitation, acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials (other than the Chief Executive Officer or the Director, respectively), or any local municipal authority, or any civil or military authority; laws, ordinances, permits, rules, regulations, orders, and other applicable requirements imposed by governmental authorities with competent jurisdiction; insurrections; civic disturbances; riots; strikes; lockouts; unforeseen subsurface conditions; shortages of labor, fuel, or materials; discontinuation, suspension, or interruption of, or interference with, any utility or service; landslides; fire, explosion, and earthquakes; and adverse weather, including, but not limited to, hurricane, tornadoes, lightening, storms, and floods; or severe ice, snow or wind.

“Hazardous Materials” shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint, asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Leased Premises is prohibited by any Federal, State or local authority; mold or any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance”, “hazardous material”, hazardous waste”, “toxic substance”, “toxic pollutant”, “contaminant”, or “pollutant” within the meaning of any Environmental Law.

“Improvements” means, collectively, the following: (a) the Existing Improvements; and (b) any other buildings, structures, and other improvements that Lessee, in Lessee’s sole discretion, determines to be in furtherance of, and consistent with, Lessee’s mission and authority related to conservation, education, and recreation pursuant and subject to Chapter 1545 of the Ohio Revised Code, as contemplated to be constructed upon the Leased Premises pursuant

to Section 13 of this Lease, including, any alteration, remodeling, modification, expansion or demolition of the improvements set forth in (a) and (b) above.

“Initial Term” shall have the meaning set forth in Section 4.1 of this Lease.

“Lease Commencement Conditions” shall have the meaning set forth in Section 5.1 of this Lease.

“Leased Premises” means the real property described and depicted on **Exhibit A**, attached hereto and incorporated herein, currently known as Permanent Parcel Numbers 785-19-001, 785-21-001, and 785-21-009, together with the Existing Improvements.

“Lessee Mortgage” means any mortgage or other encumbrance by Lessee, by mortgage, sale-leaseback, or other lease or similar document that constitutes an alternative method of financing in lieu of a mortgage.

“Non-Serving Utilities” shall have the meaning set forth in Section 10.2 of this Lease.

“Permitted Exceptions” means those exceptions to title to the Lease Premises approved by Lessee and reflected in Lessee’s ALTA Owner’s Policy for a Leasehold Estate.

“Release” means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

“Substantial Portion” means the Taking of such portion of the Leased Premises that renders the Leased Premises unusable for its permitted purposes (other than for temporary periods).

“Taking” means all or a Substantial Portion of the Leased Premises taken by right of condemnation or eminent domain, with or without litigation, or transferred in lieu of or under threat of such action.

“Tax” or “Taxes” means all real estate taxes, payments in lieu of taxes, personal property taxes, privilege taxes, admissions taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, rates and charges, levies, license and permit fees, assessments (including assessments for public improvements or benefits) and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing, but excluding any income, franchise, excise, corporation, estate, inheritance, succession, capital stock, or transfer tax levied on Lessor to the extent that any such tax is not a substitute for real estate taxes.

“Term” shall mean the Initial Term, as the same by be extended by one or more Extension Terms, if exercised.

## 2. Use of the Leased Premises.

2.1 Title to the Leased Premises. Lessor covenants that it is well-seized of, and has marketable fee simple title to, the Leased Premises, subject only to the Permitted Exceptions.

2.2 Lease of Leased Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, on the terms and conditions and for the purposes set forth herein, all of Lessor's rights, title and interested in and to the Leased Premises.

2.3 Condition of Leased Premises. Lessee accepts the Leased Premises in their present or "as is" condition as of the Commencement Date.

2.4 Exclusive Use of Leased Premises. Lessor and Lessee acknowledge and agree that Lessee's right to use and occupy the Leased Premises under this Lease is exclusive, except for rights reserved under the Cell Tower Lease.

2.5 Use Restrictions. The Leased Premises shall be used by Lessee for open space, park, recreation and conservation purposes pursuant and subject to Chapter 1545 of the Ohio Revised Code (as the same may be amended from time to time) or any successor statute defining the rights and responsibilities of Ohio park districts, and for no other purpose or purposes unless approved by Lessor in writing, such approval not to be unreasonably withheld, conditioned or delayed.

2.6 Cell Tower Lease. Notwithstanding anything contained herein to the contrary, Lessor shall retain all rights and obligations under the Cell Tower Lease, including, without limitation, all revenues derived therefrom. Lessor shall be responsible for all costs, fees, expenses and damages caused by the exercise of any of its rights or performance of any of its obligations under the Cell Tower Lease. Lessor shall have a license over the Leased Premises solely for the purpose of performing its obligations under the Cell Tower Lease, subject to the following conditions: (a) Lessor's use of the Leased Premises will not unreasonably interfere with Lessee's use and enjoyment of the Leased Premises or Lessee's rights and obligations under this Lease, each as determined by Lessee in its reasonable discretion; (b) the location of any equipment or improvements (and access to such equipment or improvements) on the Leased Premises shall be determined by Lessee, in Lessee's sole discretion; (c) Lessor shall procure and maintain general liability insurance in form and substance reasonably satisfactory to Lessee naming Lessee as an additional insured thereunder and Lessor shall cause the tenant under the Cell Tower Lease to name Lessee as an additional insured under any liability insurance such tenant is required to maintain under the Cell Tower Lease; (d) Lessor shall maintain, repair and replace any and all equipment or improvements installed by or on behalf of Lessor as necessary to keep and maintain all such equipment in good condition and repair and in compliance with all Applicable Laws; (e) Lessor shall promptly enforce all terms and conditions under the Cell Tower Lease applicable to the tenant thereunder; and (f) Lessor shall obtain all necessary permits or consents necessary in connection with the Cell Tower Lease and the operation of the improvements and equipment permitted thereunder.

3. Delivery of Possession. On the Commencement Date, Lessor shall deliver sole and exclusive possession of the Leased Premises to Lessee, free and clear of all tenancies, whether oral or written, other than the Cell Tower Lease.

4. Term.

4.1 Initial Term. The “Initial Term” shall commence upon the Commencement Date and expire upon the ninety ninth (99th) anniversary of the Commencement Date, unless sooner terminated in accordance with the provisions of this Lease.

4.2 Extension Term. Lessee shall have the right and option to extend this Lease for up to four (4) Extension Terms. Lessee shall automatically be deemed to have exercised its option to extend the Lease for the Extension Terms unless Lessee notifies Lessor in writing of its intent not to extend not less than six (6) months prior to the expiration of the Initial Term or the then current Extension Term, as applicable. The terms and conditions of this Lease applicable during the Initial Term shall be the terms and conditions for the Extension Terms.

4.3 Termination. Notwithstanding the foregoing or any other provision of this Lease to the contrary, Lessee shall have the right, if Lessee so elects at any time, to terminate this Lease by delivery of six (6) months’ written notice to Lessor.

4.4 Termination due to Tax Foreclosure. If, at any time during the Term, the relevant public authority initiates a Tax foreclosure against the Leased Premises, Lessee shall have the option at any time during the Tax foreclosure proceedings to either: (1) terminate this Lease by providing Lessor with not less than ten (10) days’ prior written notice; provided, however, such notice shall be null and void if Lessor caused the Tax foreclosure to be dismissed prior to the expiration of such ten (10)-day period; or (2) amend this Lease to remove the portion of the Leased Premises being foreclosed upon from this Lease.

5. Conditions to Commencement of this Lease.

5.1 Conditions to Commencement of this Lease. In addition to the conditions provided elsewhere in this Lease, the commencement of the Initial Term shall be subject to the satisfaction or waiver in writing of each of the following conditions (“Lease Commencement Conditions”) on or before the Commencement Date:

5.1.1 Lessee has received and approved all Due Diligence Materials, and Lessee has approved all Due Diligence Reports and Testing;

5.1.2 Lessee shall have received and approved the Survey (if Lessee elected to obtain a Survey);

5.1.3 Lessor shall have delivered to Lessee the executed Estoppel Certificate, which Estoppel Certificate shall waive the Right of First Refusal contained in the Cell Tower Lease and shall not contain any other objectionable matters, as determined by Lessee in its reasonable discretion.

5.1.4 All of the other documents required to be delivered to Lessee by Lessor, as required by this Lease, shall have been delivered.

5.1.5 All utilities within and servicing the Leased Premises, including, to the extent applicable, natural gas, electric, telephone, broad band, water and sewer to all locations within the Leased Premises, shall have been transferred to Lessee.

5.1.6 All signage identifying the Leased Premises as a city park shall have been removed in accordance with Section 5.3.

5.1.7 All Taxes related to the Leased Premises for periods prior to the Commencement Date shall have been paid by Lessor or others and the Title Policy shall not include an exception for Taxes, other than Taxes that are not yet due and payable.

5.1.8 The Title Company shall be in a position to issue to Lessee, dated as of the Commencement Date, the Title Policy insuring that Lessee has good and marketable leasehold interest in the Leased Premises, subject only to Permitted Exceptions.

5.2 Lessee's Rights Prior to the Commencement Date. If any Lease Commencement Condition is not satisfied or waived in writing by Lessee on or before the date on which it is required to be satisfied, then Lessee shall have the right to postpone the Commencement Date or to terminate this Lease by written notice to Lessor.

5.3 Signage Removal. Lessor shall prior to the Commencement Date, remove all signage identifying the Leased Premises as a city park from the Leased Premises except for the signage foundations.

6. Further Assurances and Additional Information. Lessor and Lessee shall, from and after the Effective Date or Commencement Date, as the case may be, upon the reasonable request of the other party, execute and deliver such other documents as the other party may reasonably request to obtain the full benefit of this Lease and the consummation of the Lease Transactions. Both parties shall participate in regularly scheduled periodic information sharing and planning sessions that will focus on information exchange that shall allow both parties to promptly implement the terms of this Lease immediately following the receipt of proper authority from their respective statutory governing bodies.

7. Payment.

7.1 Rent. In consideration of the Lease hereby granted, Lessee shall pay Lessor the rent of One Dollar (\$1) per year during the Term, which, as to the Initial Term, Lessee shall have the option of paying as a lump sum on or before the Commencement Date.

7.2 Absolute Net Lease. Except as otherwise provided in this Lease, Lessee and Lessor intend for this Lease to be absolutely net, with Lessor receiving the rent herein reserved free from any expenses whatsoever relating to the Leased Premises or activities conducted on the Leased Premises.

7.3 Place of Payment. All payments of rent shall be made by good draft or check, payable to the order of the "City of Maple Heights" and forwarded to:

**City of Maple Heights**

c/o INSERT  
5353 Lee Road  
Maple Heights, Ohio 44137

7.4 Taxes. Lessor and Lessee acknowledge that, as of the Effective Date, Lessor has not applied for an exemption of the Leased Premises from Taxes. Lessor anticipates pursuing such exemption and Lessee shall cooperate, at no additional cost to Lessee, with such exemption. If Lessor does not pursue such an exemption or if a bill is otherwise issued for Taxes for the Leased Premises at any time during the Term, then Lessor shall be solely responsible for the payment of such Taxes and shall pay such bill in full prior to the date of delinquency. Lessor shall hold Lessee harmless from any Taxes assessed against the Leased Premises at any time during the Term.

7.5 No Offsets or Abatements Allowed. All amounts and times stated for payments herein shall be paid without offset or abatement.

8. Law Enforcement and Security Patrols. Throughout the Term, Lessee's Ranger Department shall have the right and obligation to exercise all powers of police officers within and adjacent to the Leased Premises in accordance with Cleveland Metroparks Standards and Applicable Laws. Opportunities of mutual aid and assistance with Lessor's Police Department may be enumerated in a separate Memorandum of Understanding between Lessor and Lessee to be entered into after the Commencement Date.

9. Operation and Maintenance Possible Concession on the Leased Premises. Throughout the Term, Lessee may, in its sole discretion, elect to operate concessions on the Leased Premises (which Lessee may self-operate or contract with a third party) and, if Lessee so elects, Lessee shall operate such concessions in accordance with the Cleveland Metroparks Standards.

10. Utilities.

10.1 Utilities Serving the Leased Premises. Lessee shall arrange and pay for, at its sole cost and expense, all utilities serving the Leased Premises that are located upon the Leased Premises. Lessee shall repair and maintain or cause third-parties to repair and maintain all utilities serving the Leased Premises that are located upon the Lease Premises. Lessee shall have the right to enter into and record all easements or other instruments for utilities that Lessee deems necessary for the use and operation of the Leased Premises. Lessor agrees to cooperate with Lessee to pursue stormwater enhancements on the Leased Premises available through Lessor's participation in the Northeast Ohio Regional Sewer District's ("NEORS") Community Cost-Share Program (or any similar program administered through NEORS or any other similar organization).

10.2 Non-Serving Utilities. The utilities located on, over or through the Leased Premises as of the Commencement Date but not serving the Leased Premises (or serving the Leased Premises and property other than the Leased Premises), whether such utilities are owned by Lessor or have been permitted on the Leased Premises with or without formal agreements or easements ("Non-Serving Utilities"), shall remain the responsibility of Lessor or the party owning the utilities, and Lessee shall have no obligation to maintain, repair, replace, or remove the Non-Serving Utilities, provided that Lessee shall exercise reasonable diligence in

determining the location of such Non-Serving Utilities and avoiding damage thereto. Notwithstanding the above, Non-Serving Utilities shall include, but not be limited to, storm sewers serving catchment areas off of the Leased Premises.

10.3 Repair of Non-Serving and Lessor Utilities. Lessor shall, at its sole cost and expense, install, maintain, repair or replace all Non-Serving Utilities and all other utilities owned or operated by Lessor. All installation, maintenance, repair or replacement shall (a) be performed in a good and workmanlike manner without interfering with the operations on the Leased Premises, and without diminishing or interfering with the utility services to the Leased Premises, and (b) be performed in accordance with all applicable federal, state or local laws, ordinances, statutes, codes, rules or regulations. Prior to performing any installation, maintenance, repair or replacement, Lessor shall give Lessee at least ten days' prior written notice of the work and shall schedule its work in a commercially reasonable manner. Lessor shall restore any damage to the Leased Premises to a condition that is substantially the same or better than that which existed immediately prior to such installation, maintenance, repair or replacement (including restoration of all paving or landscaping disturbed). Within thirty (30) days after written request by Lessee, Lessor, shall at Lessor's sole cost and expense, provide a metes and bounds legal description and easement for any such Non-Serving Utility or other utility owned or operated by Lessor.

## 11. Improvements and Alterations.

11.1 Construction of Improvements; Title to Improvements. Subject to the provisions of this Section 11, Lessee may, in Lessee's sole and absolute discretion, construct and use Improvements and modify the Existing Improvements to the extent necessary or desirable for the use and occupancy of the Leased Premises by Lessee under this Lease, it being understood and agreed specifically by Lessor and Lessee that Lessee shall not be obligated to preserve or maintain the Improvements, but freely may change the use, alter, remodel, or demolish the same, provided that such use, alteration, remodel or demolition is in accordance with the use and other requirements of this Lease. Lessee shall be responsible for all applicable building permit fees, impact fees or any other fees payable in connection with any construction, alterations, additions or other Improvements to the Leased Premises, which shall be procured and paid for in accordance with Lessee's standard procedures. Lessee will obtain building permits from the State of Ohio for structures as required by the then current edition of the Ohio Building Code. Lessor acknowledges that Lessee shall not be obligated to obtain planning commission or building department approval of any construction, demolition, alteration or remodeling of any Improvement or plan related thereto, or any other consent, approval or permit from Lessor in connection therewith. All such alterations, additions and Improvements constructed by Lessee during the Term shall be and remain the property of Lessee at all times during the Term. Lessor shall execute such documents, make such appearances and do such other things as Lessee may reasonably request so as to comply with the intent of this Section 11, all of which shall be done at Lessee's cost and expense.

Notwithstanding the foregoing provisions, Lessor and Lessee specifically acknowledge and agree that:

11.2.1 On December 7, 2016, by Resolutions 2016-102 and 2016-103, Lessor applied for the Cuyahoga County Department of Development's 2017 Community Development



Block Grant and Supplemental Grant Program to fund improvements at the Leased Premises, including construction of a new pavilion, parking lot and sand volleyball courts, and demolition of tennis courts and aged structures (“Dunham Park Improvements”);

11.2.2 Lessor was awarded a total of \$200,000 in 2017 Block Grant funds to make the Dunham Park Improvements by December 31, 2017;

11.2.3 Subsequent to the 2017 Block Grant funds being awarded to Lessor, Lessee met with Lessor and proposed a partnership for the future operation and maintenance of the Leased Premises with Lessee agreeing to enter into this Lease;

11.2.4 Lessor will have, prior to the effective date of this Lease, used the 2017 Block Grant funds to construct a new parking lot and new entrance road, with input from Lessee’s design team, and demolished the tennis courts and old pavilion and other structures and foregone the construction of sand volleyball courts; and

11.2.5 Lessee agrees to fund (either through its own budget or by applying for grant funds), design and construct a future new pavilion of at least similar size to Lessor’s old pavilion by June 30, 2021.

11.2 Removal of Alterations. Lessee may remove any alterations, additions or Improvements at any time during the Term without the prior written reasonable consent of Lessor. Lessee shall not be required to remove any alterations, additions or Improvements, and Lessee’s failure to do so within thirty (30) days after the expiration or termination of this Lease shall be deemed to be an abandonment and the same shall, at such time, become a part of the Leased Premises with title vesting in Lessor. In case of removal of any alterations, additions or other Improvements by Lessee occurring at or after the termination of this Lease, Lessee shall level the area formerly occupied by any alterations, additions or other Improvements so removed and shall return the Leased Premises to a generally neat and clean appearance.

11.3 Protection of Utility Lines, Cable, and Equipment. All work undertaken pursuant to the authority granted in this Section 11 shall be subject to the condition that Lessee make, at its sole cost and expense, suitable arrangements for the relocation of any affected utility lines, cable, or other equipment; provided, however, Lessor shall be responsible for all costs and expenses relating to the relocation of any Non-Serving Utilities or other utilities owned or operated by Lessor.

12. Surrender of Leased Premises. On the date of termination of this Lease, whether by termination pursuant to the Lease, expiration of the Term or otherwise, Lessee agrees to yield and deliver peaceably to Lessor possession of the Leased Premises granted hereunder, promptly and in the condition generally required to be maintained under this Lease, ordinary wear and tear and repairs, damage or restoration for which Lessee is not responsible hereunder excepted.

13. Representations, Acknowledgments, and Additional Covenants.

13.1 Lessor’s Representations. Lessor represents that: (a) Lessor is a municipal corporation duly formed and validly existing under the laws of the State of Ohio; (b) the execution, delivery, and performance by Lessor of this Lease are within the power of Lessor and



have been authorized by all necessary action; (c) this Lease has been duly executed and delivered by Lessor; (d) this Lease and the documents referred to herein constitute valid and binding obligations of Lessor; (e) to the best of Lessor's knowledge, the execution and delivery of this Lease and the performance by Lessor of the provisions and terms hereof do not and will not violate or conflict with any provision of, or result in an event of default, or in the acceleration of any obligation, under any material commitment, contract, agreement, plan, arrangement, understanding, instrument, lease, license, or permit to which Lessor is a party or by which it is bound or which otherwise affects the Leased Premises; and (f) Lessor has no knowledge or reason to know of any violation or condition that would create liability to any owner or operator, with respect to, and has received no notice from any governmental authority asserting that the Leased Premises or any part thereof is in violation of, or in conflict with, any applicable law, rule, regulation, or ordinance that relates to environmental or any other matters; and (g) commencing on the Effective Date and continuing thereafter throughout the Term, Lessor shall give notice to Lessee with respect to all matters of which Lessor obtains notice or knowledge affecting the Leased Premises.

13.2 Lessee's Representations. Lessee represents that: (a) Lessee is a political subdivision of the State of Ohio duly formed and validly existing under the laws of the State of Ohio and has or will obtain all material governmental licenses, authorizations, consents, approvals, and other qualifications required to carry on its business as now conducted and to be conducted pursuant to the terms of this Lease; (b) the execution, delivery, and performance by Lessee of this Lease are within the power of Lessee and have been authorized by all necessary action; (c) this Lease has been duly executed and delivered by Lessee; and (d) this Lease and documents referred to herein constitute valid and binding obligations of Lessee.

#### 14. Insurance.

14.1 Kinds and Amounts of Insurance. Lessee shall, at its sole cost and expense, take out and maintain during the Term such liability and property insurance as it customarily carries, with limits of liability or coverage not less than those Lessee customarily carries, with respect to similar facilities operated by Lessee.

14.2 Proof of Insurance. No later than seven (7) days after the Commencement Date, each party shall provide to the other party a certificate or certificates of insurance and an endorsement naming such other party as an additional insured or loss payee, as appropriate.

14.3 Blanket Policies. Any insurance required to be maintained may be taken out under a blanket insurance policy or policies covering other premises, properties or insured in addition to the Leased Premises.

14.4 Waiver of Subrogation. Lessor and Lessee hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property coverable by property, fire or extended coverage insurance policies even if such damage shall have been caused by the fault or negligence of the other party, or anyone claiming through or under such other party.

#### 15. Damage or Destruction.

15.1 Restoration. If Improvements are damaged or otherwise destroyed at any time after the Commencement Date, then this Lease shall remain in full force and effect and Lessee shall fully restore the Improvements, or cause the Improvements to be fully restored, to the condition existing prior to such damage or destruction to the extent of available insurance proceeds ("Restoration Work"). All Restoration Work performed or caused to be performed by Lessee shall be: (a) performed in compliance with the Applicable Laws, and (b) completed within twenty-four (24) months following the date of casualty, subject to Force Majeure; provided, that if such Restoration Work cannot reasonably be completed within such period, such date shall be extended so long as Lessee diligently and continuously prosecutes the completion of the Restoration Work. Notwithstanding the foregoing, if (i) the estimated cost of completing the Restoration Work, as determined by a contractor selected by Lessee, exceeds fifty percent (50%) of the fair market value of the Improvements; or (ii) less than five (5) years remain on the Term at the time of the damage or destruction, then Lessee shall have no obligation to complete such Restoration Work. In the event that Lessee shall elect not to restore the relevant Improvements pursuant to this Section 15.1, then Lessee shall cause all damaged Improvements, including debris, to be removed from the Leased Premises.

15.2 No Abatement. In the event of any damage or destruction to the Leased Premises, there shall be no abatement of rent or any other obligations of Lessee hereunder unless and until this Lease is terminated.

16. Environmental Matters. Lessor shall be responsible for the cleanup, removal, treatment, and/or remediation of Released Hazardous Materials on the Leased Premises as of the Commencement Date. Lessee shall be responsible for the cleanup, removal, treatment and/or remediation of Released Hazardous Materials on the Leased Premises occurring after the Commencement Date, provided such Release is caused by Lessee.

17. Condemnation.

17.1 Substantial Taking. If a Taking occurs, then Lessee shall have the right, at its option, exercisable at any time following the date of such Taking, to terminate this Lease in its entirety or with respect to the applicable portion of the Leased Premises, in which event the parties shall be released from all additional obligations or liability hereunder, without prejudice to any rights that have accrued prior to such termination.

17.2 Award. In the event of a Taking, the Award shall be paid to and solely retained by Lessee, and the payment or other award attributable to the value of the Leased Premises or leasehold estate shall be paid to and retained solely by Lessor. Lessee waives any right to recover the value of its leasehold estate.

17.3 Partial Taking; Restoration of the Leased Premises. If less than a substantial portion of the Leased Premises is the subject of a Taking, or if a substantial portion or more is the subject of a Taking but Lessee does not terminate this Lease as provided in Section 17.1, or in the event of any temporary Taking, then Lessee shall restore or cause to be restored, to the extent of funds received by Lessee from the Award, the remainder of the Leased Premises to a complete architectural unit suitable for Lessee's use and otherwise to a state comparable to that which existed immediately prior to the date of Taking, and this Lease shall remain in effect without abatement of any obligations hereunder.

18. Subordination and Estoppel.

18.1 Subordination. Lessor reserves the right to request from Lessee, and Lessee shall deliver to Lessor, within ten (10) days after receipt of such demand, a waiver of priority or subordination of this Lease, in recordable form, subordinating this Lease in favor of any mortgage placed upon the Leased Premises, or any part thereof, from time to time by Lessor; provided that Lessor shall procure from any such mortgagee an agreement providing in substance that so long as Lessee shall faithfully discharge the obligations on its part to be kept and performed under the terms of this Lease, Lessee's tenancy will not be disturbed by any default under such mortgage. Lessee agrees that this Lease shall remain in full force and effect even though default in the mortgage may occur. Lessee agrees to attorn to any mortgagee or purchaser in a foreclosure sale against Lessor.

18.2 Estoppel. The parties hereby reserve the right to demand and obtain from each other, and the other shall deliver to the requesting party within ten (10) days after receipt of such request, a true and accurate estoppel certificate indicating that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that requesting party is not in default in the performance of its covenants hereunder (or if there are such defaults, specifying the same), the Commencement Date and Term, the amount of rent and such other information as the requesting party shall request.

19. Notice of Dispute. Each party shall give the other party prompt written notice of any claim, breach or dispute coming to its knowledge that in any way directly or indirectly affects the interests of such other party, which other party shall have the right to participate in the defense of such dispute to the extent of its interest.

20. Assignments, Transfers, and Other Parties.

20.1 Assignment and Transfer by Lessee.

20.1.1 Lessee shall not assign, transfer, convey, or otherwise dispose of this Lease, or its right to execute it, or its right, title, or interest in it or to it, or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Lease, except with the written consent of Lessor. The giving of any such consent to a particular transfer shall not dispense with the necessity of such consent to any further or other assignments.

20.1.2 Notwithstanding the foregoing or any other provision of this Lease to the contrary, on one or more occasions (with Lessor's prior consent), Lessee may enter into a Lessee Mortgage, pursuant to Financial Accounting Standards Board Statement No. 13 (as the same exists on the date hereof or hereafter may be modified); provided, however, that all rights acquired thereunder by the mortgagee (or its equivalent) or other holder from time to time with respect to any Lessee Mortgage shall be subject to this Lease and to all right and interest of Lessor herein and provided further that Lessor shall cooperate with Lessee so that, if Lessee so elects, Lessee will be able to procure a Lessee Mortgage (by way of illustration and not limitation, Lessor agrees, if Lessee so requests, to execute and deliver to Lessee or its existing or proposed mortgagee or other holder instruments duly authorized and executed on behalf of Lessor that relate to this Lease such as modifications of this Lease reasonably requested by

Lessee' existing or proposed mortgagee or other holder or certificates that may provide, for example, that this Lease sets forth the entire agreement between Lessee and Lessor with respect to the Leased Premises and such other matters as may be requested by Lessee' existing or proposed mortgagee or other holders).

20.2 Assignment and Transfer by Lessor. Lessor shall not sublet, assign, transfer, convey, sell, mortgage, pledge or encumber this Lease or the Leased Premises hereunder without in each instance first obtaining authorization of Lessee, which authorization shall not be unreasonably withheld, conditioned or delayed. Any transfer or assignment by merger, consolidation, stock purchase, operation of law or in any other manner whatsoever shall likewise be prohibited without prior authorization of Lessee and shall constitute a default hereunder.

20.3 Subletting. Notwithstanding any provision of this Lease to the contrary, Lessee may sublet or permit the use of all or any portion of the Leased Premises for purposes not inconsistent with the purposes described in Chapter 1545 of the Ohio Revised Code (as the same may be amended from time to time). Subletting shall not relieve Lessee of any of its obligations under this Lease.

20.4 No Third Party Beneficiaries. Nothing in this Lease shall be construed to create any third party beneficiaries under this Lease.

21. Quiet Enjoyment. Upon paying the rent set forth in Section 7.1, and all other charges to be paid by Lessee as herein provided, and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, Lessee shall quietly have and enjoy the Leased Premises during the Term without hindrance, interference, or molestation of any sort by anyone whomsoever.

22. Right of Entry. Upon reasonable prior written notice, Lessor, through its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times (provided that there shall be no unreasonable or material interference with the use or occupancy of the Leased Premises by Lessee under this Lease) to enter upon the Leased Premises for all reasonable purposes, including for the purpose of inspecting the same and for the purpose of exercising any other rights or remedies of Lessor under this Lease. Nothing herein shall imply any duty upon the part of Lessor so to inspect the Leased Premises, or to do any repairs or work that any such inspection may disclose to be necessary, and no exercise or failure by Lessor to exercise any rights or remedies under this Lease shall constitute a waiver or any such right or remedy or of Lessee' default, if any, in connection therewith.

23. Financial Records.

23.1 Retention of Financial Records. Lessee shall maintain for a reasonable period, but no less than the applicable statute of limitations period, all records required to document Lessee's compliance with its obligations to Lessor.

23.2 Inspection of Books and Records. Each party shall permit the other party to inspect, audit, and copy all books and records maintained or required to be maintained with respect to the Leased Premises. Each party agrees to conduct any such inspections and audits only during the normal business hours and at such party's sole cost and expense.

24. Default.

24.1 Events of Default. Each of the following shall constitute a default by either party:

24.1.1 A party makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;

24.1.2 A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against a party and is not dismissed within thirty (30) days after the filing thereof;

24.1.3 Except as permitted hereunder, any lien is filed against the Leased Premises because of any act or omission of a party and is not discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise, within one hundred eighty (180) days;

24.1.4 A party fails duly and punctually to pay any monies required hereunder to the other party within sixty (60) days after receipt of notice given in accordance with Section 25; and

24.1.5 A party fails to keep, perform, and observe every other promise and agreement set forth herein on its part to be kept, performed, or observed within one hundred twenty (120) days after receipt of notice of default hereunder from the other party, except where fulfillment of its obligations requires activity over a period of time and such other party has commenced to perform whatever may be required for fulfillment and continues such performance without interruption.

24.2 Remedies For Default. Upon occurrence of any of any default pursuant to Section 24.1, and at any time thereafter during the continuance thereof, the non-defaulting party may, at its option, exercise concurrently or successively any one or more of the remedies then available to the non-defaulting party under the laws of the State of Ohio, except that Lessor shall have no right to re-enter, recover possession of the Leased Premises, or terminate this Lease unless it be ordered by a court having jurisdiction over the Leased Premises that Lessee is in violation of Section 2.5 hereof and that no other remedy, legal or equitable, will be adequate under the circumstances to protect Lessor's interests. Without limiting the generality of the foregoing, Lessee shall have the right, but not the obligation, to cure a default by Lessor, in which case Lessor promptly shall reimburse Lessee for its costs and expenses incurred in connection therewith upon presentation of an invoice therefor.

24.3 No Waiver of Default. No waiver by either party at any time of any of the terms or conditions of this Lease shall be deemed or taken as a waiver at any time thereafter of the same or any other term or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of either party to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of any commission then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquishment thereof, or acquiescence therein and no notice by either party shall be required to restore or revive any option, right, power, remedy or privilege after waiver

by such party of default in one or more instances. No waiver shall be valid against either party unless reduced to writing and signed.

25. Notices.

25.1 Form of Notices. Any notices, consents or approvals required or permitted hereunder shall be in writing and personally delivered or sent by registered or certified mail, and shall be deemed to have been served or given when personally delivered or three (3) days after said notice, consent or approval has been deposited, postage prepaid, in a post office, branch post office, or post office box regularly maintained by the United States Government.

25.2 Notices to Lessor. Notices to Lessor shall be delivered or addressed to it at:

City of Maple Heights  
Attention: Mayor  
5353 Lee Road  
Maple Heights, Ohio 44137

With a copy to:

City of Maple Heights  
Attention: Law Director  
5353 Lee Road  
Maple Heights, Ohio 44137

or to such other person or place as Lessor may designate in writing.

25.3 Notices to Lessee. Notices to Lessee shall be delivered or addressed to it at:

Board of Park Commissioners of the  
Cleveland Metropolitan Park District  
Attn: Chief Executive Officer  
4101 Fulton Parkway  
Cleveland, Ohio 44144

with a copy to:

Board of Park Commissioners of the  
Cleveland Metropolitan Park District  
Attn: Chief Legal & Ethics Officer  
4101 Fulton Parkway  
Cleveland, Ohio 44144

or to such other person or place as Lessee may designate in writing.



26. Construction of Lease. All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any paragraph or clause herein may require, the same as if such words have been fully and properly written in the number and gender. Each party agrees that no representation or warranties of any type shall be binding upon the other party, unless expressly authorized in writing herein. The headings of sections and paragraphs, if any, to the extent used herein are used for reference only, and in no way define, limit or describe the scope or intent of any provisions hereof. This Lease may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument. The exhibits attached hereto are hereby incorporated in and made a part of this Lease.

26.1 Amendments To Be In Writing. This Lease shall not be changed, modified, discharged or extended except by written instrument executed by both parties in recordable form pursuant to the laws of the State of Ohio and the ordinances and charter of the City of Cleveland, Ohio.

26.2 Severability. If any term or provision of this Lease is held invalid, illegal or unenforceable by any court of competent jurisdiction, the validity, illegality or unenforceability shall not affect any other term or provision hereof. This Lease shall be interpreted and construed as if such term or provision, to the extent it has been held invalid, illegal or unenforceable, had never been contained herein.

26.3 Lessor and Lessee Not Partners. Nothing contained in this Lease shall be deemed to constitute Lessor and Lessee as partners in a partnership or joint venture for any purpose whatsoever.

26.4 Laws of Ohio. This Lease shall be construed in accordance with the laws of the State of Ohio.

26.5 Compliance With Laws. Each of Lessor and Lessee covenants and agrees at all times to comply with all Applicable Laws of the federal government, the State, ordinances of Lessor and all applicable rules and regulations of Lessor, Lessee, or other agencies, and shall be responsible for securing, at its own expense, any and all licenses, permits and certificates of inspection required by law or by this Lease with respect to its activities hereunder. Without limiting the generality of the foregoing, each of Lessor and Lessee, as applicable, shall at all times during the Term subscribe to and comply with the Workers' Compensation Laws of the State of Ohio and pay such premiums as may be required thereunder.

26.6 Approval and Consent. Any provision of this Lease requiring the approval or consent of Lessor, satisfaction of Lessor or certification, determination or opinion of Lessor, or any official or employee thereof, shall be interpreted as requiring the written action of the Director of Public Works granting, authorizing or expressing approval, satisfaction, certification, determination or opinion, as the case may be. In each case in which this Lease provides for the approval or consent, such approval or consent shall not be unreasonably withheld, conditioned or delayed, unless the express language of the Lease provides that approval or consent may be withheld or granted in a party's sole discretion.

[Signatures on next page]



IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the Effective Date.

LESSOR:

CITY OF MAPLE HEIGHTS

Approved as to legal form:

By: \_\_\_\_\_  
Annette M. Blackwell, Mayor

By: \_\_\_\_\_  
Frank Consolo, Law Director

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

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

LESSEE:

BOARD OF PARK COMMISSIONERS OF THE  
CLEVELAND METROPOLITAN PARK DISTRICT

Approved as to legal form by Rosalina  
M. Fini, Chief Legal & Ethics Officer:

\_\_\_\_\_  
Kyle G. Baker, Senior Assistant Legal  
Counsel

By: \_\_\_\_\_  
Brian M. Zimmerman, Chief Executive Officer

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF CUYAHOGA )

Before me a Notary Public in and for said County and State, personally appeared the City of Maple Heights, a municipal corporation, by Annette M. Blackwell, its Mayor, who acknowledged that she did sign the foregoing Lease and that the same is her free act and deed personally and as said officer, and the free act and deed of the City of Maple Heights.

IN TESTIMONY WHEREOF, I hereunto have set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF CUYAHOGA )

Before me a Notary Public in and for said County and State, personally appeared the Board of Park Commissioners of the Cleveland Metropolitan Park District, a political subdivision of the State of Ohio, by Brian M. Zimmerman, its Chief Executive Officer, who acknowledged that he did sign the foregoing Lease and that the same is his free act and deed personally and as said officer, and the free act and deed of said Board of Park Commissioners of the Cleveland Metropolitan Park District.

IN TESTIMONY WHEREOF, I hereunto have set my hand and official seal at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

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

This instrument was prepared by,  
and should be returned to:  
Cleveland Metroparks  
Attn: Chief Legal & Ethics Officer  
4101 Fulton Parkway  
Cleveland, Ohio 44144

**Exhibit A**

**Legal Description and Depiction of Dunham Park**

**Exhibit B**

**Form of Estoppel Certificate**

[see attached]

## TENANT ESTOPPEL CERTIFICATE

The undersigned ("Tenant") is the tenant under that certain Option and Land Lease dated August 5, 2014 between the City of Maple Heights, Ohio ("Landlord") and SBA Towers V, LLC, a Florida limited liability company, as evidenced by a certain Memorandum of Option and Land Lease dated August 5, 2014 and recorded on September 8, 2014 as Instrument No. 201409080010 (collectively, the "Lease"), pursuant to which Tenant is leasing a portion of Landlord's property known as Dunham Park, located in Maple Heights, Ohio (the "Property") on which Tenant has constructed a communications tower (the "Tower"). The Landlord is in the process of leasing the Property (the "Transaction") to the Board of Park Commissioners of the Cleveland Metropolitan Park District ("Metroparks"). In connection with the foregoing, Landlord hereby requests that Tenant certify certain facts to Metroparks in order to induce Metroparks to lease the Property.

Tenant hereby covenants, agrees and certifies to Metroparks and its successors and assigns as follows:

- (i) The Lease is in full force and effect according to its terms.
- (ii) The present term of the Lease expires on \_\_\_\_\_, and may be extended for \_\_\_\_\_ additional \_\_\_\_\_-year terms.
- (iii) Neither Tenant nor, to Tenant's knowledge, Landlord is in default under the Lease.
- (iv) The current [**monthly/annual**] rental payment due under the Lease as of the date hereof is \$\_\_\_\_\_ and has been paid through \_\_\_\_\_.
- (v) Tenant acknowledges and agrees that Landlord has the right to use the remainder of the Property not exclusively occupied by Tenant for any purpose whatsoever, including leasing the Property.
- (vi) The Lease has not been amended.
- (vii) Tenant hereby waives its Right of First Refusal contained in the Lease as the same may apply to the Transaction.

Tenant acknowledges and agrees that the Landlord shall continue to be the landlord under the Lease and Tenant shall look solely to the Landlord for the performance of all landlord obligations under the Lease.

Tenant hereby acknowledges and agrees that Metroparks and its successors and assigns will rely on this Tenant Estoppel Certificate in agreeing to lease the Property.

SBA Towers V, LLC, a Florida limited liability  
company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **REAL ESTATE OPTION CONTRACT**

THIS REAL ESTATE OPTION CONTRACT (this “Contract”) is made as of December \_\_\_\_, 2017 (the “Effective Date”) by **WALLICK ASSET MANAGEMENT LLC**, an Ohio limited liability company (the “Purchaser”) and **CITY OF MAPLE HEIGHTS, OHIO**, a municipality of the State of Ohio (the “Seller”).

1. **Grant of Option.** Seller grants to Purchaser a sole and exclusive option (an “Option”) to purchase the real property, improvements, appurtenances and the personal and intangible property connected thereto, located on Lee Road, Maple Heights, Cuyahoga County, Ohio, as described in Exhibit A (the “Property”), on the terms and conditions set forth in this Contract.

2. **Option Period; Fee; Extension.** The Option is granted for the period of time between the Effective Date and 11:59 p.m. on December 31, 2018 (the “Option Period”). Purchaser shall pay an option fee of Two Thousand Five Hundred Dollars (\$2,500.00) for this option period (the “Option Fee”). Purchaser shall have the option to extend the Option Period until 11:59 p.m. on June 30, 2019 provided that, before the expiration of the Option Period, Purchaser pays an additional option fee of One Thousand Five Hundred Dollars (\$1,500.00) (the “First Option Extension Fee”). Purchaser shall have an additional option to extend the Option Period until 11:59 p.m. on December 31, 2019 provided that, before the expiration of the current Option Period, Purchaser pays an additional option fee of One Thousand Dollars (\$1,000.00) with the Title Company (the “Second Option Extension Fee”, and together with the First Option Extension Fee, the “Extension Fees”).

3. **Exercise of Option.** At any time during the Option Period, Purchaser may exercise the Option by giving written notice to Seller of its election to exercise the Option. If the Option is exercised, subject to the terms and conditions of this Contract, Seller shall sell the Property to Purchaser on the terms set forth herein.

4. **Disposition of Option Fee.** The Option Fee and any Extension Fees paid shall be held by Seller until Closing or the termination of this Contract. Seller may retain the Option Fee and any Extension Fees paid whether or not the Option is exercised except as otherwise provided herein. If the Option is exercised and the transaction closed, the Option Fee and any Extension Fees paid shall be applied as a credit to Purchaser against the purchase price. The Option Fee any Extension Fees paid shall be returned to Purchaser only if, and under the specific circumstances as may be expressly provided for in this Contract.

5. **Purchase Price; Payment.** The purchase price for the Property is Thirty Thousand Dollars (\$30,000.00) plus the actual third party costs and expenses of the Seller incurred in connection with the sale of the Property in an amount not to exceed an additional \$7,500.00 (the “Purchase Price”). The purchase price, as adjusted by the credits and prorations described in this Contract, shall be payable in full at the Closing by wire transfer of immediately available funds.

6. **Title; Survey.** Upon receipt of the purchase price, Seller shall convey marketable record title to the Property by Limited Warranty Deed (the “Deed”). Purchaser shall accept such title subject to the “Permitted Exceptions” (as defined below in this Section 6). The “Permitted Exceptions” is defined as and shall include: current taxes and assessments not yet due and payable for the year in which the Closing occurs and those title matters to which Purchaser agrees may affect the Property.

7. **Closing.** The closing of the sale and purchase of the Property (the “Closing”) shall take place on a mutually agreed day, as a mail closing through the office of Mercantile Title Agency, Inc. (the “Title Company”) within thirty (30) days after Purchaser exercises the Option subject to the satisfaction of all

contingencies and conditions precedent set forth in this Contract. Unless otherwise mutually agreed by Purchaser and Seller, this transaction shall be closed in escrow by the Title Company under instructions prepared by Purchaser and reasonably acceptable to Seller to conform to this Contract. The cost of the escrow shall be a cost and expense of Purchaser.

At the Closing, Seller shall deliver the Deed and other agreements and affidavits as required by the Title Company and in compliance with applicable law. Purchaser shall (i) deliver the purchase price (as adjusted for credits and prorations) to the Title Company for disbursement at the direction of Seller, (ii) pay the fees for recording the Deed, and (iii) pay the costs of any title insurance policies. Both Purchaser and Seller shall execute a closing statement reconciling the purchase price with the various adjustments.

**8. Taxes.** The real estate taxes shall be apportioned between Purchaser and Seller at the closing in the following manner:

(a) Seller shall pay all ad valorem real estate taxes (the "Taxes") levied with respect to the Property which become a lien and are due and payable prior to the date of the Closing. The Taxes attributable to the year in which the Closing takes place are to be prorated from January 1 to the date of Closing. If the amount of such Taxes is not then ascertainable, credit and prorating shall be on the basis of the amount of the most recently ascertainable Taxes.

(b) Seller shall pay in full all special assessment installments becoming due and payable prior to the Closing. All other assessments, levies, installments and charges (the "Assessments") shall be Purchaser's responsibility, and shall be deemed to be excepted from any warranty of title given by Seller. Any Assessment becoming payable solely on account of Purchaser's actions or this transaction, including without limitation utility connection charges, shall be paid in full by Purchaser.

**9. Possession.** Possession of the Property shall be deemed to have passed to Purchaser at Closing.

**10. Right of Inspection.** It shall be Purchaser's option to investigate (or cause to be investigated) to Purchaser's sole and absolute satisfaction, and at Purchaser's expense, the state and condition of the Property and any other matters pertaining to it of interest to Purchaser, including, but not limited to, its zoning classification, topographic characteristics, tax classification, environmental condition, the availability of utilities, the contents of applicable restrictive covenants and building codes, its suitability for Purchaser's intended use, and whether satisfactory financing can be arranged.

(a) Access. During the term of the Option Period, Seller hereby grants to Purchaser and its agents, consultants, inspectors and contractors (the "Inspection Team"), the continuing right and license to enter onto the Property to perform its inspections, testing, studies and investigations of any kind or nature, including, without limitation: (i) surveys; (ii) inspections of the environmental conditions at the Property, which may include, without limitation, Phase I and/or Phase II environmental site assessments; (iii) soil tests, soil borings, and engineering studies, which may include, without limitation, soil, sub-soil, and groundwater investigations, to identify areas of "wetlands soil" or other conditions likely to increase cost of developing the site; and (iv) identification or other assessments regarding utility access for, including, without limitation, electricity, gas, water, sanitary sewer, and storm drains (collectively, the "Inspections"), all in accordance with the terms and conditions of this Agreement. Performance of all Inspections is at purchaser's sole risk and expense.

(b) Restoration of Property. Purchaser agrees to return the portion of the Property subjected to the Inspections by the Inspection Team to substantially the same condition existing prior to the

Inspections by the Inspection Team of the Property.

(c) **Insurance.** Before entering upon the Property, Purchaser shall furnish to Seller evidence of general liability insurance coverage of not less than \$1,000,000.

(d) **Indemnification.** Purchaser will indemnify and hold Seller harmless from any claim or damages arising out of any personal injury or property damage caused by or occurring by the Inspection Team at the Property, as long as Purchaser receives written notice of any such claim within 30 days of such Inspection; provided that in no event shall Purchaser be required to indemnify and hold Seller harmless from any claim and/or damages resulting from: (i) the negligence or willful misconduct of Seller, its agents or employees; or (ii) the Inspection Team's mere discovery of an existing condition or latent defect at the Property. Seller waives any right to collect consequential or punitive damages under this Contract. Purchaser has no liability to Seller for reduction in value to the Property that results from the discovery of matters or circumstances through the Inspections by the Inspection Team that existed on the Property prior to the Inspections or after the Inspections that was not caused by the Inspections or the Inspection Team. The indemnification obligation of Purchaser in this Contract shall survive termination of this Contract for 90 days from the termination of this Contract.

**11. Reliance.** Neither Seller nor any person authorized by Seller has made any statement on which Purchaser may rely about the Property that is not set forth in this Contract.

**12. Confidentiality.** All knowledge, information, or data that is obtained by, or disclosed to, Purchaser under this Contract shall be held in strictest confidence by Purchaser and shall not be disclosed to any third party unless and until the Closing occurs or Purchaser is required to disclose such knowledge, information, or data by law.

**13. Performance.** Time is of the essence of this Contract. In the event of default by Purchaser, Seller may, at its option, terminate this Contract and retain the Option Fee as a penalty, but not as liquidated damages, and pursue whatever other remedies it may have against Purchaser. In the event of default by Seller, Purchaser's remedies shall be limited to either: (i) terminating the Contract, in which event Seller shall return to Purchaser the Option Fee; or (ii) seeking specific performance of this Contract.

**14. Successors and Assigns.** This Contract shall bind Purchaser and Seller and anyone succeeding to their interests in this Contract. Purchaser may assign this Contract without Seller's prior written permission and upon notice to Seller. Notwithstanding the foregoing, Seller may not assign its interest in this Contract without the prior written consent of Purchaser.

**15. Amendment.** This Contract represents Purchaser's and Seller's entire agreement. It supersedes all prior statements, negotiations and agreements, whether written or oral. This Contract may not be amended, altered or modified except by a written instrument executed by Purchaser and Seller.

**16. Notices.** During the term of this Contract, or until written notice of a change in address is delivered to the other party, all notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and delivered personally, by certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier (such as Federal Express), or by email transmission with a copy to follow by certified mail, return receipt requested, postage paid or by overnight courier, addressed as follows:

Seller:                      The City Of Maple Heights  
5353 Lee Road



Maple Heights, Ohio 44137  
Attn: Frank Consolo, Law Director  
Email: [fconsolo@mapleheightsohio.com](mailto:fconsolo@mapleheightsohio.com)

Purchaser: Wallick Asset Management LLC  
160 West Main Street, Suite 200  
New Albany, Ohio 43054  
Attn: Timothy A. Swiney, Senior Vice President  
Email: [tswiney@wallick.com](mailto:tswiney@wallick.com)

with a copy to: Dinsmore & Shohl, LLP  
191 West Nationwide Blvd., Suite 300  
Columbus, Ohio 43215  
Attn: Jodi Diewald Dyer, Esq.

Any such notices shall be deemed to have been given on the day after the date on which the notice was delivered to the overnight courier for delivery (with all delivery fees paid, if the party sending the notice does not have an established account with the courier permitting delayed billing), or two days after the date the notice was deposited for mailing in a United States Post Office or mail receptacle with proper postage affixed if the notice was sent by certified mail.

**17. Choice of Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.

**18. Third Parties.** There are no third-party beneficiaries to this Contract.

**19. Recording.** This Option may be recorded at the request of Purchaser or Seller and at the costs and expense of Purchaser.

**20. Severability.** The invalidity or unenforceability of any provision of this Contract shall, at the option of Seller or Purchaser, invalidate the entire Contract, upon which Seller shall promptly return the Option Fee to Purchaser. Otherwise, the remainder of this Contract shall remain in full force and effect.

**21. Attorney's Fees.** If litigation arises out of or in connection with this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs. The "prevailing party" is the party that obtains substantially the result sought, whether by settlement, dismissal or judgment, and if such dismissal occurs other than by settlement, it is the non-dismissing party. Notwithstanding the foregoing, if the judgment obtained awards only nominal damages, then neither party is the prevailing party.

**22. Execution.** The submission of this Contract for examination does not constitute an offer to sell and this Contract shall become effective only upon execution and delivery hereof by Purchaser and Seller.

**23. Counterparts.** This Contract may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement. This Contract and the signatures to this Agreement may be transmitted by facsimile or electronic transmission (via scan). Facsimiles or electronic transmissions (via scan) of signatures shall be deemed to constitute original signatures and facsimiles or electronic transmissions (via scan) of this Contract and shall be deemed to constitute a single, enforceable instrument.

*[Signatures on the Next Page.]*

**REAL ESTATE OPTION CONTRACT**

**IN WITNESS WHEREOF**, the undersigned has executed this Real Estate Option Contract as of the day and year above first written.

**PURCHASER:**

**WALLICK ASSET MANAGEMENT LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_  
Timothy A. Swiney, Senior Vice President

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me, a Notary Public, in and for said county and state, this \_\_\_\_\_, 2017, by Timothy A. Swiney, the Senior Vice President of Wallick Asset Management LLC, an Ohio limited liability company, on behalf of said limited liability company.

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

**REAL ESTATE OPTION CONTRACT**

**IN WITNESS WHEREOF**, the undersigned has executed this Real Estate Option Contract as of the day and year above first written.

**SELLER:**

**THE CITY OF MAPLE HEIGHTS,**  
a municipality of the State of Ohio

By: \_\_\_\_\_  
Name: Annette M. Blackwell  
Title: Mayor

Approved as to form:

By: \_\_\_\_\_  
Name: Frank Consolo  
Title: Law Director

STATE OF OHIO,  
COUNTY OF CUYAHOGA, SS:

The foregoing instrument was acknowledged before me, a Notary Public, in and for said county and state, this \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of **City of Maple Heights, Ohio**, a municipality of the State of Ohio, on behalf of said municipality of the State of Ohio.

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

**REAL ESTATE OPTION CONTRACT**

**Exhibit A**

**LEGAL DESCRIPTION OF PROPERTY**

The following six (6) separate but adjoining parcels located on Lee Road in Maple Heights, Cuyahoga County, Ohio, 44137:

Tax Parcel Numbers: 781-06-004, 781-06-005, 781-06-006, 781-06-007, 781-06-008, and 781-06-009

Legal Descriptions are Attached.

**ORDINANCE NO. 2017-125**

**INTRODUCED BY:** Mayor Annette M. Blackwell

**MOTION FOR ADOPTION BY:**

**AN ORDINANCE AUTHORIZING THE FINANCE DIRECTOR TO PREPARE AND FILE AN AMENDED 2018 CERTIFICATE OF ESTIMATED RESOURCES WITH THE CUYAHOGA COUNTY FISCAL OFFICER, AND DECLARING AN EMERGENCY.**

**WHEREAS**, R.C. 5705.36 requires that at the beginning of each fiscal year the Finance Director must certify to the County Fiscal Officer the total amount from all sources available for expenditures from each fund set up in the tax budget, including certain unencumbered balances that existed at the end of the preceding year; and

**WHEREAS**, the Finance Director has recommended to Council that she be authorized, pursuant to R.C. 5705.36, to certify and file with the Cuyahoga County Fiscal Officer an amended official 2018 Certificate of Estimated Resources, as set forth in the attached Exhibit A to reflect the 2018 Appropriations Budget.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

**Section 1.** The Finance Director is hereby authorized, pursuant to R.C. 5705.36, to file with the Cuyahoga County Fiscal Officer an amended official 2018 Certificate of Estimated Resources, as set forth in the attached Exhibit A, which is incorporated as if fully rewritten herein.

**Section 2.** It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in open 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 meetings open to the public, in compliance with all legal requirements including the City's Charter and Codified Ordinances and Section 121.22 of the Ohio Revised Code.

**Section 3.** This Ordinance is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of the City and for the further reason to insure the financial integrity of the City and present the amended 2018 Certificate of Estimated Resources to the County Fiscal Officer by December 31, 2017. It shall therefore become effective upon its passage by the affirmative vote of not less than five (5) members of Council and approval by the Mayor; otherwise, it shall become effective at the earliest time allowed by law.

PASSED: \_\_\_\_\_, 2018

\_\_\_\_\_  
Ron Jackson, President of Council

\_\_\_\_\_  
Annette M. Blackwell, Mayor

Ordinance No. 2017-125  
Page Two

Approved as to legal form:

\_\_\_\_\_  
Frank Consolo, Director of Law

ATTEST: \_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

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

\_\_\_\_\_  
Leonette F. Cicirella, Clerk of Council