

RESOLUTION NO. 3019

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT FOR REAL PROPERTY LOCATED AT 11 SOUTH FIRST STREET, MIAMISBURG, OHIO AND TO SUSPEND THE NECESSITY OF ADVERTISING AND RECEIVING PROPOSALS TO LEASE SUCH PROPERTY AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg owns real property located at 11 South First Street; and

WHEREAS, Mr. Pelphrey, the owner of the adjoining property at 18 E. Central Avenue, Miamisburg, OH 45342, expressed a desire to lease a portion of said property for use as an outdoor patio space; and

WHEREAS, said real property is currently underutilized; and

WHEREAS, by leasing said property, Mr. Pelphrey will be able to utilize an underused area while improving the livability of his living space in Downtown Miamisburg; and

WHEREAS, by leasing said property, Mr. Pelphrey has agreed to maintain the lease area and improve the appearance of the same; and

WHEREAS, City Council approved a lease for this property to Mr. Pelphrey in 2021; and

WHEREAS, this resolution would serve as a renewal of the previously approved lease for a five (5) year term.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a Lease Agreement with Mr. Brian Pelphrey for rental of the property located at 11 South First Street, Miamisburg, OH 45342. Said lease is attached hereto as Exhibit A.

Section 2.

This measure is declared an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for further reason that the previous lease has expired, and it is in the best interest of the parties to renew the lease in a timely manner, therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 2, 2024

Attested: 
Keysha Alexander, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

EXHIBIT A

LEASE AGREEMENT

This Lease is made and entered into this _____ day of _____, 2024 by the and between the City of Miamisburg, hereafter "Lessor", and Brian A. Pelphrey, hereafter "Lessee".

SECTION 1 – DESCRIPTION OF PROPERTY

The Lessor in consideration of rents and covenants herein contained and by said Lessee to be paid and performed, does hereby grant, demise, and lease to the said Lessee real property located at 11 S. First Street, Miamisburg, OH, and further described in the attached "Exhibit A", hereafter "Leased Premises".

SECTION 2 – USE OF PREMISES

The Leased Premises shall be used as a location for patio furniture and associated fencing (no taller than 38") and landscaping. The Lessee shall not, without the Lessor's written consent, assign this Lease, or let or underlet the whole or any part of the leased premise, or permit any other use of or make any alterations to the Premises unless provided for in this Lease Agreement.

SECTION 3 – TERM OF LEASE AND RENTAL AMOUNTS

The term of this Lease shall be for a period of five (5) years commencing upon _____, 2024 and ending on _____, 2029. Lessee agrees to pay Lessor rent at the rate of one-hundred dollars (\$100.00) per year due and payable on or before the commencement of this agreement.

Lessee shall provide Lessor with a 30-day written notice of any intention to vacate the Leased Premises.

Lessor shall have the right to terminate this lease upon a 30-day written notice to Lessee for the purpose of utilizing the space for public purposes.

SECTION 4 – POSSESSION

Lessee shall have possession of said premises upon execution of this lease.

SECTION 5 – TAXES

Lessor shall pay all real estate taxes and assessments on said leased premises as they become due and payable.

SECTION 6 – CONDITION OF PREMISES

The Premises is an existing vacant lot that has been utilized as an area to store and access utility equipment for adjoining buildings and as a greenspace Downtown. The purpose of this lease agreement is to provide the Lessee with a location that can serve as an outdoor patio to the Lessee's living space located at 18 E. Central. The Lessee hereby agrees to provide a plan as required in Section 7 below and keep the Premises in a neat and orderly appearance including the continued maintenance of any improvements made by Lessee.

SECTION 7 – ALTERATIONS

Lessee shall provide the Lessor with a detailed plan on how the Lessee will utilize the space with regards to placement and styles of landscaping, fencing, pavers, and any other proposed use of the leased space. Such plans shall be approved by the Development Department prior to implementation.

SECTION 8 – REPAIRS AND MAINTENANCE

Lessee shall maintain any and all alterations constructed by Lessee and keep the remaining portions of the Premises in a neat and orderly condition. Lessor shall be responsible for the mowing of grass and maintaining any new landscaping installed on the Premises.

SECTION 9 – LIABILITY

Lessor shall not be liable for any damage occasioned by Lessee's occupancy.

Lessee shall protect, indemnify and save harmless Lessor from and against all loss, costs, damage, judgments and expenses including attorney fees occasioned by or arising out of any accident or other occurrence causing or inflicting injury and damage to any person or property, happening or done in, upon or about the Leased Premises, due directly or indirectly to the use thereof, or any party thereto, by the Lessee or any person claiming through or under the Lessee.

SECTION 10 – DAMAGE AND DESTRUCTION

If the Premises are damaged by fire or other casualty, in whole or in part, the same cannot be repaired within sixty (60) days of such happening, then the Lessor shall have the option to terminate this Lease by giving Lessee written notice.

SECTION 11 – INSURANCE

Lessee shall maintain and pay during the term of this Lease, Public Liability Insurance with limits of not less than \$300,000.00 as to any one person and \$1,000,000.00 as to any one accident with riders attached naming the Lessor as one of the insureds. Lessee shall deliver to the Lessor an insurance binder from the insurance company issuing such policy evidencing the existence of such policy. Lessor shall be named as an additional insured on such insurance policy.

SECTION 12 – CONDEMNATION

If (i) all or part of the premises are taken or condemned by a competent authority for a public road, quasi-public use or purpose, or if there is a negated purchase by such authority under threat of such taking, and if the loss of that part so taken substantially interferes with the use of the premises by Lessee, or (ii) due to any such taking, access to the premises by Lessee, then and in any such event Lessor may terminate the Lease by giving Lessee written notice at any time after the occurrence of any of the foregoing and such termination shall be effective as of the date of the occurrence of such event, if part of the premises is taken without substantially interfering with the use of the premises by Lessee, the Lease shall not terminate.

Any award for condemnation, whether in whole or in part of the Leased Premises shall belong to Lessor and Lessee shall not be entitled to any value for damages or loss to Lessee's leasehold interest herein.

SECTION 13 – ASSIGNMENT~SUB-LETTING, LESSOR'S LIEN

Lessee shall not assign this Lease or any interest herein or hereunder without Lessor's written consent nor permit Lessee's interest under this Lease or any part thereof to be sold or assigned by operation of law or under execution or other legal process or under Order of Court or otherwise, without the written consent of the Lessor; and that at the end of said term Lessee will deliver said premises in as good order and condition as they now are, or may be put by said Lessee, reasonable use and ordinary wear and tear thereof and damage by fire or other unavoidable casualty excepted; and the interest of said Lessee in and to the same, in favor of Lessor, Lessor's successors, and assigns, prior and preferable to any and all other liens thereupon whatsoever.

SECTION 14 – ACCESS TO PREMISES

Lessee shall have reasonable access to such premises by way of ingress, egress, and regress. Such access shall be in a reasonable manner and during reasonable hours. Lessor and/or Lessor's authorized representatives shall have the right to enter the Leased Premises at all reasonable hours for the purpose of fulfilling Lessor's responsibilities under this Lease Agreement without written notice to Lessee.

Due to the presence of utility equipment in the general area of the Leased Premises, the Lessor, applicable utility companies, and/or contractors conducting work or maintenance on such utility equipment shall have access at all reasonable hours to the premises for any needed utility work.

SECTION 15 – FOREFEITURE AND RE-ENTRY

If Lessee shall fail to keep any of the other covenants to this Lease by said Lessee and such failure continues for ten (10) days after written notice is given to Lessee, it shall be lawful for said Lessor, Lessor's heirs or assigns, to re-enter upon the premises and thereupon this Lease, and all rights of the Lessee thereunder shall cease, terminate and be void.

SECTION 16 – CUMULATIVE REMEDIES

The remedies to which Lessor may resort under this Lease Agreement are cumulative and are not intended to be exclusive of any other remedy to which Lessor may be entitled by law or in equity. The failure of the Lessor to insist on strict performance of any of the provisions of this Lease Agreement or exercise any right herein contained shall not constitute a waiver on the part of the Lessor. The acceptance required hereby with knowledge of a breach by Lessee of any provisions herein shall not constitute a waiver of such breach.

SECTION 17 – ABANDONED PROPERTY

In the event the Lessee leaves any property on the Leased Premises for more than thirty (30) days after termination of this Lease for any cause, such property shall become Lessor's sole property without any liability on Lessor's part other than to pay to Lessee the net proceeds from any disposition of said property less expenses of such disposition and less any other amounts then due or becoming due from Lessee to Lessor under the terms of this Lease Agreement.

SECTION 18 – QUIET ENJOYMENT

Lessor covenants that Lessor has the full right and authority to make the lease and that if Lessee pays the rent and performs all of the terms of the Lease, Lessee shall peacefully and quietly enjoy and possess the premises throughout the term thereof, subject only to the conditions therein set forth.

SECTION 19 – WAIVER OF SUBROGATION

Each party hereto waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance, subject to the limitation that his waiver shall apply only when permitted by the applicable policy of insurance.

The parties hereto agree to use good faith efforts to have any and all fire, extended coverage or any and all material damage insurance which may be carried, endorsed with the following subrogation clause: "This insurance shall not be invalidated should the insured waive in writing prior to a loss any and all right of recovery against any party for loss occurring to the property described herein." Each party agrees to notify the other party promptly in the event said party is unable to obtain a waiver from its insurer.

SECTION 20 – PAYMENT NOTICES

The yearly lease payment shall be payable to the City of Miamisburg and mailed to Finance Director, City of Miamisburg, 10 North First Street, Miamisburg, Ohio 45342.

All notices and demands which may be required to be served upon Lessor and Lessee may be given by personal service or may be given by depositing a copy of it in the U.S. Mail, postage prepaid, registered or certified mail, addressed as follows:

To Lessor: City Manager
 City of Miamisburg
 10 North First Street
 Miamisburg, Ohio 45342

To Lessee: Brian A. Pelphrey
 18 E. Central Avenue
 Miamisburg, OH 45342

SECTION 21 – SUCESSORS AND ASSIGNS

This lease shall be binding upon and inure to the benefit of the successors, executors, administrators, heirs and assigns of the Lessor and the successors of the Lessee, as well as any assignees of the Lessee to which Lessor has in writing agreed as herein provided. Provided, however, that this Lease shall not be assigned without the written consent of the Lessor.

SECTION 22 – PARTIAL INVALIDITY

The invalidity or unenforceability of any provision herein shall not render invalid or make unenforceable any other provision.

SECTION 23 – OHIO LAW

This lease shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have signed this Lease Agreement on the date first written above.

Signed in the presence of:

LESSOR

Keith Johnson, City Manager

LESSEE:

Brian A. Pelphrey

Approved as to form and content:

K. Philip Callahan, Law Director



EXHIBIT A

Property Location and Description

"Leased Premises" measuring approximately 12' x 20' and being located partially on County parcels K46 00327 0106, K46 00327 0107, K46 00327 0104, and K46 00327 0105



RESOLUTION NO. 3020

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO DESIGNATE A SECTION OF BENNER ROAD AND MIAMISBURG-SPRINGBORO PIKE AS THE "RICHARD C. CHURCH JR. CONNECTOR" IN HONOR OF HIS DEDICATED SERVICE AND LONG-TERM CONTRIBUTIONS TO THE GROWTH AND ECONOMIC DEVELOPMENT OF THE COMMUNITY.

WHEREAS, the City Council has received a request for an honorary street name designation of Benner Road and Miamisburg-Springboro Pike; and

WHEREAS, Richard C. Church Jr. worked hard to secure funding and advocate for roadway improvements to better connect Mound Business Park to Interstate 75 because he understood these improvements are key to the long term success of the business park; and

WHEREAS, Richard C. Church Jr. was a tireless supporter of redevelopment efforts at Mound Business Park; and

WHEREAS, Council adopted a policy for establishing honorary street names as a way to create guidelines for these requests; and

WHEREAS, Council hereby recognizes the dedicated service and long-term contributions of Richard C. Church Jr. to the Miamisburg community.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to designate a section of Benner Road and Miamisburg-Springboro Pike as the "Richard C. Church Jr. Connector" in honor of his dedicated service and long-term contributions to the growth and economic development of the community.

Section 2.

This measure shall take effect and be in full force from and after its passage.

Passed: April 2, 2024

Attested:



Keysha Alexander, Clerk of Council

Approved:



Michelle L. Collins, Mayor