

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2017 – 068

By: Mayor Perciak and Mr. Southworth

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A NON-EXCLUSIVE RENTAL/OCCUPANCY AGREEMENT WITH EXPLOSIVE FASTPITCH, LLC ON A LIMITED BASIS FOR 2017, FOR THE USE OF VARIOUS BASEBALL FIELDS IN THE CITY OF STRONGSVILLE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Strongsville provides various City parks that offer baseball fields and facilities for the enjoyment and benefit of residents and guests; and

WHEREAS, Explosive Fastpitch, LLC, is a Strongsville community-based company that offers a fast pitch softball program for girls in the area; and

WHEREAS, Explosive Fastpitch, LLC desires to occupy and use the City fields to stage and conduct the “Explosive Fireworks Frenzy” softball tournament from June 30, 2017 through July 2, 2017, on a limited and non-exclusive basis; and

WHEREAS, the City welcomes this effort to continue to provide the children and families of Strongsville a safe and rewarding youth baseball experience; and

WHEREAS, the parties, therefore, now desire to enter into a limited non-exclusive Rental/Occupancy Agreement for 2017 to be authorized in accordance with Strongsville Codified Ordinance 264.02.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1. That this Council finds and determines that the baseball field facilities owned by the City of Strongsville at various locations throughout the City, are not needed entirely for municipal public use; and authorizes and directs the Mayor to enter into a non-exclusive Rental/Occupancy Agreement with Explosive Fastpitch, LLC for 2017, and upon the other terms and conditions set forth in the Rental/Occupancy Agreement, attached hereto and designated Exhibit 1, which is approved in all respects.

Section 2. That to the extent any funds will be required for the implementation of this Ordinance, such will be paid from the Multi-Purpose Complex Fund.

Section 3. That 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 of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

CITY OF STRONGSVILLE, OHIO
ORDINANCE NO. 2017 – 068
PAGE 2

Section 4. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the City, and in order to provide for the use of City lands by an organization, for recreational purposes for the benefit of the community, and to conserve City funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Remond M. Dooner
 President of Council

Approved: Thomas J. Berial
 Mayor

Date Passed: May 1, 2017

Date Approved: May 2, 2017

| | <u>Yea</u> | <u>Nay</u> |
|------------|-------------------------------------|--------------------------|
| Carbone | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Daymut | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| DeMio | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Dooner | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Schonhut | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Short | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Southworth | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Attest: Aimee Pientka
 Clerk of Council

ORD. No. 2017-068 Amended: _____
 1st Rdg. 05-01-17 Ref: _____
 2nd Rdg. Suspended Ref: _____
 3rd Rdg. Suspended Ref: _____

Pub Hrg. _____ Ref: _____
 Adopted: 05-01-17 Defeated: _____

RENTAL/OCCUPANCY AGREEMENT

THIS RENTAL/OCCUPANCY AGREEMENT is made effective the 3rd day of May, 2017, by and between THE CITY OF STRONGSVILLE, OHIO, a municipal corporation organized and existing pursuant to law and located at 16099 Foltz Parkway, Strongsville, Ohio 44149 (hereinafter "City") and EXPLOSIVE FASTPITCH, LLC, an Ohio limited liability company, and located at 10020 Fair Road, Strongsville, Ohio 44149 (hereinafter called "EF" or "Tenant").

WITNESSETH:

WHEREAS, Explosive Fastpitch, LLC, is a Strongsville community-based company that offers a softball program for girls in the area; and

WHEREAS, EF desires to occupy and use the City fields to stage and conduct the "Explosive Fireworks Frenzy" softball tournament from June 30, 2017 through July 2, 2017, on a limited and non-exclusive basis; and

WHEREAS, the City welcomes this effort to continue to provide the children and families of Strongsville a safe and rewarding youth softball experience.

NOW, THEREFORE, the parties, in consideration of the above, and the following agreements, covenants and representations, agree that:

1. DESCRIPTION AND RENTAL OF PREMISES

The City hereby rents to Tenant for limited occupancy, and Tenant hereby rents from City, certain premises set forth and listed in Exhibit A, which is made a part hereof, situated in the City of Strongsville, County of Cuyahoga, and State of Ohio and commonly known as the "City of Strongsville Fields" (hereinafter the "Premises").

2. TERM

2.1 Term

The term of this Rental/Occupancy shall commence June 30, 2017 and end at midnight July 2, 2017.

2.2 Termination

Tenant hereby acknowledges that the City may, at any time, and without cause, terminate this Agreement upon fourteen (14) days written notice. The City will make every good faith effort to apprise Tenant of its intentions at the earliest possible date, but reserves the right to terminate this Agreement within its sole discretion.

3. RENT

3.1 Basic Rent

Tenant agrees to pay to the City as rental for the term of this Rental/Occupancy, an amount to be determined by the Director of Recreation, payable to the City of Strongsville, based on the following costs and fees:

- (a) Field Fee – One Hundred Thirty-Five Dollars (\$135.00) per field, per day, for each field used by Tenant during the term of Tenant's occupancy.
- (b) City Labor Fee – Thirty Dollars (\$30.00) per hour for each two (2) person City crew that is used to set-up and maintain the Premises during the term of Tenant's occupancy.
- (c) Portable Toilets – One Hundred Seventy-Five Dollars (\$175.00) each day for a total amount of Five Hundred Twenty-Five Dollars (\$525.00) for the daily cleaning of all portable toilets.
- (d) Illumination of Baseball Fields – Twenty-Five Dollars (\$25.00) per field, per day, for each field, where the electric light system is used to illuminate each field.
- (e) Field Drying Agent – Fifteen Dollars (\$15.00) for each bag of drying agent used during the term of Tenant's occupancy.

3.2 The City shall send a bill to Tenant after the term of this Agreement has expired setting forth the total amount owed for said rental, based on the fees provided herein.

3.3 Method of Payment

The Rent payment shall be made payable to the City of Strongsville within fourteen (14) days of the date of billing, and shall be sent to the City of Strongsville, 18100 Royalton Road, Strongsville, Ohio 44136, Attention: Recreation Department, unless the City shall direct otherwise by notice to Tenant.

4. POSSESSION

Tenant may enter into possession and occupancy of the Premises on the commencement date of the Term.

5. CONDITION OF PREMISES, REPAIRS, ALTERATIONS AND MAINTENANCE

5.1 Condition of Premises at Commencement of Term

Tenant has examined the Premises, knows their condition and accepts the Premises in their present condition. Tenant acknowledges that the City has made no representations to Tenant as to the condition of the Premises prior to or at the execution of this Agreement, and has promised no repairs or alterations thereto.

5.2 Repairs and Maintenance

(a) The City shall have sole responsibility, but within its sole discretion, to repair and maintain the Premises, including but not limited to lining and reasonable maintenance of the baseball game field, plus all driveways, sidewalks, parking areas or other paved areas servicing the Premises. City shall also, at its sole expense, keep all walks, driveways, sidewalks, parking areas or other paved areas servicing the Premises

free of excessive snow, ice, water, rubbish and dirt and other natural or artificial accumulations.

(b) City shall perform such repairs and maintenance thereon as may be reasonably necessary within its sole discretion to maintain such areas in a clean, safe, serviceable and sound condition, and to comply with the laws, ordinances and regulations of all authorities which have jurisdiction over the Premises.

5.3 Condition of Premises at Termination of Agreement

Upon the expiration or other termination of this Agreement, Tenant shall remove its goods and effects and those of all persons claiming under it from the Premises, and shall deliver and yield the Premises to the City in as good repair and condition as the Premises were at the commencement of the term of this Agreement, reasonable wear and tear excepted.

6. UTILITIES

The City shall pay all charges for the use of sewers, water, light, fuel or other utilities relating to the Premises, if any, except that Tenant shall be responsible to pay for the illumination of any baseball field, as set forth in Section 3.1(d) of this Agreement.

7. INSURANCE AND INDEMNIFICATION

7.1 Public Liability Insurance

Tenant shall obtain, at its expense, effective as of the commencement of its right to occupy the Premises, and will maintain so long as Tenant continues to occupy or rent any part of the Premises, complete comprehensive, general liability insurance, under which the City will be named as an additional insured, the policy or policies to be in such form and issued by such company or companies as are satisfactory to the City, in the sum of One Million Dollars (\$1,000,000.00) in the event of injury to one person or damage to property and Two Million Dollars (\$2,000,000.00) in the event of injuries to more than one person or damage to property arising out of each occurrence for which a claim for damages may result. Said policy or policies, or a copy or copies thereof, or a certificate or certificates thereof, will be deposited with the City together with evidence of payment of the premiums thereon, within thirty (30) days after their issuance.

7.2 Indemnification

Tenant will defend, indemnify, and hold harmless the City, its agents, employees and individual board and Council members from any and all claims, liabilities, demands, costs, expenses, damage or loss to persons (including loss of life) or property which may arise from the use of the Premises or from the conduct or management of or from anything done in or about the Premises by or on behalf of Tenant or any employee, agent, invitee, or licensee of Tenant, together with all costs, expenses and attorneys' fees incurred by the City in connection with any such claim, demand, or legal proceeding arising therefrom and brought against the City. The foregoing will also include, but not be limited to, any such damage or loss caused by Tenant itself or its officers, agents, representatives, guests or invitees.

8. USE

8.1 General

(a) Tenant shall occupy and use the Premises for recreational purposes only and for no other purpose, and in a careful, safe and proper manner, and shall not commit or suffer any waste therein. Tenant shall not occupy or use the Premises for any unlawful purpose, in violation of any lawful covenant or condition of record restricting the use of the Premises, or in any way that would increase or cause foreseeable harm or injury to others. In its occupation and use of the Premises, Tenant shall comply with all laws, ordinances, rules, regulations, requirements and orders of all governmental authorities having jurisdiction over the Premises.

(b) If any such authority notifies the City of a violation of any such law, ordinance or regulations, the City shall notify Tenant thereof, and Tenant shall have ten (10) days following such notice to correct such violations. Failure by Tenant so to act within such ten (10) day period shall constitute a default for the purpose of this Agreement.

(c) All excise taxes, license fees and charges for permits which may arise from the use or operation of the Premises or the conduct of any business thereon shall be payable by Tenant, and Tenant shall save the City harmless from all liability therefor.

8.2 Alterations and Improvements

(a) Tenant shall not be permitted under any circumstances to make alterations or improvements to the Premises.

(b) The City may make such alterations and additions affecting the Premises as it might desire, provided that the same shall not materially impair Tenant's use of the Premises consistent with this Agreement.

9. DEFAULT

9.1 Events Constituting Default

For the purpose of this Agreement, "default" shall mean any of the following events: (a) abandonment of the Premises by Tenant, or (b) failure by Tenant to pay any installment of rent or other money or obligations within ten (10) days after the City shall have given Tenant written notice that such rent or other obligation is past due, or (c) failure by Tenant to perform or observe any other covenant or agreement under this Agreement, which failure shall continue uncured for a period of thirty (30) days after delivery to Tenant of written notice thereof, or (d) Tenant's permitting the Premises to be vacant or unoccupied for more than thirty (30) consecutive days.

9.2 Effect of Default

In the event of default, the City may at its option (a) terminate this Agreement, or, without terminating this Agreement, terminate Tenant's right to possession of the Premises under this Agreement, (b) re-enter the Premises with or without process of law, using such force as may be necessary and remove all persons and chattels therefrom and the City shall not be liable for damages or otherwise by reason of such re-entry, (c) cure any default relating to the condition of the Premises and obtain reimbursement of expenses therefor from Tenant, or (d) employ any other remedy provided by law. The foregoing remedies may be exercised individually or

cumulatively at the option of the City, and the exercise of any one shall not be deemed a waiver of the City's right to exercise one or more additional remedies. Except as provided in this Agreement, Tenant waives the necessity of demand for rent and any other demand or notice that may now or thereafter be required by any statute, regulation or decision for the maintenance by City of any action in forcible entry and detainer. The commencement of such an action by the City shall for the purpose of this Agreement be equivalent to the City's exercise of its right to re-enter the Premises.

9.3 Waiver or Default

No waiver of any condition or covenant of this Agreement by the City or Tenant shall be construed as constituting a waiver of any subsequent breach of any such condition or covenant, or as justification or authorization for the breach or any other covenant or condition of this Agreement; nor shall the acceptance of rent by the City at a time when Tenant is in default under any covenant or condition of this Agreement be construed as a waiver of such default or any of the City's rights, including, but not limited to, the right to terminate this Agreement on account of such default or as an estoppel against the City, or be construed as an amendment to this Agreement or as a waiver by the City of any other right created herein or by law in favor of the City and against Tenant on account of such default.

10. MECHANICS' LIENS

The Tenant shall not permit any mechanics', laborers', materialmens' or other liens to stand against the Premises for any labor, machinery or materials furnished or claimed to have been furnished in connection with the work of any character performed or claimed to have been performed on, or pertaining to the Premises solely for Tenant or under Tenant's control, whether such work was performed or materials furnished prior to or subsequent to the commencement of the term of this Agreement. If any such lien shall be filed or shall attach, the Tenant shall promptly either pay the same or procure the discharge thereof by giving security or in such other manner as is required or permitted by law. If Tenant fails to do so within thirty (30) days after receiving written notice from the City, the City may procure the discharge of such lien, by payment or otherwise, and may recover all costs and expenses of so doing from Tenant. Moreover, Tenant shall defend, indemnify and hold harmless the City from and against all claims, demands and legal proceedings on account of such furnishing or claimed furnishing of labor, machinery, material and fuel, and shall directly pay or reimburse the City for all costs and expenses thereof, including, but not limited to, attorneys' fees (to the extent permitted by law), bond premiums and court costs.

11. QUIET ENJOYMENT

Upon Tenant's paying the rent, and performing and observing the agreements and conditions on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises during the term of this Rental/Occupancy Agreement on a non-exclusive basis and subject to the City's scheduling of its use, but otherwise without interference by the City or anyone claiming by, through or under the City. However, the City shall not be liable for any damage or interference with use occasioned by or from (a) any gas, water or other pipes bursting or leaking, or (b) water, snow or ice on the Premises.

12. RIGHT OF ENTRY

The City, its agents and employees shall have the right, at all reasonable times during the term of this Rental/Occupancy, to enter the Premises to view and inspect the same and to perform any work therein which may be required or permitted of the City hereunder; provided, however, that the City, its agents and employees shall in exercising such right not unreasonably interfere with Tenant's use of the Premises. The City also shall have the right to use or arrange for use of the Premises by others when it is not in use by Tenant.

13. ASSIGNMENT, SUBLEASE AND CHANGE OF ORGANIZATION

13.1 Assignment and Sublease

Tenant shall not assign this Rental/Occupancy or any of its benefits or burdens under this Agreement, or sublet all or any part of the Premises, or permit all or any part of the Premises to be used or occupied by others unless Tenant first obtains the City's prior written consent, which the City may, in its discretion, withhold for any reason or none at all.

13.2 Change of Organization of Tenant

Tenant shall not terminate its existence, change its form of organization or permit the change of identity of its principal officers or the transfer of all, or substantially all of its assets without first having obtained the City's written consent. The City shall not unreasonably withhold such consent, and shall be deemed to consent to any change in officer status or otherwise resulting from the death or long-term disability of any officer or trustee of Tenant.

14. NOTICES

All notices to the City shall be sent to:

The City of Strongsville
18100 Royalton Road
Strongsville, Ohio 44136
Attention: Bryan V. Bogre, Director
of Recreation & Senior Services
(With a copy to the Law Director)

All notices to the Tenant shall be sent to:

Explosive Fastpitch, LLC
c/o Jeanette Howard
10020 Fair Road
Strongsville, Ohio 44149

Either party may at any time change the address to which notice shall be sent by advising the other party in writing of such a change. Notice shall be deemed given if sent by certified mail, postage prepaid, return receipt requested, and any such notice shall be deemed given when mailed as provided in this Section.

15. PARTIES BOUND AND BENEFITED

This Agreement shall bind and benefit the parties hereto, their successors and permitted assigns. The words "City" and "Tenant" in this Agreement shall be construed to include the corporations and/or entities named herein as City and Tenant,

respectively, and their respective successors and permitted assigns. This Section shall not be construed to abridge, modify or remove the prohibitions or restrictions on assignment, subleasing, permission to occupy or similar acts contained elsewhere in this Agreement.

16. RELATIONSHIP OF THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, or any relationship between the parties hereto other than that of City and Tenant.

17. ONLY AGREEMENT

This instrument contains the entire and only agreement between the parties, and neither party has made any representations or warranties other than those contained herein. It shall not be modified in any way except by a writing signed by both parties and approved in accordance with law.

18. CAPTIONS

The captions utilized as headings for the various articles and sections of this Agreement are used only as a matter of convenience for reference, and are not to be considered a part of this Agreement nor to be used in determining the intent of the parties to this Agreement.

19. GOVERNING LAW

The validity and construction of this Agreement shall be governed by the law of the State of Ohio, where the Premises are located.

20. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the City and Tenant have caused this Rental/Occupancy Agreement to be executed by their duly authorized officers on the dates written below.

Witnesses:

Jimmi Pientka
Nancy M. Sikowski

CITY OF STRONGSVILLE

By: *Thomas P. Perciak*
Thomas P. Perciak

Its: Mayor

Date: *May 2, 2017*

Approved for form:

By: [Signature]
Law Director

EXPLOSIVE FASTPITCH, LLC
(an Ohio Limited Liability Company)

By: [Signature]
Jeanette Howard

Its: owner

Date: 4/20/17

STATE OF OHIO)
) ss
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named **CITY OF STRONGSVILLE**, by Thomas P. Perciak, its Mayor, who acknowledged that he did sign the foregoing instrument and that the same is his free and voluntary act and deed as Mayor, and the free and voluntary act and deed of said municipal corporation.



I, NANCY M. SKORSKI have hereunto set my hand and official seal, at Strongsville, Ohio, this 20th day of May, 2017.

[Signature]
Notary Public

STATE OF OHIO)
) ss
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named **EXPLOSIVE FASTPITCH, LLC**, by Jeanette Howard, its OWNER, who acknowledged that she did sign the foregoing instrument and that the same is her free and voluntary act and deed, and the free and voluntary act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Strongsville, Ohio, this 20th day of APRIL, 2017.

[Signature]
Notary Public

COLLEEN A. HEALEY
Notary Public, State of Ohio
My Commission Exp. 4-1-2020

EXHIBIT A

City of Strongsville Fields

REC PARK #1 – 18100 Royalton Road

1. Cross Field
2. Finley Field
3. Rademaker Field

REC PARK #2 – 16109 Foltz Parkway

1. Foltz #1 Field
2. Foltz #2 Field

REC PARK #3 – 21273 Drake Road

1. Wood Field
2. Sprague Field

VOLUNTEER PARK – 21410 Lunn Road

1. Watts Field
2. Stroemple Field
3. Farnsworth Field
4. Cappy Field
5. Roth Field
6. Kalinich Field

YOUTH SPORTS PARK – 21255 Lunn Road

1. Youth Park #1
2. Youth Park #2
3. Youth Park #3