

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 015

By: Mayor Perciak and Mr. Southworth

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A NON-EXCLUSIVE RENTAL/OCCUPANCY AGREEMENT WITH THE STRONGSVILLE LACROSSE ASSOCIATION ON A LIMITED BASIS FOR 2014, FOR THE CITY'S FOOTBALL FIELDS LOCATED ON LUNN ROAD IN THE CITY OF STRONGSVILLE.

WHEREAS, the City of Strongsville previously purchased some twenty-five (25) acres of land located on Lunn Road near 21255 Lunn Road, primarily for purposes of a recreational park and recreational fields, and has expended sufficient sums to develop part of said land into a regulation game field and an adjacent practice field for football play by youth of the Strongsville community; and

WHEREAS, through adoption of Ordinance No. 2009-081, the City entered into a non-exclusive Lease Agreement with the Strongsville Football League, Inc. for lease of such premises and fields for a period of five (5) years; and

WHEREAS, the Strongsville Lacrosse Association (SLA), is a Strongsville community-based nonprofit, volunteer organization that offers Strongsville residents a lacrosse program for boys and girls in grades 3 through 12; and further which views its mission to be using the game of lacrosse as a vehicle for teaching life lessons to the youth of Strongsville, regardless of skill level; and

WHEREAS, through adoption of Ordinance No. 2012-030, this Council later authorized the Mayor to enter into a limited, non-exclusive Rental/Occupancy Agreement with the Strongsville Lacrosse Association for 2012; and

WHEREAS, through adoption of Ordinance No. 2013-071, Council further authorized the Mayor to enter into another limited, non-exclusive Rental/Occupancy Agreement with the SLA for 2013; and

WHEREAS, SLA again desires to occupy and play its games on the City football fields on a limited and non-exclusive basis for 2014; and

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

WHEREAS, the parties, therefore, now desire to enter into another limited Rental/Occupancy Agreement for 2014 to be authorized in accordance with Strongsville Codified Ordinance 264.02;

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 - 015

PAGE 2

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO, TWO-THIRDS OF THE MEMBERS CONCURRING:

Section 1. That this Council finds and determines that the premises owned by the City and located on Lunn Road, Strongsville, Ohio, and described in Exhibits A and B attached hereto, are not needed entirely for municipal public use; and authorizes and directs the Mayor to enter into another limited, non-exclusive Rental/Occupancy Agreement with the Strongsville Lacrosse Association for 2014, 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 (Ehrnfelt Center).

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.

Section 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Michael Daymut
President of Council

Approved: Michael Daymut
Acting Mayor

Date Passed: February 3, 2014

Date Approved: February 4, 2014

	<u>Yea</u>	<u>Nay</u>
Carbone	<u>✓</u>	_____
Daymut	<u>✓</u>	_____
DeMio	<u>✓</u>	_____
Dooner	<u>✓</u>	_____
Maloney	<u>✓</u>	_____
Schonhut	<u>✓</u>	_____
Southworth	<u>✓</u>	_____

Attest: Leticia J. Siegfried
Clerk of Council

ORD. No. 2014-015 Amended: _____
1st Rdg. 01-21-14 Ref: Recreation + Comm. Svcs.
2nd Rdg. 02-03-14 Ref: _____
3rd Rdg. Suspended Ref: _____

Pub Hrg. _____ Ref: _____
Adopted: 02-03-14 Defeated: _____

RENTAL/OCCUPANCY AGREEMENT

THIS RENTAL/OCCUPANCY AGREEMENT is made effective the ____ day of _____, 2014, 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 **STRONGSVILLE LACROSSE ASSOCIATION**, c/o Geoff Belz, an Ohio nonprofit limited liability company, qualified as a 501(c)(3) nonprofit organization and located at 20703 Pembroke Oval, Strongsville, Ohio 44149 (hereinafter called "SLA" or "Tenant").

WITNESSETH:

WHEREAS, the City of Strongsville previously purchased some twenty-five (25) acres of land located on Lunn Road near 21255 Lunn Road, primarily for purposes of a recreational park and recreational fields, and has expended sufficient sums to develop part of said land into a regulation game field and an adjacent practice field for football play by youth of the Strongsville community; and

WHEREAS, through adoption of Ordinance No. 2009-081, the City entered into a non-exclusive Lease Agreement with the Strongsville Football League, Inc. for lease of such premises and fields for a period of five (5) years; and

WHEREAS, the Strongsville Lacrosse Association, is a Strongsville community-based nonprofit, volunteer organization that offers Strongsville residents a lacrosse program for boys and girls in grades 3 through 12; and further which views its mission to be using the game of lacrosse as a vehicle for teaching life lessons to the youth of Strongsville, regardless of skill level; and

WHEREAS, through adoption of Ordinance Nos. 2012-030 and 2013-071, Council authorized the Mayor to enter into limited, non-exclusive Rental/Occupancy Agreements with the SLA; and

WHEREAS, SLA again desires to occupy and play its games on the City football fields on a limited and non-exclusive basis for 2014; and

WHEREAS, the City welcomes this effort to provide the children and families of Strongsville a safe and rewarding youth lacrosse 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 situated on Lunn Road near 21255 Lunn Road, in the City of Strongsville, County of Cuyahoga, and State of Ohio and commonly known as the "City of Strongsville Football Fields," as reflected on the drawing attached as Exhibit A, which is made a part hereof (hereinafter the "Premises").

Ex. 1

2. TERM

2.1 Term

The term of this Rental/Occupancy shall commence March 30, 2014 and end at midnight June 2, 2014, with the football fields (other than practices) only being occupied for games on the specific dates indicated on the attached Exhibit C incorporated herein.

2.2 Termination

Tenant hereby acknowledges that the City may, at any time, and without cause, terminate this Agreement upon thirty (30) 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.

2.3. Holding Over

If Tenant holds over in possession of the Premises after the expiration date of the term of this Rental Agreement, and no new agreement is executed, the City shall have the option of (i) renewing this Rental Agreement for an additional term of one (1) year, or (ii) considering Tenant a month-to-month tenant, in either event under the same conditions, other than term, as are provided in this Agreement and then in effect, including rent; or (iii) declaring Tenant in Default. The City may exercise its option to renew this Agreement as provided above by giving Tenant notice thereof as provided in this Agreement within thirty (30) days after commencement of Tenant's holding over in possession. If the City fails to give such notice within the time provided therefore, a month-to-month tenancy shall be deemed to have been created.

3. RENT

3.1 Basic Rent

Tenant agrees to pay to the City as rental for the term of this Rental/Occupancy the sum of Ten and No/100 Dollars (\$10.00), per game date for a total of Ninety and No/100 Dollars (\$90.00), payable in full and in advance on March 30, 2014.

3.2 Effect of Increase in the City's Insurance Premiums

(a) If the City's expense for insurance premiums relating to the Premises is increased over that for the period immediately prior to the commencement of the original term of this Agreement by reason of Tenant's use of the Premises, then the rental shall be increased over the amounts otherwise provided for in this Agreement by the amount of such increase in premiums over the premium paid by the City immediately prior to the entry of Tenant into possession of the Premises.

(b) Upon receipt of each premium notice, the City shall prepare and render to Tenant a statement for the amount of additional rent to be paid to the City hereunder. Such amount shall be payable within fifteen (15) days after such statement shall have been rendered.

3.3 Method of Payment

All Basic Rent payments shall be made payable to the City of Strongsville and shall be sent to the City of Strongsville, 16099 Foltz Parkway, Strongsville, Ohio

44149, Attention: Finance 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, at its expense, but within its sole discretion, to repair and maintain the Premises, including but not limited to lining and reasonable maintenance of the football 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.

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 Fire, Extended Coverage and Similar Coverages

If insurance coverage of all or any part of the Premises against loss or damage by fire, lightning, such perils as are at this time comprehended within the term "Extended Coverage," vandalism, malicious mischief, boiler and risk form, such perils as are included in the "Superior Form" of policy as issued by the Factory Insurance Association, Improved Risk Mutual, or similar organization, war risk, floods, earthquakes, rent insurance, etc., should be desired by the City, such insurance shall be obtained and maintained at the sole responsibility and expense of Tenant. If such additional insurance coverage is required by the City, Tenant will be notified consistent with Section 15 of this Agreement.

7.3 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's times and schedule of specific use shall be on a non-exclusive basis and specifically designated by the City through its Director of Recreation & Senior Services; provided, however, that scheduling of games and practice sessions shall be afforded to the Tenant in order to attempt to accommodate the Tenant's needs over any other potential users or occupiers. The foregoing is subject, however, to City Recreation Department programs which will always take precedence with regard to scheduling; and also to the fact that the City's Recreation Department reserves the right to alter, modify, supplement, amend and revise schedules, rules and regulations within its sole discretion.

(b) 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.

(c) 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.

(d) 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.

8.3 Other Conditions

(a) The dimensions of the game field will be slightly different from a regulation lacrosse field due to safety concerns (see attached Exhibit B for the dimensions and layout).

(b) The City will have the sole discretion to cancel games or practices due to field conditions; with such information disseminated through the City's rain-out number (440-580-3102).

(c) Practices are permissible on the fields behind the football fields.

(d) SLA will finance all of its operating costs including, but not limited to any necessary equipment, uniforms or referee fees and costs of marketing and fundraising efforts on its own and without any assistance from the City of Strongsville.

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:

Strongsville Lacrosse Association
c/o Geoff Belz
20703 Pembroke Oval
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:

CITY OF STRONGSVILLE

By: _____
Thomas P. Perciak
Its: Mayor _____

Date: _____

Approved for form:

By: _____
Law Director

**STRONGSVILLE LACROSSE
ASSOCIATION**
(an Ohio Non-Profit Limited
Liability Co.)

By: _____
Geoff Belz
Its: President

Date: _____

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.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Strongsville, Ohio, this ____ day of _____, 2014.

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 **STRONGSVILLE LACROSSE ASSOCIATION**, by Geoff Belz, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free and voluntary act and deed, and the free and voluntary act and deed of said non-profit limited liability company.

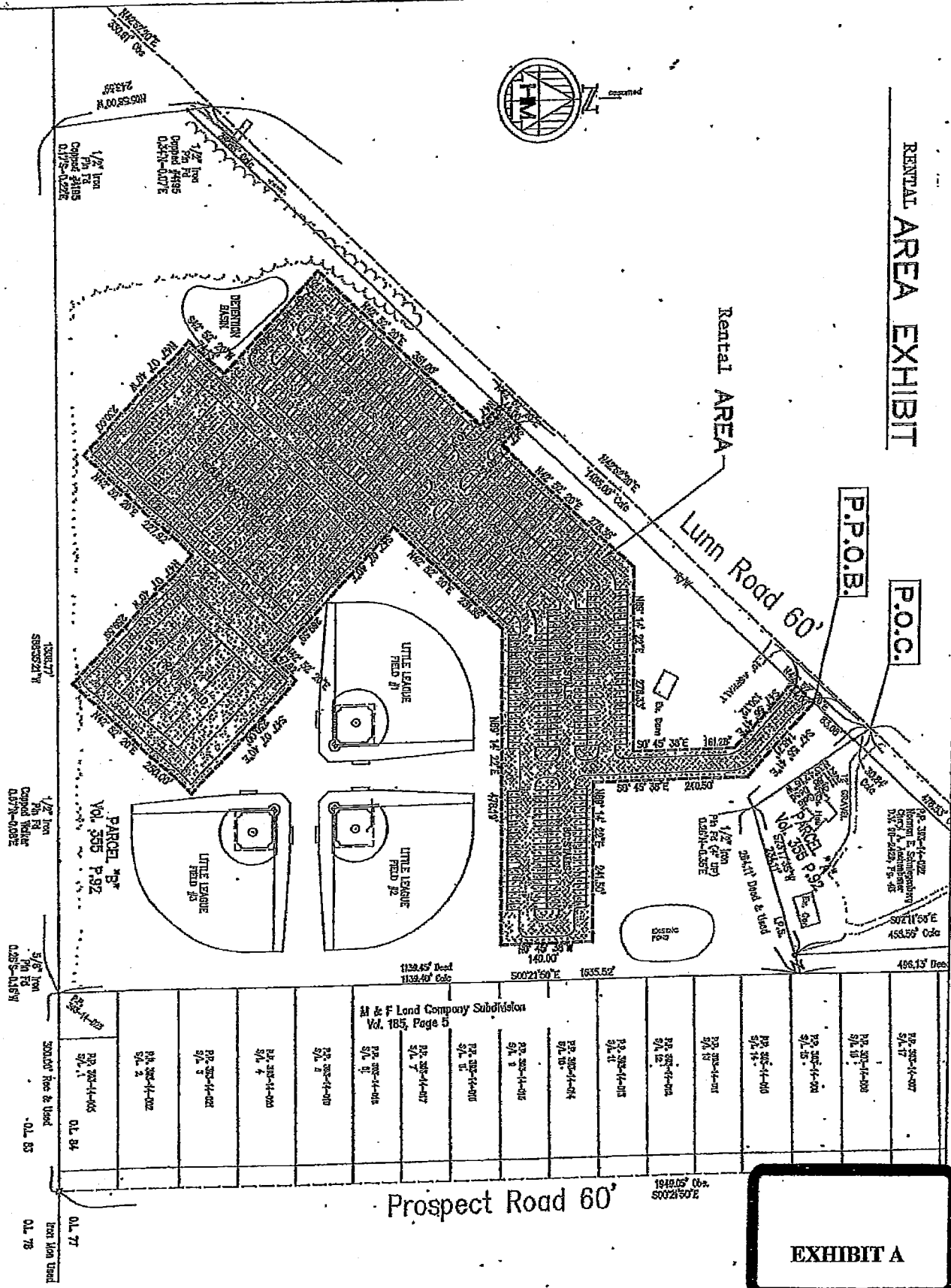
IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Strongsville, Ohio, this ____ day of _____, 2014.

Notary Public

P.O.C.

Rental AREA

Lunn Road 60'



Youth and High School Men's Lacrosse Field of Play

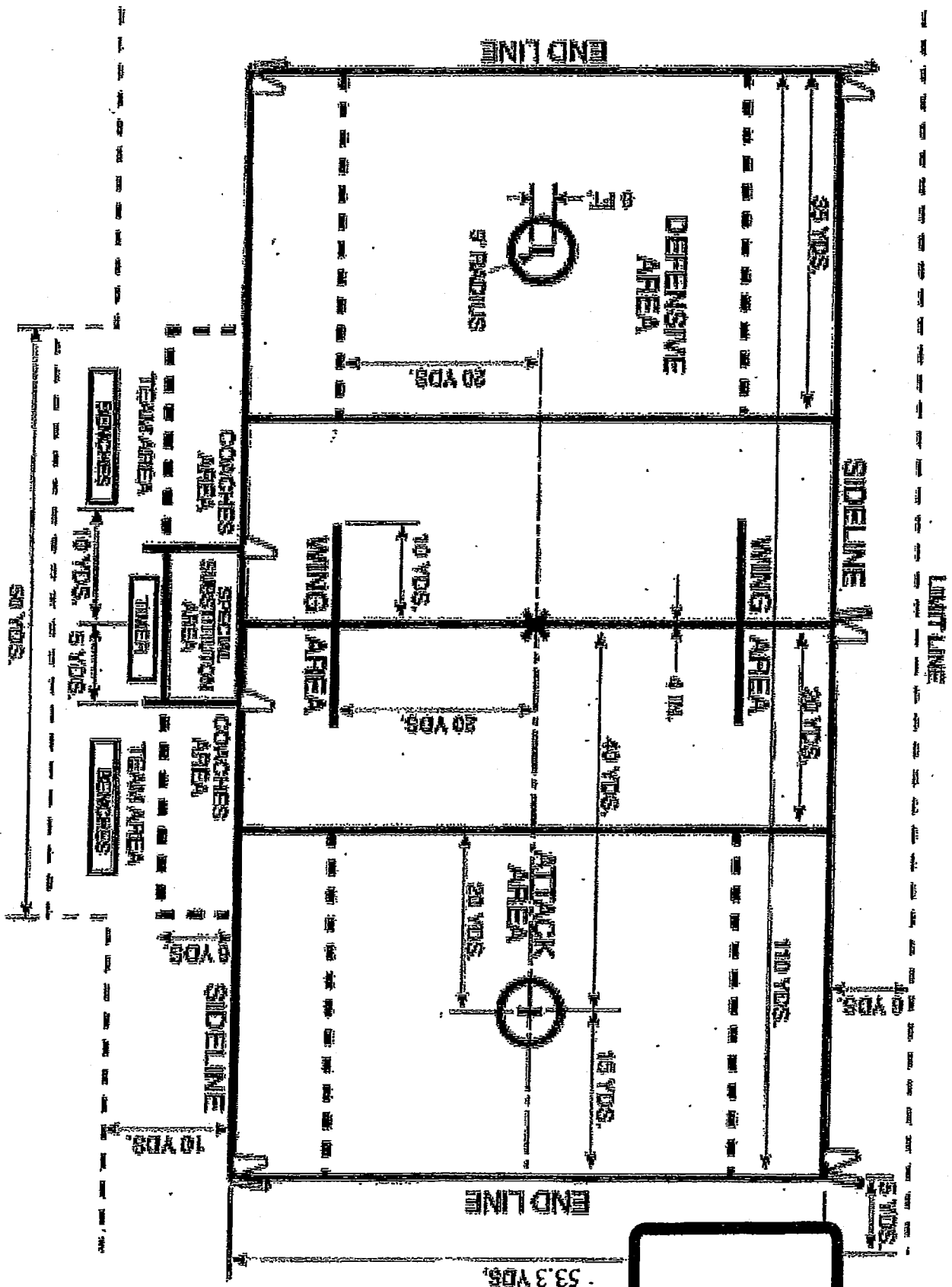


EXHIBIT B

Strongsville High School Lacrosse 2014 Home Games

Team	Month	Date	Day	Time
Boys	April	8	Tuesday	5:30pm
Boys	April	14	Monday	5pm
Girls	April	23	Wednesday	6:30pm
Boys	April	24	Thursday	5pm
Girls	April	25	Friday	5pm
Boys	April	26	Saturday	10am
Girls	April	29	Tuesday	6pm
Girls	May	1	Thursday	6pm
Boys	May	3	Saturday	12pm

EXHIBIT C