

ORDINANCE NO. 2015-17

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR THE MANAGEMENT OF THE GREENBRIER ATHLETIC CENTER WITH N.E.O. SOCCER, LLC AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. In accordance with the Charter and Ordinances of the City of Parma Heights, the Mayor is hereby authorized and directed to enter into an Agreement between the City of Parma Heights and N.E.O. Soccer, LLC for the management of the Greenbrier Athletic Center substantially in the form identified as Exhibit "A" attached hereto, and made a part hereof as though fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of said City and for the further reason it is necessary that an Agreement for the management of the Greenbrier Athletic Center be entered into for the daily operations of the facility; wherefore, this ordinance shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: 4-27-2015

  
PRESIDENT OF COUNCIL

ATTEST: Florence G. Bohdan

4-27-2015  
APPROVED

FILED WITH  
THE MAYOR: 4-27-2015

  
MAYOR

## AGREEMENT FOR MANAGEMENT OF GREENBRIER ATHLETIC CENTER

THIS AGREEMENT ("Agreement") entered into between the City of Parma Heights, a Municipal Corporation (City) and N.E.O. Soccer, LLC an Ohio Limited Liability Company ("Manager"), this \_\_\_\_ day of \_\_\_\_\_, 2015.

WHEREAS, the City is desirous of promoting the use of its building formerly operated as an Ice Rink ("Facility"); and,

WHEREAS, the City is desirous of providing an indoor soccer facility and other recreational opportunities for the residents of the City and other communities which have an interest in the regionalization of recreational activities; and,

WHEREAS, the Manager currently operates a multipurpose indoor facility and works directly with local travel programs and communities on indoor and outdoor training, thereby providing select players to compete at regional and national levels; and,

WHEREAS, the City will at various times, with consent of the Manager, which consent shall not be unreasonably withheld, continue to operate other programs and usages at the facility.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. FACILITY. Upon and subject to the terms and conditions of the Agreement, the City grants to the Manager the use of the facility located at the current Greenbrier Athletic Center, formerly known as the Greenbrier Ice Rink located in the Greenbrier Commons located in Parma Heights, Ohio. Except with respect to any repairs required to make the building free of leaks or any requirements by any regulatory agency, the Manager hereby accepts the facility "as is".

Section 2. USE BY MANAGER. The Facility shall be used by the Manager for the operation of a sports and recreational facility as recited in the preambles to this Agreement. The Manager shall operate and maintain the facility in a neat, clean, safe, and healthy condition according to City Ordinances and direction of the proper public officers; and will, if necessary, remove the snow and ice from the sidewalk contiguous to said facility.

The Manager will not permit liquor, whether spirituous, vinic or fermented, to be sold whether at wholesale or retail on said premises; provided City may at its sole option, consent to the serving of alcohol on special occasions in compliance with municipal laws. (See Section 961.01 of the Codified Ordinances).

Section 3. USE BY CITY. The City will be granted use of the facility for (1) the Annual Party in the Park, (2) the Athletic Awards Ceremonies and (3) other events, on dates to be determined, with reasonable notice to the Manager.

Reasonable notice shall be at least two (2) weeks in advance of any event planned for the facility.

There shall be no charge to the City for its use of the facility.

The City will provide the maintenance personnel when it uses the facility.

In addition, the City shall have the sole and exclusive use of Room A located in the rear of the facility which the City intends to use as an exercise room containing exercise equipment, and an area for physical activities and classes.

Section 4. TERM. This agreement shall be for a term of two (2) years commencing on May 1, 2015 (the "Commencement Date"), and continuing through 12:00 p.m. EST on April 30, 2017. (the "Term"). The Manager may renew this Agreement for two (2) additional terms of five (5) years each. The Manager shall exercise such renewal option, if at all, by providing written notice to the City not less than ninety (90) days prior to the expiration of this Term. The fees due during the renewal term shall be determined by the parties prior to the commencement of the renewal term. Either City or Manager shall have the right to terminate this Agreement upon thirty (30) days prior written notice.

Section 5. FEES. Fees shall be paid on a monthly basis in an amount of Three Thousand Three Hundred Dollars (\$3,300.00) during the term of this Agreement. All fees, and all other payments due to the City under this Agreement, shall be made to the City at 6281 Pearl Road, Parma Heights, Ohio 44130 or at such other address as the City may designate.

Section 6. REVENUES. All revenues ("Revenues") generated from the operation of the Facility from events conducted by the Manager, shall be and remain the sole property of the Manager.

Revenues generated from events conducted by the City shall be retained by the City. If the Manager and the City, agree in writing prior to the date of an event conducted by the City, then participation fees may be paid to the Manager based upon the involvement of the Manager in the event. If there is no agreement, in writing, then the City shall retain said revenues.

As a Condition to the Manager retaining the Revenues generated by the Agreement, it shall install and maintain a heating and cooling system, approved by the City's Engineer, and upgrade the locker room.

Section 7. EXPENSES. The Manager shall pay, as and when due, all water, sewage, power, heat, gas, electrical, and all other utility services and all expenses used, incurred or consumed in the facility during the term of the Agreement, such payment to be made directly to the billing company. The Manager shall pay all taxes levied against the Managers property, including, but not limited to, personal property and business.

Section 8. MAINTENANCE AND REPAIRS. The Manager shall, at its sole cost and expense maintain and repair the interior of the facility, HVAC system, electrical and plumbing systems and all improvements made to the interior, including synthetic grass surface. The City shall repair and maintain the roof and structural elements of the building during the term of this agreement.

Section 9. FIXTURES AND ALTERATIONS, (a) INSTALLATION BY MANAGER The Manager shall not install or cause to be installed any fixtures, and may make or cause to be made any alterations, changes, decorations, additions of improvements in or to the Facility without the prior written consent of the City. The City acknowledges that the Manager shall convert and utilize the facility primarily for soccer and other recreational purposes and may make any and all alteration related thereto, but with the consent of the City, such consent shall not be unreasonably withheld,

(b) REMOVAL BY TENANT. Upon the expiration or earlier termination of this Agreement, the Manager, shall, remove all trade fixtures and other equipment owned by the Manager and located within the

Facility, in which event the Manager shall repair all damage to the Facility caused by such removal. Manager agrees that upon expiration of any term of this agreement in which the Manager elects to terminate the Agreement that the synthetic grass surface and HVAC system shall remain with the City. The synthetic grass surface shall be free and clear of all liens, mortgages and encumbrances.

Section 10. LIENS. The Manager shall not suffer or permit any mechanic's lien or other lien to attach to the Facility or any building or improvement thereon in connection with any work performed by the Manager, its agents or contractors, and whenever and as often as any such lien or liens shall be filed or shall attach. The Manager shall, within thirty (30) days thereafter, pay such lien or liens or procure their removal from the Facility.

Section 11. REPRESENTATION. The Manager represents and warrants that it is an independent contractor and is not an employee of the City and none of its employees, if there be any, shall be employees of the City but shall, at all times, be the employees of the Manager.

Section 12. GENERAL INDEMNIFICATION. The Manager indemnifies and agrees to defend and hold the City and its employees, agents, and contractors harmless from and against any and all loss, cost, damage, claim or expense, including attorney fees, caused by the Manager or any person or party for whom the Manager is legally responsible. The Manager shall also indemnify the City for any liability of the City under the Public Employees Retirement System ("PERS ") for contributions for any of the employees of the Manager, or other employees hired by the Manager. This indemnification shall survive the expiration of this Agreement.

Section 13. INSURANCE. (a) PROPERTY INSURANCE. The City shall obtain and keep in force during the Term, at the City's cost and expense, commercial property insurance covering loss or damage to the Facility in an amount not less than the replacement value thereof, as the same may be increased from time to time, and providing protection against all perils covered under a standard "special for" or "all risk" policy of commercial property insurance,

(b) LIABILITY INSURANCE. The Manager shall obtain and keep in force, at its sole cost and expense, commercial general liability insurance insuring against any and all claims for damages resulting from injury or death to persons or injury to property occurring in and about the Facility and arising out of the Manager's negligent acts or omissions in connection with its use or occupancy of the Facility, or the negligent acts or omissions of any person using the Facility in connection with the Manager's business. The amount of liability coverage shall be not less than \$1,000,000.00 per occurrence and \$1,000,000.00 general aggregate for property damage and injury or death to persons. The City shall be named as an additional insured on said policy of insurance,

(c) CERTIFICATES: The Manager shall deliver to the City certificates evidencing the existence and amount of the insurance required above.

Section 14. FIRE OR OTHER CASUALTY. If at any time during the term of this Agreement or any improvements now or hereafter erected on the Facility shall be destroyed or damaged by fire or any other insured casualty, then, subject to and conditioned upon the amount of insurance proceeds recovered by the City, the City shall repair, reconstruct and restore the Facility. If the Facility, or any substantial part thereof, are damaged or destroyed to such an extent that it is impractical to repair or restore the Facility to the approximate condition it was in prior to being damaged within one hundred

eighty (180) days of the date of the damage or destruction, the City shall have the right to terminate this Agreement upon notice to the Manager. The fees shall abate during any period of restoration.

Section 15. MUTUAL RELEASE AND WAIVER OF SUBROGATION. The City releases the Manager from all claims and causes of action for loss or damage to any buildings and improvements and their fixtures and equipment, and the Manager likewise releases the City from all claims and causes of action for loss or damage to the Facility, for interruption of the Manager's business, and for loss or damage to the improvements, fixtures, trade fixtures, equipment, appliances, goods, inventory and other personal property of the Manager in or upon the Facility, resulting from fire, explosion or other hazards or perils, whether or not coverable by the Property Insurance required to be maintained pursuant to paragraph 11 of this Agreement and regardless of whether the loss or damage is caused by the acts of or omissions of the City or the Manager or their respective employees, agents or servants. Both the City and the Manager shall each notify their respective insurers of this mutual release and waiver, and shall use best efforts to deliver to the other party evidence of their respective insurers' acknowledgement of this release and waiver.

Section 16. CONDEMNATION (a) ENTIRE TAKING. If the Facility shall be taken, appropriated or condemned for any public or quasi-public use or purpose, then this Agreement shall automatically cease and terminate as of the date the Manager must relinquish possession of the Facility or when title to the Facility vests in the taking authority, whichever occurs latest, and all fees and other charges paid under this Agreement shall be apportioned as of the date of termination.

(b) PARTIAL TAKING. If less than all of the Facility shall be taken, appropriated or condemned for any public or quasi-public use or purpose, and the remaining portion not so taken is, in the opinion of the Manager, sufficient for the operation of the Manager's business as it is then being conducted, the Manager shall continue to use the portion not so taken and there shall be an equitable and proportionate reduction in the fees hereunder.

Section 17. DEFAULT. The Manager shall be in default hereunder if anyone or more of the following events (hereinafter referred to individually as an "Event of Default") shall occur (i) the Manager shall fail to pay fees, or any other amounts or charges payable by the Manager under this Agreement and such failure shall continue for more than five (5) days after the date such payment was due, (ii) the Manager shall neglect or fail to perform or observe any of the other terms, covenants or conditions contained in the Agreement and such failure shall continue for more than thirty (30) days after City's notice to the Manager of such failure (or such longer period that is reasonable if the obligation is incapable of cure within such 30-day period and the Manager has commenced such cure and diligently prosecutes the same to completion), (iii) the Manager shall become bankrupt or insolvent or make a general assignment for the benefit of creditors, (iv) The Manager's business and use hereunder shall be taken upon an execution, attachment or other process of laws, or (v) a receiver or trustee shall be appointed to take charge of all or any substantial part of City's property and such appointment shall not be vacated or otherwise nullified within ninety (90) days thereafter. Upon the occurrence of an Event of Default and while such Event of Default continues the City shall have the right, at its option, to terminate this Agreement upon a specified date not less than fifteen (15) days after the date of the notice of termination, and this Agreement shall then automatically expire on the date so specified unless the Manager's default is cured or waived prior thereto.

Section 18. COMPLIANCE WITH LAW. The Manager shall comply with all governmental laws, ordinances, rules, regulations, orders or other requirements of all governmental bodies having jurisdiction over the Facility and/or the Managers business at the Facility.

Section 19. ASSIGNMENT. The Manager shall have no right to assign this Agreement, or any part thereof, without the express prior written consent of the City.

Section 20. RIGHT TO ENTER THE FACILITY. The City and its agents shall have the right to enter the Facility to examine them.

Section 21. SURRENDER OF THE FACILITY. At the expiration of the term or upon any earlier termination of this Agreement for any reason, the Manager shall surrender the Facility in broom-clean condition and in good condition and repair.

Section 22. QUIET ENJOYMENT. The City warrants to the Manager, that upon the Manager's paying all fees, charges and all other amounts as required under this Agreement, and upon the Manager's performing and observing all covenants, agreements and conditions of this Agreement that the Manger is required to perform and observe, the Manager shall not be disturbed from the enjoyment of this Agreement during it's term without hindrance or interruption by the City, any mortgagee or any other person or persons lawfully or equitably claiming by, through or under the City.

Section 23. WAIVER. The waiver by either party of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant, or condition of this Agreement. The City's acceptance of fees and charges and other amounts hereunder shall not deemed to be a waiver of any preceding breach by the Manager of any term, covenant or condition of this Agreement. No term, covenant, or condition of this Agreement shall be deemed to have been waived by a party hereto unless such waiver be in writing signed by such party.

Section 24. ENTIRE AGREEMENT. This Agreement contains the entire Agreement of the parties in regard to the Facility. There are no oral agreements existing between the parties hereto.

Section 25. MODIFICATION OF AGREEMENT. This Agreement shall not be modified except in writing signed by both the Manager and the City.

Section 26. GOVERNING LAW; SEVERABILITY. This Agreement and its performance shall be governed, interpreted and regulated by and in accordance with the laws of the State of Ohio. If any portion of this Agreement should be invalid or held invalid, the remainder of it shall be unaffected and remain in full force and effect.

Section 27. NOTICE. Any notice, demand, or request required to be given by the City or the Manager under this Agreement shall be in writing signed by the party giving it, and sent by certified mail, return receipt requested, to the party to be notified as follows;

TO CITY:

City of Parma Heights

628 I Pearl Road

Parma Heights, Ohio 44130

Attention: Mayor

With a copy to:

City of Parma Heights

6281 Pearl Road

Attention: Law Director

Parma Heights, Ohio 44130

TO MANAGER:

NEO Soccer, LLC

25627 Elm Street

Olmsted Falls, Ohio 44138

Or such other address as the City or the Manager, respectively, may designate by such a notice. Service shall be complete upon three (3) business days after mailing as set forth above, except in the case of a notice to change an address in which case service shall be complete when notice is received by the addressee. Notice sent by any means other than certified mail, return receipt requested, shall be deemed delivered when such notice is received by the addressee.

Section 28. SUCCESSORS. The provisions of this Agreement shall apply to and be binding upon the successors and assigns of both the Manager and the City.

Section 29. SURVIVABILITY. The terms, conditions, agreements and indemnifications contained in the Agreement shall survive the expiration of this

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

FOR THE CITY OF PARMA HEIGHTS:

\_\_\_\_\_

Michael P. Byrne

Mayor

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

FOR THE NEO SOCCER:

\_\_\_\_\_

Chris Mueller

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

EXHIBIT A  
GUARANTY

For value received I personally guarantee the payment of fees and performance of the covenants, terms, conditions, indemnification and Agreement of the Manager in the within Agreement.

Parma Heights, Ohio

\_\_\_\_\_, 2015

\_\_\_\_\_

Chris Mueller

In the presence of:

\_\_\_\_\_

\_\_\_\_\_