

DATE: APRIL 4, 2011

CLERK: MARY BETH BAILEY
CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 55 - 2011

BY: PARKS AND RECREATION COMMITTEE

passed

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a lease agreement with the Board of Education of the Massillon City School District for the leasing of Eagles 190 Sports Complex, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary to enter into a leasing agreement with the Board of Education of the Massillon City School District for the leasing of Eagles 190 Sports Complex.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to enter into a lease agreement with the Board of Education of the Massillon City School District for the leasing of the Eagles 190 Sports Complex.

Section 3:

The terms of the lease shall be for Twenty-Five (25) years commencing May 1, 2011 and ending April 30, 2036. It is understood and agreed that either party may terminate the lease by providing the other party with written notice of termination six (6) months in advance of the effective date of termination. The Massillon School District shall pay the sum of One Dollar (\$1.00) per year, payable annually on the first of January of each year. This lease agreement was approved by the Recreation Board at their March 10th 2011 meeting.

(SEE ATTACHED LEASE AGREEMENT HERETO)

Section 4:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the additional reason that it is necessary that the lease agreement be signed between the City of Massillon and the Board of Education of the Massillon City School District in a timely manner. Provided it receives the affirmative vote of two-thirds of the elected members 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.

2nd page is the signature page

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into effective the 1st day of May, 2011 by and between the CITY OF MASSILLON, OHIO, an Ohio Municipal corporation hereinafter referred to as "Landlord", and the BOARD OF EDUCATION OF THE MASSILLON CITY SCHOOL DISTRICT, hereinafter referred to as "Tenant".

1. LEASED LAND

In consideration of the rents, covenants, and conditions herein promised to be paid and performed by the Tenant, the Landlord hereby leases to Tenant and Tenant accepts from Landlord the lease of the following described property, hereinafter referred to as "Premises" the same being further described as follows:

Situated in the City of Massillon, County of Stark and State of Ohio and known as and being Outlot 795 in the city of Massillon as set out in the replat of lands of Massillon Tiger Football Booster Club, recorded in Stark County, Ohio Recorder Plat Books 66, page 33 and containing approximately 8.84 acres of land more or less.

Parcel No. 06-81096

2. TERMS OF LEASE

The term of this lease shall be for twenty five (25) years commencing May 1, 2011 and ending April 30, 2036. It is understood and agreed that either party may terminate this lease by providing the other party with written notice of termination six (6) months in advance of the effective date of termination.

3. RENT

Tenant agrees to pay rent to Landlord during the term of this lease in a sum of one and no/100 Dollars (\$1.00) per year, payable annually on the first of January each year.

4. SUBLETTING AND STRUCTURES

Tenant shall not sublet the Premises nor be permitted to erect or build any permanent structures upon the Premises without the express written consent of Landlord.

5. INSURANCE

Tenant shall, during the Lease Term, keep in full force and effect a policy of public liability and property damage insurance with respect to the Premises and all uses of the Premises by Tenant, with a combined single limit for personal or bodily injury and property damage of not less than \$1,000,000.00. The policy shall name Tenant as insured, and Landlord as

an additional insured and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord Thirty (30) days' written notice. The insurance shall be provided by an insurance company licensed to do business in Ohio and a copy of the policy or a certificate of insurance shall be delivered to Landlord. All public liability, property damage and other liability policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Any insurance (whether liability or casualty) required by the terms of this Lease to be carried by Tenant may be carried under a blanket policy (or policies) covering other properties of Tenant or its related or affiliated corporations, or both; provided, however, that Tenant provides Landlord evidence reasonably satisfactory to Landlord that (a) Landlord is named as an additional insured on such policy or policies and (b) the coverage under such policy or policies is sufficient to cover the limits required herein.

6. WAIVER OF SUBROGATION

Subject to the prior written consent of the Tenant's insurance carrier, whether the loss or damage is due to the negligence of either Landlord or Tenant, their employees or agents, or any other cause, Landlord and Tenant do each herewith and hereby release and relieve the other and any other Tenant, its employees and agents from responsibility for, and waive their entire claim of recovery (including deductible amounts under the policies of insurance referred to below) for, any loss or damage to the real or personal property of either located anywhere in the Buildings arising out of or incident to the occurrence of any of the perils which are covered and paid by their respective insurance policies, with extended coverage endorsements, that each of them is required to carry under this Lease (regardless of whether such coverage is actually in effect).

7. INDEMNIFICATION

Landlord shall not be liable for any loss or damage to person or property sustained by Tenant or other persons, which may be caused by the buildings or the Premises, or any appurtenances thereto, being out of repair, or the bursting or leakage of any water, gas, sewer or steam pipe, or by theft, or by any food born or contagious illness; or by any act, omission or neglect of any Tenant or occupant, or other person, or by any other cause of whatsoever nature except to the extent that Tenant's loss is caused by the gross negligence, willful misconduct or willful omission of Landlord or Landlord's employees or agents. Tenant agrees to use and occupy the Premises at Tenant's own risk and, except as specifically set forth in the preceding sentence, hereby releases Landlord, Landlord's employees and/or agents from all claims for any damage or injury to the fullest extent permitted by law.

8. CARE OF PREMISES AND IMPROVEMENTS

Tenant covenants and agrees that it shall maintain the improvements erected on the demised premises in good condition and shall not permit or maintain a nuisance thereon, or permit waste on the premises.

Tenant shall be responsible for all reasonable repairs, resurfacing, landscaping, maintenance, and snowplowing on or about the premises.

9. UTILITIES AND MAINTENANCE

Tenant shall provide and pay for all utilities supplied to the premises, including but not limited to electrical, water and sewer, trash removal, connection charges and meter costs. Tenant, at its expense, shall keep the premises clean, neat, orderly, safe and sanitary at all times, and provide for the proper handling and disposal of garbage, trash, and other refuse. Tenant shall enjoy exclusive use and control of the premises during the term of this lease as well as the quiet enjoyment of the premises, free of any interference by Landlord, its employees or agents.

10. NOTICES

Any notices, consents, approvals, elections, submissions, requests or demands required or permitted to be given under this Lease or pursuant to any law or governmental regulation by Landlord to Tenant or by Tenant to Landlord shall be in writing (whether or not expressly so provided) and shall be deemed received and effective five (5) days after being deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid or one (1) business day after being sent by overnight express mail or nationally recognized courier service (e.g. Federal Express) to Landlord or Tenant, at the respective addresses set forth below or such other addresses as either party may designate by notice to the other from time to time. In lieu of registered or certified mail, and in any event during any period of postal strike or other interference with the mails, any notice may be given by personal delivery with a receipt signed by the person served or by any person authorized by law to serve process in the jurisdiction where such service is accomplished and shall be effective when received. The address for notices to Landlord shall be City of Massillon, Attention: MICHAEL J. LOUDIANA, 151 Lincoln Way E., Massillon, Ohio 44646-6615. The address for notices to Tenant shall be BOARD TREASURER, 207 Oak St. SE, Massillon, Ohio 44646, and a copy to General Counsel.

11. GENERAL

TITLES

The title to sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

12. GOVERNING LAW

This Lease shall be construed and governed by the laws of the State of Ohio.

13. BINDING EFFECT

All of the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

14. ENTIRE AGREEMENT

This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the lease, use and occupancy of the Premises and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

15. VALIDITY

Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

16. INTERPRETATION

This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party.

17. AUTHORIZATION

If Tenant is a corporation or partnership, Tenant represents and warrants that the execution, delivery and performance of this Lease have been duly authorized by all necessary persons. The officer or partner executing this Lease on behalf of Tenant further individually represents and warrants that he or she is duly authorized to execute and deliver this Lease to Landlord on behalf of Tenant.

18. NO RECORDING

Tenant shall not record this Lease or any notice or memorandum thereof in the records of the county auditor without Landlord's prior written consent.

STATE OF OHIO,
STARK COUNTY, SS:

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named CITY OF MASSILLON, OHIO, a municipal Corporation, by MICHAEL LOUDIANA its Safety Service Director, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2011.

Notary Public

My commission expires: _____

STATE OF OHIO,
STARK COUNTY, SS:

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named BOARD OF EDUCATION OF THE MASSILLON CITY SCHOOL DISTRICT, an Ohio nonprofit corporation, by _____, its President, AND TERESA L. EMMERLING, its Treasurer/CFO, who acknowledged that it did sign the foregoing instrument and that the same is the free act and deed of them personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2011.

Notary Public

My commission expires: _____