

Committee-of-the-Whole Agenda

6:30 p.m.

Tuesday, December 17, 2013

Oath of Office

Oath of office for promotional appointment to Fire Lieutenant to Jim VanVooren effective December 15, 2013.

Mayor's Board Appointments

Mayor's appointment of Don Welvaert to the Park Board to fill the unexpired term of Nichole Jones to expire May 31, 2014.

Presentation

Fall Flemish Fest Update (Mark Bray, Planning & Development Graduate Assistant)

Questions on the Agenda

Agenda Items

1. **Lease Agreement with Action Valley Paintball at Green Valley** (Laura Duran, Parks & Recreation Director)
2. **Other**

Explanation

1. **Agreement to Lease a portion of Green Valley Park to Action Valley Paintball, LLC.** (Laura Duran, Parks & Recreation Director)

Explanation: Action Valley Paintball, LLC desires to enter into a Lease Agreement with the City for the purpose of running a paintball operation on a certain portion of Green Valley Park as described in the attached documents. The operation would be open Wednesday evenings and all day Saturday and Sunday (to dusk). The Lessee is responsible for providing all of its own equipment and for keeping the leased property clean. The Park Board supports the request and has approved this Agreement. Additional documentation attached.

Staff Recommendation:	Approval
Fiscal Impact:	City will receive \$400 per year lease fee for the term of the Agreement.
Public Notice/Recording:	N/A
Goals Impacted:	Improved City Infrastructure & Facilities, A Great Place to Live

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 201_, by and between the City of Moline, Illinois, a municipal corporation (hereinafter “Lessor”), by and through its Park and Recreation Board of Directors, and Action Valley Paintball, LLC, (hereinafter “Lessee”) (hereinafter collectively “Parties”) to lease portions of Green Valley Park for the purpose of operating a paintball field that is open to the public.

WHEREAS, Lessor seeks to enhance services to citizens of Moline and visitors (hereinafter “Individuals”) utilizing Green Valley Park; and

WHEREAS, Lessor has determined having a paintball field operating at Green Valley Park would be a service enhancement; and

WHEREAS, Lessor is not in the business of nor does it have the personnel necessary to operate a paintball field; and

WHEREAS, Lessor wishes to contract with Lessee for the operation of a paintball field, on a portion of Green Valley Park subject to the terms, conditions, restrictions, limitations and reservations stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. DEFINITIONS
 - a) Premises: Portions of Green Valley Park being more particularly described in **Exhibit “1,”** and **Exhibit “1-A,”** attached hereto and incorporated herein.
 - b) Service(s)/Operation(s): The operation of a field for individuals to play paintball and offering equipment rental for players.
 - c) Lessee Property: All property provided by Lessee for the Operation including, but not limited to, the temporary structures, paintball equipment, and markers.
2. USE
 - a) Lessor shall lease the Premises to Lessee solely for the operation of a paintball field. All activities conducted by Lessee shall be approved by Lessor. The pricing of all activities shall be determined by the Lessee. Under no circumstances shall the Premises be used for the sale of alcoholic beverages, tobacco products or the paraphernalia of either.
 - b) The Lessee shall operate under the name “Action Valley Paintball, LLC.”
 - c) Lessee shall offer services three days a week from 3:00 p.m. until Dusk on Wednesday, 8:00 a.m. until Dusk on Saturday, 8:00 a.m. until Dusk on Sunday weather permitting.

- d) Lessee acknowledges that the Premises contains no parking. Customers of Lessee are allowed to park in the parking lots that are located adjacently north of the leased premises. Lessee also acknowledges that Lessor also allows Moline Soccer Club to use said parking lots. Lessee shall coordinate use of said parking lots directly with Moline Soccer Club and Lessee shall not request any further parking from Lessor.
- e) Lessee understands that the leased premises are located in a flood hazard area and that flood waters from the Rock River could make the leased premises inaccessible or unusable at any time. Lessor will not refund any portion of the rent payment due to the presence of flood waters.
- f) Lessee must approve all signage with Lessor before installation. Lessor requires that all signage coordinates with existing signage in Green Valley Park, that the Lessee's contact phone number is shown on said signage, and that all signage is at the expense of the Lessee.

3. LESSEE'S RESPONSIBILITIES.

- a) The Parties agree that Lessee is an independent contractor. Lessee shall have the exclusive responsibility for the Operation without undue influence by Lessor except in cases specifically referred to in this Agreement; however, at times mutually agreeable, Lessee and Lessor or Lessor's designee(s) shall discuss and consider the matters which may be of mutual interest in maintaining efficient and profitable operation.
- b) Lessee shall at all times devote reasonable time, attention and energies to the management and improvement of the business. Lessee acknowledges the Premises is public property and agrees that the Lessor must have the right to make and enforce rules and regulations governing the Premises, which rules and regulations shall be considered covenants of this Agreement. Present rules and regulations are set forth in **Exhibit "2,"** attached hereto and incorporated by reference herein.
- c) Lessee shall be responsible for all Lessee Property associated with the Operation and shall pay all operational and maintenance costs for same.
- d) Lessee shall keep all equipment utilized in the Operation in good working order and shall permit Lessor to make periodic inspections of same for the purpose of determining compliance with this requirement.
- e) Lessee shall not discriminate when providing Services to the public. Discrimination by Lessee in the provision of Services hereunder based on race, sex, religion, age, marital status, handicap, national origin, or sexual orientation shall be deemed to be a material breach of this lease.

- f) Lessee shall be responsible for all staffing, taxes, insurance, and appropriate licensing associated with and necessary for the Operation. Lessee's employees shall not be deemed employees of Lessor for any purpose whatsoever and shall not be eligible to participate in any benefit program provided by the Lessor for its employees. Lessee shall be exclusively responsible for the payment of all wages and salaries, taxes, withholding payment, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans including, but not limited to, workers compensation and Social Security obligations, licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Lessee shall not bring any cause of action alleging Lessor is the employer of Lessee or any of Lessee's employees, officers or agents, and Lessee shall indemnify, defend and hold harmless Lessor against all claims, losses, costs, or expenses, including reasonable attorneys' fees, associated with the employment of said employees by Lessee.
 - g) Lessee shall remove all Lessee Property from the Premises daily upon completion of Operations for the day.
 - h) Lessee shall be responsible for properly disposing of garbage from the Operation. Lessee shall clean the Premises no less than daily and as frequently as necessary to keep the Premises free of debris resulting from the Operation.
 - i) At its own expense, Lessee shall obtain a water supply for use at the Premises, which meets the approval of the Environmental Health Specialist prior to commencing Operations.
4. RENT. Lessee shall pay lease payments to Lessor as follows:
- a) An annual payment of Four Hundred and no/100 Dollars (\$400.00) due on or before February 1st, 2014
 - b) Delinquent payments shall accrue interest at a rate of eight percent per annum.
 - c) Payments shall be made to the City of Moline Finance Department 1630 8th Avenue, Moline, Illinois 61265.
5. TERM AND TERMINATION
- a) The term of this Agreement shall commence on January 14, 2014 (hereinafter "Commencement Date") and shall continue through Janaury 14, 2015. Any holding over after the expiration of the term hereof without the consent of the Lessor shall be construed to be a tenancy from month to month at the rental five times the last rental rate in effect and shall otherwise be on the terms and conditions herein specified, as far as applicable.

- b) In addition to any other remedies provided by law or equity, in the event of any default or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party or successor shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within thirty (30) days after receipt of such notice. Said written notice shall describe the nature of the default, and what action, if any, is deemed necessary to cure the same. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, but in no event longer than thirty (30) days after receipt such notice unless mutually agreed to in writing by the parties, the aggrieved party may terminate this Agreement by providing final written notice to the other or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. Upon termination of the Agreement by either party, Lessee must peacefully surrender the Premises to Lessor; Lessor must peacefully surrender Lessee's equipment to Lessee. The Premises leased herein shall include all appurtenant fixtures to said real estate, which, upon termination of this Agreement shall remain with the Premises and return to Lessor.

6. HOLD HARMLESS/INDEMNIFY.

- a) In consideration for permission to use the Premises and Lessor's property as granted above, Lessee hereby agrees to defend, hold harmless and indemnify Lessor, its subsidiaries and affiliates, their respective officers, directors, employees, agents, assigns, servants and contractors from and against all claims, demands, actions, or proceedings, all costs, damages, expenses, including reasonable attorneys' fees, or other liability of any nature whatsoever due to personal injury or property damage (including damage to the Premises and Lessor's property other than reasonable wear and tear), any of which arises directly or indirectly from or in connection with, in whole or in part, the permission to use and/or use of the Premises and Lessor's property granted hereinunder, unless caused or contributed to by the willful acts or omissions of Lessor, its officers, directors, employees, agents or assigns, in which case Lessee shall have no duty to defend, hold harmless or indemnify.
- b) This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties thereto.

7. LESSEE'S INSURANCE COVERAGE. Lessee shall, throughout the term of this Agreement and at Lessee's expense, carry and keep in full force and effect comprehensive general liability insurance with respect to the Premises, with a carrier and in a form satisfactory to Lessor, which policy or policies shall:

- a) Have limits of \$1,000,000.00 per occurrence personal injury and \$2,000,000.00 general liability with a \$5,000,000.00 umbrella or higher.

- b) Name Lessor as an additional insured party.
- c) Contain fire and extended perils insurance covering Lessee's own property and insuring Lessee's possessions on the Premises; Lessor shall have no duty to insure Lessee's possessions, the possessions of Lessee's guests, invitees or permittees, or to replace same in the event of any calamity or other disaster.

To the extent required by law, Lessee shall further carry workers' compensation insurance. Workers' compensation and public liability insurance shall be paid by Lessee from the Operation. Certificates of all insurance coverage shall be delivered to Lessor seven (7) days prior to the Commencement Date.

- 8. NOTICES. Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when:
 - a) Hand delivered to the party to whom the notice is addressed, or
 - b) Mailed by certified mail, return receipt requested, United States mail, postage prepaid, and addressed to the party at the address shown below:

Lessor:
Laura Duran
Park & Recreation Director
City of Moline
3635 4th Avenue
Moline, IL 61265

Lessee:
Action Valley Paintball, LLC
Attn: Paul M. Nagovan II
3200 16th Ave
Rock Island , IL 61201

Either party may change the address and individual(s) to whom the notice is to be directed by written notice sent to the other party in the manner provided above.

- 9. OBSERVANCE OF LAWS AND ORDINANCES. Lessee must, at its sole cost and expense, promptly correct any violation and comply with all laws, ordinances, notices, permits, requirements, orders, regulations and recommendations now or in the future in effect, of whatever nature, of all federal, state, county, municipal and other authorities, with respect to Lessee's conduct or use of the premises.
- 10. SURRENDER OF PREMISES. At the end or termination of the term hereby demised, Lessee covenants to surrender and deliver up the Premises hereby leased in as good as condition as they now are, or may hereafter be put, destruction by fire, reasonable use, ordinary wear and tear, and the effects of time excepted.
- 11. ASSIGNMENT AND SUBLEASING. Lessee shall not have the right to assign this Agreement or sell, transfer or sublet any portion of the Premises herein without the express written consent of Lessor, and shall not release or discharge Lessee from any obligations hereunder.

12. EFFECT OF PARTIAL INVALIDITY. The invalidity of any part of this Agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

13. WAIVER. Waiver by Lessor of any breach of any covenant or duty of Lessee under this Agreement is not a waiver of a breach of any other covenant or duty of Lessee, or of any subsequent breach of the same covenant or duty.

14. CHOICE OF LAW. This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state court located within Rock Island County, Illinois, or federal court located within the same venue.

15. TAXES. Lessee shall also be responsible for and pay all real estate taxes assessed against the lease premises, if any are so assessed, and shall furnish to Lessor proof of payment within thirty (30) days after payment is due.

16. MISCELLANEOUS.
 - a) This Agreement and each and every one of the terms and provisions thereof shall be for the benefit of and be binding upon the parties hereto and each of them and their respective heirs, executors, administrators, grantees, successors and assigns.

 - b) This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior agreements, undertakings and arrangements between the parties relating to the subject matter hereof. All amendments, changes, modifications or alterations of the terms and conditions hereof shall be in writing and signed by all parties hereto.

 - c) The captions of the Agreement are used for convenience of reference only and shall have no significance in construing the text of the Agreement.

IN WITNESS WHEREOF, this Lease Agreement is executed in Moline, Illinois, as of the date hereof first above written.

**CITY OF MOLINE, ILLINOIS
(LESSOR)**

**ACTION VALLEY PAINTBALL, LLC
(LESSEE)**

By: _____
Scott Raes, Mayor

BY: _____
NAME, _____
Print Title

BY: _____
Chip Nelson, President
Parks and Recreation Board

ATTEST:

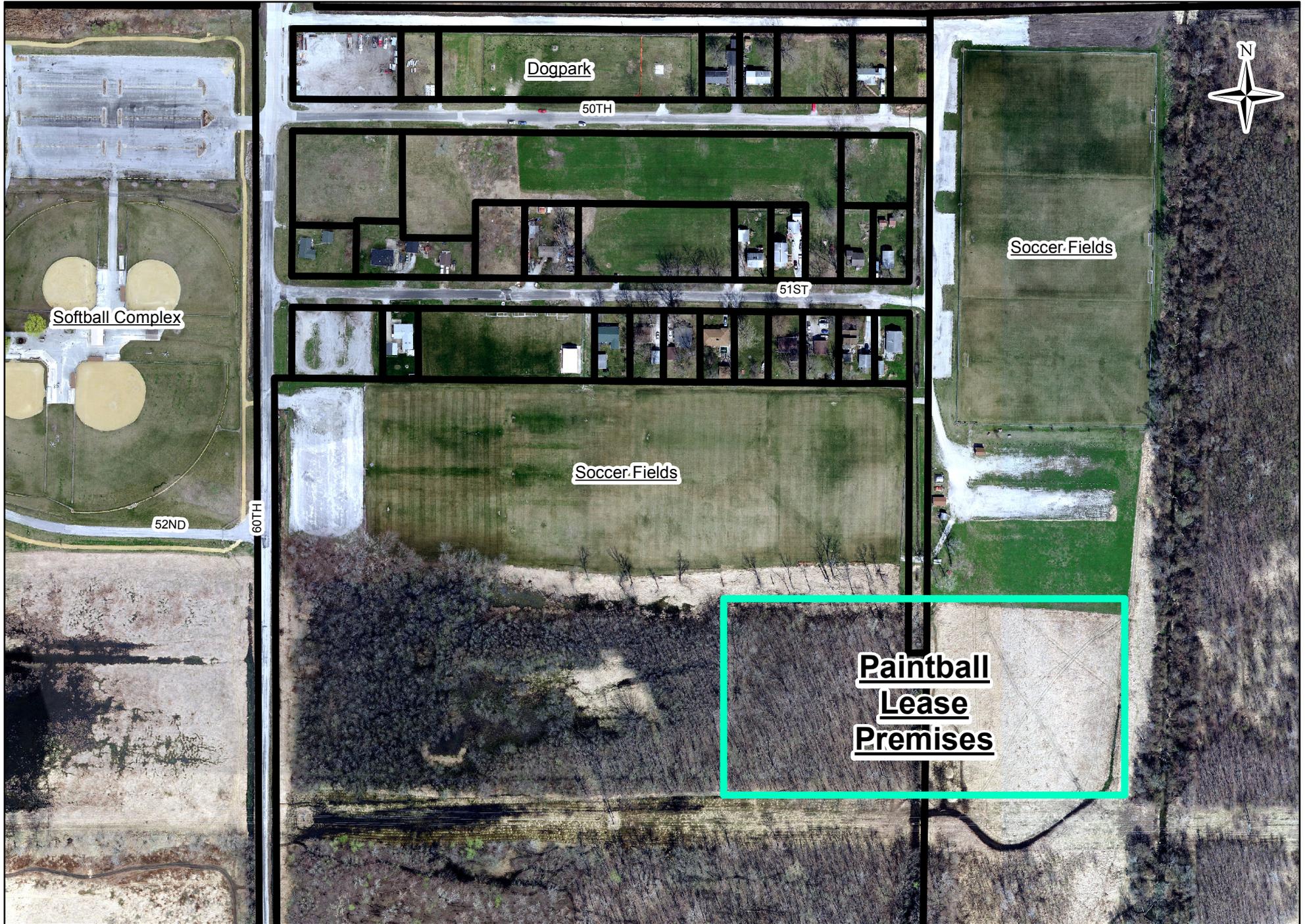
Tracy Koranda, City Clerk

DATE: _____

Approved as to Form:

City Attorney

Exhibit "1"



1 inch = 250 feet

EXHIBIT "1-A"
DESCRIPTION

The location of the premises will be a portion of Green Valley Park, the boundary more particularly described as follows: The Point of Beginning (P.O.B.) being 1200 feet south of the NW corner of Parcel 07297; thence East from the P.O.B. a distance of 390 feet, thence South a distance of 375 feet, thence West a distance of 390 feet, thence North a distance of 375 feet to the P.O.B.; said Premises depicted in the diagram attached hereto and incorporated herein as Exhibit "1."

SEE ATTACHED DIAGRAM
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EXHIBIT "2"

RULES AND REGULATIONS

1. Use of Name: Vendor shall not use the name of the Owner, or any simulation or abbreviation thereof, as its name or as part of its name without Owner's prior written consent.
2. Noises and Odors: Vendor shall not make noises, cause disturbances or vibrations, or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances, or create odors, any of which may be reasonably offensive to other users of the Premises or unduly disturb any wildlife in and around the Premises.
3. Solicitation: Vendor shall not exhibit, sell or offer to sell, use, rent or exchange any item or service from the Premises unless ordinarily embraced within Vendor's use of the Premises specified herein.
4. Vendor Shall Not Interfere With Reserved Rights: Vendor shall not attempt to exercise any of the rights specifically reserved by Owner or interfere in any way with the exercise of these rights by Owner.