

## **Committee-of-the-Whole Agenda**

**6:30 p.m.**

**Tuesday, November 1, 2016**

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### **Oath of Office**

Oath of office for regular commissioned appointment as Police Officer to Benjamin Tuttle effective October 26, 2016 (hire date October 26, 2015).

### **Informational**

Single Family Rehabilitation Program Partnerships (K.J. Whitley, Community Development Program Manager)

### **Questions on the Agenda**

### **Agenda Items**

- 1. HGAC Agreement** (Dave Mallum, Fleet Manager)
- 2. QC Music Guild Lease** (Lori Wilson, Parks Recreation Director)
- 3. Angel of Hope Agreement** (Lori Wilson, Parks Recreation Director)
- 4. Develop Parking Lot** (Ray Forsythe, Planning & Development Director)
- 5. Other**
- 6. Public Comment**

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# Explanation

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**1. A Resolution authorizing the Mayor and City Clerk to execute an Interlocal Contract for Cooperative Purchasing with Houston-Galveston Area Council (H-GAC).** (Dave Mallum, Fleet Manager.)

**Explanation:** The Houston-Galveston Area Council (H-GAC) is a regional council of governments operating under the laws of the State of Texas and governed by a board comprised of 35 elected officials from the 13-county region. The H-GAC Board awards all contracts, which can then be made available to local governments nationwide, through HGACBuy for equipment products that are utilized in Public Safety and Public Works. HGACBuy is a self-funded “enterprise fund” government agency, self-supported through an administrative fee assessed to the contractor as an “order processing charge” (administrative fee). The City will have access to volume purchasing and discounts at a very competitive cost by entering into the Interlocal Contract for Cooperative Purchasing with Houston-Galveston Area Council (H-GAC). Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** Access to volume purchasing and discounts for equipment/products.  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Financially Strong City & A Great Place to Live

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**2. A Special Ordinance authorizing the Mayor and City Clerk to execute a Lease Agreement with the Quad City Music Guild.** (Lori Wilson, Parks Recreation Director)

**Explanation:** The Moline Park and Recreation Board and the Quad City Music Guild previously entered into a lease agreement dated March 1, 2000, for a twenty-year term ending April 1, 2020, for premises described therein. The parties agreed to review the lease in 2016 upon the request of the Guild’s current President, he would like the Guild to enter into a new twenty-year lease before he steps down from office. The new lease would be effective January 1, 2017, and it would terminate and replace the current lease. The Park and Recreation Board recommends approval of the new lease. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** City of Moline will receive \$450.00 per year for the lease term.  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Strong Local Economy, A Great Place to Live

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**3. A Special Ordinance authorizing the Mayor and City Clerk to execute an Agreement with the Compassionate Friends of the Quad Cities.** (Lori Wilson, Parks Recreation Director)

**Explanation:** The Compassionate Friends of the Quad Cities are donating a bronze statue, “The Angel of Hope,” and memorial garden to Moline Memorial Park, Section 10. The plans and landscape drawings were previously approved by Park Board. The statue is ready to be placed upon approval of the agreement. Additional documentation attached.

**Staff Recommendation:** Approval  
**Fiscal Impact:** N/A  
**Public Notice/Recording:** N/A  
**Goals Impacted:** Upgrade City Infrastructure & Facilities, A Great Place to Live

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- 4. A Resolution authorizing the concept of a redevelopment project of the Parking Lot I located at 1300 6<sup>th</sup> Avenue, Moline, Illinois; and affirming the intent of the City to enter into a purchase agreement and a development agreement for said project; and authorizing City staff to negotiate a purchase agreement and a development agreement exclusively with The Landmark Properties, LC for a term of 180 days, which agreements shall be subject to further review and approval by the City Council. (Ray Forsythe, Planning & Development Director)**

**Explanation:** The City and The Landmark Properties, LC (Developer) have a mutual desire to develop the Parking Lot I located at 1300 6<sup>th</sup> Avenue (Property), currently owned by the City. Developer has submitted a formal offer to purchase the Property and has already purchased the adjacent property. The Developer is planning to demolish the home on the adjacent property to explore the concept of apartments or townhomes on the block. The City is seeking a 180 day period of exclusive rights to explore the option to sell the Property. This time would allow Developer to complete due diligence on the site as well render a final development proposal. The Developer and City Administration will work to provide updates to the City Council regarding the research on the feasibility of the development in order to facilitate the due diligence and lessen the needed time to perform the decision and negotiation process. Additional documentation attached.

**Staff Recommendation:** Approval

**Fiscal Impact:** N/A

**Public Notice/Recording:** N/A

**Goals Impacted:** A Great Place to Live

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**INTERLOCAL CONTRACT  
FOR COOPERATIVE PURCHASING**

ILC

No.: \_\_\_\_\_

Permanent Number assigned by H-GAC

THIS INTERLOCAL CONTRACT ("Contract"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the Houston-Galveston Area Council, hereinafter referred to as "H-GAC," having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, and \* City of Moline, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "End User," having its principal place of business at \* 619 - 16th Street, Moline, Illinois 61265.

**WITNESSETH**

WHEREAS, H-GAC is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Act, H-GAC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, in reliance on such authority, H-GAC has instituted a cooperative purchasing program under which it contracts with eligible entities under the Act; and

WHEREAS, End User has represented that it is an eligible entity under the Act, that its governing body has authorized this Contract on \* \_\_\_\_\_ (Date), and that it desires to contract with H-GAC on the terms set forth below;

NOW, THEREFORE, H-GAC and the End User do hereby agree as follows:

**ARTICLE 1: LEGAL AUTHORITY**

The End User represents and warrants to H-GAC that (1) it is eligible to contract with H-GAC under the Act because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state), or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and (2) it possesses adequate legal authority to enter into this Contract.

**ARTICLE 2: APPLICABLE LAWS**

H-GAC and the End User agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Contract.

**ARTICLE 3: WHOLE AGREEMENT**

This Contract and any attachments, as provided herein, constitute the complete contract between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

**ARTICLE 4: PERFORMANCE PERIOD**

The period of this Contract shall be for the balance of the fiscal year of the End User, which began \* January 1, 2016 and ends \* December 31, 2016. This Contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the End User may make any payment due an H-GAC contractor beyond the fiscal year in which such obligation was incurred under this Contract.

**ARTICLE 5: SCOPE OF SERVICES**

The End User appoints H-GAC its true and lawful purchasing agent for the purchase of certain products and services through the H-GAC Cooperative Purchasing Program. End User will access the Program through HGACBuy.com and by submission of any duly executed purchase order, in the form prescribed by H-GAC to a contractor having a valid contract with H-GAC. All purchases hereunder shall be in accordance with specifications and contract terms and pricing established by H-GAC. Ownership (title) to products purchased through H-GAC shall transfer directly from the contractor to the End User.

(over)

**ARTICLE 6: PAYMENTS**

H-GAC will confirm each order and issue notice to contractor to proceed. Upon delivery of goods or services purchased, and presentation of a properly documented invoice, the End User shall promptly, and in any case within thirty (30) days, pay H-GAC's contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall H-GAC have any financial liability to the End User for any goods or services End User procures from an H-GAC contractor.

**ARTICLE 7: CHANGES AND AMENDMENTS**

This Contract may be amended only by a written amendment executed by both parties, except that any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal and State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

H-GAC reserves the right to make changes in the scope of products and services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

**ARTICLE 8: TERMINATION PROCEDURES**

H-GAC or the End User may cancel this Contract at any time upon thirty (30) days written notice by certified mail to the other party to this Contract. The obligations of the End User, including its obligation to pay H-GAC's contractor for all costs incurred under this Contract prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Contract, until performed or discharged by the End User.

**ARTICLE 9: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 10: FORCE MAJEURE**

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds. Determination of force majeure shall rest solely with H-GAC.

**ARTICLE 11: VENUE**

Disputes between procuring party and Vendor are to be resolved in accord with the law and venue rules of the State of purchase.

**THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:**

\* City of Moline  
Name of End User (local government, agency, or non-profit corporation)

\* 619 16th Street  
Mailing Address  
\* Moline, IL 61265  
City State ZIP Code

\*By: \_\_\_\_\_  
Signature of chief elected or appointed official

\* Scott Raes, Mayor  
Typed Name & Title of Signatory Date

**Houston-Galveston Area Council**  
3555 Timmons Lane, Suite 120, Houston, TX 77027

By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Manager

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

\*Denotes required fields

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, (hereinafter "Lease" or "Agreement") by and between the City of Moline, Illinois, a municipal corporation, as Lessor, with the approval and consent of the Moline Park and Recreation Board, (hereinafter "Lessor") and the Quad City Music Guild, an Illinois not-for profit corporation, as Lessee (hereinafter "Lessee") (hereinafter collectively "Parties").

WHEREAS, the Moline Park and Recreation Board and the Quad City Music Guild previously entered into a lease agreement dated March 1, 2000;

WHEREAS, the term of the March 1, 2000 lease agreement expires April 1, 2020;

WHEREAS, the Parties mutually desired to review the lease during 2016; and

WHEREAS, the Parties agree to make certain changes to the lease and enter into a new lease effective January 1, 2017, which will replace their current lease agreement.

NOW THEREFORE, for and in consideration of the rent hereinafter specified to be paid by Lessee, and the covenants and agreements hereinafter contained, by the Lessee to be kept and performed, Lessor does hereby demise, lease, and let unto said Lessee those certain Premises in the City of Moline, County of Rock Island, State of Illinois, as hereinafter set forth, subject to all such conditions, promises and agreements incorporated herein.

### **Section 1: TERM**

- (a) Primary: The term of this Lease shall be twenty (20) years, commencing on the first (1<sup>st</sup>) day of January, 2017, and terminating on the last (31<sup>st</sup>) day of December, 2036.
- (b) Renewal: Lessee shall have an option to renew this lease for twenty (20) years ("Renewal Option"). To exercise this option, Lessee must provide, in writing, to the Lessor its notification of the renewal by November 1, 2036.
- ~~(c) Termination of prior agreement: On the commencement date of this Lease as set forth above, and only if this lease is fully executed, the Parties hereby mutually agree that the prior lease agreement between the Moline Park and Recreation Board and the Quad City Music Guild dated March 1, 2000, shall be and hereby is terminated.~~

### **Section 2: TERMINATION**

- (a) FOR CAUSE: In the event of any material breach of this Lease by the Lessee, the Lessor shall have the right to terminate this Lease according to the terms and conditions of default, remedies, and notice herein provided.

- (b) WITH NINETY (90) DAYS' NOTICE: Lessee shall have the right to terminate this Lease before the end of the primary term, and prior to the Renewal Option, upon giving a ninety (90) day written notice of such termination. Such termination may be without cause and without liability.
- (c) FOR CHANGE IN CIRCUMSTANCES: The Lessee and Lessor may review this lease on the ten (10) year anniversary of its execution and every five (5) years thereafter. During such review, the Parties may negotiate changes in terms or conditions. Notwithstanding, either party may request a review of the Lease pursuant to a change in circumstance resulting in a hardship for the party seeking review. Any request for review must be submitted by the party seeking relief to the other party, in writing, prior to the last day of January in a given year. If Lessee requests the change, then Lessor, in its sole discretion, shall determine whether any change in circumstance constitutes a hardship. Lessor shall notify Lessee, in writing, of its determination. If Lessor requests the change, then Lessee, in its sole discretion, shall determine whether the change in circumstance constitutes a hardship. Lessee shall notify Lessor, in writing, of its determination. Nothing herein shall require or prohibit the parties from renegotiating the Lease terms to alleviate the hardship.

**Section 3: RENT**

Rent payable hereunder shall be Four Hundred and Fifty dollars (\$450.00) per year, payable annually beginning January 1, 2017, and payable on January 1st of each subsequent year.

**Section 4: THE PREMISES**

The premises being leased by Lessor to Lessee is legally described as follows:

Parts of Outlots No. 4 and No. 5 in Prospect Park Addition to South Moline, a part of this NE ¼ of SE ¼ and SE ¼ of NE ¼, Section 8, Township 17 N, Range 1 W of the 4<sup>th</sup> P.M., Rock Island County, Illinois,

commonly known as Prospect Park Music Guild building and related parking areas immediately adjacent to said property, 1584 34<sup>th</sup> Avenue, Moline, Illinois 61265 ("Premises").

**Section 5: PURPOSE OF PREMISES; ALLOWED USE**

Said Premises shall be used only for the following purposes and for no other purpose whatsoever: conducting cultural activities/services associated with theatrical performances, training classes, rehearsals, musical events, choral presentations and dance performances. Any other uses shall be deemed a material breach of this lease, unless authorized in writing by the Lessor prior to the actual use of the premises in such manner. Lessee shall not allow any other organizations, clubs, or not-for-profits to utilize the Premises without the permission of the Lessor.

**Section 6: ASSIGNMENT, SUBLEASE AND MORTGAGE**

Lessee may sublease or assign said premises to other organizations conducting similar or related services to Lessee, as set forth in Section 7; however, any such sublease must be approved by Lessor in writing prior to execution between Lessee and Sub-Lessee. Sub-Lessee shall provide insurance coverage as required by the Lessor, naming the City of Moline and the Moline Park and Recreation Board as additional insured's. Sub-Lessee shall also adhere and agree to all indemnification paragraphs identical to Lessee's, as set forth in this Lease. Lessee shall provide ten percent (10%) of all sub-lease rental fees to Lessor, in addition to Paragraph 5 rental fees. Lessee assumes responsibility for all actions of Sub-Lessee. Sub-leasing to organizations conducting events dissimilar or unrelated to the services of Lessee's shall not be allowed except by specific prior written approval from Lessee.

**Section 7: LESSOR'S DUTY TO MAINTAIN PREMISES**

- (a) Lessor shall provide lawn maintenance and garden and shrub maintenance.
- (b) The Lessor shall complete snow and ice removal for the adjacent grounds, walks, and parking areas.

**Section 8: LESSEE'S DUTIES TO REPAIR AND MAINTAIN PREMISES**

- (a) It shall be the duty of the Lessee to maintain the interior and exterior of the building, except for the particular duties of the Lessor stated in Section 9 above.
- (b) Lessee represents that it has inspected and examined the demised Premises, accepts them in their present condition as-is, and agrees that Lessor shall not be required to make any improvements or repairs whatsoever in or upon the Premises demised or any part thereof.
- (c) Lessee agrees to keep said Premises safe and in good order and condition at all times during the term hereof, and upon expiration of this Lease, or any sooner termination thereof, Lessee will quit and surrender possession of said Premises quietly and peaceably and in as good of an order and condition as the Premises were at the commencement hereof; reasonable wear, tear and damage by the elements excepted.
- (d) Lessee further agrees to keep and leave said Premises free from all nuisance and dangerous and defective conditions.
- (e) Lessee shall at all times keep the Premises clean and compliant with all municipal ordinances, rules and regulations.
- (f) Lessee's duty shall extend to maintaining walls, ceilings, floors, windows, doors and locking mechanisms, fixtures, seating, plumbing, stage and work rooms, orchestra pit, exhaust fans, HVAC systems, ticket areas, concession area and equipment, stage lighting, security lighting, interior drains and sewer systems, and all other visible or exposed portions of the interior and exterior.

- (g) Lessee, at its sole expense, shall provide janitorial services and replace all expendable items, including, but not limited to, light bulbs.
- (h) If the building is damaged or destroyed by fire or other Acts of God, neither Lessor nor Lessee shall be liable to rebuild any of same and no rebate of the lease payments shall occur. If the present auditorium is damaged or destroyed by actions of the Lessee, repairs shall be made or a new building created Premises to replace the same by Lessee within five (5) years. A new building, if any, shall be at least equivalent to the present building in its present condition.
- (i) Lessor shall, in its sole discretion, have the right to determine if Lessee is fulfilling the requirements of this section.

**Section 9: FIRE, CATASTROPHE, DISASTER INSURANCE**

- (a) The Lessor shall insure any buildings or structures by carrying insurance for Fire, Theft, Vandalism and Extended coverage. Said coverage shall meet the standard requirements as set forth by the Moline Park and Recreation Board and/or the City of Moline.
- (b) The Lessee shall have no duty to insure the building itself, but the Lessee shall insure all improvements therein as well as Lessee's possessions therein. Said coverage shall meet the standard requirements as set forth by the Moline Park and Recreation Board and/or the City of Moline.
- (c) Lessor shall have NO DUTY to insure Lessee's possessions or to replace same in the event of fire or any other damage or loss caused by calamity, disaster, vandalism or theft.

**Section 10: LIABILITY INSURANCE AND INDEMNIFICATION BY LESSEE**

- (a) Lessee shall, throughout the term of this Lease, and at Lessee's expense, carry and keep in full force and effect general liability insurance with respect to its activities on the Premises with a carrier and in a form satisfactory to Lessor, which policy or policies shall:
  - (i) Have commercial general liability insurance coverage with limits not less than:
    - (1) One million dollars (\$1,000,000) for bodily injury or death to each person;
    - (2) One million dollars (\$1,000,000) for property damage resulting from any one accident;
    - (3) One million dollars (\$1,000,000) for all other types of liability; and
    - (4) Two million dollars (\$2,000,000) aggregate;
  - (ii) Name Lessor as an additional insured party;
  - (iii) Contain a clause that the insurance carrier will not cancel or change the insurance without first giving Lessor thirty (30) days' written notice;
  - (iv) 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 replace same in the event of a any calamity or other disaster;
  - (v) To the extent possible, each such policy of insurance shall contain a waiver of subrogation provision;

- (vi) Not extend to acts or occurrences occurring outside the Premises or which were unrelated to Lessee's actions or business.
- (b) Lessee agrees to indemnify and hold harmless Lessor, its agents, employees, assigns or beneficiaries from and against any and all losses, damages, expenses, liabilities, demands and causes of action and any expense, including reasonable attorney fees, incidental to the defense thereof by the Lessor due to or arising out of:
  - (i) Any violation or non-performance of any covenant, condition or agreement to be fulfilled, kept or observed and performed, by Lessee;
  - (ii) Any damage to the property occasioned by Lessee or one of Lessee's agents or employees negligence; and
  - (iii) Any injury, including death, to person or persons arising out of or in the course of the use and occupancy of the Premises or any thereof claimed to have been caused by the negligence of Lessee, its officers, agents, or employees, or the officers, agents, or employees of a subcontractor, whether arising directly or indirectly out of the use and occupancy of the Premises.
- (c) Lessee shall not be liable for, other than for payment of insurance premiums for policy or policies described above, nor shall Lessee indemnify, defend and hold harmless Lessor, its agents, employees, assigns, beneficiaries from any and all loss, damage, expense, liabilities, demands or causes of action and any and all expenses, including reasonable attorney fees, incidental to the defense thereof by Lessor, resulting from consequences of a tortious or negligent act of Lessor or its agents, employees, assigns or beneficiaries.

**Section 11: OBSERVANCE OF LAWS AND CODES**

The Premises shall not be used in any manner where the use would violate federal law, state law, municipal ordinance, or any rule or regulation enacted pursuant to any of the above. The Premises shall not be used in any way which would increase the insurance coverage rates. Breach of the conditions in this Section shall be construed as a material breach of this Lease. Any construction connected with utilities must be granted approval by City inspector and work be completed by licensed and bonded contractors. Permits, if required, must be obtained for any work to be completed.

**Section 12: MECHANICS' LIENS**

- (a) Lessee agrees not to make any contract for the construction, repair or improvement on, in, of, or to the Premises, or any part thereof, or for any work to be done or materials to be furnished on or to the Premises, or any part thereof, without providing in such contract or agreement that no lien of mechanics or materialism or other lien shall be created or shall arise against the above-described Premises or improvements at any time located therein. All persons furnishing any work, labor or materials, as well as all other persons whatsoever, shall be bound by this provision and notice thereof from and after the date of this Lease, and notice is hereby given that no mechanic's lien, material men's lien or any other lien or encumbrance of any sort whatsoever, made, or obtained against the Lessee, or his interest in said land and/or the building or improvements thereon, shall in any manner or degree effect the title or interest of the Lessor in said land and or building or improvements thereon.

- (b) Further, Lessee agrees not to make any contract or agreement, either oral or written, for any labor, services, fixtures, materials or supplies in connection with altering, repairing or improving the Premises without providing in such contract or agreement that the contractor(s) waive all right to a mechanic's lien, and waive all right of any subcontractor(s) to mechanic's liens, by reason of furnishing any labor, services and/or material under such contract(s), whether written or oral.
- (c) The parties agree this Agreement or a memorandum thereof shall be filed in the office of the Recorder of Deeds of Rock Island County, Illinois, at Lessor's expense.

**Section 13:                    RIGHTS IN THE EVENT OF FIRE, CALAMITY OR OTHER  
DISASTER**

In the event that the Premises in question is destroyed or rendered untenable by calamity, disaster, or condemnation, the Lessor may immediately terminate this Lease by serving written notice on Lessee. In lieu thereof, the Lessor may choose to repair. In the event that it is reasonably estimated that the repairs cannot be accomplished within four (4) months, the Lessee shall have the right to terminate the Lease upon delivery of a written notice to the Lessor. Further, the Lessor shall have the right to demand that the Lessee advise in writing within (30) thirty days whether Lessee intends to terminate Lease under the terms of this section. Rent shall abate during the time when the Premises is untenable. If only a portion of the leased Premises becomes untenable, rent shall abate only on that portion of the Premises.

**Section 14:                    UTILITIES**

The Lessee shall pay for all utilities used on the Premises, including, but not limited to, gas, electricity, water and sewage, and telephone. Lessee shall also pay costs associated with exterior perimeter lighting of the leased area. The failure of Lessee to pay any such utility shall be construed as a material breach of this lease.

**Section 15:                    TAXES**

Lessee shall pay any and all taxes levied and assessed upon any personal property, buildings, fixtures and improvements belonging to Lessee and located upon said demised Premises, as well as all leasehold and possessory interest taxes levied or assessed by any proper taxing authority. Lessee shall also be responsible for and pay all REAL ESTATE TAXES, if any taxes are so assessed and levied, against the leased Premises. Lessee shall furnish to Lessor proof of payment within thirty (30) days after payment is due for any of the above taxes. Failure to pay such taxes when due or to provide Lessor with the required proof of payment within the time specified above shall constitute a material breach of this agreement.

**Section 16:                    OTHER OBLIGATIONS OF LESSEE**

Lessee further agrees not to commit or suffer any waste in or upon said Premises, and to comply strictly and literally with any and all rules, regulations and requirements that may be at any time imposed by virtue of any policy of insurance or any federal, state, or municipal law.

**Section 17:           DEFAULT**

In the event that Lessee shall be in default of any payment of any rent or in the performance of any terms or conditions herein agreed and to be kept and performed by Lessee, Lessor may terminate and end this Lease, notwithstanding any other requirements for termination, and Lessor may take the legal action necessary to re-enter upon said Premises and remove all persons and property there from. Lessee shall not be entitled to any money paid hereunder or any part thereof. In the event Lessor brings a legal action to enforce any of the terms hereof, or to obtain possession of said Premises by reason of any default of Lessee, Lessee agrees to pay Lessor all costs of such legal action, including reasonable attorney fees.

**Section 18:           REMEDIES**

- (a) All rights and remedies of Lessor herein enumerated shall be cumulative, and shall include all other rights or remedies allowed by law or equity.
- (b) This lease and all the rights of Lessee hereunder shall, at the option of the Lessor, cease and terminate upon Lessee being, by any court, adjudged bankrupt, or insolvent, or upon the appointment of a receiver, or upon Lessee making any assignment for the benefit of creditors; it being agreed that such adjudication in bankruptcy or insolvency, or the appointment of a receiver, or assignment for the benefit of creditors shall constitute a material breach of this lease and thereupon the Lessor shall be entitled to recover damages for such breach in an amount equal to the amount of rent reserved in this lease for the residue of the term hereof less the fair rental value of the Premises for the remainder of said term.
- (c) If the rent above reserved, or any part thereof, shall be behind or unpaid on the day whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants and agreements herein contained, to be kept by Lessee, and if said default continues ten (10) days after receipt by Lessee from Lessor of a written notice of said default, it shall be lawful for Lessor to sue for said overdue rent or for damages due to said default, or at Lessor's election to declare said term ended, and take necessary legal action for possession of the Premises. In such case, or in the case of termination of this Lease in any way, the Lessee does hereby covenant and agree to surrender and deliver up said above-described Premises, peaceably, to Lessor immediately upon the termination of said term as aforesaid, and if Lessee shall remain in possession of the same after default, or after the termination of this Lease in any of the ways above named, Lessee shall be subject to all the conditions and provisions above named, including a forcible entry action under state law.
- (d) In the event the Lessee shall fail to pay rent, or otherwise default in any of the covenants or agreements of this Lease as above provided, and if said default shall continue ten (10) days after receipt by Lessee from Lessor of a written notice of said default, such action shall

constitute a material breach of the Lease and it shall and may be lawful for the Lessor, in addition to other remedies herein provided for, either (1) to re-lease the Premises as an agent of the Lessee, applying all net rent received after necessary expenses to the rent to be paid and in that event Lessee shall remain liable to the Lessor for the excess of rent, if any, which is due pursuant to this Lease; or (2) to recover damages for such breach in an amount equal to the amount of the rent reserved for this Lease for the remainder of the term thereof, less a fair rental value of the Premises for the remainder of said term.

- (e) In addition to any other remedies provided hereinabove, when a breach of a covenant, condition or agreement constitutes a material breach by Lessee of the terms herein, or any of them, the Lessor may elect immediately to declare the term ended and take necessary legal action to evict the Lessee upon written notice of this remedy.
- (f) In any action for breach of a covenant, condition or other obligation contained within this Lease, or to otherwise enforce the terms of this Lease, Lessee shall be responsible to Lessor for any and all loss, damage, expense, liabilities, including reasonable attorney fees, resulting directly or indirectly from Lessee's conduct or paid by Lessor to enforce the terms of this Lease.

**Section 19:                   HOLDING OVER**

In the event that Lessee shall hold over and remain in possession of the Premises with the consent of the Lessor, such holding over shall be deemed to be from year-to-year only and not an extension of the Lease for a similar term and upon all of the same rents, terms, covenants and conditions as contained herein. Rent during any hold over period shall be Five Hundred and No/100ths Dollars (\$500.00) per month. Any unpaid rent shall accrue interest at the rate of Eight Percent (8%) per annum until paid.

**Section 20:                   OTHER AGREEMENTS OF LESSEE**

- (a) Lessee agrees, in addition to all the terms and conditions of the Lease set forth above, as follows:
  - (i) To permit Lessor and its agents and employees without limitation to enter on the Premises or any part thereof, at all reasonable hours, for purpose of examining the same or making such repairs or alterations as may be necessary for the safety or preservation thereof;
  - (ii) That no representation as to the condition of repair of the Premises has been made by Lessor or its agent, prior to, or at the execution of, this Lease other than is herein expressed or endorsed hereon, and Lessee relies upon no representations other than those set forth herein in entering into this Lease;
  - (iii) Lessor shall have a lien on all of the property of the Lessee used or situated on the demised Premises, to secure payment of the rent (and other indebtedness owing from Lessee to Lessor at any time during the existence of this lease) to become due under this lease, and in default of payment may take possession of and sell such of said property as may be sufficient to pay the delinquent rent or indebtedness;
  - (iv) Lessor shall have the right to sell the Premises, provided notice of such contemplated sale shall be given in writing to the Lessee at least one hundred eighty (180) days prior

to the time fixed for vacation of the Premises by the Lessee, and provided that during such period, the Lessee shall have the option to buy the Premises at the price and on the terms of such contemplated sale. In the event of a sale of the Premises by the Lessor after such notice and the failure of the Lessee's option to purchase, Lessee agrees to vacate and give possession of the Premises within one hundred eighty (180) days after written notice of sale, given by Lessor to Lessee; and

(v) Lessor shall not be liable for injury to Lessee or damage to Lessee's property from failure to keep Premises in repair or from any act, omission or negligence of Lessee or other persons.

(b) With regard to subsection (a) above, determining whether Lessee's conduct fulfills the obligations established by this Agreement shall be in Lessor's sole discretion.

**Section 21: FAILURE TO INSIST ON STRICT PERFORMANCE NOT WAIVER**

Failure of the Lessor or Lessee to insist on the strict performance of the term, agreements and conditions herein contained or any part of them, whether in whole or in part, shall not constitute or be construed as a waiver or relinquishment of the Lessor's or Lessee's right thereafter to enforce any such term, agreement or condition, but the same shall instead continue in full force and effect.

A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

**Section 22: LIEN**

A lien is hereby reserved upon the interest of Lessee in and to the Premises hereby leased and the property of Lessee upon said Premises, in favor of Lessor, prior and preferable to any and all other liens thereupon whatsoever, for the whole of the rents to be paid by Lessee aforesaid, including installments of rent, and all rent and damages due as above provided for a breach of the lease and said property may be levied upon and sold pursuant to this provision.

**Section 23: NOTICE**

All notices required under this Lease shall be deemed to be properly served if delivered in writing personally or sent by certified mail:

To Lessor: Park and Recreation Board  
3635 4<sup>th</sup> Avenue  
Moline, IL 61265

with a copy to: City Attorney  
619 16<sup>th</sup> Street  
Moline, IL 61265

To Lessee: \_\_\_\_\_  
President, Quad City Music Guild

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Date of any notice served by mail shall be the date on which such notice is deposited, postage prepaid, in a post office of the United States Postal Service.

**Section 24: APPLICATION TO SUCCESSORS IN INTEREST**

All the agreements and conditions herein contained shall extend to and be binding on the representatives, heirs, executors, administrators, successors and assigns of the respective parties hereto as if they were in all cases named herein.

**Section 25: NEW CONSTRUCTION, BUILDING IMPROVEMENTS, AND PARKING LOT CONSTRUCTION**

New or additional buildings, including modifications, remodeling, and additions to the present structures or parking lot construction may be completed on the Premises, with the written consent of Lessor, which shall not be unreasonably withheld. All new construction, building improvements and parking lot construction costs shall be paid by the Lessee. All revisions or new construction shall become the property of the City of Moline upon termination of this lease as renewed or extended.

**Section 26: PERSONAL PROPERTY**

All personal property of the Lessee located on said Premises shall remain the property of Lessee under its sole and exclusive possession and control at all times during the period of this Lease and any extension thereof, and said property shall remain the property of the Lessee, regardless of the termination of this Lease.

**Section 27: ENTIRE AGREEMENT**

This Lease contains the entire Agreement between Lessor and Lessee, and any Amendments made to such Lease must be made and approved in writing, signed by both parties.

**Section 28: APPLICABLE 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 appropriate venue.

**Section 29: SEVERABILITY**

Should any part of this Agreement be determined to be illegal, invalid or otherwise unenforceable, then all such remaining parts not so affected by such illegality, invalidity or unenforceability shall continue in full force and effect, fully binding all parties, their respective heirs and assigns, as to such remaining terms.

**IN WITNESS THEREOF**, the Lessor and Lessee hereunto set their hands and seals and have caused these presents to be signed.

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

**QUAD CITY MUSIC GUILD  
(LESSEE)**

BY: \_\_\_\_\_  
Scott Raes, Mayor

BY: \_\_\_\_\_  
Kevin L Pieper, President

BY: \_\_\_\_\_  
Don Welvaert, President  
Parks and Recreation Board

ATTEST:

\_\_\_\_\_  
Tracy A. Koranda, City Clerk

DATE: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

Prepared by:  
City of Moline  
619 16<sup>th</sup> Street  
Moline, IL 61265

## AGREEMENT

**THIS AGREEMENT** (hereinafter "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Moline, Illinois, a municipal corporation by and through its Park and Recreation Board (hereinafter "Owner"), and The Compassionate Friends, an Illinois not-for-profit corporation, Quad City Area Chapter (hereinafter "TCFQCC") (hereinafter collectively "Parties") to utilize a certain portion of the Moline Memorial Cemetery located at 5001 34<sup>th</sup> Avenue for the purpose of constructing and maintaining an Angel of Hope memorial garden and installing an Angel of Hope statue within the memorial garden (hereinafter "Memorial").

WHEREAS, TCFQCC contacted Owner for help finding a location to place an Angel of Hope statue and memorial garden; and

WHEREAS, Owner and TCFQCC found a location within Moline Memorial Park Cemetery (hereinafter "Cemetery") that would be suitable for such Memorial; and

WHEREAS, TCFQCC is constructing its Memorial within the location shown on the attached Exhibit A in the Cemetery; and

WHEREAS, upon completion of construction and installation, it is the desire of TCFQCC to have the Memorial remain in the Cemetery as a fixture; and

WHEREAS, TCFQCC will maintain the Memorial for the term of this agreement, which includes maintaining Fixtures, as defined herein; and

WHEREAS, the Parties desire to enter into this Agreement to set forth terms allowing TCFQCC to utilize the area shown on **Exhibit A** for the purpose constructing and maintaining the Memorial 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:** The northern point of section 10 of the Moline Memorial Park Cemetery being more particularly shown on **Exhibit A**, attached hereto and incorporated herein.
  - b) **Service(s)/Operation(s):** The construction and maintenance of the Memorial, including, but not limited to, the statue, plantings, pavers, benches, by TCFQCC.
  - c) **TCFQCC Property:** All equipment and annual plantings provided by TCFQCC to be used for the construction and maintenance of the Memorial, but shall not include the statue, pavers, perennial plantings, landscaping, or benches, which become a fixture on the Premises.

- d) Fixtures: The statue, pavers, perennial plantings, landscaping, and benches which are placed on and become part of the Premises.

2. USE.

- a) Owner shall grant access to the Premises to TCFQCC for the construction and maintenance of the Memorial.
- b) TCFQCC is only allowed to construct and maintain the Memorial on the Premises. Such Memorial shall be substantially similar in design as shown on the drawings attached hereto as **Exhibit B**.

3. TCFQCC'S RESPONSIBILITIES.

- a) TCFQCC shall at all times devote reasonable time, attention and energies to the maintenance and improvement of the Memorial. TCFQCC acknowledges the Premises is public property and agrees that the Owner 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 C**, attached hereto and incorporated by reference herein.
- b) TCFQCC shall be responsible for all TCFQCC Property associated with the Operation and shall pay any and all operational and maintenance costs for same.
- c) Owner shall not be liable for any claim, demand, action, or proceedings for personal injuries that occur to any person on the Premises.
- d) TCFQCC agrees to provide access to the Memorial to the public without discrimination other than that permitted by law. Discrimination by TCFQCC in its Operation 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 Agreement.
- e) TCFQCC shall comply with and at all times operate in a manner which meets all applicable Federal, State and Municipal laws, ordinances and regulations and guiding rules, including but not limited to meeting the requirements for permits or licenses.
- f) TCFQCC shall be responsible for all taxes, insurance, and appropriate licensing associated with and necessary for the Operation. If TCFQCC has any employees or volunteers who will be working on or at the Memorial, those volunteers or employees shall not be deemed employees of Owner for any purpose whatsoever and shall not be eligible to participate in any benefit program provided by the Owner for its employees. TCFQCC shall be exclusively responsible for the

payment of any and 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, and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

- g) It is understood that once constructed and installed, the Memorial, including but not limited to the statue and its base, pavers, and benches, shall become fixtures of the Cemetery and shall remain the property of Owner upon the termination of this Agreement.
- h) In maintaining the Memorial, TCFQCC shall be responsible for properly disposing of debris or garbage from the Premises. TCFQCC shall clean the Premises as frequently as necessary to keep the Premises free of debris and weeds. All TCFQCC Property and the Memorial must be kept within the Premises as defined in this Agreement. TCFQCC may utilize garbage disposal receptacles located in the Cemetery for debris disposal. TCFQCC shall notify Owner should the garbage receptacles need emptying.
- i) The Memorial shall be completed by TCFQCC and not abandoned. The Premises shall not be left in a state of disrepair at any time. Abandonment of the Memorial or leaving the Premises in a state of disrepair shall constitute a material breach of this Agreement.
- j) TCFQCC shall be responsible for any and all repairs of TCFQCC's Property and Fixtures while located on the Premises, regardless of the cause of such damage. TCFQCC agrees Owner shall not be liable to TCFQCC for any damage done to TCFQCC Property or Fixtures, while it is located on the Premises, unless caused or contributed to by the willful acts or omissions of Owner, its officers, directors, employees, agents or assigns.

4. TERM AND TERMINATION.

- a) The term of this Agreement shall commence upon execution of this Agreement (hereinafter "Commencement Date") and shall terminate on December 31, 2019.
- b) An extension of this original agreement, if any, shall be at the discretion of the Owner and TCFQCC as agreed to by the Parties.
- c) Notwithstanding any provision herein to the contrary, this Agreement may be terminated by the written mutual consent of the Parties.
- d) Notwithstanding any provision herein to the contrary, this Agreement may be terminated by either party providing the other party with thirty (30) days prior

notice in writing. Notices of termination under this Section shall be delivered according to Section 7.

- e) 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, TCFQCC must peacefully surrender the Premises to Owner. The Premises herein shall include all appurtenant fixtures to said real estate, which, upon termination of this Agreement shall remain with the Premises and return to Owner.

5. HOLD HARMLESS/INDEMNIFY.

- a) In consideration for permission to use the Premises and Owner's property as granted above, TCFQCC hereby agrees to defend, hold harmless and indemnify Owner, 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, or other liability of any nature whatsoever due to personal injury or property damage (including damage to the Premises and Owner'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 Owner's property granted hereinunder, unless caused or contributed to by the willful acts or omissions of Owner, its officers, directors, employees, agents or assigns, in which case TCFQCC 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.
- c) TCFQCC shall not bring any cause of action alleging Owner is the employer of TCFQCC or any TCFQCC's volunteers, employees, officers or agents, and TCFQCC shall indemnify, defend and hold harmless Owner against all claims, losses, costs, or expenses that are based upon or related to TCFQCC's employment of its own employees or of its volunteers.

6. TCFQCC INSURANCE COVERAGE. TCFQCC shall, throughout the term of this Agreement and at TCFQCC's expense, carry and keep in full force and effect comprehensive general liability insurance with respect to Operations on the Premises, with a carrier and in a form satisfactory to Owner, which policy or policies shall:

- a) Have limits of \$1,000,000.00 per occurrence personal injury and \$100,000.00 per occurrence property damage.
- b) Name Owner as an additional insured party.
- c) Contain fire and extended perils insurance covering TCFQCC's own property and insuring TCFQCC's possessions on the Premises; Owner shall have no duty to insure TCFQCC's possessions, the possessions of TCFQCC's guests, invitees, permittees, or volunteers, or to replace same in the event of any calamity or other disaster.
- d) Each such policy of insurance shall contain a waiver of subrogation provision.

If required by law, and to the extent so required, TCFQCC shall further carry workers' compensation insurance. Workers' compensation, and public liability insurance if required, shall be paid by TCFQCC. Certificates of all insurance coverage shall be delivered to Owner seven (7) days prior to the Commencement Date.

7. 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:

Owner:  
City of Moline Park Board  
Attn. Park Director  
3635 4<sup>th</sup> Avenue  
Moline, IL 61265

TCFQCC:  
The Compassionate Friends Quad City Chapter  
c/o Bethany For Children and Families  
1830 6<sup>th</sup> Avenue  
Moline, IL 61265

With a copy to:

City of Moline  
Attn: City Attorney  
619 16<sup>th</sup> Street  
Moline, IL 61265

The Compassionate Friends Quad City Chapter  
c/o Doug Scott  
\_\_\_\_\_  
\_\_\_\_\_

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.

8. OBSERVANCE OF LAWS AND ORDINANCES. TCFQCC 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 TCFQCC's conduct or use of the Premises.
9. SURRENDER OF PREMISES. At the end or termination of the term of this Agreement, TCFQCC covenants to surrender and deliver up the Premises 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. The understanding of the Parties being that title to the Premises shall never be transferred or intended to be transferred to TCFQCC and that this Agreement relates to construction and maintenance of the Memorial on the Premises owned by Owner by TCFQCC.
10. ASSIGNMENT. TCFQCC shall not have the right to assign this Agreement or without the express written consent of Owner, and consent of Owner shall not release or discharge TCFQCC from any obligations hereunder.
11. 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.
12. WAIVER. Waiver by Owner of any breach of any covenant or duty of TCFQCC under this Agreement is not a waiver of a breach of any other covenant or duty of TCFQCC, or of any subsequent breach of the same covenant or duty.
13. 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.
14. 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 Agreement is executed in Moline, Illinois, as of the date hereof first above written.

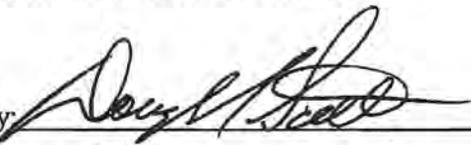
**OWNER**

**CITY OF MOLINE, an Illinois  
Municipal Corporation**

By: \_\_\_\_\_  
Scott Raes, Mayor

**TCFQCC**

**THE COMPASSIONATE FRIENDS, an  
Illinois Not-For-Profit Corporation,  
QUAD CITY AREA CHAPTER**

By:   
\_\_\_\_\_  
Douglas N. Scott  
Chapter Leader

Attest:

By: \_\_\_\_\_  
Tracy Koranda, City Clerk

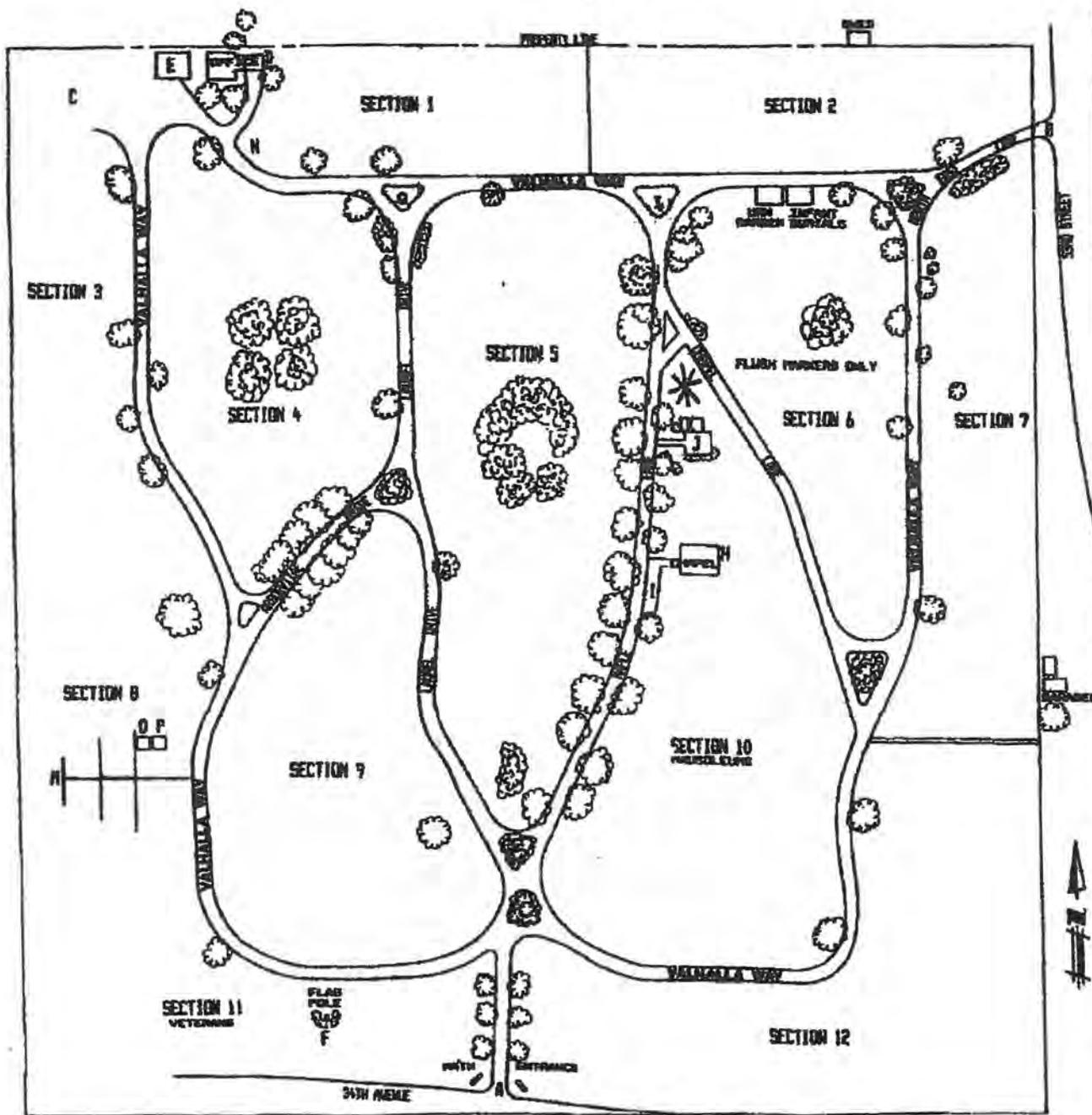
**MOLINE PARK AND RECREATION  
BOARD**

By: \_\_\_\_\_  
Don Welvaert, President

Approved as to Form:

\_\_\_\_\_  
City Attorney

Exhibit A



**Moline Memorial Park Cemetery**  
 5001 34th Avenue  
 Moline, Illinois 61265-5600  
 (309) 524-2435  
 FAX (309) 797-8728

Formerly "Valhalla Cemetery", established in 1927  
 Administered by The Moline Park and Recreation  
 Department since 1979.

- A - Main Entrance
- B - 53rd Street Gate Locked
- C - Historic Valhalla Main Entrance Closed
- D - Office
- E - Garage
- F - Flag & Veterans Memorial
- G - City of Moline Dedication Monument
- H - Chapel Mausoleum
- I - Parking
- J - Praying Hands Mausoleum
- K - Niche Cabinet for Cremains
- L - Historic Site of Valhalla Chapel  
*Currently Maintenance Building*
- N - Sidewalks
- O - Garden Feature
- P - Urn Garden

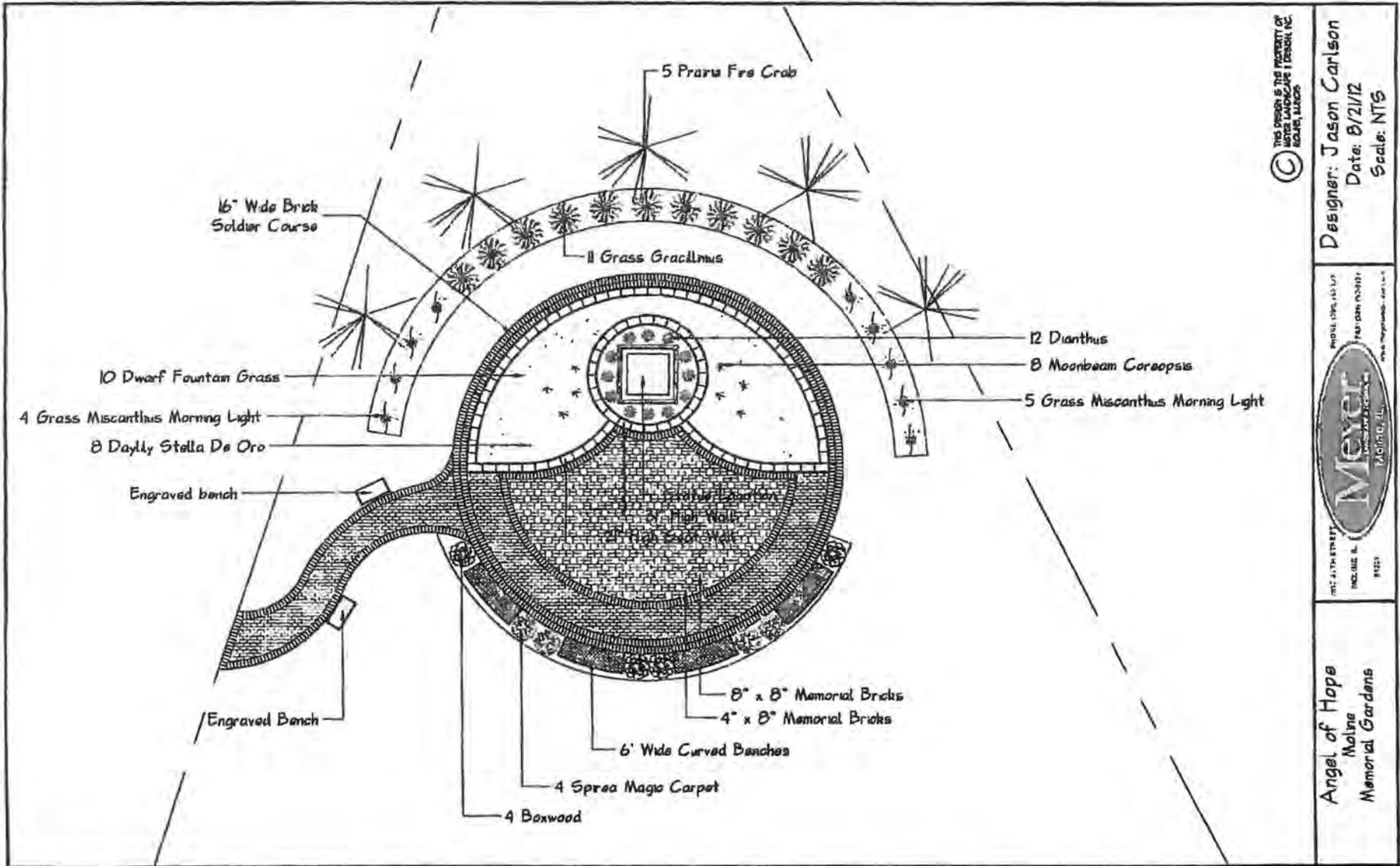
142a



\*Angel of Hope - Section 10 - North tip

LOCATION MAP

# Exhibit B



© THIS DESIGN IS THE PROPERTY OF  
Meyer LANDSCAPE DESIGN, INC.  
MOLINE, ILLINOIS

Designer: Jason Carlson  
Date: 8/2/12  
Scale: NTS

PROFESSIONAL LANDSCAPE ARCHITECT  
Meyer LANDSCAPE DESIGN, INC.  
MOLINE, ILLINOIS  
1125 N. 11TH STREET  
MOLINE, IL 61704  
PH: 309.398.4444  
FAX: 309.398.4444  
WWW.MEYERLANDSCAPEDESIGN.COM

Angel of Hope  
Maline  
Memorial Gardens

## **RULES AND REGULATIONS RIVERSIDE CEMETERY/MOLINE MEMORIAL PARK**

These Rules and Regulations were adopted by the City of Moline Park and Recreation Board on the 26th day of December 1991, to apply to the operations of Riverside Cemetery/Moline Memorial Park, Moline, IL. These rules are a revision of and update to Rules and Regulations covering the operation of Riverside Cemetery/Moline Memorial Park since inception.

### **I. PURPOSE**

Deeds issued to lot purchasers in the Cemeteries contain a provision that the grantees take title subject to the Rules and Regulations then in force and those which may be made in the future. These regulations are as binding upon the purchaser as though they were incorporated in the deed.

All Rules and Regulations have been made or will be made to the benefit of the owner collectively. Experience has shown that the adoption and enforcement of the Rules and Regulations are necessary to secure uniformity, protect the interests of the owners and to preserve the beauty of the cemetery. All persons are required to obey the Rules and Regulations and we encourage citizens to report any infractions on the part of others.

Lot owners are granted all the privileges consistent with these Rules and Regulations.

### **II. DEFINITIONS**

As used in these Rules and Regulations, the following terms shall have the meaning hereinafter defined, unless a contrary intention appears from the context of any particular Rule or Regulation.

1. "The Cemetery" shall refer to the burial ground commonly known as Riverside Cemetery/Moline Memorial Park or its assigns, owned by the City of Moline, including all land dedicated, reserved or used for interment purposes; the vegetation therein; graves, mausoleums, crypts, columbaria, niches or other interment spaces therein; memorials and works of art; all roads, walkways, crematoria and other structures of every kind, and public rights of way.
2. "City" shall refer to the City of Moline.
3. "Interment" means the (a) burial, (b) entombment or (c) cremation and inurnment of human remains.
4. "Burial" means the disposition of human remains by earthen burial in a grave.

5. "Entombment" means the placement of human remains in a crypt.
6. "Inurnment" means the placement of cremated human remains in an urn and placement of such urn in a niche.
7. "Lot" means a grave, crypt, niche or plot.
8. "Grave" means a space of land in the cemetery used or intended to be used for the burial of human remains.
9. "Crypt" means a space in a mausoleum used or intended to be used for the entombment of human remains.
10. "Niche" means a space in a columbarium used or intended to be used for the inurnment of cremated human remains.
11. "Columbarium" means a vault with niches for urns containing cremated human remains.
12. "Plot" means two or more adjoining graves, crypts or niches.
13. Cemetery "Deed" means the document by which the Cemetery conveys a right of interment, entombment or inurnment.
14. "Lot Holder" or "Lot Owner" means the person or persons:
  - (a) To whom the Cemetery has conveyed a right or rights of interment; or
  - (b) who have acquired such right or rights by transfer in accordance with these Rules and Regulations; or
  - (c) who hold such right or rights by inheritance.
15. "Community Mausoleum" means a structure, above ground, or partially above and partially below ground, containing crypts and niches used or intended for use by members of the general public.
16. "Family (Private) Mausoleum" means a structure above ground, or partially above and partially below ground, containing crypts, the use of which is restricted to a group of persons related to each other by blood or marriage.
17. "Memorial" means (a) a grave marker identifying a grave or graves; or (b) a name plate or inscription identifying a crypt or niche.
18. "Monument" means a memorial usually made entirely of granite which extends above the surface of the earth in upright form, at least 24" high.
19. "Foundation" means the base or foundation upon which a memorial or monument is installed.

20. "Annual Care" includes cutting the grass when necessary and removing weeds, leaves and rubbish that may be on the lot. A reasonable charge will be made for any special care that may be needed.
21. "Special Care" means the care of a lot in accordance with specific instructions on the basis of an annual charge, or to the extent of income derived from a special trust fund created by a lot holder in accordance with Illinois law.
22. "Installation and Maintenance" means the preparation of the earth to place a memorial/monument and the future maintenance of the foundation.
23. "Abandonment" shall mean non-use of vested interment rights for a period of seventy-five (75) years or sooner if a person owning vested rights dies without heirs and without transferring said vested rights by will or otherwise as provided herein.

### **III. GENERAL RULES AND REGULATIONS**

1. All Interment rights in lots and mausoleums in the Cemetery shall be owned and held subject to the laws of the State of Illinois and the Rules and Regulations of the Cemetery now in force or hereafter adopted.
2. The Cemetery will be open and may be visited every day of the year from 7:00 AM through sunset. The Cemetery office is open Monday through Friday from 8:00 AM to 12:00 noon and 1:00 PM to 5:00 PM, and on Saturdays from 10:00 AM to noon. The Cemetery office shall be closed on Sunday and on certain designated City holidays.
3. The Cemetery reserves the right to exclude any vehicle which might in any way damage the roads within the Cemetery grounds. Buses or cumbersome vehicles are not allowed to enter the Cemetery, except by special permission.
4. The Cemetery reserves the exclusive right to complete all grading, landscaping, excavating, and installation of foundations, walks and curbs; all installation of memorials, sealing crypts and niches; as well as all interments, disinterments, entombments, inurnments and removals (including all openings, fillings and closings of interment space) with its equipment and personnel, or by contractual arrangement. The Cemetery also reserves the exclusive right to care for any crypt or niche and to plant all trees and plants of any and several kinds. The owner of the interment space, and all others requesting the same, shall prepay the Cemetery's established charges in advance, unless other suitable arrangements are made with the Cemetery.
5. All persons entering the Cemetery must display proper respect for the deceased and for the sacred burial grounds in which they are interred. The Cemetery and the employees of the Cemetery must take such measures as the circumstances

warrant in order to assure strict observance of this basic principle. In addition, the following rules must be observed:

- (a) No picnicking is allowed and persons with foodstuffs, liquor or any other form of refreshments are not permitted on Cemetery grounds.
- (b) No vehicle shall be driven in the Cemetery at a speed greater than 15 m.p.h. All vehicles are restricted to the Cemetery roads, shall drive and park on the right side and no undue noise shall be permitted in operating a vehicle through the Cemetery.
- (c) Soliciting for work in the Cemetery is prohibited. No signs, notices or advertisements of any kind shall be placed within the Cemetery. The Cemetery may remove and destroy any advertising without notice and without liability.
- (d) During a funeral service, all work or other activity must cease in the vicinity of the grave, crypt, niche or chapel where the services are being conducted.
- (e) Visitors should use trash receptacles and shall not throw or scatter papers or other material on the Cemetery grounds.
- (f) The taking of photographs or the making of films on Cemetery grounds is not allowed without prior permission from the Cemetery office.
- (g) Children under the age of fourteen years must be accompanied by an adult.
- (h) Dogs are permitted on Cemetery grounds; however, they must be on a leash and owners are required to clean up all wastes.
- (i) Persons shall enter or leave the Cemetery by use of the public entrances furnished by the Cemetery.
- (j) Any person, other than authorized by the Cemetery, found on the grounds after closing hours is considered a trespasser. Any person who knowingly enters or remains upon cemetery premises without authorization during hours that the Cemetery is posted as closed to the public, is guilty of a Class C Misdemeanor in the State of Illinois.
- (k) The carrying or discharging of firearms, fireworks, bows and arrows or slingshots is prohibited.
- (l) Walking, jogging or biking is permitted, as long as such activity is limited to the roads or paved walkways; however, no other recreational or sports activities are allowed on Cemetery grounds.

6. If trees or shrubs on any grave shall, by reason of their roots or branches, become detrimental to adjacent graves or paths, or become unsightly, inconvenient or hazardous to visitors or employees of the Cemetery; or if any memorial, marker, mausoleum, or any other construction situated on a grave has fallen, is in a damaged condition, is unsightly or in such need of repair as to cause a hazard or possible injury or danger to passengers, pedestrians or employees of the Cemetery, the Cemetery shall, upon notice as hereinafter provided, have the right to enter upon said grave or lot and remove, repair or otherwise remedy the condition at the expense of the grave owner.
7. The Cemetery reserves, and shall have the right to correct without liability for the payment of damages, any errors that may be inadvertently made by them, either in making interments, disinterments or removals, or in the description, transfer or conveyance of burial rights, and to substitute and convey in lieu thereof other interment property of similar nature and location insofar as possible; or in the sole discretion of the Cemetery, to refund the amount of money paid on account of its errors. In the event such error is in respect to the interment of the remains of a deceased person, the Cemetery reserves and shall have the right to remove or transfer such remains to a location as may be substituted and conveyed in lieu thereof.
8. All persons within the Cemetery grounds shall use only the avenues, roads, walks and paths and shall have the right of access over the paths and walks in the area in which the grave or lot they are visiting is located. The Cemetery shall not be liable for any injuries sustained by any persons violating this rule.
9. The Cemetery shall not be liable for damage or injury to any person or property in the Cemetery, except for its own willful misconduct or gross negligence. Persons entering the Cemetery grounds, or buying property therein, are mere licensees and assume every and all risks.
10. The Cemetery shall not be liable for damage to or destruction of any structure, including but not limited to granite, bronze or concrete work on any lot from causes beyond its reasonable control, including but not limited to the elements, Acts of God, the common enemy, thieves, vandals, strikes, lockouts, malicious mischief, explosions, war, riots, or by orders of any military or civil authority. In the event of such damage or destruction, the Cemetery may, at any time thereafter, give a ten (10) day written notice of the necessity for the replacement, repair, resetting or reconstruction thereof to the owner of the lot as shown upon its records. If the owner fails to replace, repair, reset or reconstruct the same, the Cemetery may, at its discretion, enter the said lot, cause the same to be repaired, reset or reconstructed, and charge the expenses against the owner, but nothing herein shall obligate the Cemetery to render any such service.
11. Unless in compliance with other requirements of these Rules and Regulations as set out in Article VII hereof, all labor and equipment for interments, disinterments, entombments, inurnments, and excavations for memorials and monuments and the

construction of foundations, walks and curbs, shall be performed solely by the Cemetery or by its authorized contractor at the expense of the owner, who shall pay the same in advance, unless suitable arrangements are made with the Cemetery.

12. The Cemetery shall make the determination as to the finish grade of a grave, and all construction erected thereon shall be in conformity therewith.
13. For the purpose of performing work on any lot or other part of the Cemetery, the Cemetery reserves the right temporarily to enter upon and use adjoining areas, including lots or graves, to receive such machinery and materials as may be necessary to perform all of the work and shall restore such areas as quickly as possible.
14. The Cemetery reserves the right to change the boundaries or grading of the Cemetery, including the right to modify, relocate, re-grade or eliminate roads, drives and/or walks and at all times to plat and re-plat graves. It also reserves easements and rights of way under, through and over the Cemetery grounds and any and every part thereof for the purpose of laying, maintaining, operating, altering or changing pipelines, conduits, gutters and/or drains for water systems, drainage, electric or communication lines, or for any other purpose. The Cemetery reserves for the benefit of those lawfully entitled thereto, a perpetual right of ingress and egress over any and all lots in the Cemetery for the purpose of passing and repassage to and from other lots and other parts of the Cemetery.
15. No interment will be permitted in any path, walk or road.
16. No interment or disinterment will be permitted, nor memorial or embellishment placed upon any lot, grave, crypt or niche where there is any charge of the Cemetery due and unpaid. All charges for work shall be available for review at the office of the Cemetery and shall be final. The Cemetery reserves the right to change its charges from time to time.
17. Violators of the Rules and Regulations of the Cemetery or trespassers on the Cemetery grounds may be ejected therefrom and prosecuted and held liable under the law for any damage caused by them. In the State of Illinois, the penalty for willfully destroying, mutilating or injuring a tomb, monument, vault or other object in a cemetery is a Class A Misdemeanor for the first offense and a Class 4 Felony for any subsequent offense.
18. No casket may be opened or reopened, and no items may be removed without the specific written permission of the next-of-kin or appropriate civil authorities. This must be completed under the supervision of a licensed funeral director.

#### IV. RIGHTS OF LOT OWNERS

1. Right of Interment

A right of interment is an easement in a specific location. All interment rights conveyed are subject to (a) all applicable laws and governmental regulations; (b) the franchise, charger, certificate of incorporation, articles of partnership or other documents establishing the Cemetery; and (c) all Rules and Regulations adopted by the Cemetery.

2. Record Owner

The individual(s) named in the Deed issued and of record will be presumed to be the owner(s) of the Right of Interment unless the Cemetery receives written notice to the contrary.

3. Vested Interment Rights

A vested right of interment is one in which the individual holding it has a superior right to its use which is not defeasible by anyone other than the owner or someone else who has a similar vested right. The spouse, children and parents of the certificate owner of record of more than one interment right have vested rights. The spouse of any owner has a vested right of interment in the space superior to any other person, even if they become the spouse after the rights were acquired. No transfer or other action of the owner without the written consent of the spouse of the owner divests the spouse of a vested right of interment.

A vested right of interment may be released by abandonment, terminated upon the interment elsewhere of the remains of the person so vested, or in the case of a spouse by divorce, unless it is otherwise provided for in the divorce decree. No vested right of interment gives the right to be interred where any deceased person having a prior vested right of interment has been interred, nor does it give the right to have the remains of more than one deceased person interred in a single interment space in violation of these Rules and Regulations.

4. Family Areas

When an interment of the owner or a member of his family has been made in a plot, thereafter unless the Cemetery is otherwise directed in writing by the owner, the plots shall be held as the family plot of the owner and no rights of interment therein may be transferred to non-family members unless such a disposition was made by the owner in a will, by a specific devise, or by a written declaration filed and recorded prior to his death in the office of the Cemetery. In a family area, the following shall have preference as to use:

- (a) One right of interment may be used for the owner's interment;
- (b) One right of interment may be used by the owner's surviving spouse, if any, who has a vested right of interment;
- (c) If any rights of interment are remaining, the parents and children of the deceased owner, in order of death, may be interred without the consent of any other person claiming any interest in the rights;

- (d) If no parent or child survives, the right of interment goes in order of death, (1) to the spouse of any child of the record-owner, and in order of death, (b) to the next heirs at law of the owner of the spouse of any heir at law.

5. Restrictions on Transfer

Subject to these Rules and Regulations and the Laws of Illinois, interment rights are freely transferrable. Upon the receipt of written instructions or a certified copy of a will containing specific devises from the deceased owner of record, the Cemetery shall restrict interments to the persons designated in the authorization or devise. No transfer of a family burial estate will be accepted by the Cemetery after interment of the original owner or owners, except for the interment of family members, others as designated in writing, by a will of the owner or by court order.

6. Absence of Designation

If an owner of record dies without providing a written declaration or a specific devise by will, any unused rights of interment descend to the heirs at law of the owner subject to the rights of interment of the descendant and his or her surviving spouse.

7. Joint Tenants

Upon the death of a joint tenant, the title to any lot held in joint tenancy immediately vests in the survivors, subject to the vested rights of interment of the survivors of the deceased joint tenant.

8. Multiple Owners

When there are multiple owners of rights of interment, they may designate one or more persons to represent their interests by filing written notice with the Cemetery. In the absence of such designation or a written objection at the time of interment, the Cemetery may permit an interment upon the request or direction of any co-owner without liability.

9. Affidavit Required

The Cemetery is authorized to permit the use of an unused interment right by a person entitled to its use if it receives an affidavit by a person having knowledge of the facts setting forth: (1) the death of the owner and the name of the person or persons entitled to the use of the right of interment; or (2) the death of one joint tenant, proof of the identity of the surviving joint tenants or their successors in interest, named in the certificate of ownership and the written direction of the surviving joint tenants or their successors in interest.

10. Restriction on Assignments

No transfer or assignment of any right of interment, or interest therein, shall be valid until accepted in writing by the Cemetery on its forms and recorded in its books. The Cemetery may refuse to consent to a transfer or to an assignment if there is an outstanding portion of the purchase price or the deposit required to be made to the Cemetery's care fund.

**11. Transfer Charges**

The Cemetery may charge for all transfers of ownership. No transfer of ownership shall be complete or effective until all charges are paid.

**12. Escheat**

Any right of interment is subject to escheat to the Cemetery upon abandonment. The Cemetery must make reasonable efforts to find and notify the record owner of the escheat at least thirty (30) days prior to the effective date of the escheat. If no owner, heir, or assignee can be found, the Cemetery must publish in a local newspaper at least once in each of two successive weeks, notice of the escheat to the last known record owner, with the first publication being at least thirty (30) days prior to the effective date of the escheat.

## **V. INTERMENTS/DISINTERMENTS**

1. No interment shall be made without completion of an Interment Service Order signed by the person or persons authorized by law and/or by the lot owner or owners, designated the location of the lot to be used. The Cemetery shall be entitled to rely on the accuracy of the information set forth in such authorization and shall not be liable for any error therein contained, or as to the identity of the person whose remains are to be interred.
2. Orders for interment must be completed in person at the Cemetery office, or a notarized statement signed by the lot owner giving authorization to inter must be delivered to the Cemetery prior to the time of actual interment.
3. Orders for interment must be received during normal office hours at least 24 hours prior to interment. Orders will not be accepted on Sundays or approved Holidays. All orders must contain: (a) name and age of the deceased; (b) lot, section and grave numbers; (c) name of owner of interment space; (d) name of funeral director; (e) date of interment and time of arrival at Cemetery; (f) name and address of the next of kin. No services are allowed on Sundays, on observed Holidays, or after 3:30 PM Monday through Friday and 12:00 noon on Saturdays.
4. All funerals entering the Cemetery shall be under the supervision of the Cemetery. The Cemetery shall have the right to refuse to proceed with the interment if the funeral is not accompanied by a duly licensed funeral director. Prior to interment, the funeral director must deliver all necessary permits and authorization.
5. All vaults shall not exceed an outer width of thirty-six (36") inches in any one grave, and if the same is larger, two graves must be utilized.
6. The Cemetery shall not be liable for any delay in interment where its Rules and Regulations are not complied with, when unforeseen underground obstructions are encountered, when a protest has been made, or circumstances occur beyond the Cemetery's control.

7. Only one interment of human remains shall be permitted in each grave, crypts or niche; EXCEPT as provided in crypt or niche companion burial rights, or in bronze companion cremation repositories.
8. All interments must be in burial vaults or cement boxes, EXCEPT for cremains. Wood boxes or casket-only burials are not permitted.
9. No disinterment will be permitted without proper state and local permits, the consent of the Cemetery and all the persons whose consent may be necessary or advisable under the laws of the State of Illinois. The Cemetery may, in its sole and absolute discretion, require that in addition to such consents, an Order of the Courts also be obtained.
10. All disinterments will be completed by the Cemetery and all charges, including unpaid arrears pertaining to the lot, if any, shall be paid in advance.
11. The date of a disinterment shall be set solely by the Cemetery.

## **VI. PLANTINGS, DECORATIONS AND CARE**

1. No enclosures of any kind, including beds of stone, concrete, metal, wood or plastic, may be used to encircle graves or plots. Grave mounds are not allowed and no lot shall be raised above established grade. No glass jars, bottles, tin cans or crockery are permitted.
2. Live flowers and silk or plastic flowers are permitted;
  - (a) On all upright monuments or monument bases, at any time;
  - (b) In flush marker vases, sub-surface vases, or other approved containers for the ten (10) day period starting five (5) days prior to the following holidays: Easter, Mother's Day, Memorial Day and Father's Day; and from November 1st through March 15th each year;
  - (c) On ledges, only, at Riverside Mausoleum and in display areas provided at Moline Memorial Park Mausoleum, at any time.
3. Live cut flowers are permitted in flush marker vases or sub-surface vases at any time.
4. Artificial or real wreaths, blankets, easels and other Christmas/Winter decorations are permitted on monuments or graves from November 1st through March 15th each year. After March 15th, they will be removed. (Rev. 4/23/92)
5. No other plantings are permitted, other than as approved by the Cemetery.
6. The Cemetery reserves the right to dispose of live flowers, silk or plastic flowers, or winter decorations which become unsightly, wilted, or detract from the appearance of the grounds, or when in violation of these rules. (Rev. 4/23/92)

7. Wooden or iron crosses, tablets, boxes, plant hangers, or other miscellaneous objects and emblems are not permitted on graves or in mausoleums.
8. No money shall be paid to employees or contractors on the grounds. Visitors must not otherwise engage them, and all orders, inquiries or complaints must be filed with the Cemetery office.
9. Nothing shall be deemed to prohibit care of a grave by the owner; however, all debris and rubbish generated by such care shall be removed from the grave and disposed of in containers provided by the Cemetery.
10. The Cemetery assumes no responsibility for damage or loss of vases, flowers, containers, easels or other unauthorized materials that are set above the ground.

## **VII. OUTSIDE CONTRACTORS**

1. All outside contractors shall annually file with the Cemetery certificates issued by responsible insurance companies authorized to transact business in the State of Illinois, evidencing adequate coverage for public liability, property damage and Workmen's Compensation.
2. All work performed by outside contractors shall be supervised by the Cemetery and be in accordance with the specifications applicable to similar work done by the Cemetery's employees. Detailed specifications are available at the Cemetery office. A reasonable supervision fee may be charged by the Cemetery.
3. No contractor or other person will be permitted to work in the Cemetery on Sundays, legal holidays, or before 7:00 AM on other days, except by prior approval of the Cemetery.
4. All workmen or contractors are subject to the supervision of the Cemetery and any workman failing to comply with these Rules and Regulations will not be permitted to work in the Cemetery.
5. All workmen employed by lot owners, in any capacity, must give notice at the Cemetery office before beginning work. In addition, workmen must state the kind and style of work to be done and file with the Cemetery a written authorization signed by the lot owner.
6. The Cemetery assumes no liability to anyone by reason of its granting approval to any outside contractor to perform work at the Cemetery. If in the opinion of the Cemetery, any work or material furnished is improper, it may reject the same. The Cemetery may fix and collect a reasonable charge for the use of Cemetery roads and facilities.

7. If it is necessary to make a survey before a contractor performs work, the Cemetery may make a survey and fix and collect from the contractor a reasonable charge.
8. No work will be allowed to be left in an improper, unfinished or unsafe state and should such occur, the Cemetery may complete or remove same at the expense of the lot owner.
9. When making improvements causes obstruction to roads, avenues and paths, prior approval by the Cemetery is required.
10. When heavy material is to be moved, plants must be laid on the paths or grass areas to protect from damage.
11. No setting of monuments is permitted during inclement weather.

### **VIII. MEMORIALS AND MONUMENTS**

1. The Cemetery reserves the right to prescribe the kind, design, size, symbolism, craftsmanship, quality, material and inscriptions of all memorials and monuments.
2. The consent of the owner of record or next of kin or person authorizing the interment will be required for placement of any memorial/monument, but the Cemetery shall incur no liability for failure to receive such consent.
3. The name or inscription of each memorial/monument must correspond with the name of the deceased and record of the Cemetery.
4. The Cemetery reserves and shall have the right to correct any error that may be made by its employees or persons in the location or placement of a memorial or monument in the Cemetery.
5. While the Cemetery exercises all possible care to protect raised lettering, carvings, or ornaments on any memorial/monument or other structure on any lot, it disclaims responsibility for any damage or injury thereto.
6. Lots must be paid for in full before memorials/monuments are installed.
7. Repair of all memorial work shall be the responsibility of the lot owner.
8. Private Interment Rights have specific requirements as to type and size of memorial and foundation. Any requirements not specified in the Rules and Regulations of the Cemetery or on the plat of special sepulchre rights, shall be specified in the purchase agreement of the private or special interment rights.

9. Only one memorial is permitted on a grave, except a memorial may be set to embrace two or more spaces if it is a companion or family plot.
10. All installations will be set on uniform lines to conform to the general plan of the Cemetery.
11. All memorials and required foundations for memorials and monuments will be installed by the Cemetery, and to its specifications.
12. No memorial will be installed without a setting order approved by the Cemetery.
13. All markers or memorials provided by the Cemetery shall be at the cost of the owner and the Cemetery shall assume responsibility for the proper installation of such marker or memorial; however, the Cemetery shall not be liable for any defective materials or defective workmanship beyond replacement or repair of such defective materials as have been furnished by the Cemetery. The Cemetery shall not be responsible for any installation by outside contractors.
14. Should any memorial become unsightly, dilapidated or a menace to visitors, or not be in compliance with these Rules and Regulations, the Cemetery shall have the right either to correct the condition or to remove same at the expense of the lot owner.
15. All agreements for the purchase of a memorial from the Cemetery must be on the Cemetery's forms. If the marker or memorial is purchased through the Cemetery, the installation, maintenance and foundation charge shall be included in the purchase contract.
16. The Cemetery shall charge for foundation installation on the basis of the square inch area of the marker, memorial or monument, plus foundation production cost, and is payable in advance of setting.
17. Monuments:
  - (a) Must be of standard granite, and are permitted only on graves/lots having monument rights stated on the deed.
  - (b) All lettering and carvings will face the grave; however, the Cemetery may authorize same on the back side of the monument, at its discretion.
  - (c) Monuments may not exceed five (5) percent of the total lot area, or be larger than 1'4" (base) x 6'0" (length) x 4'0" (height) without prior approval of the Cemetery.
  - (d) No monument will be installed on less than two graves, EXCEPT for Section 11 (Veterans), Moline Memorial Park.

- (e) The Cemetery reserves the right to restrict, specify, or limit sizes, colors, styles and inscriptions in certain sections or areas of both cemeteries.
- (f) Families purchasing shared monument rights may install one vase on the base of the monument. No other decorations or flowers are permitted on the base or the die of the monument.

**18. Memorials:**

- (a) Must be of bronze or standard granite.
- (b) Bronze memorial castings shall be true, free from defects, and will not be sulphide, paint or lacquer finished.
- (c) Grass level memorials, only, are permitted in Moline Memorial Park.
- (d) The following sizes are specified:
  - (1) Individual: Minimum 19"x9"; maximum 24"x18"
  - (2) Companion: Minimum 32"x11.5"; maximum 60"x20"
  - (3) Babyland (Section 6, Moline Mem. Park): heart 12"x12"
  - (4) Urn Gardens (Cremorials): Individual: 12"x11.5"; Companion 17"x11.5"

## **IX. MAUSOLEUMS**

1. One entombment/inurnment is allowed in any single crypt or any single niche. Two entombments/inurnments are allowed in crypts or niches with companion rights.
2. No special memorials, plaques or other decorations of any type are permitted on crypt or niche fronts. All fronts will have the name of the deceased, the date of birth and death in uniform styling to conform to that designated for the mausoleum, and no other lettering or designation will be permitted without specific approval of the Cemetery.
3. All Rules and Regulations heretofore set forth shall apply equally to the mausoleum, except where said rule is obviously inappropriate.
4. At Riverside Mausoleum, casket height must not exceed 21 1/2" or 24", for standard and compartment crypts, respectively.

5. At Moline Memorial Park Niche Cabinet, single urns, or two individual urns for companion inurnment, will not exceed 5 1/2" (wide) x 11 1/2" (high) x 12" (depth), in total area.
6. The Cemetery will not accept, nor entomb or complete inurnment, of caskets or urns which exceed the dimensions specified in #4 and #5 above.

## **X. MODIFICATIONS AND AMENDMENTS**

1. Because of continuing changes in customs, practices, economic conditions, and products, the City may, and hereby expressly reserves the right at any time or times, with or without notice to owners, adopt new Rules and Regulations, or amend, alter and/or repeal any rule, regulation and/or article, section, paragraph and/or sentence in these Rules and Regulations. The City further reserves the right to modify and change all prices referred to herein without notice.
2. A copy of the current Rules and Regulations and price list is available for inspection at the Cemetery office located in Moline Memorial Park during regular office hours. In order to prevent confusion and misunderstanding as to which Rules and Regulations are current, copies of the Rules and Regulations at the Office should be reviewed.
3. Special cases may arise in which the literal enforcement of a rule may impose unnecessary hardship. The City therefore reserves the right, without notice, to make exceptions or modifications when, in its judgment, the same appear advisable; and such exceptions or modifications shall in no way be construed as affecting the general application of such.
4. If any section, subsection, paragraph, clause or provision of these Rules and Regulations shall be adjudged invalid, such adjudication shall apply only to the provision so adjudged, and the rest of these Rules and Regulations shall remain valid and effective.





## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made and entered into as of the 5th day of September, 2016, by and between THE LANDMARK PROPERTIES, LC, an Iowa limited liability company ("Purchaser") and the CITY OF MOLINE, ILLINOIS ("Seller").

### WITNESSETH:

WHEREAS, the parties hereto are desirous of entering into this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE ONE

#### Property to be Sold

Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy from Seller:

Section 1.1 Subject Property. All that tract or parcel of land described as follows, together with all of Seller's right, title and interest in and to any strips or gores of real estate adjoining the same, and all the tenements, hereditaments, improvements, appurtenances, rights, easements, and rights-of-way incident thereto (collectively, the "Subject Property"):

A lot in Block 4 in that part of the City of Moline known as and called Pitts, Gilbert and Pitts (First) Addition to said City, situated in the County of Rock Island and State of Illinois, the exact legal description to be added later upon agreement of the parties but which parcel is currently referred to as Parcel 08 5762A and is an improved parking lot.

### ARTICLE TWO

#### Representations, Warranties and Covenants of Seller

To induce the Purchaser to enter into this Agreement, Seller makes the representations, warranties and covenants hereinafter contained, each of which is material to and is relied upon by Purchaser. Seller represents, warrants and covenants as follows:

Section 2.1 Authority to Sell. Seller has the right, power and authority to enter into this Agreement and the terms and conditions hereof, and Seller has not granted any options or entered into any contracts with others for the sale of the Subject Property. The Subject Property does not constitute the principal residence of either Seller.

Section 2.2 Subject Property. Seller has good and marketable fee simple title to the Subject Property, and will convey the Subject Property to Purchaser by warranty deed free and clear of any liens, security interests, easements, leases or other encumbrances, except (1) zoning ordinances; (2) utility easements of record not impairing the use of the Subject Property in accordance with its current use; and (3) current general real estate taxes not yet due and payable (collectively, the "Permitted Encumbrances") and such other matters as may be acceptable to Purchaser. General real estate taxes that are due and payable have been paid to the extent payable through the Closing Date.

Section 2.3 FIRPTA. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(1)(30) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"). Seller's taxpayer identification number is \_\_\_\_\_.

Section 2.4 Governmental Notices. To Seller's knowledge, there is no outstanding notice or order of any governmental authority having jurisdiction over the Subject Property not fully and duly complied with, affecting the use or operation of any part of the Subject Property, or requiring, as of the date hereof or a specified date in the future, any repairs or alterations or additions or improvements thereto.

Section 2.5 No Mechanics' Liens. No labor has been performed or material furnished for the Subject Property on behalf of Seller for which Seller has not heretofore fully paid, or for which mechanics' or materialmen's lien or liens, or any other lien, can be claimed by any person, party, or entity.

Section 2.6 No Condemnation Proceedings. There are no condemnation or eminent domain proceedings pending or, to the best of Seller's knowledge, contemplated against the Subject Property or any part thereof and Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Subject Property or any part thereof.

Section 2.7 Usage/Environmental Matters. The Seller is not in violation of, and has not violated in a material way, any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, licenses or permits of any governmental authorities relating to environmental matters, including by way of illustration and not by way of limitation the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation Recovery Act, the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, the Toxic Substances Control Act, any "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or guideline (whether published or unpublished) regulating, relating to or imposing liability or standards of conduct concerning Hazardous Materials, in each case as amended from time to time (collectively, "Environmental Laws"). For purposes of this Agreement, "Hazardous Materials" means asbestos, asbestos containing materials ("ACMs"), polychlorinated biphenyls, lead-based paints, any petroleum, petroleum by-product (including, but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, used motor oil, oil mixed with other waste, oil sludge and all other liquid hydrocarbons (regardless of specific gravity), natural or synthetic gas or other hazardous

or toxic substances, materials, wastes, pollutants or contaminants defined under or regulated by the Environmental Laws. Specifically, but not in limitation of the foregoing:

- (a) The Subject Property to be in compliance with the Environmental Laws.
- (b) The Subject Property and the Improvements thereon are free of ACMs in any friable or damaged form or condition, and are free of Hazardous Materials.
- (c) The Seller has at all times received, handled, used, stored, treated and disposed of all Hazardous Materials in compliance in all material respects with all Environmental Laws.
- (d) To the knowledge of Seller, no Hazardous Material has been released, deposited, discharged, placed, disposed of or originated on the Subject Property. To the knowledge of Seller, the Subject Property has not been used at any time by any person as a landfill or a waste disposal site.
- (e) There is no electrical equipment, including transformers, containing polychlorinated biphenyls (PCBs) located on the Subject Property.
- (f) There are no monitoring wells, in or coming from the Subject Property.
- (g) There are no underground or aboveground tanks or pipelines situated on the Subject Property.
- (h) There are no liens on the Subject Property resulting from any cleanup or proposed cleanup under the Environmental Laws.
- (i) No part of the Subject Property constitutes "wetlands" as defined under any Environmental Law or other law or regulation.
- (j) To the knowledge of the Seller, no Environmental Law and no proposed Environmental Law imposes standards or requirements, or will impose standards or requirements, which will require the Seller to engage in any work, repairs, construction or capital expenditures in order to comply with such Environmental Law or such proposed Environmental Law.
- (k) No notices of any violation, inquiries or requests for information relating to any of the matters referred to in Subsections (a) through (j) above have been received by the Seller.
- (l) The Seller is not in any way be responsible for any Environmental Liability to the extent resulting from a claim caused by, or contributed to, migration of Hazardous Materials or conditions from surrounding properties.

Section 2.8. Improvements. To the knowledge of the Seller, the Subject Property is zoned for the various purposes for which the buildings and other improvements located thereon (the

“Improvements”) are presently being used, and all Improvements and all uses thereof are in compliance with all applicable zoning and land use laws, ordinances, regulations, and private restrictions (“Compliance Representation”). All Improvements are in good repair and in good operating condition, ordinary wear and tear excepted, and free from latent and patent defects, and to the knowledge of the Seller, no part of any Improvement encroaches on any real property not comprising the Subject Property.

Section 2.9 Pending Litigation. Seller is solvent and there are no pending actions, suits or proceedings, arbitrations or governmental investigations or administrative proceedings pending or, to the knowledge of Seller, threatened against the Seller or the Subject Property, an adverse outcome of which would materially affect or impede the Seller’s performance under this Agreement or which would adversely affect the title to the Subject Property.

Section 2.10 Roads; Condemnation. Seller has not received notice of any Federal, State or local plans to change the highway or road system in the vicinity of the Subject Property, or to restrict or change access from any such highway or road to the Subject Property, or of any pending or contemplated condemnation of the Subject Property, or any part thereof, or of any plans for improvements which might result in a special assessment against the Subject Property.

Section 2.11 Leases. There are no leases affecting the Subject Property.

Section 2.12 Service Contracts. There are no non-terminable service contracts.

Section 2.13 Options and Rights of First Refusal. To the Seller’s knowledge, no tenant or other party has a purchase option or right of first refusal affecting the Subject Property or any portion thereof.

### ARTICLE THREE

#### Purchase Price

Section 3.1 Purchase Price. The purchase price for the Subject Property is Thirty Thousand and No/100 Dollars (\$30,000.00) (the “Purchase Price”), payable in cash at Closing.

### ARTICLE FOUR

#### Closing

Section 4.1 Closing. The Closing shall take place at the office of the Purchaser’s Attorney or at such other place as may be mutually agreed upon between Seller and Purchaser thirty (30) days after Seller has completed to the satisfaction of the Purchaser the Conditions Precedent of Seller.

### ARTICLE FIVE

#### Consummation of Sale; Conditions to Closing; Possession

Section 5.1 Seller's Deliveries. Seller shall deliver to Purchaser at the Closing, and such delivery shall be a precondition to Purchaser's obligation to close hereunder, the following documents dated as of the Closing Date, the delivery and accuracy of which shall be a condition to Purchaser's obligation to consummate the purchase and sale herein contemplated.

(a) Warranty Deed. An warranty deed, in recordable form, duly executed by Seller and conveying to Purchaser good, fee simple, marketable and insurable title to the Subject Property, using the legal description as amended and as set forth in Section 1.1, subject only to the Permitted Encumbrances. In the event Purchaser shall obtain a current survey of the Subject Property and such survey is inconsistent with the Section 1.1 legal description, then such survey shall become the basis for a revised legal description to be utilized for the executor's deed legal description.

(b) Seller's Certificate. A certificate duly executed by Seller and certifying: that each and every warranty and representation made by Seller in this Agreement is true and correct as of Closing as if made by Seller at such time, except as shall have been disclosed to and waived by Purchaser in writing.

(c) Non-Foreign Affidavit. An affidavit of Seller, sworn to under penalty of perjury, setting forth the Seller's United States tax identification number and stating that the Seller is not a foreign person and is a United States Person as defined in the Internal Revenue Code.

(d) Tax Reporting. Such forms as may be reasonably requested by the closing agent in order to satisfy tax reporting and withholding requirements in connection with the sale of the Subject Property, including all forms required by local practice.

(e) ALTA Statement. The Title Insurer's standard ALTA Statement, which Purchaser agrees to execute along with Seller.

(f) Bill of Sale. A Bill of Sale for any personal property or fixtures included in the Subject Property.

(g) Additional Documents. Such other documents as are reasonably necessary or appropriate to consummate the conveyance herein contemplated and to obtain an owner's policy of title insurance in connection therewith, including, without limitation, evidence that the transactions contemplated hereby were duly authorized by the Seller; a transfer tax declaration; an affidavit stating, except as provided herein, that no brokerage, management or other commissions are owing as result of the transaction contemplated hereby or otherwise with respect to the Subject Property; and an owner's affidavit in form reasonably satisfactory to the parties, but specifically incorporating the provisions of Section 2.5.

Section 5.2 Survey Cost, Title Insurance Premiums, Documentary Transfer Fees and Taxes. Purchaser shall pay for the lender's title insurance commitment and final lender's title insurance policy as well as UCC searches. The Purchaser shall pay the cost of recording the

conveyance deed contemplated hereby. Seller shall pay any documentary stamp taxes, transfer taxes, or excise taxes attributable to such deeds.

Section 5.3 Costs of the Parties. All costs or expense of performance of obligations hereunder and the consummation of the transactions contemplated herein which have not been specifically assumed by either party under the terms hereof shall be borne by the party incurring such cost or expense.

Section 5.4 Delivery of Possession. Seller shall deliver possession of the Subject Property at the time of Closing.

Section 5.5. Conditions Precedent. Seller, at Seller's sole cost, will to the satisfaction of Purchaser do the following prior to Closing:

(a) Remove the billboard on the Premises together with all electrical and or other utilities related to the billboard.

(b) Remove the footings, etc that support the billboard and fill in any holes or related damage caused or created by the removal of the billboard.

## ARTICLE SIX

### Prorated Items; Adjustments

Adjustments and prorations with respect to the Subject Property shall be computed and determined between the parties as follows:

Section 6.1 Assessments and Other Taxes. Except as otherwise provided in this Section, all general and ordinary assessments, taxes and other similar charges which have become a lien upon the Subject Property or any part thereof at or before the date of Closing, whether or not same are then past due or are payable thereafter (in installments or otherwise), or which have been confirmed by any public authority at or before the date of Closing, shall be credited against the Purchase Price and assumed by Purchaser in accordance with local practice. Seller shall be responsible for the payment of any installments of special or extraordinary assessments which are due before Closing, and Purchaser shall be responsible for the payment of any installments of special or extraordinary assessments which are due on or after Closing.

Section 6.2 Other Prorations. At the Closing all taxes, assessments, similar charges, rents, any applicable sales taxes and other charges and fees customarily prorated and adjusted in similar transactions shall also be prorated, and the portion of the Purchase Price payable at Closing shall be adjusted to reflect such prorations. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills are not obtainable, the parties shall prorate on the best available information, subject to adjustment upon receipt of the final bill. Payment of any such adjustment shall be made within ten (10) business days of the date that the adjustment calculation is

made and notice thereof provided to the other party. Payment of any such adjustment shall be made to Seller or Purchaser, whichever shall be entitled to such payment, by the other party.

## ARTICLE SEVEN

### Fair Dealing and Good Faith

Seller and Purchaser acknowledge that in the fulfillment and exercise of the duties and obligations set forth in this Agreement, Seller and Purchaser shall adhere to the standard of good faith and fair dealing in the implementation of such duties and obligations.

## ARTICLE EIGHT

### Indemnification

Section 8.1 Indemnification by Seller. Subject to Section 8.2 below, Seller shall indemnify, defend and hold harmless Purchaser shareholders, members, directors, officers, managers and affiliates (the "Purchaser Indemnitees") from, against and with respect to any and all loss, damage, claim, obligation, liability, cost and expense (including, without limitation, attorneys' fees and costs and expenses incurred in investigating, preparing, defending against or prosecuting any litigation, claim, proceeding or demand), of any kind or character (a "Loss"), arising out of or in connection with any of the following:

(a) any breach of any of the representations or warranties of Seller contained in or made pursuant to this Agreement or any transfer instrument or other certificate or document delivered by Seller pursuant to this Agreement;

(b) any failure by Seller to perform or observe, or to have performed or observed, in full, any covenant, agreement or obligation to be performed or observed by each pursuant to this Agreement; or

(c) any use, release, threatened release, emission, generation, storage, transportation, disposal or arrangement for the disposal of Hazardous Materials by the Seller, including, without limitation, the cost of any environmental response action or liability under the Comprehensive Environmental Response, Compensation and Liability Act, whether such Loss accrues, is required or is necessary prior to the Closing Date, to the full extent that such Loss is attributable, in whole or in part, directly or indirectly, to the presence, use, emission, generation, storage, transportation, release, threatened release, disposal or arrangements for disposal of Hazardous Materials by any person on any of the properties of the Seller or on any other properties to which the Seller or their affiliates have sent or arranged for the disposal of Hazardous Materials prior to the Closing Date or the exposure of any person, including, without limitation, any third party, to any Hazardous Material present, or previously present, in or on any of the Subject Property; provided, however, that Seller shall not be in any way responsible for any Loss to the extent caused by or contributed to migration of Hazardous Materials or conditions from surrounding properties. The forgoing right of indemnity against the Seller shall not limit Purchaser's or any other

indemnified person's rights of recovery against Seller or any other person under any Environmental Law or any other law, including, without limitation, the Comprehensive Environmental Response, Compensation Liability Act.

Section 8.2 Notice of Claim. The Purchaser (the "Indemnified Party") shall promptly notify the Seller (the "Indemnity Obligor") in writing of any claim for recovery ("Loss"), specifying in reasonable detail the nature of the Loss. The Indemnified Party shall provide to the Indemnity Obligor as promptly as practicable thereafter all information and documentation reasonably requested by the Indemnity Obligor to verify the claim asserted. Failure or delay in providing such notice or information shall not relieve the Indemnity Obligor of its obligations hereunder except and only to the extent that such failure or delay shall have prejudiced the Indemnity Obligor.

Section 8.3 Defense.

(a) Subject to subsections (b) and (c) below, if the facts pertaining to a Loss arise out of the claim of any third party, or if there is any claim against a third party available by virtue of the circumstances of the Loss, the Indemnity Obligor may, by giving written notice to the Indemnified Party within 15 days following its receipt of the notice of such claim, elect to assume the defense or the prosecution of such claim, including the employment of counsel or accountants at its cost and expense. The Indemnified Party shall have the right to employ counsel separate from counsel employed by the Indemnity Obligor in any such action and to participate in such action, but the fees and expenses of such counsel shall be at the Indemnified Party's own expense. Whether or not the Indemnity Obligor chooses so to defend or prosecute such claim, the Indemnified Party shall cooperate in the defense or prosecution of such claim and shall furnish such records, information and testimony and shall attend such conferences, discovery proceedings and trials as may be reasonably requested in connection therewith.

(b) Notwithstanding subsection (a) above, the Indemnity Obligor shall not have the right to assume control of such defense and, if the claim is one for which indemnification is due under this Agreement, shall pay the reasonable fees and expenses of reputable counsel retained by the Indemnified Party and reasonably acceptable to the Indemnity Obligor, if the claim which the Indemnity Obligor seeks to assume control (i) seeks non-monetary relief (except where non-monetary relief is merely incidental to a primary claim or claims for monetary damages), (ii) involves criminal allegations against an Indemnified Party, (iii) involves a conflict of interest between the Indemnified Party and the Indemnity Obligor, or (iv) involves a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnity Obligor failed or is failing to vigorously prosecute or defend.

(c) Notwithstanding subsection (a) above, if the Indemnity Obligor shall control the defense of any such claim, the Indemnifying Party shall obtain the prior written consent of the Indemnity Obligor (which shall not be unreasonably withheld) before entering into any settlement of a claim or ceasing to defend such claim, if pursuant to or as a result of such settlement or cessation, injunction, or other equitable relief will be imposed against the Indemnified Party or if such settlement does not expressly unconditionally release the Indemnified Party from all liabilities and obligations with respect to such claim.

Section 8.4    Limitations on Indemnification.

All representations and warranties of the Seller contained in this Agreement and in connection with the transaction contemplated by this Agreement shall survive for a period of eighteen (18) months after the Closing Date, except that (i) the representations set forth in Sections 2.1 and 2.2 shall survive indefinitely, (ii) the representations and warranties set forth in Sections 2.7 and 2.8 shall survive for a period after the Closing Date equal to the longest applicable statute of limitations; and (iii) the representations and warranties set forth in 2.9 shall survive for a period of five (5) years after the Closing Date. The limitations set forth in this Section 8.4 shall not apply in the case of fraud by the Seller.

ARTICLE NINE

Notices

All notices, requests, consents and other communications hereunder shall be in writing addressed to the addresses and/or facsimile numbers set forth herein, and shall be deemed to be given to and received by the party intended to receive such notice as follows:

(a) if by hand delivery, the same shall be deemed given and received when hand delivered;

(b) if sent by mail (provided the same has been sent postage prepaid, certified mail, return receipt requested, and properly addressed), the same shall be deemed given upon deposit in the United States mail, and shall be deemed received on the earlier of (i) actual receipt or (ii) three business (3) days after such notice shall have been deposited in the United States mail;

(c) if sent by overnight courier (signature release required), the same shall be deemed given upon deposit with the overnight courier, and shall be deemed received on the first business day (or on Saturday or holiday if sent for delivery thereon) following the date of sending; or

(d) if sent by facsimile (provided the same has been sent to the intended recipient's facsimile number provided herein), the same shall be deemed given and received on the date of transmission provided the sender obtains a confirmed receipt (generated by the sending facsimile machine) that the document was received by the intended recipient's facsimile machine.

In the event of a change of address and/or facsimile number by a party, such party shall give written notice thereof in accordance with the foregoing.

Rejection or failure to claim delivery of any such notices, requests, consents and other communications hereunder, or any refusal to accept any such notices, requests, consents and other communications hereunder, or the inability to deliver any such notices, requests, consents and other communications hereunder because of changed address and/or facsimile number of which no notice was given, shall be deemed to be receipt of the notice, request, consent and other communication

hereunder sent as of the date of attempted personal delivery, or, if such notice, request, consent and other communication hereunder is sent by mail or overnight courier or facsimile, as of the date set forth in subparagraphs (b), (c) or (c) above, as the case may be.

The initial addresses and/or facsimile numbers for notices are as follows:

(i) if to Purchaser:

The Landmark Properties, LC  
2604 E. 40<sup>th</sup> Street  
Davenport, Iowa 52807

with copy to:

Steven H. Jacobs  
1900 E. 54<sup>th</sup> Street  
Davenport, Iowa 52807  
563.327.2525

if to Seller:

City of Moline  
\_\_\_\_\_  
\_\_\_\_\_

## ARTICLE TEN

### Miscellaneous Provisions

Section 10.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the parties.

Section 10.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

Section 10.3 Waiver, Modification. Failure by Purchaser or Seller to insist upon or enforce any of its rights shall not constitute a waiver thereof. Either party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement. No oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.

Section 10.4 Time of Essence. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

Section 10.5 Governing Law. Although the Asset Purchase Agreement is governed by the laws of Illinois.

Section 10.6 Cumulative Remedies. Each and every one of the rights, benefits, and remedies provided to Purchaser or Seller by this Agreement, or any instrument or documents executed pursuant to this Agreement, are cumulative, and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Purchaser or Seller except to the extent provided in Article Ten hereunder.

Section 10.7 Counterparts; Facsimile. Separate counterparts of this Agreement may be executed by the parties, and any such counterpart(s) into which a full complement of signatures has been inserted, whether or not those signatures are contained on separate signature pages, shall be deemed a valid original hereof. A counterpart bearing a signature sent by facsimile shall be deemed to bear a valid original signature.

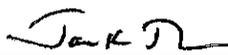
Section 10.8 Broker. Seller and Purchaser represent and warrant to each other that neither Seller nor Purchaser has dealt with any other broker or other finder in connection with the sale to Purchaser of the Subject Property. Purchaser and Seller hereby indemnify each other against, and agree to hold and save each other harmless from, any claim, loss, liability, cost or expense (including reasonable attorneys' fees incurred in defending any such claim or enforcing this indemnity) for any real estate commissions or similar fees arising out of or in any way connected with any acts of the indemnitor or the indemnitor's representatives and relating to the subject matter of this Agreement. Notwithstanding anything contained herein to the contrary, this provision shall survive the Closing or any termination of this Agreement.

Section 10.09 Merger. Except as expressly provided for herein, all terms and conditions of this Agreement shall merge with the delivery of the deed and the closing of this transaction.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals as of the day and year indicated below their respective signatures, the last of which shall be inserted in the introductory paragraph of this document as the date hereof.

PURCHASER:

LANDMARK PROPERTIES, LC,  
an Iowa limited liability company

By:   
James K. Thomson, Manger

SELLER:

CITY OF MOLINE, ILLINOIS

By: \_\_\_\_\_

\_\_\_\_\_  
Title



Flirty Fashion

BLVD BARBERS

Shooting Sports

Faith Baptist Church

Heritage Natural Foods

Eagles Nest

PRS Petro Mart

McMannus Pub

Potential Phase II

Landmark Properties

City of Moline

6th Ave

12th St

12th St

12th Pl St

7th Ave

New Journey AME Church

13th St

7th Ave

13th St

7th Ave

14th St

14th St

15th St

6th Ave

14th St

14th St

14th St