

Committee-of-the-Whole Agenda

6:30 p.m.

Tuesday, March 9, 2010

Proclamations

- ▶ A Proclamation from the Pilot Club of Moline to declare March 15, 2010 to March 21, 2010 as “Brain Awareness Week.”

Informational

- ▶ ISO Rating (Fire Chief, Ron Miller)

Questions on the Agenda

Agenda Items

- 1. Approval of a Lease and Concession Agreement with Stephanie and Gary Wicall to sell food and beverages from a mobile concession stand within a portion of Stephen’s Park. (Chris Mathias – Property Management Coordinator)**
- 2. Approval of a Lease and Concession Agreement with Roy’s All Fed Up, Inc. (2504 18th Avenue Apt. D, Rock Island, IL 61201) to sell food and beverages from a mobile concession stand along Ben Butterworth Parkway (Chris Mathias – Property Management Coordinator)**
- 3. A Resolution Amending Resolution 1106-2005 to Increase an Existing Revolving Line of Credit Between the City of Moline and First Midwest Bank in an Amount not to Exceed \$2,900,000. (Kathy Carr, Finance Director)**
- 4. Other**

Explanation

- 1. Approval of a Lease and Concession Agreement with Stephanie and Gary Wicall to sell food and beverages from a mobile concession stand within a portion of Stephen's Park.**
(Chris Mathias – Property Management Coordinator)

Explanation: Stephanie and Gary Wicall desire a Lease and Concession Agreement for the purpose of selling food and beverages from a mobile concession stand within a certain portion of Stephen's Park described in **Exhibits "A" and "A-1,"** attached. The Park and Recreation Board of Directors supports having a vendor serving food and beverages from a mobile concession stand in the Park during ball diamond events from May through August each year, as a method of enhancing services for citizens and visitors utilizing the Park and has approved this Agreement for that purpose. The lease agreement is attached as **Exhibit "B."** Staff recommends approval.

Staff Recommendation: Approval
Fiscal Impact: City will receive \$400.00 income for the period.
Goal Impacted: Strong Local Economy

- 2. Approval of a Lease and Concession Agreement with Roy's All Fed Up, Inc. (2504 18th Avenue Apt. D, Rock Island, IL 61201) to sell food and beverages from a mobile concession stand along Ben Butterworth Parkway** (Chris Mathias – Property Management Coordinator)

Explanation: Roy's All Fed Up, Inc. desires a Lease and Concession Agreement for the purpose of selling food and beverages from a mobile concession stand along a certain portion of Ben Butterworth Parkway described in **Exhibits "A" and "A-1,"** attached. The Park and Recreation Board of Directors supports having a vendor serving food and beverages from a mobile concession stand along the Parkway from April through November each year, as a method of enhancing services for citizens and visitors utilizing the Parkway and has approved this Agreement for that purpose. The proposed Agreement is attached as **Exhibit "B."** Staff recommends approval.

Staff Recommendation: Approval
Fiscal Impact: City will receive \$800.00 income for the period.
Goal Impacted: Strong Local Economy

- 3. A Resolution Amending Resolution 1106-2005 to Increase an Existing Revolving Line of Credit Between the City of Moline and First Midwest Bank in an Amount not to Exceed \$2,900,000.** (Kathy Carr, Finance Director)

Explanation: In 2005, the City of Moline established a line of credit with First Midwest Bank to facilitate the purchase of vacant land in the vicinity of John Deere Road and 38th Street. Only \$778,527 is currently being used. As part of the Development Agreement with Northwest Bank and Trust to move forward and complete Phases II and III of the One Moline Place Redevelopment Plan, the City will need temporary financing to pay off outstanding obligations owed for previously incurred TIF eligible expenses (\$2,045,152). This line of credit will subsequently be paid off with proceeds from a pending bond issue through a new TIF District to finance the completion of Phases II and III of this Redevelopment Project.

Staff Recommendation: Approve a \$1,100,000 increase to the existing line of credit.
Fiscal Impact: Complies with IRS regulations to qualify for future proposed bond issue
Goals Impacted: Quality Neighborhoods & Desirable Place to Live

EXHIBIT "A"
DESCRIPTION

A portion of Stephen's Park described as follows: Beginning at a point twenty feet west of the Southwest corner of the easternmost parking lot located on RICO Parcel MO-5298 and commencing west fifty-five feet more or less; thence north forty feet more or less; thence east fifty feet more or less; thence south forty feet more or less to the point of beginning, said Premises depicted in the diagram attached hereto and incorporated herein as Exhibit "A-1."

SEE ATTACHED DIAGRAM
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Exhibit "A-1"



EXHIBIT "B"

LEASE AND CONCESSION AGREEMENT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the City of Moline, Illinois, a municipal corporation (hereinafter "Owner"), by and through its Park and Recreation Board of Directors, and Stephanie and Gary Wicall (hereinafter "Vendor") (hereinafter collectively "Parties") to lease a certain portion of Stephen's Park for the purpose of selling food and beverages to the public from a mobile food unit or pushcart.

WHEREAS, Owner seeks to enhance services to citizens of Moline and visitors (hereinafter "Individuals") utilizing Stephen's Park; and

WHEREAS, Owner has determined having a means of providing food and beverages to Individuals utilizing a certain portion of Stephen's Park would be a service enhancement; and

WHEREAS, Owner has determined having a vendor serve food and beverages from a mobile food unit or pushcart during scheduled Dad's Club, Little League and Park League games is the most appropriate means of providing such a service; and

WHEREAS, Owner is not in the business of nor does it have the personnel necessary to operate a food and beverage service; and

WHEREAS, Owner wishes to contract with Vendor for the sale of food and beverages to the Individuals, from a mobile food unit or pushcart, within Stephen's Park subject to the terms, conditions, restrictions, limitations and reservations stated herein.

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

1. DEFINITIONS

- a) Premises: A portion of Stephen's Park being more particularly described in **Exhibits "1" and "1-A,"** attached hereto and incorporated herein.
- b) Service(s)/Operation(s): The sale of Owner approved food and beverages from a mobile food unit or pushcart by Vendor.
- c) Vendor Property: All property provided by Vendor for the Operation including but not limited to the mobile food unit or pushcart, food and beverages.

2. USE

- a) Owner shall lease the Premises to Vendor solely for the sale of Owner approved food and beverages from a mobile food unit or pushcart to the public. All food and beverages sold shall be approved by Owner. The selection of beverages and foods referenced herein and its pricing shall be determined by the Vendor. Under no circumstances shall the Premises be used for the sale of alcoholic beverages, tobacco products or the paraphernalia of either.

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- b) The Vendor shall operate under the name "Joe's Heavenly Dogs."
- c) Vendor shall offer services during scheduled youth activities taking place on the Stephen's Park baseball diamonds, weather permitting.

3. VENDOR'S RESPONSIBILITIES.

- a) The Parties agree that Vendor is an independent contractor. Vendor shall have the exclusive responsibility for the Operation without undue influence by Owner except in cases specifically referred to in this Agreement; however, at times mutually agreeable, Vendor and Owner or Owner's designee(s) shall discuss and consider the matters which may be of mutual interest in maintaining efficient and profitable operation.
- b) Vendor shall at all times devote reasonable time, attention and energies to the management and improvement of the business. Vendor 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 "2,"** attached hereto and incorporated by reference herein.
- c) Vendor shall be responsible for all Vendor Property associated with the Operation and shall pay all operational and maintenance costs for same.
- d) Vendor shall keep any mobile food unit or pushcart utilized in the Operation in good working order and shall permit Owner to make periodic inspections of same for the purpose of determining compliance with this requirement.
- e) Vendor agrees to provide Services to the public without discrimination other than that permitted by law. Discrimination by Vendor in the provision of Services hereunder based on race, sex, religion, age, marital status, handicap, national origin, or sexual orientation shall be deemed to be a material breach of this lease.
- f) Vendor 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 food and beverage permits or licenses.
- g) Vendor shall be responsible for all staffing, taxes, insurance, and appropriate licensing associated with and necessary for the Operation. Vendor's 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. Vendor shall be exclusively responsible for the payment of all wages and salaries, taxes, withholding payment, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension

EXHIBIT "B"

or other deferred compensation plans including, but not limited to, workers compensation and Social Security obligations, licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall not bring any cause of action alleging Owner is the employer of Vendor or any of Vendor's employees, officers or agents, and Vendor shall indemnify, defend and hold harmless Owner against all claims, losses, costs, or expenses associated with the employment of said employees by Vendor.

- h) Vendor shall remove all Vendor Property from the Premises daily upon completion of Operations for the day.
 - i) Vendor shall be responsible for properly disposing of garbage from the Operation. Vendor shall clean the Premises no less than daily and as frequently as necessary to keep the Premises free of debris resulting from the Operation. Vendor may utilize garbage disposal receptacles on the Premise for debris disposal. Vendor shall notify Owner should the garbage receptacles need emptying.
 - j) At its own expense, Vendor shall obtain a water supply for use at the Premises, which meets the approval of the Environmental Health Specialist prior to commencing Operations.
4. RENT. Vendor shall pay lease payments to Owner as follows:
- a) \$100.00 per month due on or before the fifth day of each month during the lease term.
 - b) Delinquent payments shall accrue interest at a rate of eight percent per annum.
 - c) Payments shall be made to the City of Moline Finance Department 1616 6th Avenue, Moline, Illinois 61265.
5. TERM AND TERMINATION
- a) The term of this Agreement shall commence on May 1st, 2010 (hereinafter "Commencement Date") and shall continue through August 31, 2010. Any holding over after the expiration of the term hereof without the consent of the Owner shall be construed to be a tenancy from month to month at the rental five times the last rental rate in effect and shall otherwise be on the terms and conditions herein specified, as far as applicable.
 - b) In addition to any other remedies provided by law or equity, in the event of any default or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party or successor shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within thirty (30) days after receipt of such notice. Said written notice shall describe the nature of the default, and what action, if any, is deemed necessary to cure the same. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a

EXHIBIT "B"

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, Vendor must peacefully surrender the Premises to Owner; Owner must peacefully surrender Vendor's equipment to Vendor. The Premises leased herein shall include all appurtenant fixtures to said real estate, which, upon termination of this Agreement shall remain with the Premises and return to Owner.

6. HOLD HARMLESS/INDEMNIFY.

- a) In consideration for permission to use the Premises and Owner's property as granted above, Vendor 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 Vendor shall have no duty to defend, hold harmless or indemnify.
- b) This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties thereto.

7. VENDOR'S INSURANCE COVERAGE. Vendor shall, throughout the term of this Agreement and at Vendor's expense, carry and keep in full force and effect comprehensive general liability insurance with respect to the Premises, with a carrier and in a form satisfactory to 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.
- c) Name Owner as an additional insured party.
- d) Contain a clause that the insurance carrier will not cancel or change the insurance without first giving the Owner thirty (30) days prior written notice in a form similar to that attached hereto as **Exhibit "3."**
- g) Contain fire and extended perils insurance covering Vendor's own property and insuring Vendor's possessions on the Premises; Owner shall have no duty to

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insure Vendor’s possessions, the possessions of Vendor’s guests, invitees or permittees, or to replace same in the event of any calamity or other disaster.

h) Each such policy of insurance shall contain a waiver of subrogation provision.

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

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

Owner:
Laura Duran
Park & Recreation Director
City of Moline
3435 4th Avenue
Moline, IL 61265

Vendor:
Stephanie and Gary Wicall
2369 34th Street
Moline, IL 61265

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

9. OBSERVANCE OF LAWS AND ORDINANCES. Vendor 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 Vendor’s conduct or use of the premises.
10. SURRENDER OF PREMISES. At the end or termination of the term hereby demised, Vendor covenants to surrender and deliver up the Premises hereby leased in as good as condition as they now are, or may hereafter be put, destruction by fire, reasonable use, ordinary wear and tear, and the effects of time excepted.
11. ASSIGNMENT AND SUBLEASING. Vendor shall not have the right to assign this Agreement or sell, transfer or sublet any portion of the Premises herein without the express written consent of Owner, and consent of Owner shall not release or discharge Vendor from any obligations hereunder.
12. EFFECT OF PARTIAL INVALIDITY. The invalidity of any part of this Agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining

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provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

- 13. WAIVER. Waiver by Owner of any breach of any covenant or duty of Vendor under this Agreement is not a waiver of a breach of any other covenant or duty of Vendor, or of any subsequent breach of the same covenant or duty.
- 14. CHOICE OF LAW. This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state court located within Rock Island County, Illinois, or federal court located within the same venue.
- 15. TAXES. Vendor shall also be responsible for and pay all real estate taxes assessed against the lease premises if any are so assessed and shall furnish to Owner proof of payment within thirty (30) days after payment is due.
- 16. MISCELLANEOUS.
 - a) This Agreement and each and every one of the terms and provisions thereof shall be for the benefit of and be binding upon the parties hereto and each of them and their respective heirs, executors, administrators, grantees, successors and assigns.
 - b) This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior agreements, undertakings and arrangements between the parties relating to the subject matter hereof. All amendments, changes, modifications or alterations of the terms and conditions hereof shall be in writing and signed by all parties hereto.
 - c) The captions of the Agreement are used for convenience of reference only and shall have no significance in construing the text of the Agreement.

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

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

**STEPHANIE AND GARY WICALL
(VENDOR)**

By: _____
Donald P. Welvaert, Mayor

BY: _____
Stephanie Wicall, Vendor

BY: _____
Gary Wicall, Vendor

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BY: _____
Roger Clawson, President
Parks and Recreation Board

ATTEST:

Tracy Koranda, City Clerk

DATE: _____

Approved as to Form:

Law Director

EXHIBIT "A"
DESCRIPTION

A portion of Ben Butterworth Parkway described as follows: Beginning at the northeast corner of the easternmost parking lot located on RICO Parcel MO-2644-A and commencing northwest 180 feet more or less following the northern edge of said parking lot; thence north fifteen feet to the southern edge of the Ben Butterworth Parkway trail; thence east 177 feet more or less following the southern edge of the Ben Butterworth Parkway trail; thence south sixty feet more or less to the point of beginning, said Premises depicted in the diagram attached hereto and incorporated herein as Exhibit "A-1."

SEE ATTACHED DIAGRAM
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Exhibit "A-1"



EXHIBIT "B"

LEASE AND CONCESSION AGREEMENT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the City of Moline, Illinois, a municipal corporation (hereinafter "Owner"), by and through its Park and Recreation Board of Directors, and Roy's All Fed Up, Inc., (hereinafter "Vendor") (hereinafter collectively "Parties") to lease a certain portion of Ben Butterworth Parkway for the purpose of selling food and beverages to the public from a mobile food unit or pushcart.

WHEREAS, Owner seeks to enhance services to citizens of Moline and visitors (hereinafter "Individuals") utilizing Ben Butterworth Parkway; and

WHEREAS, Owner has determined having a means of providing food and beverages to Individuals utilizing a certain portion of Ben Butterworth Parkway would be a service enhancement; and

WHEREAS, Owner has determined having a vendor serve food and beverages from a mobile food unit or pushcart from April through November each year is the most appropriate means of providing such a service; and

WHEREAS, Owner is not in the business of nor does it have the personnel necessary to operate a food and beverage service; and

WHEREAS, Vendor is a mobile food unit or pushcart operator and has a positive working history with Owner; and

WHEREAS, Owner wishes to contract with Vendor for the sale of food and beverages to the Individuals, from a mobile food unit or pushcart, along a certain portion of Ben Butterworth Parkway 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: A portion of Ben Butterworth Parkway being more particularly described in **Exhibits "1"** and **"1-A,"** attached hereto and incorporated herein.
- b) Service(s)/Operation(s): The sale of Owner approved food and beverages from a mobile food unit or pushcart by Vendor.
- c) Vendor Property: All property provided by Vendor for the Operation including but not limited to the mobile food unit or pushcart, food and beverages.

EXHIBIT "B"

2. USE

- a) Owner shall lease the Premises to Vendor solely for the sale of Owner approved food and beverages from a mobile food unit or pushcart to the public. All food and beverages sold shall be approved by Owner. The selection of beverages and foods referenced herein and its pricing shall be determined by the Vendor. Under no circumstances shall the Premises be used for the sale of alcoholic beverages, tobacco products or the paraphernalia of either.
- b) The Vendor shall operate under the name "Roy's All Fed Up, Inc."
- c) Vendor's shall offer services seven days a week from 10:00 a.m. until 4:00 p.m. weather permitting. Vendor may offer extended serves from 4:00 p.m. until dusk at Vendor's discretion.

3. VENDOR'S RESPONSIBILITIES.

- a) The Parties agree that Vendor is an independent contractor. Vendor shall have the exclusive responsibility for the Operation without undue influence by Owner except in cases specifically referred to in this Agreement; however, at times mutually agreeable, Vendor and Owner or Owner's designee(s) shall discuss and consider the matters which may be of mutual interest in maintaining efficient and profitable operation.
- b) Vendor shall at all times devote reasonable time, attention and energies to the management and improvement of the business. Vendor 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 "2,"** attached hereto and incorporated by reference herein.
- c) Vendor shall be responsible for all Vendor Property associated with the Operation and shall pay all operational and maintenance costs for same.
- d) Vendor shall keep any mobile food unit or pushcart utilized in the Operation in good working order and shall permit Owner to make periodic inspections of same for the purpose of determining compliance with this requirement.
- e) Vendor agrees to provide Services to the public without discrimination other than that permitted by law. Discrimination by Vendor in the provision of Services hereunder based on race, sex, religion, age, marital status, handicap, national origin, or sexual orientation shall be deemed to be a material breach of this lease.
- f) Vendor shall comply with and at all times operate in a manner which meets all applicable Federal, State and Municipal laws, ordinances and regulations and

EXHIBIT "B"

guiding rules, including but not limited to meeting the requirements for food and beverage permits or licenses.

- g) Vendor shall be responsible for all staffing, taxes, insurance, and appropriate licensing associated with and necessary for the Operation. Vendor's 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. Vendor shall be exclusively responsible for the payment of all wages and salaries, taxes, withholding payment, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans including, but not limited to, workers compensation and Social Security obligations, licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall not bring any cause of action alleging Owner is the employer of Vendor or any of Vendor's employees, officers or agents, and Vendor shall indemnify, defend and hold harmless Owner against all claims, losses, costs, or expenses associated with the employment of said employees by Vendor.
 - h) Vendor shall remove all Vendor Property from the Premises daily upon completion of Operations for the day.
 - i) Vendor shall be responsible for properly disposing of garbage from the Operation. Vendor shall clean the Premises no less than daily and as frequently as necessary to keep the Premises free of debris resulting from the Operation. Vendor may utilize garbage disposal receptacles on the Premise for debris disposal. Vendor shall notify Owner should the garbage receptacles need emptying.
 - j) At its own expense, Vendor shall obtain a water supply for use at the Premises, which meets the approval of the Environmental Health Specialist prior to commencing Operations.
4. RENT. Vendor shall pay lease payments to Owner as follows:
- a) \$100.00 per month due on or before the fifth day of each month during the lease term.
 - b) Delinquent payments shall accrue interest at a rate of eight percent per annum.
 - c) Payments shall be made to the City of Moline Finance Department 1616 6th Avenue, Moline, Illinois 61265.
5. TERM AND TERMINATION
- a) The term of this Agreement shall commence on April 1, 2010 (hereinafter "Commencement Date") and shall continue through November 30, 2010. Any holding over after the expiration of the term hereof without the consent of the Owner shall be construed to be a tenancy from month to month at the rental five

EXHIBIT "B"

times the last rental rate in effect and shall otherwise be on the terms and conditions herein specified, as far as applicable.

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

6. HOLD HARMLESS/INDEMNIFY.

- a) In consideration for permission to use the Premises and Owner's property as granted above, Vendor 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 Vendor shall have no duty to defend, hold harmless or indemnify.
- b) This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties thereto.

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

EXHIBIT "B"

- a) Have limits of \$1,000,000.00 per occurrence personal injury and \$100,000.00 per occurrence property damage.
- c) Name Owner as an additional insured party.
- d) Contain a clause that the insurance carrier will not cancel or change the insurance without first giving the Owner thirty (30) days prior written notice in a form similar to that attached hereto as **Exhibit "3."**
- g) Contain fire and extended perils insurance covering Vendor's own property and insuring Vendor's possessions on the Premises; Owner shall have no duty to insure Vendor's possessions, the possessions of Vendor's guests, invitees or permittees, or to replace same in the event of any calamity or other disaster.
- h) Each such policy of insurance shall contain a waiver of subrogation provision.

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

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

Owner:
Laura Duran
Park & Recreation Director
City of Moline
3435 4th Avenue
Moline, IL 61265

Vendor:
Roy's All Fed Up, Inc.
attn: John Rogers
2504 18th Avenue, Apt. D
Rock Island, IL 61201

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

9. OBSERVANCE OF LAWS AND ORDINANCES. Vendor 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 Vendor's conduct or use of the premises.
10. SURRENDER OF PREMISES. At the end or termination of the term hereby demised, Vendor covenants to surrender and deliver up the Premises hereby leased in as good as

EXHIBIT "B"

condition as they now are, or may hereafter be put, destruction by fire, reasonable use, ordinary wear and tear, and the effects of time excepted.

11. ASSIGNMENT AND SUBLEASING. Vendor shall not have the right to assign this Agreement or sell, transfer or sublet any portion of the Premises herein without the express written consent of Owner, and consent of Owner shall not release or discharge Vendor from any obligations hereunder.
12. EFFECT OF PARTIAL INVALIDITY. The invalidity of any part of this Agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
13. WAIVER. Waiver by Owner of any breach of any covenant or duty of Vendor under this Agreement is not a waiver of a breach of any other covenant or duty of Vendor, or of any subsequent breach of the same covenant or duty.
14. CHOICE OF LAW. This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state court located within Rock Island County, Illinois, or federal court located within the same venue.
15. TAXES. Vendor shall also be responsible for and pay all real estate taxes assessed against the lease premises if any are so assessed and shall furnish to Owner proof of payment within thirty (30) days after payment is due.
16. MISCELLANEOUS.
 - a) This Agreement and each and every one of the terms and provisions thereof shall be for the benefit of and be binding upon the parties hereto and each of them and their respective heirs, executors, administrators, grantees, successors and assigns.
 - b) This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior agreements, undertakings and arrangements between the parties relating to the subject matter hereof. All amendments, changes, modifications or alterations of the terms and conditions hereof shall be in writing and signed by all parties hereto.
 - c) The captions of the Agreement are used for convenience of reference only and shall have no significance in construing the text of the Agreement.

EXHIBIT "B"

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

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

**ROY'S ALL FED UP, INC.
(VENDOR)**

By: _____
Donald P. Welvaert, Mayor

BY: _____
John Rogers, _____
Print Title

BY: _____
Roger Clawson, President
Parks and Recreation Board

ATTEST:

Tracy Koranda, City Clerk

DATE: _____

Approved as to Form:

Law Director