

**CITY OF COLUMBIA, ILLINOIS**

**ORDINANCE NO. 2815**

**AN ORDINANCE TO AUTHORIZE A LEASE AGREEMENT  
BETWEEN THE CITY OF COLUMBIA, ILLINOIS AND  
COLUMBIA AMERICAN LEGION, COLUMBIA POST 581,  
DISTRICT NO. 22, DEPARTMENT OF ILLINOIS, AN ILLINOIS  
CORPORATION, FOR THE LEASE OF REAL PROPERTY  
LOCATED IN THE COLUMBIA AMERICAN LEGION  
MEMORIAL PARK SUBDIVISION IN THE CITY OF  
COLUMBIA, ILLINOIS**

**Adopted by the  
City Council  
of the  
City of Columbia, Illinois  
this 18<sup>th</sup> day of October, 2010**

**Published in pamphlet form by  
authority of the City Council  
of the City of Columbia,  
Illinois, this 18<sup>th</sup> day  
of October, 2010**

OCT 18 2010

*J. Ronald Culy*  
City Clerk

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COLUMBIA, ILLINOIS**

WHEREAS, the City of Columbia, Illinois ("City") is a municipal corporation and body both corporate and politic created and existing in and by virtue of the laws of the State of Illinois located in Monroe and St. Clair counties, Illinois, and Columbia American Legion, Columbia Post 581, District No. 22, Department of Illinois, is an Illinois corporation created and existing under and pursuant to the laws of the State of Illinois ("Columbia American Legion");

WHEREAS, Columbia American Legion is the owner of the real estate, and the improvements thereon, known as the Columbia American Legion Memorial Park Subdivision located in the City;

WHEREAS, a majority of the real estate located in the Columbia American Legion Memorial Park Subdivision has been operated by the Columbia American Legion as a park and playground and for other recreational purposes;

WHEREAS, Columbia American Legion has expressed an interest in leasing most of Lot 2 and part of Lot 3 in the Columbia American Legion Memorial Park Subdivision to the City, provided the City agrees to continue to use such land as a park and playground and for other recreational purposes; and

WHEREAS, City believes and hereby declares that it is in the best interests of the City to lease various parcels of real estate, and the improvements thereon, in the American Legion Memorial Park Subdivision from the Columbia American Legion for its continued use as a park and playground and for other recreational purposes.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

**Section 2.** The City Council of the City of Columbia, Illinois, does hereby authorize and direct the Mayor to execute and deliver the American Legion Memorial Park Lease, in the form attached hereto, which American Legion Memorial Park Lease is hereby approved as to form, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

**Section 3.** This ordinance shall be in full force and effect following its passage and publication in pamphlet form, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Roessler, and the roll call vote was as follows:

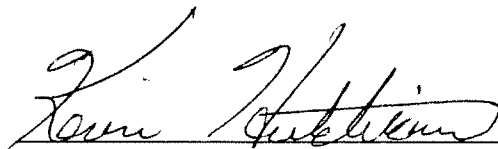
YEAS: Aldermen Ebersohl, Agne, Niemietz, Row, Hejna, Stumpf, Roessler and Mayor Hutchinson.

NAYS: Alderman Oberkfell.

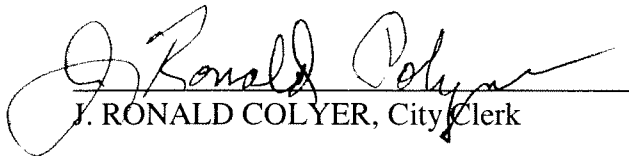
ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 18<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

  
\_\_\_\_\_  
J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF MONROE    )

**CERTIFICATE OF PUBLICATION**

I, J. Ronald Colyer, certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois.

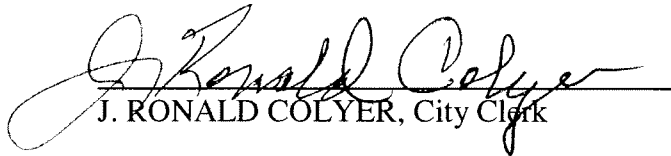
I further certify that on the 18<sup>th</sup> day of October, 2010, the Corporate Authorities of the City of Columbia, Illinois, passed and approved Ordinance No. 2815 entitled:

**“AN ORDINANCE TO AUTHORIZE A LEASE AGREEMENT BETWEEN THE CITY OF COLUMBIA, ILLINOIS AND COLUMBIA AMERICAN LEGION, COLUMBIA POST 581, DISTRICT NO. 22, DEPARTMENT OF ILLINOIS, AN ILLINOIS CORPORATION, FOR THE LEASE OF REAL PROPERTY LOCATED IN THE COLUMBIA AMERICAN LEGION MEMORIAL PARK SUBDIVISION IN THE CITY OF COLUMBIA, ILLINOIS”**

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2815, including the ordinance and a cover sheet thereof, was prepared, and a copy of such ordinance was posted in the Columbia City Hall, commencing on October 19, 2010 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also made available for public inspection upon request in the office of the City Clerk.

DATED at Columbia, Illinois this 18th day of October, 2010.

  
J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS       )  
  ) SS  
COUNTY OF MONROE       )

**CERTIFICATE OF TRUE COPY**

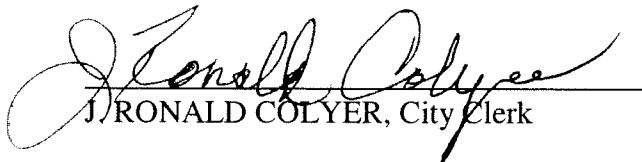
I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois, and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2815, entitled:

**“AN ORDINANCE TO AUTHORIZE A LEASE AGREEMENT BETWEEN THE CITY OF COLUMBIA, ILLINOIS AND COLUMBIA AMERICAN LEGION, COLUMBIA POST 581, DISTRICT NO. 22, DEPARTMENT OF ILLINOIS, AN ILLINOIS CORPORATION, FOR THE LEASE OF REAL PROPERTY LOCATED IN THE COLUMBIA AMERICAN LEGION MEMORIAL PARK SUBDIVISION IN THE CITY OF COLUMBIA, ILLINOIS”**

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois, City Council held on the 18th day of October, 2010.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 18th day of October, 2010.

  
J. RONALD COLYER, City Clerk

(SEAL)

## AMERICAN LEGION MEMORIAL PARK LEASE

This Lease Agreement is made and entered into to take effect the 1st day of November, 2010 by and between COLUMBIA AMERICAN LEGION, COLUMBIA POST 581, DISTRICT NO. 22, DEPARTMENT OF ILLINOIS, an Illinois Corporation having an office at 375 East Locust Street, Columbia, Illinois, (herein referred to as "Legion"), and The CITY OF COLUMBIA, ILLINOIS, an Illinois Municipal Corporation and body both corporate and politic having its City Hall at 208 South Rapp Avenue, Columbia, Illinois (herein referred to as "City"), WITNESSETH:

### (1) Description of property.

Legion leases to City all those hereinafter described parcels of land in the Columbia American Legion Memorial Park Subdivision, in the City of Columbia, Illinois, a copy of the plat of which is recorded in the Monroe County, Illinois Recorder's Office in Plat Envelope 2-158 B, as Document No. 266777, (hereinafter referred to as the "Legion Subdivision"), is attached hereto as Exhibit No. "1" and by reference is made a part hereof, to wit:

(A) All of Lot 2 of Legion Subdivision, and the improvements located thereon, including, but not limited to, the base ball fields and diamonds, back stops, baseball field lighting and other exterior lighting (if any), restroom buildings and facilities, paved roadways and travel ways and all other improvements located on said Lot 2; excepting, however, the Pavilion Building (Building 2) and facilities located in the most southeasterly part of Lot 2 which shall continue to belong to and to be under the control of, used, managed, and maintained by the Legion with free access thereto on, over, along and across said Lot 2 for that use and purpose during the entire term of this lease:

(B) That part of Lot 3 of Legion Subdivision that is occupied by playground equipment and facilities located along the west side of the Legion Hall (Building 1) for approximately the length of the west side of said Legion Hall and extending in a westerly direction to the chain link fencing located on or adjacent to the paved travel way and extending beyond the access easement (40 feet wide) depicted on the Legion Subdivision plat adjacent to the west side of Lots No. 1 and 3 of Legion Subdivision. The playground and playground equipment and facilities shall be maintained and repaired by City, and may be improved by City with the prior written consent of Legion.

### (2) Term.

The land and improvements that are the subject of this lease are leased for a term of two (2) years, commencing on November 1, 2010 and ending on October 31, 2012, but subject to earlier termination as provided in this lease.

(3) Rent.

City agrees to pay as rent for the premises for the two (2) year term of this lease the sum of Twenty Five Thousand Dollars (\$25,000.00), at the time of execution hereof by City, plus all real property taxes, insurance and maintenance expenses and other charges stated in this lease. In the event this lease is terminated prior to the expiration of the two (2) year term hereof, the unearned, pro-rata portion of the rental (based upon the 730 day term of the lease) shall be refunded to City by Legion, unless the early termination is due to the default of performance of the lease by City, and in which event, the unearned portion of the rental shall be retained by Legion.

(4) Parking lot and Access Easements.

The asphalt paved parking area located on Lot No. 3 of the Legion Subdivision (other than the play ground and play ground equipment and facilities located on said Lot 3) shall remain and be under the ownership and control of Legion during the entire term of this lease. City and its invitees, guests, agents, employees, contractors, officers and licensees shall have the right to use the parking area as an appurtenance to Lot No. 2 and the leased part and improvements on Lot No. 3 (playground area improved by playground equipment and facilities). The right and privilege of City to use the parking area shall, however, be subordinate to the right of Legion and its guests, invitees, agents, officers, employees, contractors, and licensees to use and occupy the same. In the event of a conflict of scheduling of events by Legion and City the right of Legion and its guests, invitees, agents, officers, employees, contractors, and licensees to utilize the parking area (or such part thereof as Legion shall determine) for its activities or events shall take precedence over the right of City to utilize the same. Legion shall be responsible for the maintenance and repair of the parking area and shall keep and maintain the same in good order and repair so that it will be available at all times during the term of this lease to be utilized by both parties for its intended use and purpose.

The access easement depicted on Lot 3 of the Legion Subdivision plat (approximately 40 feet wide) located along the southwesterly boundary of Lot 3 and the paved travel way for vehicular traffic located in that access easement shall remain and be under the ownership and control of Legion for the entire term of this lease and City and its invitees, guests, employees, contractors, officers and licensees shall have the right to use the same as an appurtenance to Lot 2, jointly with Legion and its invitees, guests, employees, contractors, officers and licensees of Legion. Legion shall be responsible for the maintenance and repair of the same and shall keep the same in good order and repair during the entire term of this lease so that it will be available at all times during the lease term to be utilized by both parties for its intended access use and purpose.

The access easement depicted on Lot 2 (adjacent to the Southeast boundary of Lot No. 3) on the Legion Subdivision plat and paved travel way for vehicular traffic located in that access easement and all of the paved roadways or travel ways located on Lot 2 outside of that access easement may be used by both City and Legion, jointly, and their invitees, guests, employees, contractors, officers and licensees shall have the right to use same as an appurtenance to Lot 2 and an appurtenance to the Legion Hall and other buildings and facilities of Legion on Lot 3. City shall be responsible for the maintenance

and repair of the same during the term of this lease and shall keep the same in good order and repair during the entire term of this lease so that it will be available at all times during the lease term to be utilized by both parties for their intended access use and purpose and so that they will provide free and easy access for the improvements in the Legion Subdivision for both parties and their invitees, guests, employees, contractors, officers and licensees during the entire term of this lease.

(5) Legion's covenants.

(A) Legion is the owner of the leased premises and has the right to make this lease.

(B) City, upon paying the rent and upon performing all of the terms and conditions contained in this lease, may at all times during the term of this lease peacefully and quietly hold and enjoy the leased premises.

(C) Legion, during the term of this lease, shall maintain liability insurance coverage in connection with Legion's use of the pavilion (Building 2) located in the southeast corner of Lot 2, and the leased property surrounding such pavilion.

(D) The leased premises are now free from all encumbrances except the following which this lease is subject and subordinate to:

(1) Line of Credit Loan Mortgage to Columbia National Bank of Columbia, Illinois in the original principal amount of \$100,000.00, recorded in the Monroe County, Illinois Recorder's Office as Document No. 331914.

(2) Easement granted to Harrisonville Telephone Company and Southwestern Bell Telephone Company April 20, 1970, recorded in the Monroe County, Illinois Recorder's Office in Book 106, on page 122.

(3) Fifteen (15) foot Sewer Line Easement Agreement and Deed granted by Columbia Post 581, American Legion, Department of Illinois, to the City of Columbia, Illinois dated October 13, 1987, recorded in the Monroe County, Illinois Recorder's Office in Book 156, at page 417, as Document No. 151303.

(4) Consent to Sewer Line Easement granted by Illinois Power Company dated November 16, 1987, recorded in the Monroe County, Illinois Recorder's Office on November 23, 1987, in Book 156 at page 496, as Document No. 151521.

(5) Consent to Sewer Line Easement granted by Harrisonville Telephone Company dated November 17, 1987, recorded in the Monroe County, Illinois Recorder's Office on November 20, 1987, in Book 156 at page 480, as Document No. 151478.

(6) Building lines, easements, conditions and restrictions reflected on the plat of 'COLUMBIA AMERICAN LEGION MEMORIAL PARK' subdivision recorded as Document No. 266777 in the Monroe County, Illinois Recorder's Office.



(6) City's covenants.

(A) Taxes and assessments.

City agrees to pay when due a pro-rata part of all real property taxes, assessments and charges of every kind that may be lawfully imposed, assessed, or charged during the term of this lease against the leased premises (Lot 2 of the Legion Subdivision and other parts of said leased premises), whether the taxes, assessments, and charges are legally payable by Legion or City. Whenever taxes, assessments, or charges may be paid in installments, City shall pay those installments in respect to periods which fall wholly within the term of this lease, together with a prorated part of any installment in respect to a period which only a portion of which falls within the term of this lease. Real property taxes, assessments, and charges imposed on the premises for the initial year of this lease, and for the last year of this lease, will be prorated between Legion and City as of the dates of commencement and termination respectively. In the event City determines, in the exercise of reasonable business judgment, to contest the amount or validity of any tax, tax rate, assessment, charge, or the like, Legion will join in the proceedings if legally required to do so. City will pay any costs or attorney's fees Legion may incur in the proceedings. In the event any court or other governmental authority of competent jurisdiction determines the tax, rate, assessment, charge, or the like to be valid or proper, City will promptly pay the same together with any interest, penalty, or fine resulting from the contest.

(B) Utility and other charges.

City will pay when due all electric service utility charges attributable to the leasehold premises (Lot 2 of the Legion Subdivision and three (3) dusk to dawn lights located thereon, except for the pavilion located in the southeast corner of Lot 2). City will not be responsible for payment of electric service charges assessed against Lots 1 and 3 or the electric service charges attributable to the pavilion (Building 2) located on Lot 2 of the Legion Subdivision. Legion will determine the amount of each monthly electric bill attributable to the leasehold premises and will bill City for the same. Should City disagree with the amount City is being billed by Legion for electric service provided to the leasehold premises, the parties shall attempt to agree whether an adjustment should be made, and if the parties cannot agree, the City may require and pay for the service to be separately metered thereafter and shall pay the amount of the disputed bill with a right to seek reimbursement by submitting the matter to arbitration by a three-person impartial arbitration panel. Arbitration shall be initiated by City notifying Legion of such election. City shall select one (1) arbitrator, and Legion shall select another arbitrator within thirty (30) days thereafter. The two arbitrators so selected shall select a third arbitrator, and the decision of any two shall be binding upon City and Legion and may be enforced as if it were a court judgment.

Legion shall be solely responsible for payment of the monthly potable city water service bills for the Legion Subdivision (including potable water service for the leasehold premises) free of any obligation on the part of the City to contribute to the payment of the same, for the entire term of this lease. City shall reimburse Legion, however, for the cost of any water use by City to water grass or for any other purposes, except for on premises drinking or sanitary purposes.

Any other utility service bills for the lots in the Legion Subdivision shall be paid by the party who received and used the service, including, but not limited to, sanitary sewer, gas, heat, telephone, telecommunication, trash pickup, or other utility services.

(C) Repair and maintenance.

Except as otherwise provided, City shall maintain and keep in good repair all buildings and other improvements now or later located on the leased premises, including, but not limited to, the restroom buildings and facilities, the playground equipment and facilities on Lot 3, and the ball fields, ball diamonds and back stops, ball field lighting standards and facilities, and the access easement and paved travel ways located on Lot 2 of the Legion Subdivision. City shall have no obligation to maintain and/or repair the Legion Hall or other buildings and improvements located on Lots 1 and 3 or the pavilion (Building 2) located on Lot 2 of the Legion Subdivision.

(D) Unlawful uses; indemnification.

City will not make or allow to be made any unlawful, improper, or offensive use of any part of the leasehold premises, and agrees to keep the same in a strictly decent, safe, and sanitary condition, observing all municipal, state, and federal laws, ordinances, rules, and regulations, now or later in effect. City further agrees to indemnify and hold harmless Legion against all claims, demands, costs, or judgments of any kind whatsoever made or suffered due to the breach of this covenant.

(E) Additional indemnification.

City agrees to hold harmless and indemnify Legion from and against any and all claims, demands, costs, attorney's fees, expenses, or judgments of any nature that may arise or that Legion may suffer on account of, or in connection with, the leased premises or any condition or occurrence upon the leased premises during the term of this lease, which is not the result of the negligence of Legion or its agents, employees, officers, contractors, patrons, or legal representatives.

(F) Assignment and sublease.

City shall not assign this lease nor sublet the premises without the prior written consent of Legion.

(G) Inspection.

Legion shall have the right at all reasonable times during the term of this lease, to enter the leasehold premises and any building or other improvement on the leasehold premises, to determine whether the covenants made by City are being performed. City will permit Legion access to the leasehold premises at all reasonable times, and within fifteen (15) days following written notice by Legion, City will remedy and repair any condition in violation of the terms of this lease. However, if such repairs cannot reasonably be made within said fifteen (15) day time period, the period allowed for the making of the repairs in question shall be extended for a reasonable period so long as City commences the repairs within said fifteen (15) day period and diligently prosecutes the completion of the repairs.

(H) Liability insurance.

City shall, at City's own expense, procure and maintain during the term of this lease liability insurance coverage with the City's insurance carrier, in the following minimum coverage limits, to wit:

\$1,000,000.00 per occurrence;

\$3,000,000.00 annual aggregate for property damage and injury or death to persons.

City shall have City's insurance carrier include the Legion as an additional insured on a primary non-contributory basis on said liability insurance coverage and furnish to Legion a certificate of such insurance showing Legion as such additional insured.

(I) Casualty insurance.

City shall, at City's own expense, procure and maintain during the term of this lease, property insurance insuring the leased premises and all improvements located thereon, against loss or damage by fire or other casualty, damage from the elements, vandalism, and malicious mischief, with limits of coverage in amounts to be mutually agreed upon between Legion and City; and, City shall require the insurer to name Legion as loss payee on such policy or policies of insurance and furnish Legion with a certificate of insurance to that effect.

(J) Liens and encumbrances.

City will keep the premises at all times free and clear of all liens and encumbrances of every kind attributable to City.

(K) Construction of buildings.

Before beginning construction or alteration of any building or buildings on the leasehold premises, City shall obtain Legion's written consent and written approval of all specifications and will furnish to Legion reasonable assurances of completion according to specifications as Legion may reasonably require.

(L) Surrender.

At the end of the term of this lease, City agrees to surrender to Legion the land leased together with all buildings and other improvements, whether erected by City or otherwise, in good order, repair, and condition.

(7) Mutual covenants.

(A) Eminent domain; condemnation in fee simple.

If all of the leased premises are taken or condemned in fee simple for any public or quasi-public use, this lease will terminate as of the date of the taking. If a portion, but not all of the premises are taken or condemned, this lease will terminate as to the part taken as of the date of the taking and will continue as to the remainder for the balance of the term of this lease at a reduced rental based on the proportion which the total of the areas taken bears to the entire area leased. However, if the percentage of the land remaining after the taking is less than 50% of the total land area, and the remaining land is, in City's reasonable business judgment, unsuitable for its intended use and purpose, then City may at its option surrender this lease, being relieved of any further obligation under this lease and shall be entitled to a refund of unused rental paid at the commencement of this lease. The award for any taking of the land or any improvements on it other than buildings as may be erected by City after the date of this lease, will belong to Legion; the award for the taking of any building erected by City on the land after the date of this lease will belong to City. City will also be entitled to assert claims against the condemning authorities for any cost or loss City may incur in the removal of any improvements erected or fixtures installed by it on the premises.

(B) Eminent domain; condemnation of leasehold.

If any leasehold interest in the demised premises is taken or condemned for any public or quasi-public use, this lease will remain in full force and effect, and City's covenants and obligations will remain unimpaired. The award for the taking of the leasehold interest will belong to City.

(C) Legion's rights on default.

This lease is subject to City's performance of the covenants and conditions stated herein. Except as otherwise provided herein regarding repairs to the leasehold premises, if City defaults in performance of any of the covenants or conditions, and the breach continues for more than 30 days after City receives written notice of it or abandons the premises, then Legion may, at its option:

(1) Pursue any legal remedy to recover for the breach, and continue this lease in force; or

(2) Declare the lease forfeited, reenter the leased premises, and remove from it all persons claiming under City and all property of City and retain all prepaid rental paid by City to Legion at the commencement of this lease.

(D) Non-waiver of breach.

Legion's waiver of City's breach of any covenant or condition contained in this lease will not be construed as a waiver of the covenant or condition itself, of any subsequent breach of it, or of any other covenant or condition contained herein.

(E) Notices.

Any notice or demand required or permitted to be given herein will be deemed sufficiently given when delivered or mailed by registered or certified mail, postage prepaid, addressed to the party to receive it at the addresses specified above in this lease, or at any other address or addresses which the receiving party has designated in writing.

8. Patronage.

The parties acknowledge that the park and playground and recreational facilities currently located on the leasehold premises (including base ball fields and diamonds, restroom buildings and facilities, playground equipment and facilities adjoining the Legion Hall) are annually used, occupied and enjoyed by local civic and charitable organizations, including but not limited to: the Khoury League, Immaculate Conception Catholic Church School, Soccer Leagues, Blue Jay Football League. and the Columbia Community Unit 4 School District. City agrees that that the continued use of the leasehold premises by these citizens and organizations shall be allowed, encouraged and perpetuated during the entire term of this lease and shall not be terminated without consent of Legion, which consent shall not be unreasonably withheld. City assumes responsibility for, and agrees that it shall be responsible for, the determination and coordination of the use of the leasehold premises by these and any other citizens or organizations who seek to use the leasehold premises during the term of this lease.

9. Name and Use Restriction.

During the entire term of this lease the leasehold premises shall be used and occupied exclusively for outdoor park, playground and recreational uses and purposes (such as, but not limited to, base ball playing fields, soccer ball fields, and similar or other outdoor sporting activities and events, and for community activities and gatherings such as, but not limited to, the annual 4th of July celebration) unless the written consent of Legion is first obtained for City to utilize the same (or any part thereof) for some other use or purpose.

During the entire term of this lease, the leasehold premises shall continue to be named and known as the "Columbia American Legion Memorial Park" unless the written consent of Legion is first obtained for City to name the same or refer to the same by any other name.

Executed at Columbia, Illinois on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

COLUMBIA AMERICAN LEGION,  
COLUMBIA POST 581, DISTRICT 22,  
DEPARTMENT OF ILLINOIS, an Illinois  
Corporation, LEGION

By: \_\_\_\_\_  
HERMAN W. WOLF, Post Commander

ATTEST:

\_\_\_\_\_  
JAMES A. MERTZ, Post Adjutant

CITY OF COLUMBIA, ILLINOIS,  
An Illinois Municipal Corporation,  
CITY:

By: \_\_\_\_\_  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

\_\_\_\_\_  
J. RONALD COLYER, City Clerk