

Request for City Council Action

Date: June 30, 2015

Agenda Section: General Business No. 6	Originating Department: Economic Development			
Item: Resolution Authorizing the City Manager to Execute a Lease of City-owned property to Sports Blast, LLC d/b/a Garden Grove Event Center. No. 6.1	Approved:			
<p>Background:</p> <p>Garden Grove Event Center has proposed to lease City-owned property on Sports Blast Rd. to develop plans for a lifestyle destination development that will complement existing facilities at Sports Blast and Garden Grove Event Center.</p> <p>Section 1-13-9-A of the Carbondale Revised Code allows the City to lease property for economic development purposes, for a period greater than 20 years and less than 99 years, upon passage of an Resolution by a 2/3 affirmative vote (five votes) of City Council. A public hearing was held previously as part of this meeting's agenda and a notice was published in the <i>Southern Illinoisan</i> on June 12, 2015.</p> <p>Recommended Action:</p> <p>It is recommended that the City Council approve a resolution authorizing the City Manager to execute a Lease of City-owned property on Sports Blast Rd. to Sports Blast, LLC, d/b/a Garden Grove Event Center.</p>				
Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
Council Action: Motion by _____ 2nd by _____ to _____				

RESOLUTION NO. 2015-R-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE OF CITY-OWNED PROPERTY TO SPORTS BLAST, LLC d/b/a GARDEN GROVE EVENT CENTER

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a) of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public, health, safety, morals and welfare; and

WHEREAS, the Carbondale City Code, Section 1-13-9-A allows the City to lease property for economic development purposes, for a term in excess of twenty (20) years but not in excess of ninety-nine (99) years, upon passage of a resolution by a vote of two-thirds (2/3) of the City Councilmembers then holding office; and

WHEREAS, Sports Blast, LLC, d/b/a Garden Grove Event Center desires to lease City-owned property on Sports Blas Road to develop plans for a lifestyle development; and

WHEREAS, the City Council of the City of Carbondale finds that it is in the best interest of the City to allow Sports Blast, LLC, d/b/a Garden Grove Event Center to develop plans for a lifestyle development that will complement existing facilities at Sports Blast and Garden Grove Event Center for the leasing of the City-owned property to Garden Grove Event Center pursuant to the Lease Agreement, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION 1. That the City Council of the City of Carbondale hereby authorizes the City Manager to enter into a lease with Garden Grove Event Center pursuant to the terms of a Lease Agreement, a copy of which is attached hereto as Exhibit “A” and made a part hereof.

SECTION 2. That the City Manager of the City of Carbondale is hereby authorized to and shall take any and all reasonable, necessary and proper action to carry out the intent and purposes of this Resolution.

SECTION 3. That this Resolution be spread at length upon the minute records of the City Council of the City of Carbondale, Illinois.

SECTION 4. That this Resolution shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

LEASE AND OPTION TO PURCHASE

Agreement of Lease, made this _____ day of _____, 2015, between The City of Carbondale, Illinois, a municipal corporation, with its principal office located at 200 S. Illinois Avenue, Carbondale, Illinois 62901, hereinafter referred to as "Lessor", and Dirk Borgsmiller as owner and general manager of the Garden Grove Event Center, which is located at 1215 East Walnut, Carbondale, Illinois 62901, hereinafter referred to as "Tenant".

SECTION I PREMISES LEASED

Lessor leases to the Tenant an approximately 4-acre parcel contiguous to Tenant's northern property line and legally described as shown on Exhibit "A", which is attached hereto and made a part hereof.

SECTION II TERM

The term of this lease is for thirty years and shall run from the date of this agreement, for a period of thirty years, unless sooner terminated as set forth in this lease. At the end of the thirty year period, the Tenant may exercise the option contained in this lease in Section XI below. If Tenant does not exercise the option, Tenant must surrender the premises and all permanent improvements to the Lessor immediately upon expiration or termination of this lease or any extension unless the lease is renewed.

SECTION III RENT

Tenant agrees to pay the Lessor an annual rent of \$4,000.00 per year for first year with the first payment due at execution of this document. In each subsequent year, an additional allowance for the percentage rise of the cost of living in the immediately preceding year above the cost of living for the base year of 2015. In determining the cost of living the indices used for calculation shall be the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor. In each year in which this index is not available, the parties to this lease will find and use some similar

indices. All subsequent payments will be made before May 1st of each succeeding year of this lease. Lessor acknowledges receipt this day of the first lease payment of \$4,000.00 paid by the Tenant which will be applied to the Tenant's obligation.

SECTION IV PROPERTY TAXES

Obligation to Pay Taxes. Tenant must pay property taxes assessed to this property, if any, for the term of this lease.

SECTION V UTILITIES

Tenant is required to pay any and all utilities accruing on the said real estate during the term of this lease.

SECTION VI OBSERVANCE OF LAWS AND ORDINANCES

Tenant must, at its expense, promptly correct any violation and comply with all laws, ordinances, notices, permits, statement of occupancy, requirements, orders, regulations and recommendations now or in the future in effect, of whatever nature, of all federal, state, county, municipal and other authorities and of the Board of Fire Underwriters and any insurance organizations, associations or companies, with respect to Tenant's conduct or use of the premises. It will be Tenant's responsibility to obtain the proper city and county occupational licenses and certificates of occupancy prior to taking possession of the premises. Tenant must supply, install and maintain in the premises fire extinguishers of the type, size and quantity required by local codes or regulations.

SECTION VII USE OF PREMISES

The Tenant accepts the premises "as is" and undeveloped and upon developing the premises will construct a "Lifestyle Destination Development". Tenant will fully comply with all zoning requirements of the City of Carbondale. In addition, Tenant agrees to break ground and begin work on the site within 60 months of the execution of this

agreement. Should the Tenant be unwilling or unable to start development on or before 60 months from the date of this agreement, this Lease will terminate, and the Tenant will surrender the premises to the Lessor.

SECTION VIII PROHIBITED ACTS

(a) Tenant must not, without the prior written consent of Lessor, do or permit its agents, employees or invitees to do any of the following: Assign, mortgage, encumber, lien or pledge this lease or underlet or sublease the premises or any part of the premises, or permit any other person, firm or corporation to occupy the premises or any part of the premises.

(b) Tenant must not do or cause any act, matter or thing objectionable to insurance companies or in violation of the provisions of any insurance policies or by which the insurance or any other insurance now in force or in the future to be placed on the premises or on the land or buildings becomes void or suspended, or rated as a more hazardous risk than at the execution of this lease or at the time tenant takes possession of the premises.

SECTION IX RIGHT OF ENTRY

Lessor retains a right, both for itself and the general public, to use and maintain the drive shown on Exhibit "A". In addition, the Lessor and its agents have the right to enter the premises during all reasonable hours for any reasonable purpose, including, but not limited to, inspection, examination, alteration, improvement, or repair. This section does not obligate the Lessor to examine, inspect, show, alter or improve the premises. Tenant accepts the leased premises subject to certain utility easements and this lease is subject to those easements.

SECTION X COVENANTS OF TENANT

The Tenant shall at its own cost and expense:

(a) Take good care of the demised premises and shall suffer no waste.

(b) Indemnify and hold harmless the Lessor during the term of this lease from and against all claims, suits, damages, costs, losses, and expenses in any manner resulting from, arising out of, or connected in any manner resulting from, arising out of, or connected in any way with this lease, or with the use by the Tenant of the demised premises or any injury occurring in any way on the demised premises due to the negligence of the Tenant, its agents, employee, visitor or invitee.

(c) Comply with all sanitary laws, ordinances, rules and order of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises.

SECTION XI OPTION TO PURCHASE REAL ESTATE

Lessor grants to the Tenant the following option to purchase the real estate:

(a) Grant of Option. Lessor, in consideration of all lease payments required by this lease, and in addition, \$10.00 in additional consideration paid by the Tenant to the Lessor.

(b) Option Period. The term of this option will be the term of this lease, and in addition 60 days after the end of this lease.

(c) Purchase Price. The full purchase price of the property is all lease payments required by this lease, and in addition, \$10.00, which will be payable as provided below, if Tenant elects to exercise this option.

(d) Application of Consideration to Purchase Price. If Tenant purchases the property described in this option, all lease payments made will be credited toward the full purchase price.

(e) Exercise of Option. Tenant may exercise this option by giving Lessor written notice, signed by Tenant, before the Tenant's expiration date, which is 60 days after the termination of this lease. Within 90 days after receipt of notice, Lessor will deliver to Tenant, against payment of the purchase price, a warranty deed to the property. Tender of Tenant's valid certified check for the total purchase price, will constitute a sufficient tender.

(f) Proof of Title. Lessor will at Tenant's expense, furnish Tenant a policy of title insurance, written by a title insurer acceptable to the Tenant. Title to the property must be insured to be free and clear of all defects except those specifically mentioned below.\

Title to the property will be conveyed free and clear of all encumbrances except the following: real property taxes on the property, whether a lien or not, to be assessed for the term of this lease and the year in which this transaction is completed will be prorated between the parties to the deed's delivery date. If taxes are not ascertainable at delivery of the deed, the prior year's taxes will be used as a basis of proration. All special assessments and special ad valorem levies, if any, will be paid by Lessor.

If it appears Tenant is unable to obtain necessary permits to construct and maintain buildings, driveways, approaches and equipment to operate its business on the property, Tenant may terminate this option and be under no obligation to complete the purchase.

(g) Failure to Exercise Option. If Tenant does not exercise this option before it expires, this option and the rights of Tenant will automatically terminate without notice. If Tenant fails to exercise this option, Lessor will retain the sum paid as consideration for the option.

SECTION XII TIME OF ESSENCE

Time is of the essence of this option.

SECTION XIII NOTICE

Any notice by either party to the other must be in writing. The notice must be delivered personally, by delivery service, or by the U.S. Postal Service Express Mail, or by other nationally recognized overnight delivery service, or mailed by registered or certified mail, return receipt requested, in a postpaid envelope properly addressed. The envelope must be properly addressed as follows: (a) if to the Tenant, at the address set forth on the first page of this lease; and (b) if to the Lessor, at the address set forth on the first page of this lease, or to Post Office Box 2047, Carbondale, Illinois 62902-2047. Either party may from time to time designate by written notice a different address for delivery of notices.

SECTION XIV
BINDING EFFECT

This option will be binding on and will inure to the benefit of the parties and their heirs, successors or assigns.

IN WITNESS WHEREOF, the Lessor and Tenant have caused this instrument to be duly executed this ____ day of _____, 2015.

LESSOR:

The City of Carbondale, Illinois

Attest: _____
City Clerk

BY: _____
City Manager

TENANT:

Garden Grove Event Center

BY: _____
Dirk Borgsmiller, Owner/Gen. Mgr.

EXHIBIT "A"

Lot 1 in the University Mall South, being a subdivision part of the Southeast Quarter of the Northeast Quarter of Section 22, Township 9 South, Range 1 West of the Third Principal Meridian in the City of Carbondale, Illinois, as shown by the recorded Plat thereof in Plat Cabinet 2 on Page 23A in the Recorder's Office, Jackson County, Illinois.

