



CITY COUNCIL ACTION REPORT

March 12, 2007

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance and Administration
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Agenda Item: Third Addendum To Tennis Lease

Background:

- A ground lease exists between the City and Don Pierce, President, Troy Racquet Club.
- The lease, if options are extended, expires in 2014.
- The lease allows operation of the Troy Racquet Club for 33 weeks each year.
- Mr. Pierce requests a third amendment to the lease which includes:
 - Extending the operation one week each year (34 weeks). Other indoor tennis facilities typically operate on a 34-week season and Troy Racquet Club would like to be consistent with other indoor facilities.
 - Adding two (2) options of two (2) years each. The additional options are being requested so that the \$100,000 in improvements planned can be amortized over a longer period provided options are exercised.

Financial Considerations:

- This amendment results in an additional minimum rent of \$781.25 per year to the City.

Legal Considerations:

- Legal considerations have been addressed through the amendment.

Policy Considerations:

- Approval of the amendment will result in one less week of outdoor play at the Civic Center. As other facilities are available and outdoor weather is unpredictable in early spring, this should not cause hardship to Parks and Recreation activities.

March 12, 2007

To: Phillip L. Nelson, City Manager
Re: Troy Racquet Club

Options:

- City Management recommends approval of the amendment.

Where legal review is necessary:

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

THIRD AMENDMENT TO TENNIS GROUND LEASE

This Amendment to that certain Tennis Ground Lease dated April, 1998, by and between the City of Troy, as Lessor, and Troy Racquet Club, as Lessee, is made effective the ____ day of March, 2007.

A. Current Lease. There exists between the parties a Tennis Ground Lease ("Lease") executed in April of 1998, with respect to the indoor seasonal operation of an eight (8) tennis court facility, including a permanent support building, eight (8) asphalt tennis courts and air supported structures to cover the tennis courts in the winter. An Addendum to the Lease to establish a 33 week season was signed in 1999, and the Lease was further amended effective on or about January 17, 2000.

B. Lease Amendment. The parties desire to, and hereby do, further amend the Lease as follows:

Section 2 – Term and Options to Extend. This section is amended to read as follows:

a. Initial Term. The initial term of the Lease expired May 15, 2002, and the current option term expires at the end of the season in May, 2008.

b. Options to Extend. Three (3) additional successive options each for an additional term of two (2) years, as provided in the January, 2000, Amendment currently remain. By this Amendment, there are added two (2) additional similar options, each for a period of two (2) years. Each option shall be deemed exercised unless Lessee provides written notice to Lessor on or before February 1st of the calendar year in which the option period will begin of Lessee's intention not to renew. Notice shall be provided in the manner described in Section 36 of the Lease.

Section 4 shall be amended as follows:

a. Beginning in the 2007 – 2008 lease year and for the remainder of the lease term, the Lessee shall pay \$26,562.50 annually plus a percentage of \$25,562.50 equal to the increase in the Consumer Price Index ("CPI") as published in the Wall Street Journal for the immediately preceding calendar year.

b. Beginning in the 2007 – 2008 lease year and for the remainder of the lease term, the lease year shall commence on the third (3rd) Monday of September and a season shall mean the period of Lessee's continuous 34-week operation of the Tennis Facility from the opening of business each year through the close of business in the following year.

THIRD AMENDMENT TO TENNIS GROUND LEASE Continued

CITY OF TROY, a municipal corporation

By: _____
Louise Schilling
Its: Mayor

And

By: _____
Tonni L. Bartholomew
Its: City Clerk

TROY RACQUET CLUB, LLC, a
Michigan limited liability company

By: _____
Donald A. Pierce, Jr.
Its: President

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of March, 2007, by Louise Schilling, the Mayor and Tonni L. Bartholomew the City Clerk of the City of Troy, a Michigan municipal corporation, on behalf of the corporation.

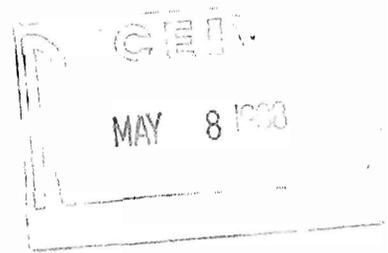
Notary Public, Acting in and for the
County of Oakland
State of Michigan
My commission expires: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of March, 2007, by Donald A. Pierce, Jr., President of Troy Racquet Club, LLC, a Michigan limited liability company, on behalf of the company.

Juliet DiSessa
Notary Public, Acting in and for the
County of Oakland
State of Michigan
My commission expires: 11/16/2011

1580. 48-244-
May 4, 1998



Amendments
11/99
1-2/00

TENNIS GROUND LEASE
between the
City of Troy as Lessor
and the
Troy Racquet Club as Lessee

VACID thro 2014

April - 1998

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TENNIS GROUND LEASE

THIS LEASE, made this _____ day of _____, 1998 by and between THE CITY OF TROY, a Michigan municipal corporation ("Lessor"), the address of which is 500 West Big Beaver Road, Troy, MI 48084, and TROY RACQUET CLUB, a Michigan limited liability company ("Lessee"), the address of which is 801 W. Big Beaver Road, Suite 500, Troy, MI 48084.

RECITALS

The following is a recital of facts underlying this agreement:

Lessor has invited Lessee to operate and maintain on property owned by Lessor an eight (8) court tennis facility, including a permanent support building, and eight (8) asphalt courts covered by an air supported structure or structures. This lease nullifies and supersedes all previous agreements with Lessee and any Lessee requirements for documentation of previous tennis operations.

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

1. LEASE

Lessor leases to Lessee and Lessee rents from Lessor, that real property situated in the City of Troy, Oakland County, Michigan, as more fully described in the attached Exhibit "A" ("Leased Premises"), together with all easements, rights, privileges, advantages or appurtenances belonging or appertaining and subject to: (i) such temporary easements for construction as shall be reasonably necessary in Lessor's judgment; and (ii) a means of reasonable and convenient automobile and pedestrian

access to and from a public highway from the parking area. Lessee agrees that the Leased Premises will be used and occupied for the purpose of maintaining a Tennis Facility and for no other purpose.

2. TERM

The initial term of this Lease shall commence on September 1, 1997 and conclude May 15, 1999. Upon completion of this initial term the Lease shall automatically renew and extend itself for 1999-2000, 2000-2001, and 2001-2002 unless sooner terminated as provided in Paragraph 3. Options to extend beyond 2002 may be permitted if mutually desired by Lessee and Lessor.

3. TERMINATION

This Lease shall terminate upon the occurrence of any of the following events.

- a. In the event Lessor shall declare the existence of a need for the Leased Premises or a portion of the Leased Premises (such as would prevent Lessee, at its option, from operating its business) for expansion of the civic center or road improvements, provided that Lessor shall declare the necessity by resolution and serve upon Lessee a written notice of the resolution not less than 180 days prior to the time as Lessor shall desire to resume possession which possession shall be treated as a condemnation as provided in Section 25 of this Lease.
- b. Lessor may elect to terminate this Lease at any time in the event Lessee shall cease to use the Leased Premises for a Tennis facility by giving the Lessee notice of the election in writing not less than 60 days prior to Lessor's intended resumption of possession by Lessor because of Lessee's failure to use the Leased Premises for a Tennis Facility.

- c. Lessee may elect to terminate this Lease at the end of the initial term or any renewal term by giving the Lessor notice of the election in writing not less than 90 days prior to the expiration date of the term, in which event this Lease shall terminate.
- d. Lessor may elect to terminate this Lease at the end of the 2001-2002 term or any subsequent term(or sooner as provided in 3a or 3b above) by giving the Lessee notice of the election in writing not less than 90 days prior to the expiration date of the term, in which event this Lease shall terminate.

4. RENTAL

During the term of the lease (including renewal period), Lessee shall pay to the City Treasurer, as compensation for the privilege of operating the Tennis Facility, the sum of \$25,000 annually except as provided for below with regard to changes in the Consumer Price Index. Payment shall be made in eight (8) equal installments on the first of each month for the months of October through May.

A lease year shall commence on the fourth Monday of September and a season shall mean the period of Lessee's continuous 32 week operation of the Tennis Facility from the opening of business each year through the close of business in the following year.

For the first lease year, Lessee shall pay \$25,000. Payments shall be made upon execution of this document on the first of each month through May 1998 in equal installments for those months.

For remaining years, Lessee shall pay \$25,000 annually plus a percentage of \$25,000 equal to the increase in the Consumer Price Index (CPI) as published in the Wall Street Journal for the immediately preceding calendar year.

5. SCHEDULE OF OPERATIONS AND HOURLY RATES

Lessee shall keep the Tennis Facility open to club members and available for membership 32 consecutive weeks in each lease year commencing on Monday of the fourth (4th) week in September of each year. Minimum hours of operation and the hourly rates to be charged members shall be as follows:

<u>Monday through Friday</u>	<u>Rate/Hour/Court</u>
6:00 am to 5:00 pm ("non-prime time")	As approved by City Council or City Manager
5:00 pm to 12:00 midnight ("prime time")	
<u>Saturday and Sunday</u>	
6:00 am to 5:00 pm ("prime time")	As approved by City Council or City Manager
5:00 pm to 12:00 am ("non-prime time")	

Normal hours may be slightly less than the permissible hours shown above, but expanded hours may be adopted only with Lessor's permission. Troy residents who are not members of the club shall be permitted to play with other non-member Troy residents on a random basis (as provided in the following paragraph 6). Lessee may

charge a reasonable fee for use of the club facilities by such non-members or each guest of a member, and may restrict the number of times members may bring guests to the club. The club may be closed for certain holidays.

6. COURT RESERVATIONS

Lessee may allow the advance reservation by members of specific time periods in which to play tennis ("Court Time") on a seasonal basis ("Permanent Court Time"); i.e., the same time period each week for a full thirty-two (32) week season or such shorter term as the Lessee shall determine, or upon an hour by hour basis only ("Random Time"). Lessee may allow non-member groups, companies, firms, organizations and/or institutions to reserve in advance specific blocks of court time ("Block Time") during any lease year and for a reasonable fee (so long as charges for use of the courts themselves shall not exceed normal court charges and Lessee shall first make reasonable efforts to provide for membership demand). Block Time shall not be sold to an individual non-member on a recurrent basis. Block Time may be sold to non-member groups (including organizations, institutions, companies and firms) on a recurrent basis provided that (i) requests for available court time will be first honored for club members, whenever court time is available and (ii) the court time shall not be sold at reduced rates unless that time is normally resistant to sale at regular rates (the proof of which shall be the responsibility of Lessee). In the event that Block Time shall be made available, Lessee shall first accommodate any requests for Block Time first received from Troy educational and recreational institutions, provided that Lessee shall not be required to cancel any Block Time previously allocated to others in order to accommodate educational or recreational institutions.

Those residents who qualify for assistance through the Parks and Recreation Confidential Assistance Program may reserve court time to play with other non-member Troy residents, and shall be permitted the use of all club member facilities immediately before and after such play. Use of said facilities by said non-members shall be contingent upon payment for court time in advance at the club office.

Lessee shall set at least one hundred seventy (170) court hours per week of Random Time, which club members will be able to reserve up to one (1) week in advance on a first-come first-serve basis. Lessee shall set aside at least thirty (30) of the 170 hours for reservation by members on a first-come first-serve basis. Otherwise, non-member residents of Troy may only reserve court time up to twenty-four (24) hours in advance of its scheduled use.

7. CHANGES IN RATES AND FEES

The court time rates and membership dues approved by City Council for the 1998-99 season are the established rates. Any changes in court time rates or membership dues must be approved 90 days in advance of implementation by the City Council or City Manager.

8. TEACHING PROGRAMS

Lessee may engage such tennis players and instructors, either as direct employees or independent contractors, as Lessee may determine to be necessary for the purpose of aiding in the operation and management of the Tennis Facility and the conduct of a program of instruction in the skills of the game. Lessee may allot, set aside and reserve such time, up to fifty percent (50%) of available time during the hours of operation as may be required for instructional purposes in order to accommodate the demand for

instruction. Instructional time so reserved shall be considered as being part of required periods of operation. Lessee shall use its reasonable best efforts to prohibit the tennis instruction on a regular basis by persons not under Lessee's employ or under contract to it.

9. OTHER EMPLOYEES

Lessee may employ such other persons as may be required in the operation, management and maintenance of the indoor Tennis Facility and its appurtenances. Lessee shall, where applicable, comply with the requirements of all Federal, State and local laws and ordinances and regulations relating to minimum wages, social security, unemployment insurance and worker's compensation and shall not discriminate against any employee or applicant because of race, sex, age, creed, color or national origin. If required, Lessee shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the appropriate governmental agency setting forth the fact that Lessee is an "Equal Opportunity Employer" and the non-discrimination provisions. Lessee shall require all employees to exercise courtesy and consideration in their relations with the public and shall require all employees to wear a uniform or badge to show that such persons are employees of the Lessee.

10. PRO SHOP

A Pro Shop shall be operated in the tennis facility in order to make available to the public that merchandise of a type customarily found in other tennis pro shops of like circumstance and size, subject to member demand. Lessee shall be required to keep the shop open only during the thirty-two (32) week tennis season.

11. EXTENSION AND CONSTRUCTION OF UTILITIES

Lessee has assured itself of the availability of heat, light, power, public water and public storm and sanitary sewer facilities to the Leased Premises (in or immediately adjacent to a road right-of-way adjacent to the Leased Premises) for use by Lessee, subject to all normal fees and restrictions normally imposed for such use.

12. RESOLUTION OF CITY

At the time of execution, Lessor shall furnish to Lessee a certified copy of a duly enacted resolution of the City Council for the City of Troy, in recordable form, authorizing and directing the execution of this Lease by the proper officers and the performance by the Lessor of the terms and conditions on its part to be performed. Should said resolution ever be determined to be legally insufficient or defective and the deficiency or insufficiency may be cured by the Lessor, the Lessor shall, within a period of sixty (60) days (or such longer period as shall be reasonably required), cure such insufficiency or deficiency at its sole cost and expense. The Lessor further agrees to defend at its sole cost and expense any action contesting the power and authority of the Lessor to enter into this Lease. Lessee shall, if requested by Lessor, reasonably cooperate with Lessor in the defense of any such action. In the event that there shall be a final determination that the resolution is insufficient or defective and it cannot be cured and/or it shall be determined that Lessor lacks the power and authority to enter into this Lease, this Lease shall automatically terminate as of the date of such final determination. In that event, Lessor shall not be responsible for the payment of any compensation to Lessee.

13. LESSEE'S OBLIGATIONS FOR REPAIRS

Lessee, at its own cost and expense, shall maintain the Leased Premises and all improvements, fixtures and equipment in good order and repair, making all necessary repairs and replacements.

14. CONFORMITY TO LAW

The Lessee shall promptly observe, perform, execute and comply with all applicable and valid laws, ordinances and regulations of every duly constituted governmental authority or agency relating to the Leased Premises. The Lessee, upon notice of any violation, shall have the right to correct it within the time allowed for correction or compliance and/or to contest in good faith, by appropriate action, the validity of any such law, rule, requirement, order, directive, ordinance or regulation, provided that title of the Lessor to the Leased Premises and the rights of the parties to this Lease are not jeopardized or impaired and, so long as the Lessor shall not be subject to any penalty, and the Leased Premises shall not become subject to any lien.

15. LICENSES

The Lessee, at its own expense, shall obtain and keep in effect all licenses or permits which may be required by law to operate the Tennis Facility on the Leased Premises.

16. ALTERATIONS AND IMPROVEMENTS

Subject to the prior written approval of Lessor, which approval shall not be unreasonably withheld, Lessee may, from time to time, make interior and exterior structural and non-structural alterations, additions or improvements to the premises and may install or remove any sign on the exterior of the building (provided that the

installation size and location complies with the ordinances of the City of Troy).

However, interior alterations, additions and improvements of a nature which do not affect the continuous operation of the facility or its structural integrity, and which require less than Five Thousand and 00/100 Dollars (\$5,000.00) to complete may be made without prior approval of the Lessor. Any such work done by Lessee shall be done in a good and workmanlike manner, without impairing the structural soundness of the building and without creating a use other than recreational (and its related office and supporting activities). All permanent additions to the Leased Premises, and all alterations and improvements which become attached to the Leased Premises (other than the air-supported structure and its servicing and supporting equipment), shall become part of the Leased Premises.

17. REMOVAL OF TRADE FIXTURES

The Lessee may remove at the termination of this Lease or any extension any trade fixtures or equipment (including the air-supported structure, its lights and support equipment) installed by it on the Leased Premises, provided that any damage which may be caused by the removal shall be repaired or paid for by Lessee. Trade Fixtures shall include property placed in the Leased Premises by Lessee and used in connection with the operation of the Tennis Facility which is removable without material damage to the Leased Premises.

18. LIENS

The Lessee shall not permit any recorded liens to stand against the Leased Premises for any labor or material furnished to the Lessee in connection with any work performed by Lessee or at the Lessee's direction. If, because of any act of omission (or

alleged act or omission) of Lessee, any mechanics' lien shall be recorded against the Leased Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within one hundred twenty (120) days after actual notice to Lessee of the recording.

19. QUIET TITLE AND ENJOYMENT

The Lessor warrants that it owns the fee simple title to the Leased Premises, and Lessor covenants that the Lessee, on performing its obligations, shall peaceably and quietly hold and enjoy the premises throughout the term and any extension.

20. POSSESSION

Lessee shall have actual and exclusive possession of the Leased Premises, with appurtenances in conformity with the law.

21. INSURANCE

During the balance of the term of this Lease, the Lessee shall obtain and keep in force the following insurance coverage:

- A. Fire and extended coverage insurance on the building constructed on the Leased Premises in an amount at least equal to the replacement cost of a similar building and the air-supported structure on the Leased Premises, exclusive of foundations and footings. In the event that Lessee shall be unable to obtain fire and extended coverage insurance with respect to the air-supported structure only at a reasonable cost, Lessee shall not be considered to be in default, so long as it continues to carry the required insurance on its facilities other than the air-supported structure and continues to seek insurance coverage with respect to the air-supported structure through a reputable insurance agent

licensed to do business in the State of Michigan, provided, however, that Lessee shall be required to place into an escrow account each year (commencing as of the date of expiration or cancellation of the insurance) a sum equal to one hundred ten percent (110%) of the cost of the air-supported structure insurance for the last year during which it was in effect. The account shall be used and maintained as a continuing fund in lieu of insurance to be applied solely in the same manner as the requirements for the application of insurance proceeds. Upon the re-issuance of insurance coverage in compliance with the provisions of this Lease, the balance of the escrow account shall be returned to Lessee. For the purpose of the foregoing, "reasonable cost" shall be deemed to mean at an annual cost no greater than one hundred ten percent (110%) of the cost of the insurance for the prior year of coverage. In the event that Lessee shall receive any insurance recovery for loss of business, Lessor shall be entitled to five percent (5%) of those gross revenues upon which such recovery is based in lieu of rent. In the event that such award is not directly based upon gross revenues, corresponding adjustments shall be made in determining the amount due Lessor in lieu of rent. The balance of any recovery for loss of business or profits shall be paid to Lessee. If the Lessor is paid the annual rent by the Lessee then no portion of the insurance recovery is owed to the Lessor. The insurance coverage shall be for the benefit of (i) the Lessor (except with respect to the air-supported structure), (ii) the Lessee, and (iii) any leasehold mortgagee or other secured party, as their respective interest may appear. Any proceeds payable shall be applied (to the extent required) for the purpose of paying the cost of repairing or

rebuilding the improvements on the Leased Premises in case of loss or damage by fire or other insured risks. The Lessee, with the consent of any leasehold mortgagee or other secured party, shall have the right and authority to adjust losses and execute proofs of loss under such policies in the name of all interested parties;

- B. Public liability insurance in favor of Lessee and Lessor, indemnifying them against any claim for personal injury or death in the sum of Three Hundred Thousand Dollars (\$300,000.00) for any one occurrence and Five Hundred Thousand Dollars (\$500,000.00) on the aggregate annually and for property damage in the sum of One Hundred Thousand Dollars (\$100,000.00) for any one occurrence; and
- C. Worker's Compensation insurance covering all of Lessee's employees to the extent and amount required by law.

Any insurance required shall be placed with a financially responsible insurance company licensed to write insurance in the State of Michigan, with a certificate of insurance to be furnished to Lessor naming it and any leasehold mortgagee as insured parties, as their respective interests may appear. Each policy shall be endorsed to provide Lessor thirty (30) days' written notice of any cancellation or reduction in coverage or non-renewal.

22. RESTORATION

Except as provided in this paragraph, if the improvements on the Leased Premises are destroyed by fire or the elements, or by any other cause, the Lessee, at its expense, whether or not the proceeds of insurance shall be sufficient, shall promptly

restore or rebuild the improvements as nearly as possible to the condition existing just prior to the destruction or damage. Should any amount of insurance proceeds remain after completion and payment for the entire work to be performed by Lessee for the restoration and rebuilding, the amount shall, subject to the prior rights of any leasehold mortgagee, be paid to and belong to the Lessee.

23. WAIVER OF SUBROGATION

Each party releases and discharges the other party, and any officer, agent, employee or representative of the party, of and from all liability arising from loss, damage or injury caused by fire or other casualty for which insurance (permitting waiver of liability and containing a waiver of subrogation) is carried by the injured party at the time of the loss, damage or injury to the extent of any recovery by the injured party under the insurance. Where available at a reasonable cost, the parties' respective fire insurance policies, including any policies for contents, furniture, furnishings and fixtures, shall include appropriate clauses pursuant to which the insurance carriers: (i) waive all rights to subrogation against the other party with respect to losses payable under such policies, and (ii) agree that the policies shall not be invalidated should the insured waive in writing prior to loss any or all right of recovery against any party for losses covered by the policies.

24. INDEMNITY

The Lessee shall indemnify and forever hold the Lessor harmless from and against all liability, actions, claims, demands, costs, damages or expense of any kind which may be brought or made against the Lessor or which the Lessor may pay or incur, by reason of the Lessee's performance of or failure to perform any of its obligations under

this Lease or by reason of any occurrence in or upon the Leased Premises during the seasonal operation by Lessee, excepting only any such liability which may arise by reason of the gross negligence on the part of the Lessor, its agents or employees.

The Lessor shall indemnify and forever hold the Lessee harmless from and against all liability, actions, claims, demands, costs, damages or expense of any kind which may be brought or made against the Lessee or which the Lessee may pay or incur, by reason of the Lessor's gross negligence in the performance of its obligations under this Lease, excepting only any liability which may arise by reason of the actions or failure to act on the part of Lessee, its agents or employees.

Notwithstanding anything in this paragraph to the contrary, neither Lessee nor Lessor (nor others on their behalf) may negotiate, agree upon or pay any sum under a settlement of any claim based upon any circumstance for which indemnification would be forthcoming by the other, without the other's written consent.

25. EMINENT DOMAIN

If the entire Leased Premises is taken under the power of eminent domain, or so much as to render the remainder, in the judgment of Lessee, insufficient to enable continuous operation of the tennis facility on a profitable basis, and the Lessor has been so notified in writing, this Lease may be terminated by Lessee and any condemnation awards (or proceeds from such sale) attributable to the Leased Premises shall be distributed as follows:

- A. Lessor shall first receive such portion of the award designated for loss of business or profits as shall relate to five percent (5%) of those gross revenues upon which the award is based. In the event that the award is not directly based

upon gross revenues, corresponding adjustments shall be made in determining the amount due Lessor. The balance of the award for loss of business or profits shall be paid to Lessee; and

B. Lessee shall next receive the remaining balance.

In the event of the taking, termination shall be effective as of the date that possession is required to be given to the condemning authority, and all liabilities of the parties shall be apportioned as of that date.

If less than the entire leasehold interest is taken under the power of eminent domain and the portion remaining shall be, in the judgment of the Lessee and the Lessor, sufficient to enable Lessee to continue the profitable operation of the Tennis Facility, Lessee shall be entitled to receive all of the proceeds of the award for the purposes of restoration, to the extent possible, of that portion so remaining so as to form an integral unit. Any excess remaining from the award, after payment of all costs of restoration shall belong to Lessee. Under no circumstances shall Lessee be required to restore the Leased Premises, but may do so at its option. During the period of restoration or rebuilding of the Leased Premises after a taking which shall not cause Lessee to cancel this Lease, rent shall abate to the extent of the curtailment of operations. The annual rent shall be reduced proportionately for any reduction in the number of available courts.

26. TAXES AND UTILITIES

The Lessee shall pay all charges for fuel, water, sewers, gas, electricity or other public utilities used by it on the Leased Premises. Lessee shall pay all personal

property taxes levied on its interest in the property used in connection with the Tennis Facility.

27. SET-UP AND TAKE-DOWN OF AIR-SUPPORTED STRUCTURE

Lessee shall, at its own expense, set up and take down the air-supported structure at the beginning and end, respectively, of each thirty-two (32) week tennis season. Lessor shall make the premises available for a sufficient time (up to one [1] week) in advance of and after the season to allow Lessee to accomplish the task.

Lessee shall provide, after take-down of the air-supported structure, posts for support of tennis nets, but not the nets themselves. Lessor shall have the exclusive right to use the tennis courts and net posts (but not the permanent support structure, absent other agreement) during the twenty (20) week non-season period, subject to Lessee's rights regarding necessary time for set-up and take-down. Notwithstanding the foregoing, Lessee shall be permitted access to the tennis courts during non-seasonal periods for the purpose of making repairs and replacements. Lessee and Lessor shall cooperate in the scheduling of the repairs so as to avoid unreasonable interference with use by the public of the courts during the non-seasonal period.

28. LESSEE'S DEFAULT

The Lessee is in default, if it fails to fulfill any provision of this agreement and, provided, that Lessee shall have sixty (60) days after written notice by Lessor of the act or default to remedy the act or default and, should Lessee commence but be unable to cure the default by the expiration of the period, such time as is reasonably required to remedy the default through diligent action on its part.

In addition, the Lessee is in default if the Lessee shall make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or be adjudicated a bankrupt to take the benefit of any insolvency act or be dissolved, voluntarily or involuntarily, or if a receiver or a trustee of Lessee and/or its property shall be appointed in any proceedings other than bankruptcy proceedings and the appointment if made in proceedings instituted by Lessee shall not be vacated within sixty (60) days after it has been made, or if made in proceedings instituted by other than Lessee, shall not be vacated within ninety (90) days after it has been made. Lessee shall notify Lessor of any security interest in any property located in or on the Leased Premises which it shall grant to anyone.

29. RIGHT OF RE-ENTRY

In the event that Lessee shall default, Lessor may, upon giving not less than ten (10) days written notice, after the respective periods for compliance and/or cure, have expired and the default is still unremedied, terminate this Lease. Lessor may institute proceedings (in the 52-4th District Court or the Oakland County Circuit Court) for the re-entry and repossession of the Leased Premises and all improvements (including the air-supported structure and related support equipment subject to any encumbrance on the equipment) for the purpose of removing and putting out the Lessee and those occupying under the Lessee.

30. POSSESSORY INTEREST OF LESSEE

The value of the Lessee's possessory interest, for the purpose of determining the value for taking under the power of eminent domain or lease termination under Article 25 of the Lease, or for determining value for settlement of any insurance proceeds,

shall be determined by establishing fair market value of the leasehold improvements. Fair Market Value shall be determined by each party selecting its own appraiser to conduct a fair market value appraisal. Should the two appraisers fail to determine the fair market value between themselves, then they shall select a third appraiser acceptable to both, who then will conduct his own independent appraisal which shall be final and binding upon all parties. In making any determination, the parties and all appraisers shall incorporate the following assumptions solely for their effect upon determination of value:

- A. Lessee's improvements are not situated upon a leasehold;
- B. Lessee's interest has not been forfeited, is not subject to forfeiture and could be freely transferred to a willing purchaser in the open market, and;
- C. That value of the land upon which the improvements are situated must be excluded from any final determination of fair market value. The Lessee's possessory interest shall be deemed valueless if Lessor's authority to execute this Lease is successfully contested pursuant to its charter provision 13.1 et. seq. (having to do with voter referendum within 30 days after publication of minutes of council action authorizing execution of this Lease by the City.

31. SALE OF INTEREST IN LESSEE

This Lease is conditioned upon the continued participation in the ownership of Lessee during the term of the Lease by Donald A. Pierce, Jr., or a Trustee holding the same for his benefit. If Donald A. Pierce, Jr., should, without the prior consent of the Lessor (which shall not be unreasonably withheld) divest himself of his entire interest in the Lessee, and/or cease to participate in the management of Lessee's business

operations, except by reason of death or disability, the Lessor reserves the right to cancel this Lease. Upon the death of Donald A. Pierce, Jr. no consent by Lessor shall be required to effect a transfer of his interest to his estate, heirs, trustee or personal representatives. Any other sale or assignment of this Lease by Lessee or any sale by the successor of Donald A. Pierce, Jr. shall require the prior written approval of Lessor, which approval shall not be unreasonably withheld. Failure of the Lessor to reject any proposed sale or assignment within a period of ninety (90) days from the date of receipt of written notice shall constitute approval.

32. FINANCIAL INFORMATION

Lessor, or its duly authorized agents, shall have the right (for a period of two [2] years following the end of each lease year) at any reasonable time to examine the Lessee's books, accounts and records, including copies of Michigan Sales Tax Returns, cash register tapes and reports or receipts attributable to any "open" year, and the right to audit wherever the records may be kept by the Lessee, to the extent necessary to determine gross revenues.

33. ARBITRATION

Any disputes arising between Lessor and Lessee as to financial matters shall be exclusively resolved by arbitration in accordance with the applicable Rules of the American Arbitration Association then pertaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be entered upon in the Oakland County (Michigan) Circuit Court. Notice of the demand for arbitration shall be filed in writing with the other party and with the

which Lessor shall have permitted to be made, shall be vested in the Lessor free and clear of all encumbrances.

36. NOTICES

All notices required to be given by either party shall be in writing and sent by registered or certified mail, return receipt requested, to the following addresses:

<u>Lessor</u>	City of Troy c/o Director of Parks and Recreation 500 West Big Beaver Road Troy, MI 48084
<u>Lessee</u>	Donald A. Pierce, Jr. Troy Racquet Club 801 West Big Beaver Road, Suite 500 Troy, MI 48084

The notices are to be sent with a copy to the leasehold mortgagee, or at the other address as each party may designate from time to time in writing. Either party may from time to time change the address to which such notices are to be directed by written notice to the other party.

37. RECORDATION

Lessee shall pay the total cost of recording this Lease or memorandum.

38. FORCE MAJEURE

The provisions of this paragraph shall be applicable if there shall occur during or prior to the term, including any extension, and (i) strikes, lockouts or labor disputes; (ii) inability to obtain labor or materials or reasonable substitutes; or (iii) acts of God,

governmental restrictions, regulations or controls, enemy or hostile government action, civil commotion or insurrection, revolution, sabotage, or fire or other casualty or acts or failure to act by the party or other conditions similar to those indicate in the foregoing items (i), (ii) and (iii) beyond the reasonable control of the party whose performance shall be required. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided in this Lease, or perform any duty, the time limit shall be deemed extended for a period equal to the duration of the event(s). The extension shall be subject to reasonable limitations.

39. INCONSISTENCIES

This Lease has been drafted as an integrated description of the various rights and obligations of the parties and as an expansion upon that original proposal made on behalf of Lessee to Lessor for the construction and operation of the Tennis Facility. Where specific inconsistencies exist between that document and this, this Lease shall control as the final statement. Where matters are not covered, or where coverage is not exhausted or inconsistent with this Lease, the provisions of the original proposal shall supplement and control, as the case may be.

40. ARTICLE AND SECTION TITLES

The headings in this Lease are intended merely for convenience of reference and are not a part of this Lease and shall have no effect upon the construction or interpretation of any part.

41. INTEGRATED AGREEMENT

This instrument contains all of the agreements and conditions made between the parties and may not be modified orally or in any other manner than by an agreement in writing signed by all the parties or their respective successors in interest.

42. SEVERABILITY

The invalidity or illegality of any provision shall not affect the remainder of this instrument.

43. SUCCESSORS AND ASSIGNS

All of the covenants, provisions, terms, agreements and conditions of this Lease shall inure to the benefit and be binding upon Lessor, Lessee and their respective successors and assigns.

44. CONSTRUCTION OF LEASE TERMS

Wherever the singular number is used in this Lease and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm, partnership, trust, association or other recognized business relationships.

45. RELATIONSHIP BETWEEN PARTIES

It is mutually understood and agreed that nothing contained in this Lease and Agreement is intended, or shall be construed, as creating or establishing the relationship of co-partners or joint venturers between the parties or as constituting the Lessee as the agent or representative of the Lessor for any purpose or in any matter.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed the day and year first above written.

WITNESS:

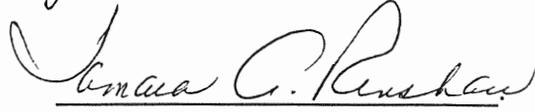

Cecilia A. Brukwinski


MaryAnn Hays

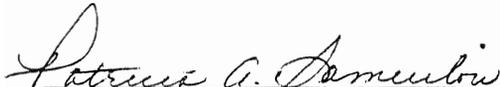
As to Lessor

CITY OF TROY,
a Michigan Municipal Corporation


By: Jeanne Stine, Mayor


Tamara Renshaw, City Clerk

"Lessor"


PATRICIA A. SAMUILOW

TROY RACQUET CLUB,
a Michigan Limited Liability
Company


Donald A. Pierce, Jr.
Its President

"Lessee"

ADDENDUM TO THE 1998
TENNIS GROUND LEASE

THIS ADDENDUM, to the 1998 TENNIS GROUND LEASE between the City of Troy as Lessor and the Troy Racquet Club as Lessee, is made this 15th day of November, 1999 by and between the CITY OF TROY, a Michigan municipal corporation ("Lessor"), the address of which is 500 West Big Beaver Road, Troy, Michigan, 48084, and the TROY RACQUET CLUB, a Michigan limited liability company ("Lessee"), the address of which is 801 West Big Beaver Road, Suite 500, Troy, Michigan, 48084.

The TENNIS GROUND LEASE signed by the parties in 1998 shall remain in full force and effect except that Section No. 4 shall be amended as follows:

1) Beginning in the 1999-2000 lease year and for the remainder of the lease term, the Lessee shall pay \$25,781.25 annually plus a percentage of \$25,781.25 equal to the increase in the Consumer Price Index ("CPI") as published in the Wall Street Journal for the immediately preceding calendar year;

2) Beginning in the 1999-2000 lease year and for the remainder of the lease term, the lease year shall commence on the third (3rd) Monday of September and a season shall mean the period of Lessee's continuous 33-week operation of the Tennis Facility from the opening of business each year through the close of business in the following year.

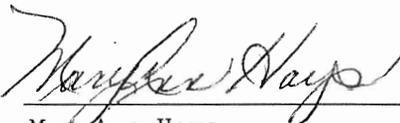
IN WITNESS WHEREOF, the parties have caused this Addendum to be executed on the date written above.

"LESSOR"

WITNESS:

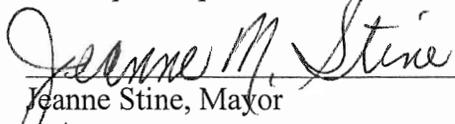


Mary Ann Hays (print)

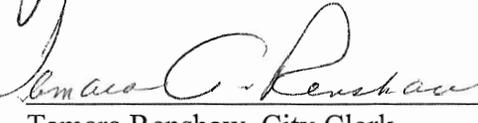


Mary Ann Hays (print)

CITY OF TROY, a Michigan
municipal corporation

By: 

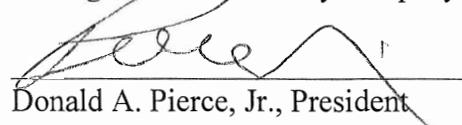
Jeanne Stine, Mayor

By: 

Tamara Renshaw, City Clerk

"LESSEE"

TROY RACQUET CLUB, a
Michigan limited liability company

By: 

Donald A. Pierce, Jr., President

CONSENT AGENDA – CONTINUED**Approval of Addendum to the Lease Agreement – Troy Racquet Club**

E-16

Resolution #99-522-E-16

RESOLVED, that the addendum to the lease agreement between the City of Troy and Don Pierce/Troy Racquet Club, is hereby approved, a copy of which shall be attached to and become a part of the original minutes of this meeting.

Bid Extension – Traffic Control Signs

E-17

Resolution #99-522-E-17

WHEREAS, on November 2 1998, one year contracts were awarded to the low bidders, Vulcan, Inc. and Rocal, Inc. to supply traffic control signs (Resolution #98-501-E-2c); and

WHEREAS, a market survey was conducted to check market conditions and it was found that prices for signs made of high intensity material had drastically fallen; and

WHEREAS, the award made to Vulcan, Inc. included signs made of high intensity material and therefore an extension is not recommended; and

WHEREAS, it is the determination of the City Manager and City Council of the City of Troy that no benefit would result for the City to solicit additional sealed bids for traffic signs included in the award to Rocal, Inc. because the signs are not made of high intensity material;

NOW, THEREFORE, BE IT RESOLVED, that bidding procedures are hereby waived and the contract with Rocal, Inc. to provide traffic control signs is hereby extended through November 1, 2000.

**Waiver of Formal Bid Procedure and Award Based upon Informal Quotations –
Emergency Brick Repair at Troy City Hall**

E-18

Resolution #99-522-E-18

WHEREAS, telephone quotations have been obtained to furnish all labor and materials to repair the brick work on the eastside of the Troy City Hall; and

WHEREAS, it is the determination of the City Manager and City Council of the City of Troy that no benefit would result to the City to solicit additional sealed bids;

NOW, THEREFORE, BE IT RESOLVED, that formal bidding procedures are hereby waived and a contract to complete brick removal and repair work for the eastside of the Troy City Hall be made to Akins Construction, Inc. at an estimated cost of \$16,380 contingent upon submission of insurance certificates and all other specified requirements.

1000 - 10 - 1
1/17/2000

AMENDMENT TO TENNIS GROUND LEASE

This Amendment to that certain Tennis Ground Lease dated April _____, 1998, by and between the City of Troy, as Lessor, and Troy Racquet Club, as Lessee, is made effective the _____ day of January, 2000.

A. Current Lease. There exists between the parties a Tennis Ground Lease ("Lease") executed in April of 1998, with respect to the indoor seasonal operation of an eight (8) tennis court facility, including a permanent support building, eight (8) asphalt tennis courts and air supported structures to cover the tennis courts in the winter. An Addendum to the Lease to establish a 33 week season was signed in 1999.

B. Lease Amendment. The parties desire to, and hereby do, amend the Lease as follows:

Section 2 - Term and Options to Extend. This section is amended to read as follows:

a. Initial Term. The initial term of this Lease commenced on September 1, 1997 and is scheduled to conclude May 15, 2002.

b. Options to Extend. To the current remainder of the term ending May 15, 2002, there shall be added six (6) additional successive options each for an additional term of two (2) years. Accordingly, the additional options to extend will become applicable for the Lease year beginning in September 2002. Each option shall be deemed exercised unless Lessee provides written notice to Lessor on or before February 1st of the year in which the option period will begin of Lessee's intention not to renew. Notice shall be provided in the manner described in Section 36 of the Lease.

Improvements. The Lessor hereby grants to the Lessee the right to, and the Lessee must to make this Amendment effective, construct, operate and maintain upon the Leased Premises the additions to the clubhouse and related improvements described herein.

Lessee's Building Plans. Lessee has prepared building plans for the "Addition to Troy Racquet Club". The plans are designated as Luckenbach/Ziegelman and Partners, Inc., Project Number 9707.00 (the "Building Plans"). Said plans, including site plan, demolition plan, foundation plan, floor plan, reflected ceiling plan, framing plan, exterior elevations, interior elevations, wall sections and details, specifications, plumbing plan, mechanical plan, electrical plan, electrical lighting and power plan, and mechanical and electrical specifications have been submitted to the Building Department of the City of Troy and the Department of Recreation for the City of Troy for review and approval. The addition to facilities shall be constructed in substantial conformance to the plans, with material changes or modifications as may be made during the construction period to be subject to the approval of the Building Department and the Parks and Recreation Department of the City of Troy.

Assurance of Completion of Clubhouse:

a. Cash or Irrevocable Letter of Credit. There shall be cash posted or an irrevocable bank letter of credit furnished to assure proper completion of the Clubhouse project. Lessee and Lessor shall also execute those "private agreements" (as customarily known and utilized in private party's dealings with the City of Troy) which relate to this Lease and Lessee's construction obligations hereunder. The construction shall be subject to approval by the City of Troy Department of Parks & Recreation. The construction draw releases, as requested in writing by Lessee, shall be subject to approval by the Lessor's designee.

b. Customary sworn statements and waivers of lien, including a month "lag" in waiver presentation, shall be required, relating to the Clubhouse construction.

Additional Provisions.

1. Completion Date. The Proposed Addition, whether done at one time or in two separate years, shall be completed in 2000 or 2001. In the event the Addition to Troy Racquet Club is not completed by December 31, 2001, this Amendment shall be of no effect, and the original term of the Lease shall apply.

2. Construction Work. Construction equipment (including trailers, dumpsters, etc.) shall be stored in areas designated by the City of Troy Parks & Recreation Department. The electrical work, including timing of transformer relocating, shall be coordinated through the Department of Parks & Recreation, and it shall be done so that the Aquatic Center shall not be closed, unless prior approval is obtained from the Parks & Recreation Department.

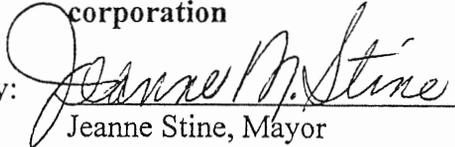
3. Air Structures. Replacement air structures shall be substantially the same as those in existence.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Tennis Ground Lease to be executed effective the day and year first above written.

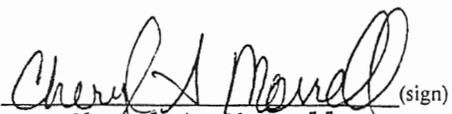
WITNESSED

CITY OF TROY, a municipal corporation

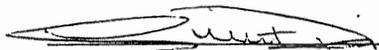

Cecilia A. Brukwinski (print)

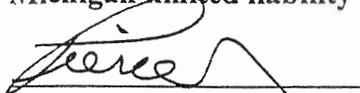
By:  (sign)
Jeanne Stine, Mayor

and
By:  (sign)
Tamara Renshaw, City Clerk


Cheryl A. Morrell (print)

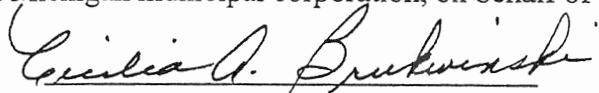
**TROY RACQUET CLUB, a
Michigan limited liability company**

 (sign)
Juliet DiSessa (print)

By: 
Donald A. Pierce, Jr.
Its: President

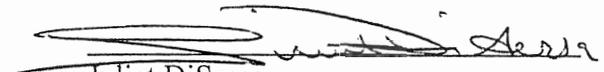
STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 25th day of January , 2000, by Jeanne Stine, the Mayor of the City of Troy, a Michigan municipal corporation, on behalf of the corporation.


Cecilia A. Brukwinski
Notary Public, Oakland County
State of Michigan
My Commission Expires: June 18, 2002

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 19th day of January, 2000, by Donald A. Pierce, Jr., President of the Troy Racquet Club, L.L.C., a Michigan limited liability company, on behalf of the company.


Juliet DiSessa
Notary Public, Oakland County
State of Michigan
My Commission Expires: 11/16/00