City of Troy

CITY COUNCIL AGENDA ITEM

Date: March 4, 2015

To: Brian Kischnick, City Manager

From: Mark F. Miller, Director of Economic & Community Development
Tom Darling, Director of Financial Services
Elaine S. Bo, Recreation Director

Subject: Camp Ticonderoga Capital Projects Extension Request

History

Since December 1995, restaurant operations at 2725 Rochester Road, Troy Michigan; adjacent to Sylvan Glen Golf Course, has been managed by Gallatin, Inc. (aka Camp Ticonderoga) of Metamora. Michigan. In that time they have made more than $1 million in capital improvements.

The current lease has an expiration date of May 1, 2016 with the option to renew for one additional five (5) year period under the terms and conditions of the current lease. The lease states that Gallatin, Inc. agreed to make $180,000 of capital improvements to the leased property by October 1, 2014 or their monthly rent would increase by $1,710. Gallatin Inc. has requested an extension to this timeline to make the improvements.

Financial

To date Gallatin, Inc has made $126,598 of repairs which include: permanent outdoor deck roof/gutters, up-date outdoor electrical and lighting system, installed new outdoor deck heaters, up-grade four restrooms with granite counters, sinks, faucets, toilet stalls; replace and upgrade second floor Emergency Exit awning/stairs; new baseboard heaters in main dining and Hunt room; enlarge basement walk-in cooler to meet new health codes and increase draft beer capability; replace and upgrade three emergency exits; insulate west wall of building.

The remaining $53,402 of repairs would include: the replacement of the large golf-course side window; install new stainless counters and heat lamp system and replace 2nd floor windows along Rochester Rd.

Gallatin, Inc. is requesting an extension to May 1, 2016 to complete the remaining projects without a rent increase.

CITY COUNCIL AGENDA ITEM

Recommendation

City Management recommends that Gallatin Inc, (aka Camp Ticonderoga), be given an extension to May 1, 2016, to complete the remainder of capital improvements without an increase in rent.

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney _____ Date _____

ESB/esb\AGENDA ITEMS\3.4.15-- Camp Ti Capital

AMENDMENT TO LEASE AGREEMENT BETWEEN THE
CITY OF TROY AND GALLATIN, INC., d/b/a CAMP TICONDEROGA

THIS AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF TROY AND GALLATIN, INC., d/b/a CAMP TICONDEROGA, is entered into between the CITY OF TROY, a Michigan municipal corporation, 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as the "LESSOR", and GALLATIN, INC., a Michigan Corporation, d/b/a CAMP TICONDEROGA, 3405 Rock Valley Road, Metamora, Michigan 48455, hereinafter referred to as "LESSEE", collectively referred to as the "Parties".

The LESSOR and LESSEE agree to the following Amendments to the to Lease Agreement between the City of Troy and Gallatin, Inc., d/b/a Camp Ticonderoga previously approved by City Council on June 6, 2011 and executed by the Parties on June 6, 2011:

Section 4 of Capital Improvements by Lessee, is hereby amended as follows:

4. CAPITAL IMPROVEMENTS BY LESSEE. LESSEE shall continue to make capital improvements to the Leased Property, in ~~any~~ amount not less than $180,000.00. These capital improvements include, but shall not be limited to, all or part of the following: repair covering providing heat and light to the Leased Property's rear deck; alterations and/or repairs of the men's and women's restrooms; replace 11 windows in the main floor area and the 3 large windows in the golf area; and up-date and repair the HVAC system. These capital improvements will be done at LESSEE'S own expense and only after LESSOR'S written approval. Before any work is done or any materials

delivered, LESSEE shall comply with LESSOR'S request to see plans, specification, contractor's information, and copies of contracts. All repairs and/or alterations shall be approved by LESSOR prior to any work being performed. LESSEE shall obtain all necessary building and mechanical permits from the City of Troy before any work is done. LESSEE'S minimum $180,000.00 in capital improvements shall be completed on or before ~~October 1, 2014~~. May 1, 2016.

The Leased Property is a locally designated Historic District under Chapter 13 of the City of Troy Code of Ordinances (Historic Preservation). Therefore, all capital improvements by either LESSEE or LESSOR for areas of the Leased Property which are controlled by Chapter 13 shall be designed, approved and maintained in compliance with Chapter 13, applicable State of Michigan statutes and the U.S. Department of Interior Standards for Historic Rehabilitation.

LESSEE shall provide adequate receipts and/or documentation to LESSOR of the actual costs of the capital improvements. If LESSEE fails to make at least $180,000.00 in capital improvements as set out in this Section by the May 1, ~~2014~~ 2016 deadline date, then ~~the monthly rent for the remaining two (2) years of this Lease Agreement shall be increased to $7,310 per month or $87,720.00 dollars for each remaining year. Additionally, in the event of an extension of this Lease Agreement beyond the initial five (5) year period, the C.P.I. for the first year rent shall be computed from a yearly rental amount of $87,720.00~~ LESSEE shall pay $180,000.00, minus the value of any capital improvements LESSEE made from June 2011 to May 1, 2016, as determined by LESSOR based on acceptable documentation or receipts provided by LESSEE, and LESSOR shall be entitled to entry of a court judgment for that amount,

and shall be entitled to collect this amount in any method allowed under the law. Additionally, failure to make the required $180,000.00 improvements may result in a decision by LESSOR not to renew this Agreement for an additional term.

All capital improvements, repairs, installations, hardware, non-trade fixtures and improvements, temporary or permanent, on the Leased Property shall become the property of LESSOR unless otherwise mutually agreed to by the Parties in writing.

All other terms and provisions of the original Lease Agreement between the City of Troy and Gallatin, Inc., a/b/a Camp Ticonderoga approved by Troy City Council and executed by the Parties on June 6, 2011 shall remain in full force and effect.

IN WITNESS WHEREOF, the LESSOR and LESSEE have executed this Amendment to Lease Agreement Between the City of Troy and Gallatin, Inc., a/b/a Camp Ticonderoga on this _____ day of March, 2015.

WITNESSES:

LESSOR:

CITY OF TROY, a Michigan Municipal Corporation,

_____

_____
By: Dane Slater, Mayor

_____

_____
By: Aileen Dickson, City Clerk

LESSEE:

GALLATIN, INC., A Michigan Corporation d/b/a Camp Ticonderoga

_____ _____

By: Linda Egeland
Its: President

_____ _____

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CITY OF TROY AND GALLATIN, INC., d/b/a CAMP TICONDEROGA

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4. CAPITAL IMPROVEMENTS BY LESSEE. LESSEE shall continue to make capital improvements to the Leased Property, in an amount not less than $180,000.00. These capital improvements include, but shall not be limited to, all or part of the following: repair covering providing heat and light to the Leased Property's rear deck; alterations and/or repairs of the men's and women's restrooms; replace 11 windows in the main floor area and the 3 large windows in the golf area; and up-date and repair the HVAC system. These capital improvements will be done at LESSEE'S own expense and only after LESSOR'S written approval. Before any work is done or any materials

delivered, LESSEE shall comply with LESSOR'S request to see plans, specification, contractor's information, and copies of contracts. All repairs and/or alterations shall be approved by LESSOR prior to any work being performed. LESSEE shall obtain all necessary building and mechanical permits from the City of Troy before any work is done. LESSEE'S minimum $180,000.00 in capital improvements shall be completed on or before May 1, 2016.

The Leased Property is a locally designated Historic District under Chapter 13 of the City of Troy Code of Ordinances (Historic Preservation). Therefore, all capital improvements by either LESSEE or LESSOR for areas of the Leased Property which are controlled by Chapter 13 shall be designed, approved and maintained in compliance with Chapter 13, applicable State of Michigan statutes and the U.S. Department of Interior Standards for Historic Rehabilitation.

LESSEE shall provide adequate receipts and/or documentation to LESSOR of the actual costs of the capital improvements. If LESSEE fails to make at least $180,000.00 in capital improvements as set out in this Section by the May 1, 2016 deadline date, then LESSEE shall pay $180,000.00, minus the value of any capital improvements LESSEE made from June 2011 to May 1, 2016, as determined by LESSOR based on acceptable documentation or receipts provided by LESSEE, and LESSOR shall be entitled to entry of a court judgment for that amount, and shall be entitled to collect this amount in any method allowed under the law. Additionally, failure to make the required $180,000.00 improvements may result in a decision by LESSOR not to renew this Agreement for an additional term.

All capital improvements, repairs, installations, hardware, non-trade fixtures and improvements, temporary or permanent, on the Leased Property shall become the property of LESSOR unless otherwise mutually agreed to by the Parties in writing.

All other terms and provisions of the original Lease Agreement between the City of Troy and Gallatin, Inc., a/b/a Camp Ticonderoga approved by Troy City Council and executed by the Parties on June 6, 2011 shall remain in full force and effect.

IN WITNESS WHEREOF, the LESSOR and LESSEE have executed this Amendment to Lease Agreement Between the City of Troy and Gallatin, Inc., a/b/a Camp Ticonderoga on this _____ day of March, 2015.

WITNESSES:

LESSOR:

CITY OF TROY, a Michigan Municipal Corporation,

_____

_____
By: Dane Slater, Mayor

_____

_____
By: Aileen Dickson, City Clerk

LESSEE:

GALLATIN, INC., A Michigan Corporation d/b/a Camp Ticonderoga

_____

_____
By: Linda Egeland
Its: President

LEASE AGREEMENT BETWEEN THE CITY OF TROY AND GALLATIN, INC., d/b/a CAMP TICONDEROGA

This Lease Agreement is entered into this 6th day of June, 2011, between the City of Troy, a Michigan Municipal Corporation, whose address is 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as "LESSOR" and Gallatin, Inc., a Michigan Corporation, d/b/a Camp Ticonderoga, whose address is 3405 Rock Valley Road, Metamora, Michigan 48455, hereinafter referred to as "LESSEE", and the LESSOR and LESSEE collectively referred to as the "Parties".

RECITALS

A. WHEREAS, LESSOR has had a landlord-tenant relationship with LESSEE, for the past 15 years during which LESSEE has established and managed a restaurant with a Class C Liquor License in a structure on property owned by LESSOR at 5725 Rochester Road, Troy, Michigan 48084; and

B. WHEREAS, based on the past performance of the LESSEE and the benefit derived to the LESSOR from the presence of a restaurant with a Class C Liquor License on LESSOR owned property adjacent to the Sylvan Glen Golf Course (also owned by LESSOR); and

C. WHEREAS, the term of the previous Lease Agreement is expiring and the Parties desire to enter into a new Lease.

Now, therefore, in consideration of the covenants and agreements Contained herein, LESSOR and LESSEE agree as follows:

1. **LOCATION AND USE OF LEASED PROPERTY**. LESSOR agrees to rent to LESSEE the premises commonly known as 5725 Rochester Road, Troy, Michigan 48084, and legally described in Exhibit A together with all easements, rights and appurtenances, hereinafter referred to as "Leased Property". LESSEE acknowledges and agrees that the Leased Property is exclusive of the Sylvan Glen Golf Course, Sylvan Glen Pro Shop and the Sylvan Glen Locker Room, hereinafter referred to as "Golf Course". The Leased Property is not to be used for any other purpose besides a restaurant with a Class C liquor license operating under the terms and conditions set out in this Agreement unless otherwise pre-approved by the LESSOR.

2. **EXCLUSIVE FOOD SERVICE PROVIDER**. LESSOR agrees to prohibit the sale or service of food or beverage service by any party other than LESSEE, unless such service is provided by LESSOR on the Golf Course, in buildings upon the Golf Course or in the Golf Course Pro Shop.

3. **RENT**. LESSEE agrees to pay LESSOR rent in the sum of sixty seven thousand two hundred ($67,200.00) dollars per year for the first through the fifth (5th) year of the Lease Agreement. Payments shall be made in equal monthly payments of five thousand six hundred ($5,600.00) dollars per month. Payment shall be made payable to: City of Troy. Payments must be received by the City of Troy Treasurer, 500 W. Big Beaver Road, Troy, Michigan 48084 on the first day of each month beginning May 1, 2011.

4. **CAPITAL IMPROVEMENTS BY LESSEE**. LESSEE shall make capital improvements to the Leased Property, in any amount not less than $180,000.00. These capital improvements include, but are not limited to, all or part of the following: repair, covering, providing heat and light to the Leased Property's rear deck; alterations and/or repairs to the men's and women's restrooms; replacement of 11 windows in the main floor area and the 3 large windows in the golf area; and an up-date and repair of the HVAC system. These capital improvements will be done at LESSEE'S own expense and only after LESSOR'S written approval. Before any work is done or any materials delivered, LESSEE shall comply with LESSOR'S request to see plans, specifications, contractor's information, and copies of contracts. All repairs and/or alterations shall be approved LESSOR prior to any work being done. LESSEE shall obtain all necessary building and mechanical permits from the City of Troy before any work is done. LESSEE'S minimum $180,000.00 capital improvements shall be completed on or before October 1, 2014.

The Leased Property is a locally designated Historic District under Chapter 13 of the City of Troy Code of Ordinances (Historic Preservation). Therefore, all capital improvements by either LESSEE or LESSOR for areas of the Leased Property which are controlled by Chapter 13 shall be designed, approved and maintained in compliance with Chapter 13, applicable State of Michigan statutes and the U.S. Department of Interior Standards for Historic Rehabilitation.

LESSEE shall provide adequate receipts and/or documentation to LESSOR of the actual costs of the capital improvements. If LESSEE fails to make at least $180,000.00 in capital improvements as set out in this Section by the May 1, 2014 deadline date, then the monthly rent for the remaining two (2) years of this Lease Agreement shall be increased to $7,310.00 per month or $87,720.00 dollars for each remaining year. Additionally, in the event of an extension of this Lease Agreement beyond the initial five (5) year period, the C.P.I. for the first year rent shall be computed from a yearly rental amount $87,720.00.

All capital improvements, repairs, installations, hardware, non-trade fixtures and improvements, temporary or permanent, on the Leased Property shall become the property of LESSOR unless otherwise mutually agreed to by the Parties in writing.

5. **TERM OF LEASE AGREEMENT**. This Lease Agreement shall be in effect for five (5) years with expiration date of May 1, 2016, unless otherwise terminated, as provided in this Lease Agreement. Within ninety (90) days of the expiration of this Lease Agreement, LESSEE shall notify LESSOR that it is agreeable to an extension of the

Lease Agreement. The LESSOR may, at its option, renew this Lease Agreement for a one additional five (5) year period under the terms and conditions as set out in this Lease Agreement. A request by LESSOR to determine LESSEE'S interest in renewing the contract in no way obligates LESSOR. The option to renew this Lease Agreement cannot be exercised without Troy City Council approval.

6. **RENT ADJUSTMENT AT EXTENSION OF LEASE AGREEMENT**. If this Lease Agreement is extended for an additional five (5) year period as provided in Section 5, and if the capital improvements are made, as specified in Section 4, the monthly rent for the second five (5) year term shall be $5,600.00 plus an upward C.P.I. adjustment, which is the percentage equal to the increase in the Consumer Price Index (C.P.I.) for Detroit/Ann Arbor metropolitan area for the preceding sixty (60) months, for each year in the extended five (5) year period.

7. **UTILITIES**. LESSEE shall pay all telephone, cable, heat, gas, water and electricity used in the Leased Property. LESSEE shall pay for all repairs or replacement parts that become necessary due to the malfunction, damage, or any other failure of any apparatus necessary for providing telephone, cable, heat, gas, water and electricity.

8. **TAXES**. LESSOR shall pay any real estate taxes attributable to the Leased Property. LESSEE SHALL pay any personal property and all other taxes attributable to the Lease Property or the restaurant operation on the Leased Property.

9. **USE AND QUIET ENJOYMENT**. Upon the timely payment of the monthly rental amount under the terms and conditions provided herein, LESSOR shall be given the use and quiet enjoyment of the Leased Property for the term or renewed term of this Lease Agreement.

10. **DUTY TO MAINTAIN HIGH QUALITY OF PERFORMANCE**. It is the intent of the Parties that the restaurant and Class C Liquor Licensed establishment on the Leased Property be operated and managed at a high level of quality. LESSEE acknowledges and agrees that any lesser standard will reflect poorly on LESSOR'S reputation. LESSEE shall maintain upon the premises a substantial stock of goods, wares, merchandise and equipment so as to provide for the proper storage, preparation, serving and disposal of food products, including, but not limited to, the use and implementation of recognized standards in the restaurant/food service industry required for the health and safety of patrons and employees.

11. **PERSONNEL**: LESSEE acknowledges and agrees that its choice of employees reflect upon the reputation of LESSOR. LESSEE shall require its employees to act courteously, responsively and responsibly towards patrons. LESSEE shall provide that each employee that will be serving alcohol shall be TIPS and/or TAM trained in accordance with the mandatory requirements of the Michigan Liquor Control Commission. Employees shall be clean and modestly dressed at all times.

12. **CLASS C LIQUOR LICENSE/SALE OF ALCOHOL ON GOLF COURSE BY CART.** At all times under this Lease Agreement, LESSEE shall maintain it's Class C Liquor License. LESSEE shall be permitted to sell alcoholic beverages on the Golf Course proper through use of one (1) beverage cart, which shall be purchased or leased by LESSEE. LESSEE is ultimately responsible for compliance with all federal, state and local laws related to the sale, distribution, use, or possession of alcohol, and the administrative rules, procedures, and guidelines as provided by the Michigan Liquor Control Commission including, but not limited to, obtaining or maintaining the necessary license(s) or permit(s) which allow for the operation of the beverage cart on the Golf Course. For purposes of this Lease Agreement, "alcoholic beverages" shall mean beer, wine, and other alcoholic beverages that contain less than 21% of alcohol by volume. LESSEE shall offer sandwiches, snacks, water and other nonalcoholic beverages, in addition to alcoholic beverages, for sale on the beverage cart.

Any of LESSOR'S employees operating the beverage cart must be trained to operate it in a safe manner and in proper golf course etiquette. LESSEE will train all operators of the beverage cart. LESSEE shall keep records of all training, and shall make such records available for review by LESSOR upon requests. LESSEE has the responsibility of determining the routing and hours of operation for the beverage cart. However, LESSOR may adjust the routing or hours of operation in the event of severe weather or other environmental conditions, after consultation with LESSEE.

Storage of the beverage cart is the sole responsibility of LESSEE. Upon approval of LESSOR, LESSEE may store the beverage cart with the golf carts during the golf season. Off season, LESSEE is responsible for beverage cart storage. Storage of the beverage cart inventory is also the sole responsibility of LESSEE. LESSOR has no liability or responsibility for damages to the beverage cart during storage.

LESSOR grants to LESSEE limited use of the Golf Course during the period of the Lease Agreement for the purpose of controlling and monitoring alcohol consumption. LESSEE shall have control and responsibility pursuant to this Lease Agreement for the sole purpose of enforcing MLCC regulations, and is responsible for the conduct of the employees of the LESSOR only as it relates to the Liquor Control Code and Administrative Rules. LESSEE shall indemnify and hold harmless LESSOR from all claims arising out of the sale of alcoholic beverages for consumption on the Golf Course. LESSEE understands and agrees that LESSOR may provide back up security for the monitoring of alcohol consumption on the Golf Course. LESSEE recognized and agrees that operation and control of normal Golf Course activities lies exclusively with LESSOR, except for insuring compliance with the Liquor Control Code and Administrative Rules which is the responsibility of the LESSEE.

13. **NO ADULT USE BUSINESS**. LESSEE is strictly prohibited from any activities set out in the City of Troy's Code of Ordinances, Chapter 76. It is the intent of the Parties that the restaurant is operated and managed in such a manner that patrons feel comfortable in bringing minor children in to dine.

14. **NUISANCE AND PROHIBITED USES**. LESSEE shall not make or permit or allow any noise or odor that is objectionable to the public, to other occupants of the building, or to LESSOR. LESSEE shall not create or maintain a nuisance on the Leased Property and shall not engage in any actions tending to injure the reputation of the LESSOR. LESSOR shall have the sole discretion to determine that a nuisance exists. LESSEE shall not place or permit any antennae, loud speakers, sound amplifiers or similar devices on the roof or outside of the Lease Property.

LESSEE shall not make, use or permit any use of the Leased Property which is directly or indirectly prohibited by law, ordinance or governmental regulation. LESSEE shall not make, use or permit any use of the Lease Property which may be dangerous to life, limb or property.

LESSEE shall pay to LESSOR compensation for all damages sustained by LESSOR as a consequence of any nuisance or illegal acts set for in this Section, including, but not limited to, any increase insurance premiums paid by LESSOR resulting from those acts.

15. **DAYS AND HOURS OF OPERATION.** LESSEE shall keep the restaurant open for patrons during reasonable business hours seven (7) days per week except holidays unless LESSEE chooses to operate on those holidays. This provision will not apply to closures for fire, casualty, strikes or other causes beyond LESSEE's control or during repair, cleaning and decorating of the Leased Property, as pre-approved by LESSOR.

Except as otherwise provided in this Lease Agreement, LESSEE shall keep the "Grill Room" portions of the Leased Property open for food and beverage services, with breakfast, full lunch and dinner menus, from April through October, inclusive, from 11:00 a.m. to dusk Monday through Friday, and from 11:00 a.m. to dusk Saturday, Sunday and holidays, when the adjacent Golf Course is open.

Under no circumstances shall the "Grill Room" be used for any purpose other than service to golfers during the golf season except on Mother's Day and scheduled group use on Saturday evenings after 7:00 p.m. At all other times, full service shall be maintained on the west deck for golfers.

If LESSOR determines that LESSEE has failed to keep the Leased Property open to patrons as required under this Lease Agreement, or if LESSEE posts or publicizes days and/or hours of operation but does not open to patrons during those days and/or hours, LESSOR will immediately notify the LESSEE in writing of the nature of the non-compliance with the Lease Agreement. In the event of non-compliance, LESSOR, though the Troy City Manager or his/her designee, and LESSEE will meet immediately but no later than forty-eight (48) hours after such notice is provided. If the City Manager or his/her designee in their sole discretion determines that LESSEE has not complied with the terms and conditions of this Lease Agreement concerning required days and hours of operation, and no exception to compliance has been demonstrated, LESSEE shall be placed on notice of the non-compliance. LESSEE agrees that if LESSOR determines, in

its sole discretion, that there are any subsequent failure to comply with the terms of this Lease Agreement as applied to days and hours that the Leased Property is open to patrons, it will pay a five hundred ($500.00) dollar liquidated damage penalty to LESSOR within five (5) days of written notice of the non-compliance by the LESSOR. If LESSEE is required to pay such liquidated damages two (2) times or more, LESSOR may terminate this Lease Agreement as provided in Section 24.

16. CURRENT CONDITION OF LEASED PROPERTY. LESSEE acknowledges that it is familiar with the present condition of the Leased Property and that the Leased Property is in satisfactory condition as of the date of execution of this Lease Agreement.

17. GROUND SIGN. As a result of a variance granted by Troy City Council on May 6, 1996, LESSEE was allowed to replace a 96 square foot sign located 12 feet from the Rochester Road right-of-way with another 96 square foot sign located 12 feet from the then existing Rochester Road right-of-way and 1 foot 2 inches into the planned Rochester Road right-of-way on the Leased Property. LESSEE is allowed to continue to use the currently existing ground sign for the duration of this Lease Agreement, including any mutually approved renewal period, or until the City of Troy needs additional Rochester Road right-of-way which requires removal and relocation of the sign, whichever occurs first. LESSEE shall be responsible for removing and /or relocating the sign at its own expense upon expiration of the variance as set forth in this Section.

In the event the LESSEE does not remove the sign, and has received advanced written notice of at least 120 days, LESSOR, without further judicial process, may enter upon the Leased Property and remove or cause the sign to be removed at LESSEE'S expense.

18. ANNUAL REPORT. LESSEE'S fiscal year shall be January 1st to December 31st. On or before the thirty-first (31st) day of March each year, LESSEE shall prepare and deliver to LESSOR an annual audited financial report prepared in the regular course of business, which accurately reflects the economic status of the business. Annual reports shall be delivered to the Troy Assistant City Manager/Finance & Administration, 500 W. Big Beaver Road, Troy, Michigan 48084.

If the LESSOR is dissatisfied with the completeness, accuracy or validity of the report, within thirty (30) days of the receipt of the annual report, LESSOR shall send written notice to the LESSEE of the reasons for its dissatisfaction. The LESSEE shall have ten (10) days from the date the notice is sent to satisfy LESSOR by presentation of documentation and reports acceptable to LESSOR or provide other reports requested by LESSOR. Failure to provide satisfactory supplemental documentation or reports, or failure by the LESSEE to submit supplemental documentation or reports, may be considered a breach of this Lease Agreement.

19. LESSEE'S OBLIGATION TO MAINTAIN, REPAIR, DECORATE AND CLEAN. LESSOR has made no promises to maintain, repair, decorate or clean the Leased Property and has made no representations regarding the condition of the Leased

Property. LESSEE shall at LESSEE'S own expense, maintain the Leased Property in good condition and repair, including, but not limited to, the outdoor deck, all interior walls, floors, doorways, plumbing fixtures and pipes, electrical outlets, heating and cooling equipment , and interior and exterior glass.

LESSEE shall maintain the temperature in the Lease Property at a level high enough to prevent the freezing of water in the plumbing fixtures and to prevent all other damage caused by low temperatures.

LESSEE shall not overload any floor. LESSOR reserves the right to direct the routing and location of all safes and all other heavy objects. All supplies, merchandise, fixtures, appliances and equipment may only pass through proper service doors while the Lease Property is occupied by patrons.

LESSOR shall remove snow and ice from the parking area in front of, adjoining and in the rear of the Leased Property and maintain the grass and shrubbery areas adjacent to the restaurant building. LESSEE shall keep all sidewalks, entrances, passages, courtyards, corridors, vestibules, halls, approaches, exits, elevators and stairways free from all obstructions including, but not limited to, snow, ice, refuse, ashes and fire hazards of any kind.

LESSEE shall keep all windows of the Leased Property clean and shall maintain the Leased Property in an attractive condition. If LESSEE desires interior awnings, shades, blinds, window or door coverings, LESSEE shall furnish and maintain the same in an attractive manner at LESSEE'S own expense.

LESSEE shall not install any apparatus for exterior illumination, air conditioning, cooling, heating, refrigeration or ventilation on the Leased Property without LESSOR'S advance written consent which shall not be unreasonably withheld.

If LESSEE fails to make repairs promptly and adequately, LESSOR reserves the option to make the repairs at the cost to the LESSEE, including, but not limited to, personnel costs, overtime costs, parts and supplies. LESSOR shall provide an invoice with a breakdown of its costs to LESSEE. If LESSEE fails to pay those costs within thirty (30) days of LESSOR'S invoice, LESSOR may add the costs as part of LESSEE'S rental payments until such costs are paid or pursue other legal remedies.

LESSEE SHALL INDEMNIFY LESSOR for any injuries, including property damage, personal injury or death, for claims based on a violation of this Section.

20. LESSOR'S OBLIGATION TO MAINTAIN AND REPAIR. LESSOR shall maintain and repair the foundation, exterior walls, and the roof of the Leased Property in good condition. LESSOR, at its own expense, may also voluntarily or pursuant to government requirements, repair any part of the Leased Property. During the repair, LESSOR shall be allowed to take whatever action is necessary to complete the repair. LESSOR shall

make a reasonable effort to avoid, prevent or minimize the occurrence of property damage and/or loss of business and profits to LESSEE during all times during the repair.

21. **RIGHT OF ENTRY**. LESSOR reserves the right to enter upon the Leased Property at all reasonable hours for the purpose of inspecting the Leased Property, and for exhibiting the Leased Property to prospective tenants, purchasers or others. The exercise by LESSOR of its rights under this Section shall not be deemed to be an eviction or interference with the LESSEE'S right to quiet enjoyment of the Leased Property.

22. **SPECIAL EVENTS**. LESSEE may conduct special events or seasonal events on the Leased Property upon approval of the LESSOR'S City Manager or his/her designee. If a special event or seasonal event is approved by LESSOR, LESSEE shall maintain insurance coverage for both itself and LESSOR for those events by rider to its insurance policy, if required for coverage. LESSEE shall provide a copy of the coverage rider to LESSOR'S Risk Manager prior to the event. LESSEE shall be responsible for payment of any costs incurred by LESSOR, including, but not limited to personnel costs, over-time cost, and/or use of LESSOR'S equipment. An invoice will be provided to LESSEE by LESSOR. LESSEE shall have thirty (30) days from the date of the invoice to pay those costs.

23. **INSOLVENCY OR BANKRUPTCY OF LESSEE**. Neither this Lease Agreement nor any interest in the Lease Property shall pass to any trustee or receiver for creditors, or to any person by attachment or execution of a judgment.

24. **TERMINATION OF LEASE AGREEMENT**: LESSOR may terminate this Lease Agreement upon sixty (60) days written notice to LESSEE for any of the following reasons:

A. LESSEE files for bankruptcy or insolvency in any state or federal court.
B. A receiver or trustee of LESSEE is appointed by reason of LESSEE'S bankruptcy or insolvency.
C. LESSEE makes a general assignment for the benefit of its creditors.
D. LESSEE terminated the normal operation of the restaurant facility by closing.
E. LESSEE'S liquor license is revoked, suspended, transferred or sold.
F. LESSEE, or any of its officers, is criminally charged with fraud, embezzlement, deceptive practices, larceny, or any similar offenses.
G.LESSEE has failed to comply with any term or provision contained in this Lease Agreement, including but not limited to, non-payment of rent.
H. LESSEE modifies the days and/or hours of operation without LESSOR'S consent and has incurred two (2) or more liquidated damage penalties as set out in Section 15.

LESSOR will send notification of termination in writing, stating the reasons for termination to LESSEE. Before LESSOR exercises its right to terminate this Lease Agreement under this Paragraphs G and H above, LESSOR will afford LESSEE an opportunity to respond within seven (7) calendar days to allegations of inadequacy of

performance and/or breach or default of this Lease Agreement. The City Manager or designated representative shall have discretion to make a decision to terminate this Lease Agreement, subject only to the approval of City Council.

At termination of this Lease Agreement for any reason, LESSEE shall peaceably surrender the Leased Property to LESSOR in the same condition as the date of first use of the Leased Property by LESSEE, excepting normal wear and tear. If the LESSEE fails to remove trade fixtures or other property from the Leased Property within thirty (30) days after termination of this Lease Agreement, LESSOR may remove the fixtures and property and LESSEE shall pay the cost for the removal. At the option of LESSOR, LESSOR may retain the fixtures and property and LESSEE shall have presumed to have conveyed the fixtures and property to the LESSOR with this Lease Agreement as the Bill of Sale and without further payment or credit.

25. INSURANCE REQUIREMENTS. LESSEE shall carry general liability insurance, automobile insurance, workers compensation, liquor liability coverage and employers' liability insurance for any actions, claims, liability or damages caused to others arising out of the performance of this Agreement in amounts approved by the LESSOR. LESSOR shall be named as an additional insured on the general liability and liquor liability policies using the following wording: "City of Troy, all elected and appointed officials, all employees and volunteers, those working as agents or on behalf of the City, boards, commissions and/or authorities, or board members, employees, and volunteers additional insured" on ISO form B or broader.

LESSOR shall be notified of any cancellation of that insurance within 30 days. The cancellation clause shall read:

> "Should any of the above-described policies be canceled before the expiration date thereof, the issuing company will provide 30 days written notice to the additional insured."

Cancellation or lapse of the insurance shall be considered a material breach of this contract and the contract shall become null and void unless the LESSEE immediately provides proof of renewal of continuous coverage to the LESSOR. All insurance carriers shall be licensed and admitted to do business in the State of Michigan and acceptable to the LESSOR. Proof of insurance meeting these requirements shall be provided to the LESSOR before execution of this contract.

LESSEE is responsible for any deductibles to any of the policies. LESSEE shall furnish three (3) complete copies of the acceptable Certificates of Insurance. If any of the policies expire during the term of the Agreement, LESSEE shall deliver renewal certificates and/or policies to LESSOR'S Risk Manager, at least ten (10) days prior to the expiration date.

26. INDEMNIFICATION AND HOLD HARMLESS. To the fullest extent permitted by law, LESSEE agrees to defend, pay on behalf of, indemnify, and hold harmless the City

of Troy, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Troy, against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Troy, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Troy, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with the execution of activities by the LESSEE outlined in this Lease Agreement or as relating to or resulting from those activities.

27. ASSIGNMENT OF LEASE AGREEMENT OR LIQUOR LICENSE: LESSEE shall have no authority or power to assign, sublet and/or transfer any rights, privileges or interests under this Lease Agreement without prior written consent from the LESSOR. LESSEE shall not assign, sublet and/or transfer any rights in its Class C liquor license without prior written consent from the LESSOR.

28. LIENS OR ATTACHMENTS PROHIBITED. LESSEE shall not cause any liens to be attached upon LESSEE'S interest by operation of law or otherwise. LESSEE is prohibited from transferring, selling, mortgaging, pledging, assigning, or conveying this Lease Agreement or any interest therein.

29. DISASTER PROVISION. In the event that the Leased Property is made wholly untenable by fire or other casualty, LESSOR shall take possession of the Leased Property within thirty (30) days thereof. If LESSOR is not prohibited from undertaking reconstruction or repair of the Leased Property by either conditions on the Leased Property or any declarations of government or insurance adjusting agencies, LESSOR shall give written Notice of Intent to LESSEE of LESSOR'S intent to either: a) terminated this Lease Agreement as of the date of the notice, or b) repair, restore or rehabilitate the Leased Property within ninety (90) days following the date of notice.

If the LESSOR later determines that it cannot substantially complete the work, for whatever reason, within that ninety (90) day period, then at any time within one hundred (100) days of the date of LESSOR'S Notice of Intent, the LESSOR may inform the LESSEE that this Lease Agreement is terminated as of the date of the termination notice.

If, at the end of the ninety (90) day period, the work has not been substantially completed, for whatever reason, then there shall be a ten (10) day period during which the LESSEE may terminate this Lease Agreement upon written notice to LESSOR. At the end of the one hundred (100) days following LESSOR'S Notice of Intent, this Lease Agreement shall only be terminated by mutual agreement of the Parties.

While the Leased Property is untenable, the rent shall be abated on a per diem basis, but shall be paid, as provided herein, to the date of the fire or casualty. If the Leased Property is partially damaged by fire or other casualty, the Leased Property shall be repaired, restored or rehabilitated by LESSOR, and, until the damaged portion

of the Leased Property is ready for occupancy by LESSEE, rent shall be apportioned by usable square footage of Leased Property.

In all cases, allowance shall be made for reasonable delay which may be caused by adjustment of insurance, strikes, labor difficulties or any cause beyond LESSOR'S control. LESSEE shall cooperate with all LESSOR'S reasonable requests for moving of LESSEE'S property in order to facilitate repairs, restoration or rehabilitation.

30. EMINENT DOMAIN. In the event that all of the Leased Property is taken by exercise of another governmental entities power of eminent domain, this Lease Agreement shall terminate as of the date possession is taken by the condemning authority. LESSOR shall refund any monthly rent paid in advance, on a per diem basis with thirty (30) days as it denominator.

If a portion of the Leased Property is taken by eminent domain proceedings, but the taking does not include the land upon which the restaurant building is constructed, then this Lease Agreement and term shall not terminate, but within one hundred eighty (180) days after LESSOR receives payment for estimated just compensation, LESSOR, at its own expense, shall commence to repair or alter the Leased Property not affected by the taking, to make them useable. During the repair or alteration, alternate arrangements shall be make for the parking of employees and patrons.

31. INDEPENDENT CONTRACTOR. LESSEE acknowledges that it is an independent contractor with no authority to bind LESSOR to any contracts or agreements, written or oral.

32. NOTICE: All written notices to be given under this Agreement shall be via first class mail to the other party at its last known address set forth herein.

33. NON-DISCRIMINATION. LESSEE shall not discriminate in the hiring of any employees or in the use of the Leased Property by patrons, directly or indirectly on the basis of age, race, color, religion, national origin, sex, height, weight, disability, familial relationship, political orientation or any other illegal basis.

34. SEVERABILITY. If any court, agency, commission, legislative body or other authority of competent jurisdiction declares invalid, illegal or unenforceable any portion of this Agreement or its application to any person, that decision shall not affect the validity of the remaining portions of this Agreement.

35. ENTIRE AGREEMENT; AMENDMENT; WAIVER. This Lease Agreement is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters contained in and related to this Agreement and supersedes any previous understandings, dealing and communications, including negotiations, discussions, representations, warranties, information, documents and agreements, among the parties pertaining to such matters. This Lease Agreement shall not be modified or amended except pursuant to a written agreement signed by both Parties. Any waiver of any party's rights or obligations under this Agreement must

be in writing and must be signed by the party against which such waiver is to be enforced. Neither Party's failure to exercise a right or to invoke a remedy in any particular circumstance shall be construed as a waiver of such right or remedy, and no waiver by either Party of any right or remedy in one situation shall constitute a waiver of such party's rights or remedies in any other subsequent situation, whether similar or not.

36. GOVERNING LAW AND JURISDICTION: This Agreement is made in and shall be governed by the laws of the State of Michigan. Any lawsuits under this Agreement shall be filed in the Oakland County Circuit Court, Michigan.

37. HEADINGS. Pronouns and relative words herein used shall be read interchangeably in the masculine, feminine or neuter, singular or plural as the respective case may be.

38. AUTHORITY TO EXECUTE: By execution of this Agreement, the respective Parties acknowledge that each has executed this Agreement with full and complete authority to do so.

LESSOR:
CITY OF TROY, a Michigan
Municipal Corporation

WITNESSES:

Cheryl A. Stewart
Cheryl A. Stewart

By: Louise A. Schilling
Mayor

Irene Newman
Irene Newman

By: Tonni Bartholomew M. Aileen Bittner
City Clerk Deputy City Clerk

LESSEE:
GALLATIN, INC., a Michigan
Corporation
d/b/a Camp Ticonderoga

By: Linda Egeland
Its: President