City of Troy

TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
Susan M. Lancaster, Assistant City Attorney SML
DATE: April 11, 2013
SUBJECT: Proposed Agreement with Ice Lounge, 5903 John R

The City has received an application for a Smoking Lounge License for Ice Lounge, which is located at 5903 John R. Road (shopping center in the southwest corner of Square Lake and John R. Roads) The license application was submitted by Assen & Aysin, Inc., the operator of the now closed Coffee Net in that same shopping center, which was previously licensed by the State of Michigan, but not the City of Troy. The State of Michigan has already transferred the State Smoker's Lounge license from Coffee Net to Ice, but the business also needs to obtain a license from the City of Troy under Chapter 77.

As a result of the background investigations for the requested license, the City could deny the license application based on the criminal history of the identified manager of Ice, Aysin Yousif. However, Mr. Yousif's sister, Assen, represents that Aysin is not the manager, and has no ownership interest.

Even though Ms. Assen Yousif would qualify for a Smoking Lounge License, City Administration is concerned about granting a license and then having Mr. Aysin Yousif take an active role in managing or operating the business. As a result, Ms. Assen Yousif's attorney has proposed an agreement that would allow her to operate, but would terminate the license if her brother, Aysin Yousif, is on the premises or assuming any operational responsibilities.

The attached agreement was drafted in recognition of the assurances provided by Ms. Assen Yousif that Mr. Aysin Yousif will not manage or have any contact with Ice, the proposed smoking lounge at 5903 John R.Road. Both Mr. Aysin Yousif and also Ms. Assen Yousif are required signatories on the Agreement. In addition to precluding Mr. Aysin Yousif from the premises, the Agreement also requires the business to close at midnight, prohibits persons under 18 years of age from entering into the facility, and addresses the use of adjoining parking lots, and requires owner permission. These are all items that have been raised during the past year at other hookah establishments, and are proposed as amendments to Chapter 77.

Although it is very unusual for the City to enter into such an agreement, City Administration recognizes Ms. Assen Yousif has made a significant investment by closing Coffee Net and renovating the proposed new site. This Agreement represents a potential compromise that still addresses some of the concerns of City Administration (City Clerk, Planning Department, Code Enforcement , Police Department and Fire Department).

A proposed resolution approving the Agreement is attached for your consideration.

Proposed Resolution

RESOLVED, that the Agreement concerning Ice Lounge, 5903 John R Road, between the City of Troy and Aysin & Assen, Inc, is hereby approved; the Mayor and City Clerk are authorized to execute the document, and a copy shall be attached to the original minutes of this meeting.

AGREEMENT

The City of Troy, a Michigan Municipal Corporation, whose address is 500 W. Big Beaver Road, Troy, Michigan 48084 (TROY); Assen Yousif, 3855 Hampton, Sterling Heights, Michigan 48310, individually and as President of Aysin & Assen, Inc., a Michigan Corporation (ASSEN), whose business address is 5903 John R Road, Troy, Michigan 48085; and Aysin Yousif, 3855 Hampton, Sterling Heights, Michigan 48310, individually, (AYSIN) voluntarily enter into this Agreement on this ____ day of April, 2013.

RECITALS:

1. On January 14, 2013, ASSEN applied for a Smoking Lounge License as allowed under Chapter 77 of the Troy City Code. ASSEN was seeking a license to operate a hookah lounge at 5903 John R Road, Troy, Michigan 48085, which was to be known as Ice Hookah Lounge, "ICE". Based on a suspected omission in the application, TROY requested a supplemental application, which was filed on February 11, 2013. Both of these documents were filed by AYSIN at the Troy City Clerk's Office. The February 11, 2013 application materials designate AYSIN, 3855 Hampton Sterling Heights, Michigan as "Manager/Operator" of Ice Lounge, 5903 John R Road, Troy, Michigan 48085.
2. As required by Chapter 77 (6.a) of the Troy City Code, the application was forwarded to the Troy Police Department for review and investigation. The investigation was completed on February 14, 2013. AYSIN had a felony

criminal history, and since he was identified as the "Manager/Operator" of ICE, this served as a basis to deny the application under Chapter 77 (7).

3. Under Chapter 77, Section 7.a.v., TROY can deny a smoking lounge license if any of the owners or managers have been convicted or found responsible for a violation of any federal, state, or local law involving moral turpitude, dishonesty, fraud, violence, controlled substances, the same distribution, or furnishing of tobacco, or the sale, distribution, or furnishing of alcoholic liquor.
4. In addition to being listed as "Manager/Operator" of the smoking lounge at 5903 John R Road, Troy, Michigan, AYSIN also filed the documentation with the City and also with the State of Michigan, and served as the primary contact and business liaison. AYSIN at all times herein represented himself to TROY and the State of Michigan as the manager of ICE.
5. AYSIN was also listed as Treasurer and Vice-President of Aysin & Assen, Inc., a Michigan Corporation, (Identification Number 04066N) on the State of Michigan Department of Licensing and Regulatory Affairs, Bureau of Commercial Services, Corporation Division, and has signed other documents on behalf of Aysin & Assen.
6. ASSEN represents that AYSIN was involved in the company's prior business operations at Coffee Net, which received a smoker's license from the State of Michigan, and which has already been transferred by the State of Michigan to ICE. However, she affirms that AYSIN no longer has any official relationship with ICE, and will not be a manager at ICE and does not have any ownership interest in ICE. ASSEN presented TROY with official corporate

documentation for Aysin & Assen that was modified since the operation of Coffee Net. This revised documentation lists ASSEN as the only shareholder, and AYSIN is not listed as having any ownership interest or having any official capacity. ASSEN also indicates that AYSIN will not be managing ICE or be on the premises of the business, in light of his criminal history.

7. In order to obtain approval of a smoking lounge license from TROY, ASSEN and AYSIN have agreed to enter into a formal agreement setting out the terms and conditions by which they, individually and as corporate officers of AYSIN & ASSEN, agree to be bound in exchange for the issuance of a smoking lounge license from TROY.
8. ASSEN, AYSIN and AYSIN & ASSEN acknowledge and agree that failure to comply with the terms and conditions as set out in this Agreement may, at the sole discretion of TROY, result in an immediate revocation of the smoking lounge license.

AGREEMENT:

The parties, for the above referenced consideration, agree to the following terms and conditions, as part of an effort to address health and public safety concerns:

1. TROY agrees to approve the application for a smoking lounge license for ICE (a/k/a Ice Hookah Lounge), 5903 John R Road, Troy, Michigan 48085, as requested by ASSEN, conditioned upon compliance with the following terms and conditions:
   a. AYSIN acknowledges and agrees that he is prohibited from entering onto the premises at 5903 John R. Road, Troy, MI any time of day or night or any date

of the year, and also excluded from any area of the parking lot that services 5903 John R Road or any other stores in the strip shopping center located at the southwest corner of John R. and Square Lake Road, Troy, MI 48085. AYSIN acknowledges and agrees that under no circumstances is he to be present on the premises, and that includes but is not limited to any time of an emergency, a claimed lack of personnel, the collection of receipts/money, conferences, training or any activities whatsoever.

b. ASSEN, individually and as the corporate representative of ASSEN and AYSIN, acknowledges and agrees that should AYSIN be present on the premises or parking areas, as set forth above, the smoking lounge license will be revoked by TROY immediately, after being sent a certified letter by the Troy City Manager or his designee that there was a violation of this Agreement, and specifying what the violation was.

c. ASSEN, individually and as the corporate representative of ASSEN and AYSIN, acknowledges and agrees that AYSIN shall have no further contact with TROY or the State of Michigan concerning any smoking lounge licensing requirements or exemption renewal under the Dr. Ron Davis Act of 2009 concerning the 5903 John R Road, Troy, Michigan 48085 address or ICE.

d. If someone other than ASSEN is going to serve as a Manager or Operator of ICE, ASSEN shall provide to TROY the Name, Address, Driver's License Number, Date of Birth, Home Phone and Length of Residency in Michigan of any Manager/Operator at least two weeks prior to the employment date, so that the Troy Police Department can conduct a background investigation of

the proposed Manger/Operator and insure compliance with Chapter 77. If the proposed Manager/Operator does not satisfy the background investigation requirements, then TROY shall notify ASSEN as soon as possible, and that Manager/Operator shall not be employed or serve, even temporarily while the license is in effect. If a Manager/Operator is on the premises and in non-compliance with this requirement, TROY may revoke the smoker's lounge license by sending a certified letter to ASSEN and indicating the violation of this Agreement that has led to the revocation.

e. Neither ASSEN, the Manager/Operator nor employees of ICE shall allow any person under the age of eighteen (18) into the building. Identification of each individual shall be confirmed before entry into the building. ASSEN shall secure exit doors to ensure no one is attempting to sneak into the building.

f. ICE shall close promptly at midnight(12:00 a.m.) every night including Friday, Saturday and Sunday. Any and all individuals except employees of Ice Lounge shall be required to leave or be removed from the building by midnight (12:15 a.m.). Only a maximum of three (3) employees shall remain on the premises after 12:15 am, and these individuals shall carry proof of employment at ICE, such as an identification badge. Employees shall provide proof of employment when requested to do so by a member of the Troy Police and/or Fire Departments. The Manager/Operator or other designated employee shall require patrons to leave or shall remove all individuals in the parking area of 5903 John R Road by 12:30 a.m. If any individual refuses to leave the building or the parking area, the Manager/Operator shall

immediately call the Troy Police Department at 911 and request that the Troy Police Department remove the individual(s) as trespasser(s) from the building or, if applicable, from the parking lot. Further, the Manager/Operator or designated employee who called the Troy Police Department shall make themselves available as a witness for any case resulting from a trespass ticket or warrant to testify at trial.

g. ASSEN, individually and as the corporate official, shall insure that patrons are not parking in adjacent or neighboring parking lots that are not part of the strip shopping center where 5903 John R Road is located unless a signed agreement for said parking is submitted to TROY. ASSEN shall insure that, during hours that the other tenants of the shopping center are open, that Ice Lounge patrons are not interfering with the use of the parking lot by patrons of other shops.

h. ASSEN, individually and as the corporate official, shall insure that at no time will controlled substances and/or alcoholic beverages be present in the building. ASSEN or her designee shall immediately remove a patron from the premises if that patron is in possession of a controlled substance and/or alcoholic beverages.

i. The Troy Police Department and the Troy Fire Department shall be allowed unannounced access to the premises to inspect for any violations of this Agreement during regular business hours.

j. ASSEN shall comply with all federal and state laws and the City of Troy Code of Ordinances, including, but not limited to, building and fire codes.

k. ASSEN, and/or AYSIN & ASSEN may not transfer the smoking lounge license approved for 5903 John R Road, Troy, Michigan to any new TROY location. Additionally, if either ASSEN and/or AYSIN and/or AYSIN & ASSEN file any new or renewal applications for a smoking lounge license within the City of Troy and that application is approved by TROY after review, that license will be subject to the same terms and conditions of this Agreement.

l. Any revision to this Agreement must be set out in writing and signed by all parties to this Agreement.

m. Penalty:

(a) ASSEN, AYSIN and ASSEN & AYSIN agree that this Agreement is to continue in effect as long as the smoking lounge license at 5903 John R Road, Troy, Michigan 48085 is in effect or until ASSEN, and ASSEN & AYSIN are no longer in business at that location. Any change to the name Ice Lounge shall not affect the terms and conditions of this Agreement. Any violation of the terms and conditions set forth above may serve as a basis for the City to object to the renewal of the license or for a revocation of the license once issued.

(b) Any attempt by AYSIN to circumvent the terms and conditions of this Agreement by establishing a new business entity or providing for an agent as Manager/Operator of the business to act in lieu of his inability to do so shall be considered a violation of this Agreement and revocation of the license will be immediate.

(c) Any fire code violations may result in the issuance of misdemeanor ticket(s) to the appropriate individual or representative.

ASSEN & AYSIN, INC.	CITY OF TROY
By: _____ Assen Yousif, Individually and as President of ASSEN & AYSIN, Inc.	_____ Dane Slater, Mayor
By:_____ Aysin Yousif, Individually	_____ M. Aileen Bittner, City Clerk