



CITY COUNCIL ACTION REPORT

September 15, 2008

TO: Phillip L. Nelson, City Manager

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

SUBJECT: Troy Racquet Club Owner – Request To Delete Lease Provisions

Background:

- The City has a Tennis Ground Lease with Troy Racquet Club. This lease was originally approved by the Troy City Council on March 9, 1977, and constructed shortly afterwards. The lease was re-negotiated and approved by the Troy City Council on May 4, 1998, and it does not expire until 2018. An amendment to this lease was most recently approved in March 2007 by the Troy City Council.
- Don Pierce, owner of the Troy Racquet Club, has requested a mid-term amendment to this lease. Specifically, he requests the removal of Section 3 (d) from the lease. This provision provides the City with the option to terminate the lease without cause upon 90 days written notice at the end of any two year term.
- At the August 25, 2008 City Council meeting, staff was directed to draft an amendment eliminating the provisions in the lease with Troy Racquet Club that allow for termination without cause. The amendment is attached.

Financial Considerations:

- There are no financial considerations.

Legal Considerations:

- City Council must formally approve any amendments to the lease, including any deletions.

Policy Considerations:

- The current lease allows for the City to terminate without cause upon 90 days written notice, which can be exercised at each two year period. This provision provides the City with additional flexibility.
- The elimination of this provision allows for termination only if there is a breach of the lease or if the property is “condemned.”

Options:

- City Council can approve the amendment.

Approved as to form and legality: _____
Lori Grigg Bluhm, Troy City Attorney

**FOURTH AMENDMENT TO GROUND LEASE BY AND BETWEEN THE CITY
OF TROY AND TROY RACQUET CLUB**

This Amendment to a certain Tennis Ground Lease dated April, 1998, by and between the City of Troy, as Lessor, and the Troy Racquet Club, as Lessee, is made effective the _____ of September, 2008.

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 a 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 executed in November 1999. A Second Amendment to the Lease was executed in January 2000. A Third Amendment to the Lease was executed in March 2007.

B. Lease Amendment. The parties agree to amend Section 3 of the Lease by eliminating the provisions that allow for termination of the lease without cause, which were set forth in subsections 3 (c) and 3 (d). Therefore, as of the effective date of this Fourth Amendment to Ground Lease, Section 3 of the Lease is amended by eliminating subsections

3 (c) and 3 (d) so that Section 3 shall now read in its entirety as follows:

3. TERMINATION

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

- a. If Lessor declares by resolution the existence of a need for the Leased Premises or a portion of the Leased Premises for

expansion of the civic center or road improvements, termination shall occur 180 day after the resolution is served upon Lessee. Upon termination, Lessor shall 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 ceases to use the Leased Premises for a tennis facility. Lessor shall give Lessee written of its election to terminate under this subsection at least 60 days before termination.

The parties agree to the terms of this Fourth Amendment to the Tennis Ground Lease, which are effective on September ____, 2008.

WITNESSED

CITY OF TROY, a municipal corporation,

By: _____
Louise E. Schilling, Mayor

And

By: _____
Tonni L. Bartholomew, City Clerk

TROY RACQUET CLUB, a Michigan limited liability company

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

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ____ day of September, 2008, by Louise E. Schilling, the Mayor and Tonni L. Bartholomew, the City Clerk of the City of Troy, a Michigan municipal corporation, on behalf of the municipal corporation.

Notary Public,
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 September 2008, by Donald A Pierce, Jr., President of Troy Racquet Club, LLC, a Michigan limited liability company, on behalf of the company.

Notary Public
County of Oakland
State of Michigan
My commission expires: _____