



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM



Date: March 17, 2021

To: Mark F. Miller, City Manager

From: Robert J. Bruner, Assistant City Manager  
Robert C Maleszyk, Chief Financial Officer  
Lisa Burnham, Controller  
Brian Goul, Interim Recreation Director  
Emily Frontera, Purchasing Manager

Subject: Lease Agreement for Camp Ticonderoga Restaurant Operations (Introduced by Brian Goul, Interim Recreation Director)

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### **History**

- Since December 1995, restaurant operations at 2725 Rochester Road, adjacent to Sylvan Glen Golf Course, have been managed by Gallatin, Inc. (aka Camp Ticonderoga).
- The agreement is for restaurant and golf course cart beverage and food sale operations at Sylvan Glen Golf Course.
- The current agreement expires on May 1, 2021.
- Camp Ticonderoga's past performance has been acceptable to City Management and City staff does not believe it would be advantageous to request proposals at this time.

### **Purchasing**

The current lease agreement with Gallatin, Inc expires on May 1, 2021. The new lease agreement will be in effect for a five (5) year period with the option to renew for an additional five (5) year period. A provision was added to provide for potential rent abatement in the event of circumstances beyond the lessee's control that prohibit use of the property (such as a pandemic).

### **Financial**

Rent is currently \$70,944 dollars per year made in equal monthly payments of \$5,912. The new agreement increases rent to \$72,720.00 in the first year, and provides for annual adjustments based on the Consumer Price Index (CPI) for the Metro Detroit region.

### **Recommendation**

City Management recommends approval of a Lease Agreement with Gallatin, Inc (aka Camp Ticonderoga) of Metamora, Michigan for a five (5) year period, with expiration date of May 1, 2026 with an option to renew for one additional five (5) year period.

### **Legal Review**

This item was submitted to the City Attorney for review pursuant to City Charter Section 3.17.

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

This Lease Agreement is entered into this 22<sup>nd</sup> day of February, 2021, 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 25 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, as a result of 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), the parties have negotiated a new lease agreement, since the previous lease agreement is expiring as of May 1, 2021.

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.** The contractor managing the Sylvan Glen Golf Course (currently Indigo Golf) has the option of selling coffee, water, and snacks to accommodate golfers who are on the premises prior to the opening of the restaurant. Otherwise, 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 Seventy-Two Thousand Seven Hundred and Twenty (\$72,720.00) dollars per year commencing May 1, 2021. Payments shall be made in equal monthly payments of six thousand sixty (\$6060.00) dollars per month for the first lease year. For each year thereafter, the annual lease payments shall be adjusted, based on the Consumer Price Index for the Metro Detroit region. LESSOR will notify LESEE of the new annual and monthly payment amounts on or before April 1 of each year. Lease payments shall be made payable to: City of Troy, and must be received by the City of Troy Treasurer, 500 W. Big Beaver Road, Troy, Michigan 48084 on the first day of each month.
4. **CAPITAL IMPROVEMENTS BY LESSEE.** LESSEE may make capital improvements to the Leased Property. 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.

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.

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 April 30, 2026, 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 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. **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.

**7. 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.

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

**9. 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.

**10. 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 require each employee that will be serving alcohol to be TIPS and/or TAM trained or a similar alcohol server training that is approved by LESSOR. Employees shall be clean and modestly dressed at all times.

**11. CLASS C LIQUOR LICENSE/SALE OF ALCOHOL ON GOLF COURSE BY CART.** At all times under this Lease Agreement, LESSEE shall maintain its Class C Liquor License. LESSEE shall be permitted to sell alcoholic beverages on the Golf Course proper through use of at least one (1) beverage cart, which shall be purchased or leased by LESSEE. There will also be additional times, such as tournaments, when LESSOR or its Contractor (currently Indigo Golf) will request additional beverage service on the golf course for the event. For each request, LESSEE agrees to meet with the City's Contractor/ Golf Course Manager at the earliest opportunity and attempt to reach an agreement about the beverage cart arrangements. If the LESSEE and the City's Contractor cannot reach an Agreement, then the LESSEE must notify the City Manager. 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 promulgated 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 beverage cart(s) on the Golf Course. During the term of the Agreement, LESSEE shall comply with any restrictions

of its liquor license and also Chapter 30 of the City of Troy Ordinances, which currently restricts alcohol sales to those beverages containing 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(s).

Any of LESSEE'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 for good cause, after consultation with LESSEE.

Storage of the beverage cart or carts is the sole responsibility of LESSEE. Upon approval of LESSOR, LESSEE may store the beverage cart(s) 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 carts 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 recognizes and agrees that operation and control of normal Golf Course activities lies exclusively with LESSOR and/or its contractor, except for insuring compliance with the Liquor Control Code and MLCC Administrative Rules, which is the responsibility of the LESSEE.

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

**13. 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.

**14. STORAGE PROHIBITED IN PARKING LOT.** LESSEE is prohibited from using the parking lot for the Lease Property and/or the Golf Course for the storage of any personal property or equipment, and shall not obstruct any part of the parking lot for any reason, unless provided express advance written permission from LESSOR.

**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 seven days a week 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 for golfers.

With advance written permission by City Manager or his or her designee, LESSEE may erect temporary structures for outdoor dining. LESSEE shall obtain all necessary building, electrical, mechanical, and/or plumbing permits from the City of Troy before erecting any temporary structures. LESSEE shall be responsible for storage of any such temporary structure(s) off the property when not in use.

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, through 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 LESSEE has not satisfied the City Manager or his/her designee that an exception is justified, then LESSOR will provide immediate notice of the non-compliance. After this initial meeting and notification, LESSOR determines, in its sole discretion, that there are any subsequent failures to comply with the days and hours provisions, LESSEE will pay a five hundred (\$500.00) dollar liquidated damage penalty to LESSOR for each such violation within five (5) days after being invoiced by LESSOR. If LESSEE violates the days and hours provisions of the lease two (2) times or more, then 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 a sign of the same size, which is now 1 foot 2 inches into the planned Rochester Road right-of-way. LESSEE is allowed to continue to use the currently existing ground sign on the Leased Property 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 is January 1<sup>st</sup> to December 31<sup>st</sup>. On or before the thirty-first (31<sup>st</sup>) 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 City Manager, 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 provide acceptable documentation and reports or provide other reports requested by LESSOR. LESSEE's failure to provide satisfactory supplemental documentation or reports upon LESSOR's request 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 for 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 and charge the cost of the necessary repairs to the LESSEE, including but not limited to personnel costs, overtime costs, parts and supplies. In such event, 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 governmental 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 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 through a rider to its insurance policy, if required for coverage. LESSEE shall provide a copy of the coverage rider and the applicable insurance policy provisions to LESSOR prior to the event. LESSEE shall be responsible for payment of any costs incurred by LESSOR as a result of a Special Event, including, but not limited to personnel costs, over-time costs, and/or costs for the use of LESSOR'S equipment. If LESSEE is required to pay any such cost, LESSOR will submit an invoice to LESSEE. 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 as set out in Section 15.

In any such event, 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 his/her designated representative shall have discretion to terminate this Lease Agreement for the reasons stated above. Within seven days, LESSEE may submit a written appeal of the City Manager's decision to terminate the lease, which would then be submitted to the Troy City Council for consideration at the next available regularly scheduled City Council meeting.

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 it shall be presumed that LESSEE conveyed the fixtures and property to the LESSOR 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 Agreement. LESSEE must immediately provide satisfactory proof of continuous coverage to the LESSOR prior to execution of this Agreement, and shall also provide LESSOR with satisfactory evidence of the LESSEE's renewals and continuous coverage. All insurance carriers shall be licensed and admitted to do business in the State of Michigan and acceptable to the LESSOR. LESSEE is responsible for any deductibles to any of the policies.

**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 Lease 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 any provision or law or 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) terminate 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 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.

LESSOR shall also allow reasonable rent abatement when LESSEE is unable to occupy the premises because of causes beyond LESSEE's control. The City Manager or his/her designee shall be responsible for determining any such abatement.

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

If a portion of the Leased Property is taken through the eminent domain process, but the taking does not include the land upon which the restaurant building is constructed, then this Lease Agreement shall not terminate. If LESSOR receives payment for estimated just compensation, LESSOR shall, at its own expense, within one hundred eighty (180) start any necessary repair or alteration of the Lease Property not affected by the taking, to make the remaining property useable. During the repair or alteration, alternate arrangements shall be made 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, or email if acknowledged by the intended recipient. Notice to the City shall be provided to the City Manager.

**33. NON-DISCRIMINATION.** LESSEE shall not discriminate, either directly or indirectly, in the hiring of any employees or in the use of the Leased Property 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.

**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 in the State of 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:

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\_\_\_\_\_  
By: Ethan D. Baker  
Mayor

\_\_\_\_\_

\_\_\_\_\_  
By: M. Aileen Dickson  
City Clerk

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

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By: Linda Egeland  
Its: President