

MEMORANDUM

TO: City Council

FROM: Alfred D. Lott
City Manager

SUBJECT: Resolution R-13-20, approval of Third Modification to Bowie Racquet and Fitness Club Lease

DATE: January 21, 2020

Bowie Racquet and Fitness (dba Sport Fit) has been leasing space in Whitemarsh Park from the City since the early 1990's. In the early 2000's Sport Fit purchased the Williams Plains property (within Whitemarsh Park) which consists of a residential home and the surrounding property. Sport Fit donated the land to the City with the intention of leasing back the land and building to build tennis courts, run a day camp program out of the house, and other recreational activities. Due to business concerns, these plans largely did not take place. Per the existing lease, which has been modified twice, Sport Fit is responsible for maintaining the house.

The City has had a good working relationship with Sport Fit and over the past months reassessing the situation, the property is really only being used by Sport Fit for the summer day camp and they have no plans for other use of the property, leaving the house without a viable use. The City staff believe it in the best interest of the property maintenance to take over the maintenance responsibility of the house, and potentially rent to another user.

The attached lease modification proposal redraws the area leased to Sport Fit by excluding the house and a portion of the grounds surrounding the house. The summer day camp activities can be satisfied at a nearby pavilion and playground which are little used during the weekdays of the summer. The City staff is willing to extend the term of the modified lease given the positive benefit the lease provides the City.

Staff Recommendation

The staff recommends the Council approval of this Resolution to reduce the leased area by Sport Fit, enable the City to entertain leasing the building to another user, and allow Sport Fit to operate its Summer Day Camp Programs in an underutilized portion of the City's park.

ADL/dm

RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
APPROVING A THIRD MODIFICATION TO THE BOWIE RACQUET AND
FITNESS CLUB LEASE

WHEREAS, the City of Bowie has leased property within Whitemarsh Park to Bowie Racquet and Fitness Club since 1992 to operate Sport Fit, and

WHEREAS, in 2005 the City modified the lease to lease the property back to Bowie Racquet and Fitness Club which it had donated to the City of Bowie, and

WHEREAS, Bowie Racquet and Fitness Club intended the Williams Plains house and grounds donated to the City be used for additional tennis courts and other recreational offerings, and

WHEREAS, the plans for additional recreation offerings have largely not been implemented except for Summer Camp Programs for children, and

WHEREAS, it is in the interest of the City of Bowie and Bowie Racquet and Fitness Club to find a new use or tenant for the Williams Plains house, and

WHEREAS, the City of Bowie has space within Whitemarsh Park conducive to the continuation of the Summer Camp Programs, and

WHEREAS, removing the Williams Plains house from the current lease will enable the City to find a tenant that could make use of the house and maintain the building into the future, and

WHEREAS, it is in the interest of the City of Bowie and Bowie Racquet and Fitness Club to extend the important lease to Bowie Racquet and Fitness Club, who provide recreational opportunities to the community.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bowie, Maryland, that the Council authorizes the City Manager to sign the Third Modification to Lease Agreement and Concession with Bowie Racquet And Fitness Club, Inc.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a meeting on _____, 2020.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Awilda Hernandez
City Clerk

Timothy J. Adams
Mayor

THIRD MODIFICATION TO LEASE AGREEMENT AND CONCESSION

This THIRD MODIFICATION TO LEASE AGREEMENT AND CONCESSION ("Third Modification Agreement") is made this _____ day of _____, 2020, by and between THE CITY OF BOWIE, MARYLAND, a public body corporate ("Lessor"), and BOWIE RACQUET AND FITNESS CLUB, INC., a Maryland corporation ("Lessee").

Recitals

WHEREAS, Lessor and Lessee made and entered into a Lease Agreement and Concession dated September 9, 1992, recorded among the Land Records of Prince George's County, Maryland in Liber 8522, at Folio 277 (hereinafter, the "Lease"), whereby Lessor leased to Lessee all that parcel of ground situate in Bowie, Prince George's County, Maryland, more fully described in Exhibit A attached thereto (the Demised Premises"), for a term of thirty (30) years from the date thereof; and

WHEREAS, on June 17, 1997, Lessor and Lessee entered into a Lease Agreement & Concession Modification Agreement, (hereinafter, the "1997 Modification Agreement") a copy of which is attached hereto, pursuant to which Lessor modified the Lease to include an additional parcel of ground in exchange for, among other consideration, Lessee's release to Lessor of part of the Demised Premises from the Lease; and

WHEREAS, on January 24, 2005, Lessor and Lessee entered into a Second Modification To Lease Agreement And Concession (hereinafter, the "Second Modification Agreement") a copy of which is attached hereto, pursuant to which the Lease was modified to include an additional parcel of ground on which the Williams Plains House is situated in exchange for, among other consideration, Lessee's release of a certain part of the Demised Premises from the Lease; and

WHEREAS, pursuant to the 1997 Modification Agreement, Exhibit A to the lease was deleted in its entirety and replaced with a new Exhibit A ("1997 Exhibit A") constituting a revised legal description of the Demised Premises; and

WHEREAS, the Lessee has been an important tenant offering recreational opportunities to the community that complement and enhance Whitmarsh Park and the City of Bowie; and

WHEREAS, the Lessee had intended to use the Williams Plains lot and house to expand recreational offerings including tennis courts; and

WHEREAS, the additional recreation offerings by the Lessee have not been implemented except for certain Summer Camp Programs for children; and

WHEREAS, the Williams Plains House has required increased maintenance and structural repairs per evaluations conducted in March 2013 and updated March 2019; and

WHEREAS, the Lessor is willing to modify the lease area to exclude the Williams Plains house and take on the repair and maintenance responsibilities of the Lessee for the Williams Plains House as written in Article IX of the Lease; and

WHEREAS, the parties have agreed to revise again the description of the Demised Premises to remove the Williams Plains House from the scope of the Lease, as set forth in the new Exhibit A attached hereto; and

WHEREAS, the Lessee desires to continue its Children's Summer Camp programs, which it has held during the weekdays of the summer months on the grounds of the Williams Plains House; and

WHEREAS, the Children's Summer Camp programs would interfere with potential reuse of the Williams Plains House if continued on its grounds; and

WHEREAS, Lessor has a suitable Picnic Shelter southwest of the ball fields in Whitemarsh Park that is underutilized during the daytime of the summer months that can serve as a suitable replacement for the space used by the Lessee's Summer Camp Programs.

NOW THEREFORE, in consideration of the above recitals, the covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby covenant and agree as follows:

1. Recitals binding. The above recitals are incorporated herein as binding provisions hereof.

2. Amendment to lease.

2.1 Revised Exhibit A. The Second Modification Agreement Exhibit A is deleted in its entirety from the Lease and is replaced by a new Exhibit A attached hereto and incorporated herein by reference, which shall constitute the description for the Demised Premises.

2.2 Term Extension. The Initial Term of the lease shall be and is hereby extended to a January 31, 2050.

2.2.1 Optional Terms. Lessee shall have the option of two (2) additional terms of ten (10) years each. With regard to the first such term, Lessee may exercise its option at any time during the Initial Term by providing written notice to Lessor. With regard to the second optional term, Lessee may exercise its option in writing at any time during the first optional term. During each of the optional terms, the terms of the Lease Agreement, as amended, shall remain in full force and effect.

3. Permit for Picnic Pavilion Use.

3.1 During the term of this Lease Agreement, Lessee shall be entitled to a Seasonal Picnic Facility at no cost for its sole use at Whitemarsh Park on weekdays from Memorial Day through Labor Day. The Lessee's right to exclusive use of the picnic shelter is limited to Mondays – Fridays, 7:00 a.m. – 5:00 p.m.

3.2 During the Summer Camp Programs, Lessee may share use of the playground adjacent to the Picnic Shelter. The Lessor will endeavor to provide regular maintenance to the picnic shelter

outside of the period of the Summer Camp Programs. In the event of critical maintenance needs during the Summer Camp Program period, the Lessor shall provide the Lessee as much notice as feasible for the picnic shelter's unavailability.

3.3 Lessee is permitted to purchase and maintain a temporary storage shed to be placed on the hard surface adjacent to the parking lot near the pavilion. The shed must be secured by the Lessee and all permits obtained if required. The shed may remain year round, throughout the term of the lease. Final location will be coordinated between Lessee and the Lessor. Lessee shall indemnify and hold the City and its agents, officials, and employees harmless from any claims, losses, or damages by any person or entity arising from or in connection with the presence of the temporary storage shed on the City's property. Lessor shall have no obligation to repair or maintain the shed but has the right to do so if Lessee fails to maintain the shed in a safe and secure manner and in a state of good repair. Lessor shall be responsible for the costs to the City of any work it undertakes to restore the shed to a state of good repair and safe condition.

3.4 The Picnic Shelter is shown within the Special Use Area labeled on Exhibit A.

4. Continuing Obligations Under Lease. Except as expressly modified by this Third Modification Agreement, all terms, provisions, and covenants of the Lease shall remain in full force and effect.

5. No Oral Modifications. This Third Modification Agreement may only be amended, altered, or terminated pursuant to a written agreement signed by Lessor and Lessee.

6. Entire Agreement. The Lease, as modified by the 1997 Modification Agreement, further modified by the Second Modification Agreement, and further modified by this Third Modification Agreement constitutes the entire agreement among parties and supersedes any prior contemporaneous oral understandings.

7. Applicable Law. The Lease, as modified by the 1997 Modification Agreement, further modified by the Second Modification Agreement, and further modified by this Third Modification Agreement shall be construed in accordance with and governed by the laws of the State of Maryland.

8. Binding Upon Assigns. This Third Lease Modification agreement shall be binding upon parties hereto and their respective successors and assigns, but this provision shall not be deemed to permit any assignment not permitted pursuant to the provisions of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Third Modification Agreement to be properly executed as of the day and year first written above.

BOWIE RACQUET AND FITNESS CLUB, INC.

Attest: _____

By: _____

Morris B. Goldman, President

STATE OF MARYLAND:
COUNTY OF PRINCE GEORGE'S, to wit:

On this ____ day of _____, 2020, before me, the undersigned officer, personally appeared Morris B. Goldman, who acknowledged himself to be the President of Grantor, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Grantor.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

GRANTEE:

CITY OF BOWIE, MARYLAND

Attest: _____
Awilda Hernandez

By: _____
Alfred D. Lott, City Manager

STATE OF MARYLAND:
COUNTY OF PRINCE GEORGE'S, to wit:

On this ____ day of _____, 2020, before me, the undersigned officer personally appeared Alfred D. Lott, who acknowledged himself to be the City Manager of the City of Bowie, and that he, as such City Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of City of Bowie.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

This is to certify that the within instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland.

Elissa D. Levan

EXHIBIT A

