

DATE: January 14, 1998

**SUBJECT: SPRINKLERS RESTAURANT - LEASE ASSIGNMENT AND
MODIFICATION OF LEASE TO INCLUDE AN OPTION TO RENEW**

RECOMMENDATION:

- A. THAT the Board consent to an assignment of the lease for Sprinklers Restaurant from Sprinklers Restaurant Inc to Chris Chatten, or a company wholly controlled by him, subject to the assignee entering into a form of assignment acceptable to the Director of Legal Services.**

- B. THAT the lease be modified to include an option to renew, subject to the assignee not being in default under the lease, for five years and shall be on such other terms and conditions as the Board and the tenant agree, provided however that the form which shall be used, at the Board's option, shall be based on the Board's standard restaurant lease form then in existence.**

- C. THAT no legal rights shall arise hereby and none shall arise hereafter until the execution of the contemplated documents.**

BACKGROUND

Sprinklers Restaurant Inc. has been operating Sprinklers Restaurant at VanDusen Gardens since 1984. The current 5 year lease term expires on March 31, 2000.

Rent is 6% of gross food and liquor revenues. In addition, the operator pays the Board for utilities (\$1,091 per month in 1997) and an amount in lieu of property taxes - currently \$2.50/sq ft for year 3 (\$708.34 per month), \$3/sq ft for year 4 (\$850 per month) and \$4/sq ft for year 5 (\$1,133.34 per month).

Sprinklers Restaurant Inc. has been experiencing financial difficulties and, on November 12, 1997, it filed a Notice of Intention to File a Proposal pursuant to the terms of the Bankruptcy and Insolvency Act (BIA).

The matter was brought before the Board at an in-camera meeting of the Community Services and Budgets Committee on November 17, 1997. Committee members agreed to consider adding a further three years to the present lease term, if a suitable operator was found.

DISCUSSION

Proposal

The Proposal under the BIA, which was filed on December 11, 1997, calls for payments to be made to the creditors from two sources of funds. The owner, Ms. Helen Redpath, is selling:

- her personal residence
- the restaurant's assets and operations.

Net revenues from these sales will be paid to the Proposal Trustee, Deloitte & Touche Inc. and, after payment of the Trustee's fees and costs, these funds will be distributed to Sprinklers' creditors.

Ms. Redpath has an agreement for sale of her residence, closing on February 26.

Sale of Restaurant

The sale of the business is being handled by Ms. Redpath and her lawyer. The sale is subject to the approval of the Trustee and the Proposal's Inspectors (the elected representatives of the creditors), such approval not to be unreasonably withheld. The assignment of the lease is subject to the approval of the Board.

Ms. Redpath's lawyer approached several local restaurant operators and groups, which he, Ms. Redpath or Board staff considered might be interested in Sprinklers. He received no indication of interest from these groups. Several other parties also expressed an interest and were provided with information.

Six offers were received by Ms. Redpath. Taking all aspects of these offers into account, she considered that the best one was from Chris Chatten, and notified the Trustee that this was the offer she wished to accept. The Trustee, with the consent of the Inspectors, has approved this proposed sale. Closing date for the sale is January 29.

Mr. Chatten's offer was made subject to obtaining the Board's consent to assignment of the existing lease, and an additional five year lease term on its expiry.

There is some urgency over concluding a sale of the business. Ms. Redpath has indicated that she is prepared to continue operating Sprinklers for a limited period until a sale has been finalised, in order to ensure that the restaurant remains open and can be sold as a going concern. This should maximise the value of the business and the return to the creditors. It is also of benefit to VanDusen Gardens if the restaurant does not temporarily close down.

However, Ms. Redpath is concerned about incurring additional personal liabilities for severance pay to the employees. There is also a question as to whether current expenses can be met out of operating revenues in the slow business months of January and February. As a result, it is doubtful whether the restaurant will remain open after the end of January, if a sale is not concluded by then.

Assignment of Lease

Any sale of the business is subject to the consent of the Board to an assignment of the lease to the purchaser. The relevant clause of the lease, Section 2.05, states:

"The Lessee will not sublet the Demised Premises or assign this lease, or any part of the lease or mortgage this lease, or part with possession of all or any part of the Demised Premises without having first obtained the written consent of the Lessor, which consent may be arbitrarily and unreasonably withheld."

Prospective purchasers of the business expressed concerns over the short period of just over two years remaining on the lease, with no options to renew. It was felt by all parties involved that it would be difficult to attract a quality operator where there was such uncertainty over the future of the location.

Staff informed Ms. Redpath' s lawyer that he should indicate to prospective purchasers that they were prepared to recommend to the Board that an additional five year term be made available to the assignee of the lease, under terms and conditions to be negotiated at that time. It was made clear that this additional period had not yet been approved by the Board, but that this recommendation would be presented to the Board at the first opportunity.

The offer from Mr. Chatten has been made on the basis that this additional five year term is available.

Assessment of Prospective Assignee

(o/s - comments re. Mr. Chatten's history at Sprinklers, experience, confirm the type of restaurant he will run, + confirm comments re references and approval of VanDusen Assoc.)

Mr. Chatten has indicated that he proposes operating a restaurant reasonably similar in nature to Sprinklers. He is aware that the restaurant has to have a broad appeal to garden visitors and be accessible for families.

He has met with VanDusen Gardens management, and the president of the VanDusen Botanical Gardens Association, none of whom have expressed any objections to him taking over the restaurant operations.

He also indicated that, at least initially, he will rehire most of the employees.

Staff have obtained satisfactory business and financial references on the purchaser and do not believe that the Board has any reason to withhold approval of this assignment of the restaurant lease.

Recovery by Board on its Claim Against Sprinklers

Based on information provided by the Trustee, if the sale of the residence closes as anticipated, Mr Chatten' s offer for the business is accepted, and there are no significant additional claims filed in the Proposal, the Board should recover \$30,000 - \$35,000 on its total claim of \$41,000.

JUSTIFICATION

The prospective new operator of Sprinklers has the experience and qualifications to operate the restaurant at VanDusen Gardens, and appears to be willing to run a type of operation acceptable to the Board.

Granting him an option to renew the lease for an additional five year period should ensure that he is making a long term commitment to the restaurant. It also gives the Board the freedom to negotiate terms for a new lease at the expiry of the present lease term.

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