



Date: March 18, 1999

TO: Board Members - Parks and Recreation
FROM: General Manager - Parks and Recreation
**SUBJECT: LEASE FOR THE FOOD SERVICE AT THE
VANCOUVER AQUATIC CENTRE**

RECOMMENDATION

1. THAT the Board grant the lease for the food service at the Vancouver Aquatic Centre in the name of Serge Borys instead of HNR Inc.
2. THAT all other conditions approved by the Board on July 28, 1997 remain the same.
3. THAT no legal rights shall arise hereby and none shall arise thereafter until the execution of the contemplated documents.

BACKGROUND

On July 28, 1997 the Board approved the following resolutions:

1. *THAT HNR Inc. be granted a lease for a five year period from September 19, 1997 to September 18, 2002.*
2. *THAT the rent remain at 10% of the first \$100,000, and 15% over \$100,000 of annual gross revenues, for the new lease period.*
3. *THAT a payment in lieu of property taxes be phased in and charged at the rate of 50 cents/sq.ft for the first year, 75 cents/ sq.ft. for the second year, \$1.00/sq. ft. for the third year, \$1.25/sq. ft. for the fourth year and \$1.50/ sq. ft. for the fifth year.*
4. *THAT no legal rights shall arise hereby and none shall arise thereafter until the execution of the contemplated documents.*

DISCUSSION

The staff recommendation that the above lease be granted in the name of HNR Inc. was based on a proposal submitted by Mr Serge Borys, one of the two principals of the company, that stated:

“HNR Inc., is a company created for the purpose of operating a restaurant in the Aquatic Centre”.

Following the Board resolutions Mr Borys operated the food service under the name of Heritage NR Enterprises Ltd. In the preparation of a new lease agreement a corporate search was conducted of this company and it was ascertained that the sole director was in fact another operator to whom Mr Borys had sold his shares.

Rental cheques and other outstanding monies from the new operator were not cashed and he was advised by our solicitor that the Board had not approved his occupancy of the premises and he was requested to vacate forthwith. He complied with these instructions and Mr Borys is once again operating the food service.

Our solicitor and staff met with Mr Borys and requested immediate payment of all outstanding rental and utility payments and this has now been completed satisfactorily.

Secondly, Mr Borys was told that in light of assigning the lease without permission of the Board staff would recommend that he continue as the operator but only under his name and that he could not form a company for the purpose of operating the food service. This would give the Board some assurance that Mr Borys would be totally responsible for the operation for the balance of the agreement. Language in the agreement protects the Board against poor performance and remedies are available if required.

SUMMARY

By assigning the premises without the Board's approval, the food service operator at the Aquatic Centre has conducted himself in a manner that is unacceptable.

If the Board is in agreement, Mr Borys will have an opportunity to operate the food service under his own name until the expiry of the term.

Prepared by
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