

# Memo



**Date:** May 5, 2010  
**File:** 0870-20-023  
**To:** City Manager  
**From:** Manager, Property Management  
**Subject:** ASSIGNMENT OF LEASE - JJ'S CAFÉ (CHAPMAN PARKADE)

Report Prepared by: T. Abrahamson, Property Officer

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## Recommendation:

THAT Council approve the City entering into an Assignment of Lease, in the form attached, between the City of Kelowna and Duncan's Bistro and Bar Ltd. for the use of City-owned property as shown on the plan attached, for the remainder of the current five (5) year term expiring on January 31, 2013. All terms and conditions of the current Lease to remain in force and effect;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the attached Assignment of Lease agreement.

## Purpose:

To enter into an Assignment of Lease from Julian Axe, dba JJ's Café, to Duncan's Bistro and Bar Ltd. operated by Duncan and Barbara Kowk.

## Background:

The Assignor operates a café known as JJ's Café & Bar located in the Chapman Parkade at 345 Lawrence Avenue consisting of 1,408 sq.ft. of commercial space. The current lease is in year three (3) of a five (5) year lease and will expire January 31, 2013. Upon expiration, the Assignee is able to renew, at the City's sole option, for a further term of five (5) years under the same terms and conditions save and except annual lease rates and further terms of renewal.

## Legal/Statutory Authority:

Community Charter, Sec. 26 - Disposal of Municipal Property

## Legal/Statutory Procedural Requirements:

Community Charter, Sec. 94 - Notice Requirements

## Considerations not applicable to this report:

Internal Circulations:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

Technical Requirements:

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External Agency/Public Comments:  
Communications Considerations:  
Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of this Lease.

Submitted by:

  
\_\_\_\_\_  
Ron Forbes, Manager  
Property Management

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building Services



THIS ASSIGNMENT dated for reference the 12<sup>th</sup> day of April, 2010.

BETWEEN:

JULIAN AXE, businessman, of  
20-1361 Glenview Avenue  
Kelowna, BC V1Y 7B3

(the "Assignor")

AND:

DUNCAN'S BISTRO AND BAR LTD., a business corporation  
incorporated under the laws of British Columbia  
with its head office at 967 Westview Way  
Kelowna, BC V1Z 3Y9

(the "Assignee")

AND:

DUNCAN KOWK and BARBARA KOWK, businesspersons of  
967 Westview Way  
Kelowna, BC V1Z 3Y9

(the "Indemnitors")

AND:

CITY OF KELOWNA, a municipal corporation,  
having an address of 1435 Water Street  
Kelowna, BC, V1Y 1J4

(the "Landlord")

WHEREAS:

- A. The Assignor operates a café known as JJ's Café & Bar located in the commercial premises comprising approximately 1408 square feet on the ground floor in that building located at 345 Lawrence Avenue, Kelowna, British Columbia as shown on the attached Schedule "A" (the "Premises");
- B. The Assignor leases the Premises pursuant to a Head Lease, dated March 10<sup>th</sup>, 2003, between the Landlord and THE VERVE COFFEE HOUSE 2001 LTD., as tenant, and the Second Assignment of Lease dated May 1, 2008 between SOLANA CONSULTING & INVESTMENT CORP., as assignor and JULIAN AXE, as assignee and the Landlord, and the First Assignment of Lease dated April 5<sup>th</sup>, 2004, between the THE VERVE COFFEE HOUSE (2001) LTD., as assignor, and SOLANA CONSULTING & INVESTMENT CORP., as assignee and the Landlord, and by way of a Lease Renewal and Modification dated February 1, 2008, between the Landlord and METRO CAFÉ (operated by SOLANA CONSULTING & INVESTMENT CORP.), as the tenant, wherein the Landlord demised the

Premises to METRO CAFE, for a term of five (5) years, commencing on the 1st day of February, 2003 and a renewal term for a further five (5) years. The Head Lease, Second Assignment of Lease, First Assignment of Lease and Lease Renewal and Modification shall be collectively referred to as the "Lease", a copy of which is attached hereto as Schedule "A";

- C. The Assignor has agreed to assign the Lease to the Assignee as of April 12, 2010, (the "Closing Date"), and the Assignee has agreed to accept such assignment of the residue of the Lease upon its renewed and modified terms as set forth above; and
- D. Section 3.3 of the Lease requires the consent of the Landlord to any such assignment of the Lease and the Assignor and the Assignee have requested that the Landlord grant its consent.

NOW THEREFORE THIS INDENTURE WITNESSES THAT in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties covenant and agree as follows:

- (1) As and from the Closing Date, the Assignor grants, assigns, transfers, and sets over absolutely and unconditionally unto the Assignee all of the Assignor's right, title and interest both at law and in equity in and to the Premises and the Lease, including without limitation, the unexpired residue of the term thereof and any rights of renewal contained therein and all other benefits and advantages to be derived therefrom.
- (2) The Assignor represents and warrants to the Assignee that:
  - (a) subject to receipt of the Landlord's consent, the Assignor has full right and authority to assign his interest in the Premises and the Lease as contemplated hereby;
  - (b) the Assignor's interest in the Premise and the Lease is free and clear of all liens, charges, encumbrances and judgments of any nature or whatsoever;
  - (c) the Lease is good, valid and subsisting and the Assignor has observed and performed each and every covenant, agreement and obligation of the Assignor therein required to be observed or preformed by him prior to the Closing Date; and
  - (d) the Lease has not previously been terminated, amended or assigned, other than as set out herein.
- (3) As and from the Closing Date, the Assignee assumes and agrees to observe, perform, be bound by and be liable under, as an obligation of the Assignee, each and every covenant, agreement and obligation of the Assignor under the Lease required to be observed or preformed on or after the Closing Date.
- (4) The Assignor will indemnify, defend and save harmless the Assignee from and against all actions, suits, losses, damages and expenses for or on account of the non-observance or non-performance of any of the covenants, agreements or obligations contained in the Lease arising prior to the Closing Date, and the Assignee and the Indemnitors will indemnify, defend and save harmless the Assignor from and against all actions, suits, losses, damages and expenses for or on account of the non-observance or non-performance of any of the

covenants, agreements or obligations contained in the Lease arising on or after the Closing Date.

- (5) The Landlord consents to the assignment by the Assignor to the Assignee of all of the Assignor's right, title and interest in and to the Premises, the Lease and the unexpired residue of the term thereof and any rights of renewal contained therein, and acknowledges that the Assignor is not now in default under the terms of the Lease.
- (6) The parties hereto acknowledge that the Lease is now on year three (3) of a five (5) year term commencing February 1, 2008 and ending January 31, 2013 with a further right of renewal of five (5) years commencing February 1, 2013 and ending January 31, 2018.
- (7) The consent of the Landlord shall not be deemed to authorize any further or other assignment or subletting or the granting of any right or licence of possession or occupancy without permission of the Landlord and subject to the terms and conditions set out in the Lease.
- (8) The Assignee agrees to obtain insurance for the Premises in accordance with the Lease effective as of April 12, 2010 and shall provide evidence of same to the Assignor on or before April 11, 2010.
- (9) The Assignor agrees with the Assignee that they will from time to time and at all times hereafter at the request of the Assignee execute and deliver to the Assignee such further assurances for the better and more perfect assignment to the Assignee of the Lease, or for its registration at the appropriate land title office, as the Assignee may require.
- (10) This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and assigns.
- (11) The invalidity or unenforceability of any provision of this Agreement or any part thereof shall not affect the validity or enforceability of the remainder of this Agreement or the remainder of such provision.
- (12) This Agreement shall be governed by and construed in accordance with the law of British Columbia.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**BY THE ASSIGNOR:**

  
\_\_\_\_\_  
JULIAN AXE

  
\_\_\_\_\_  
WITNESS:


ANDREW K. BRUNTON  
BARRISTER & SOLICITOR  
#301, 1665 Ellis Street  
Kelowna, BC V1Y 2B3  
Phone: (250) 762-2108

**BY THE INDEMNITORS:**

  
\_\_\_\_\_  
DUNCAN KOWK

  
\_\_\_\_\_  
BARBARA KOWK

  
\_\_\_\_\_  
WITNESS: MATHEW DOBERL

  
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WITNESS: MATHEW DOBERL

**BY THE ASSIGNEE:**

DUNCAN'S BISTRO AND BAR LTD.

Per:   
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**BY THE LANDLORD:**

CITY OF KELOWNA, by its authorized signatories

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

