





CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	May 18, 2022
SUBJECT/REPORT NO:	Lease Agreement – Lister Block, Unit 106, 28 James Street North (PED22086) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	David McCullagh (905) 546-2424 Ext. 1647 Delfina Duarte (905) 546-2424 Ext. 6627
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Raymond Kessler Chief Corporate Real Estate Officer Planning and Economic Development
SIGNATURE:	

Discussion of Confidential Appendix “B” to this report in closed session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the *Ontario Municipal Act, 2001*:

- A proposed or pending acquisition or disposition of property for City or a local board purpose.

RECOMMENDATION

- (a) That a Lease Agreement between City of Hamilton (Lessor) and 2637143 Ontario Inc. dba Electric Diner (Lessee), for the subject premises located as identified in Appendix “A” to Report PED22086 and based substantially on the terms and conditions outlined in Appendix “B” to Report PED22086, and such other terms and conditions deemed appropriate by the General Manager of Planning and Economic Development, be approved and entered into by the City of Hamilton;

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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- (b) That all rental proceeds including percentage rent and operating cost recoveries, from the Lease Agreement with 2637143 Ontario Inc. dba Electric Diner (Lessee) be credited to Account No.46010-790016;
- (c) That all costs, including any Lessor work outlined in Appendix “B” to Report PED22086, related to the Lease Agreement with 2637143 Ontario Inc. dba Electric Diner (Lessee), including real estate and legal costs of \$33,885, be authorized and be funded from Account No. 55778-790016 and credited to Account No. 55778-812036 (Real Estate – Admin Recovery);
- (d) That the General Manager, Planning and Economic Development Department or designate, acting on behalf of the City as Lessor, be authorized to administer the Lease Agreement with 2637143 Ontario Inc. dba Electric Diner (Lessee) and provide any requisite consents, approvals, and notices related to the Lease Agreement with 2637143 Ontario Inc. dba Electric Diner (Lessee);
- (e) That the City Solicitor be authorized to amend and waive terms and conditions on such terms as considered reasonable to complete the leasing transaction, respecting the Lease Agreement with 2637143 Ontario Inc. dba Electric Diner (Lessee);
- (f) That the Mayor and Clerk be authorized and directed to execute the Lease Agreement with 2637143 Ontario Inc. dba Electric Diner (Lessee), or such other form and all other necessary associated documents with all such documents to be in a form satisfactory to the City Solicitor;
- (g) That Appendix “B” to Report PED22086 respecting Lease Agreement – Lister Block, Unit 106, 28 James Street North remain confidential and not be released as a public document.

EXECUTIVE SUMMARY

This Report seeks Council approval to enter into a Lease Agreement with 2637143 Ontario Inc. dba Electric Diner as Lessee located within the Lister Block at 28 James Street North, Unit 106 (the “Premises”).

In April 2020, the Wendel Clark’s restaurant ceased operating in the subject Premises. Consequently, and despite being constrained by the difficulties caused by the COVID pandemic through lockdowns and restrictions, City staff sought to release the subject Premises to another restaurant use being consistent and synergistic with the dining and patio destination that has developed along King William Street.

Alternatives for Consideration – Not Applicable

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Transaction as outlined in Appendix “B” to Report PED22086 attached;

That all rental proceeds, including percentage rent and operating costs, from the Lease Agreement with 2637143 Ontario Inc. dba as Electric Diner (Lessee) be credited to Account No.46010-790016; and,

That all costs, including any Lessor work outlined in Appendix “B” to Report PED22086, related to the Lease Agreement with 2637143 Ontario Inc. dba as Electric Diner (Lessee), including the real estate and legal costs of \$33,885, be authorized and be funded from Account No. 55778-790016 and credited to Account No. 55778-812036 (Real Estate – Admin Recovery).

Staffing: N/A

Legal: Legal Services will be required to assist in the preparation of the contemplated Lease Agreement and any necessary documents required to complete this leasing transaction.

HISTORICAL BACKGROUND

On November 4, 2014, the City of Hamilton terminated a lease agreement with 28 Lister Inc. and Chris DesRoches due to default of the lease for non-payment of rents, leaving Unit 106 at 28 James Street North vacant (Premises) with a requirement to re-lease. On December 19, 2014, the City issued a Request for Proposal (RFP) for a restaurant to occupy the Premises within the Lister Block Building. As a result of this RFP process, a Lease Agreement dated April 1, 2015 was entered into with Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. operating as Wendel Clark’s Classic Grill and Bar.

In December 2016, the Franchisee, Muscat-Taylor Financial Holdings Inc., abruptly ceased business operations from the Premises and terminated its franchise agreement with the Franchisor, WC Franchising Inc.

As a result of WC Franchising Inc. operating as Wendel Clark’s Classic Grill and Bar having ceased its operations from the Premises following failure to re-franchise and complete an Assignment of its Lease to another lessee for the subject location, in April 2020, WC Franchising Inc. provided the City as Lessor with notice exercising its available option terminating the Lease and surrendered the Premises and its leasehold interest.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Portfolio Management Strategy – Real Estate Management Plan

City Council, at its meeting of November 24, 2004, adopted the City's Portfolio Management Strategy Plan, which established a formalized process to be consistently applied across all areas of the City to guide the management of the City's real property.

RELEVANT CONSULTATION

- Public Works, Facilities Planning and Business Solutions;
- Planning and Economic Development, Heritage Resource Management;
- Planning and Economic Development, Business Development Office;
- Corporate Services Department, Legal and Risk Management Services Division;
- Financial Planning Administration and Policy Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

After failure by WC Franchising Inc. (operating as Wendel Clark's restaurant), the previous Franchisor and Guarantor of the Lease, to rebrand and complete an Assignment Agreement to another Lessee, in April 2020, WC Franchising Inc. exercised its option to terminate the Lease, making the Premises available to be released.

After responding to inquiries from interested parties to the posted restaurant leasing opportunity at Lister Block and following scheduled real estate showings of the Premises, City staff engaged into discussions with the proposed Lessee.

The proposed Lessee, operating as Electric Diner in its current location in Hess Village at 96 George Street, is looking to expand by adding a second dining location in downtown Hamilton in a similar trending area towards dining, outdoor patio and closer to the office district.

At the onset of discussions with Electric Diner, Corporate Real Estate staff did bring forward and disclosed the heritage aspects of Lister Block, the constraints and limitations to their leasing space within this heritage facility. Through the Business Development Office relevant consultation with Heritage Resource Management has occurred directly with Electric Diner as lease discussions progressed.

The premises space as outlined in Appendix "A" to Report PED22086, provides for the creation of a foyer space in the premises area to better receive customers by incorporating the entrance off James Street North that includes the Ann Foster windows.

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Preserving the heritage of Lister Block, no external works to Lister Block are being undertaken by or for the Lessee by way of this Lease. In addition, the Lessor reserves the right of approval on any signs or advertising that may be visible from the leased premises including the Ann Foster windows. Otherwise the Lessee's works are being limited to the interior of the leased premises and existing patio area as summarized in the terms and conditions outlined in Appendix "B" to Report PED22086.

The recommendations of this Report PED22086 and the proposed use of the Premises as a casual dining restaurant remains consistent with the preferred use and criteria established by the Portfolio Management Committee (PMC) on March 18, 2010.

The terms and conditions outlined in confidential Appendix "B" to PED22086 attached are deemed fair, reasonable and at market value by staff of the Chief Corporate Real Estate Officer.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED22086 – Location Map, Identification of Premises Area and Floor Plan

Appendix "B" to Report PED22086 – Confidential - Major Terms and Conditions

DM/DD/jd