To: City Executive Board

Date: 12 September 2012

Report of: Head of Corporate Assets

Title of Report: LEASE RESTRUCTURING OF 41-47 GEORGE STREET, OXFORD

Summary and Recommendations

Purpose of report:	To report the decision taken by Peter Sloman, CEO under paragraph 9.3 (b) of the Constitution in approving the surrender of the existing lease and the simultaneous re-grant of a new lease of premises at 41-47 George Street, Oxford
Key decision?	No
Executive lead member:	Cllr Ed Turner, Deputy Leader of the Council, Finance, Corporate Assets and Strategic Planning Board Member
Report approved by:	David Edwards, Executive Director
Finance:	Nigel Kennedy
Legal:	Lindsay Cane
Recommendation(s):	The Board is asked to note the action taken by the CEO in approving the restructuring of the lease on the terms as detailed in the confidential not for publication Appendix 3, and otherwise on terms and conditions to be approved by the Head of Corporate Assets.

Appendices

Appendix 1 – Plan of site
Appendix 2 - Risk Register
Appendix 3 – Confidential Not for Publication Appendix

Background

1. This report advises of action taken in respect of the restructuring of a lease of premises owned by Oxford City Council as shown on the plan attached at Appendix 1. The proposed new tenant required completion of the transaction within a very tight timescale and approval under delegated authority was therefore sought from the CEO under the provisions of paragraph 9.3(b) of the Constitution. The CEO gave such authority on 30 August 2012 and, at the time of writing, the transaction is proceeding to completion. The remainder of this report mirrors that made to the CEO on which he based his decision.

Body of the Report

2. The property, comprising restaurant on ground floor and basement with residential above, is let on a lease for a term of 20 years commencing 25th March 1996. The current rent payable under the lease is £115,000 pax, subject to an outstanding review w.e.f. 25 March 2011.

3. The lease was originally granted to City Centre Restaurants (UK) Limited, now known as The Restaurant Group (UK) Limited (TRGL), who developed the building into its present configuration and uses.

4. In 2006, the lease was assigned by them to Café Uno Brasseries Limited, trading as Brasserie Gerard. Unfortunately in late 2011, the tenant company went into administration. The administrator ceased trading from the premises on 24 December 2011, since when the restaurant has been vacant.

5. Fortunately, the Council was able to recover ongoing rental payments from TRGL under the provisions of an Authorised Guarantee Agreement given by them on the 2006 assignment, which prompted TGRL to take back an assignment of the lease from the administrator in April 2012 with the Council's consent.

6. TGRL (having no desire to reoccupy the premises themselves) have been marketing the residue of the lease (now only some 3.5 years left to expiry) through Fleurets since they became aware of their liabilities in January 2012.

7. Following some 6 months of marketing, a proposal has now been made by a credible operator to take a new lease of the whole building. TGRL have therefore approached the Council with a view to facilitating the restructuring of the lease, as the new operator requires a longer term over which to write off their fitting out investment than the residue of the existing lease.

8. The Council has been carrying out negotiations with both TRGL and the new tenant to effect a surrender of the existing of the lease and the re-grant of a new lease on the basis of the Heads of Terms set out in the

confidential not for publication Appendix 3. However, the new tenant has stated that they will only proceed with the transaction if it completes very imminently, to allow fitting out to be completed in time for the Christmas trade.

9. This proposal will secure the premises in the long term on a new full repairing lease at a guaranteed increased rent. It will bring into George Street, one of the City's most important leisure areas, a new high quality restaurant operator, who will enhance the street's tenant mix and vibrancy . It will see vacant premises brought back into use, bringing certainty of rates income, and the building refurbished.

10. The alternative to not restructuring the lease in this manner would see the new operator walk away from the situation with the risk that TGRL would then seek to mitigate their position by assigning or under-letting under the existing lease to an inferior operator, at a lower rent. The Council will be left to fight the 2011 rent review, which would have an uncertain outcome. At lease expiry TRGL (if still tenant) will exit the lease, leaving the Council either with vacant premises to re-let or potentially with an inferior covenant to deal with. Restructuring the lease now to an identified high quality operator, as proposed, removes all of these potential risks.

<u>Risk Implications</u>

11. A risk assessment has been undertaken and the risk register is attached at Appendix 2

<u>Sustainability and climate change implications</u>

12. None arising out of this report.

<u>Equalities implications</u>

13. None arising out of this report.

<u>Financial implications</u>

14. The new lease is to be granted at a rent which is a guaranteed increase over the current passing rent. Whilst there is an outstanding rent review under the existing lease, there can be no certainty that the outcome would give a better result, or even any uplift at all. The new lease is to be granted at the new rent from the review date so the Council's potential uplift is protected in any event.

15. The current tenant TRGL, whilst a more established covenant than the proposed tenant, clearly will have no interest in renewing at lease expiry in 3.5 years time. The restructuring of the lease now therefore avoids any risk of the Council incurring a void, with consequent loss of rental

income, and the incurring of business rates liability, marketing and other associated costs at lease end.

16. Fleurets advise that no other operator has come forward to take either an assignment or a new lease despite 6 months of marketing. Given the overall circumstances, the agreed terms represent best consideration to the Council and are recommended for acceptance accordingly.

17. TRGL will pay the Council's reasonable legal and surveying fees incurred in the overall transaction, together with other associated costs. They will also act as guarantor to the new lease, for a limited period.

Legal Implications

18. The power to let the premises is contained within s123 of the Local Government Act 1972 for best consideration. The terms of the lease restructuring have been fully negotiated with both the existing and the proposed tenants.

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APPENDIX 1

SEE ATTACHED PLAN

Appendix 2 **CEB Report Risk Register**

Approval to restructure a lease on 41-47 George Street, Oxford

Risk Score	**Impact Score**: 1 = Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic **Probability Score:** 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain

No.	Risk Description Link to Corporate Objectives	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk	
		I	P			I	P	Action:	Outcome	Q	Q	Q	Q	I	P
1.	Negotiations fail with the tenant	3	3	Tenant/New Tenant/OCC fails to agree terms	Mitigating Control: Close contact during documentation process.	2	2	Ongoing contact throughout process to ensure the terms of a surrender and new lease are agreed and completed without delay.	Required: Successful completion of the lease. Milestone Date: 10th September 2012.	1	2	3	4		