

New Deal Café Special Membership Meeting

June 7, 2009



Agenda (1 of 2)

- Call to Order, 7 p.m. -- Bill Jones, Parliamentarian
- Report on Closing of Café (this presentation)
- Motions & Discussion
 - 1 minute for initial chance to speak
 - 3 minutes for subsequent chances by same individual

Agenda (2 of 2)

Motions

1. Kareem Kmaiha shall be temporarily reinstated as general manager for a period of 45 days
2. An election shall be held to form a special audit committee of five New Deal members
3. The members of the audit committee shall be given access to all written contracts
4. The members of the audit committee shall review all written contracts and supporting material
5. The members of the special audit committee shall submit a report to a special meeting to be held 45 days from June 7, 2009
6. In the above special meeting (to be held 45 days from June 7, 2009), the members shall be given the opportunity to debate and then cast a vote to determine whether Kareem Kmaiha should be offered the opportunity to enter into a new five-year contract

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Original Agreement between New Deal Café and Manager (April 2008)

- Manager responsibilities
 - Operate food operation & sell alcoholic beverages
 - Pay rent (\$3417), utilities, insurance, operating costs
 - Pay fee (\$4000) to coop for right to operate restaurant in NDC space
 - Manager allowed to make unlimited income
- New Deal Café (NDC) provides
 - Music and arts
 - Volunteers
 - Beer and wine manager
 - Established clientele, reputation
- Duration
 - Effective April 1, 2008 for 5 years with 5-year option
 - Matches timeframe of lease as negotiated by board

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Finance: The Big Picture

- Board has fiduciary responsibility to keep business in healthy condition.
 - Article 8, Section 9 of Bylaws: The Board of Directors shall make sure the books are kept in good shape either by hiring an outside accounting firm or through in-house talent.
- The Café
 - Has survived its many financial difficulties over the years
 - Is now in its 15th year of operation, exceeding the typical new restaurant that goes out of business in the first three years
 - Still has a debt of over \$100,000

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Origins of NDC Loans and Debts

- Loans taken out by NDC require Board approval and a Board member to co-sign
- October, 2005- President Richard McMullin/\$8,000 /GCC/cash flow shortfall
- August 2006 - Board/Bill Wilkerson/\$20,000 BOA/new refrigerator, pay bills
- November 2006 - Board/\$30,000/ BOA/cash flow problem
- Spring, 2007 - Board/\$14,000/BOA/cash flow shortfalls
- September 2007 - Peter May/\$18,000/BOA/ for two payrolls, and rent
- February 15, 2008 - Members loan the Café \$13,700
- April, May, June 2008 - Board/\$10,500/ BOA/three months rent

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Kitchen Renovation (April-June 2008)

- Manager Role
 - Pay for new gas kitchen (appliances, gas & electric lines)
 - Pay for fire suppression system, hood, and A/C repair
 - Clean and repair floor, pay for patio fencing
 - Install vegetable sink, ice machine, new mop sink.
 - MUCH HARD WORK BY THE MANAGER
- NDC Role
 - Plan renovation project, obtain estimates, hire contractors, get permits
 - Provide **free general contractor** to manage 3 month project
 - Provide free installation of hood, exhaust, air intake, vents, exhaust fan, air intake fan, cutting of holes in roof
 - MUCH SWEAT EQUITY BY NDC VOLUNTEERS

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Café Infrastructure

- Fully equipped Café
 - Kitchen, including dish sink and sterilizer, 2 double door refrigerators, freezer, microwaves, prep table, 4 stainless kitchen tables, dishes, glasses, china, utensils, cookware
 - Front and back room, including bar, stage/equipment; bathrooms, office and storage
 - HVAC & electrical equipment
 - 60 chairs, 20 tables, couches, counters, sideboard tables, china cabinets, bookcases
 - Includes donation of \$4,000 worth of chairs
 - Permits & licenses: Use & Occupancy, trader's license, tax identification numbers, beer & wine license, wine tasting license, municipal liquor license

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Successful Re-opening (June 2008)

- Re-opened June 2008, with much hoopla and a welcome from the City government
- Patrons enjoyed Chef Karim's new menu, fast service, professional operation, extremely clean café, new furnishings, and outside patio.
- The Cooperative expanded the music program to six days a week with multiple performances on weekends.
- Art shows, Reel & Meal returned as before

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Contractual Dispute Financial Problems

- October 2008 - Slowing economy causes manager to stop full payments to Café
- December 2008 - NDC offers manager lowered monthly payment and proposes bar management agreement to fulfill manager's contracted obligation
- January 2009 - Board declines advice of NDC attorney to use enforcement mechanism in agreement to preserve legal rights of cooperative
- January 2009 - NDC expands and operates bar to make up for monthly payments from manager
- February 2009 - Board tries to discuss amendment to agreement to formalize bar arrangement
- April 15, 2009 - Manager hires lawyer and demands NDC "cease & desist" operation of bar

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Contractual Dispute Potential Tax Liability

- October 2008 - NDC concerned about its inability to verify books of manager using NDC tax identification number (TIN)
- November 2008 - CPA advises NDC to have manager use separate TIN
- February 2009 - NDC Board requests in writing that Manager stop using NDC tax identification number and obtain separate TIN
- February 2009 - NDC CPA assists manager's bookkeeper in setting up a separate TIN
- April 2009 - Filing of 2008 tax return a point of contention

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Contractual Dispute Legal Issues

- April 15, 2009 - Manager's lawyer demands NDC "cease and desist" from operating bar
- April 22, 2009- NDC sends manager "notice of breach" of contract; gives 10 days to correct the breach
- May 11, 2009 - Board proposed to lower monthly payment and for the NDC to operate bar. Warns manager that time running out
- May 13, 2009 - Board has Café locks changed to protect legal rights of agreement
- May 14, 2009 - Manager offers to pay lower amount to permanently take over lease from Café. If Café then went out of business, the co-op would NOT own the lease.
- May 18, 2009 - Board sends "notice of termination" of agreement

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Notification to membership

- December 16, 2008 -- e-mail message to current membership advising of increasingly worrisome financial problems; potential loan defaults
- February 9, 2009 -- At annual membership meeting, included financial status report and a report on use of bar proceeds to cover critical financial obligations
- April 2009 - Lawyer advises board about the negative impact that speaking publicly about legal dispute could have on potential litigation by manager
- May 13, 2009 - Board notifies members of temporary closing of Café
- May 18, 2009 - Board notifies members of termination of manager's contract

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Steps Taken to Re-open Café

- Board continues to offer contract revisions
- Board searches for temporary or permanent replacement chef
 - 17 responses to Craigslist advertisement in one day
- Manager starts search for new location
- Café re-opens on weekends with volunteer staff, music and limited menu

- Manager and Board agree to restart negotiations with an intermediary

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Renegotiated Contract

- Marathon sessions on May 24 and June 1
- Manager and Board reach new terms of agreement.
 - Manager's monthly fee is reduced
 - Moneys owed to NDC due to non-payment of fees reduced
 - Manager agrees to conditions for NDC to operate bar
 - Many other issues addressed
- Both Chef Karim, Maria and Board are hopeful for the future of the New Deal Café