



Exhibition Place

Item No. 17

June 26, 2013

ACTION REQUIRED

To: The Board of Governors of Exhibition Place

From: Dianne Young, Chief Executive Officer

Subject: **Expansion of MLSEL Office Space in Ricoh Coliseum**

Summary:

This report recommends the expansion of the office space leased by Maple Leaf Sports & Entertainment Ltd (MLSEL) pursuant to the sublease (“Sublease”) between BPC Coliseum Inc. (BPC) and MLSEL which was approved by the Board/City, as landlord of the lease between the Board/City and BPC.

Recommendations:

It is recommended that:

- 1) The Board enter into a Lease Agreement with MLSEL on the terms and conditions outlined in this report and such other terms and conditions agreed to by the CEO and City Solicitor; and**
- 2) Direct that the confidential information contained in the Confidential Attachment not be released publicly in order to protect the competitive position and the future economic interests of Exhibition Place.**

Financial Impact:

The annual rent paid by MLSEL pursuant to the Sublease with BPC is sufficient to pay the debt of the Ricoh Coliseum capital project, the property taxes and provide an annual return to the equity contributors, BPC and the Board/City. MLSEL also makes annual contractual payments to a capital reserve fund to be used within the Ricoh Coliseum and any unused funds will be retained by the landlord at the end of the lease term. In addition, since July 2005, MLSEL has invested in infrastructure improvements outside the capital reserve fund and independent of any contribution from the landlord. Finally, the Board (not shared with BPC) receives additional net revenues from parking and service fees resulting from event activities in Ricoh Coliseum that cumulatively, since 2005, total approximately 1.95M. The new Lease Agreement between the Board and MLSEL will result in additional net rental income to the Board as set out in the Confidential Attachment I.

Decision History:

A meeting of the Business Development Committee was held on June 26, 2013, however, given some last minute business meetings, only the Chair and one member (Wayne Copeland) were

able to attend, who are both are in agreement with subject report and can provide comments at the July 5th Board meeting if required.

At its meeting of November 26 –28, 2002, City Council approved of moving forward with the renovation of the Ricoh Coliseum at a total cost of \$38.0M and entering into a long-term lease arrangement. The Coliseum project involved three participants: the City/Board, BPC Coliseum Inc. (BPC), an affiliate of OMERS, and Coliseum Renovation Corporation (CRC). BPC contributed a \$9.0M equity investment to the project and has the 49-year lease (the “Coliseum Lease”) with the City as landlord. CRC contributed an American Hockey League (AHL) team, the Toronto Roadrunners, and was the sub-tenant of the project under a 49-year sublease (the “Sublease”) from BPC. For its part, the City contributed a \$9.0M equity investment in the project (on a \$1 for \$1 basis with BPC) and guaranteed the \$20.0M loan.

Following termination of the Sublease between CRC and BPC in June 2004, the Board, at its meeting of August 12, 2004, consented to the granting a new sublease from BPC to MLSEL. The Sublease was for a term ending June 30, 2025, and was for Premises generally described as the arena and the office space/dressing rooms/back of house located on the ground floor of the west annex.

Issue Background:

Exhibition Place staff are recommending the Board enter into a lease with MLSEL for the expansion of the office space used solely in connection to the uses given to MLSEL pursuant to the Sublease. Converting space which is presently defined in the Sublease as “Common Facilities” (with shared rights held by the City/Board, BPC and MLSEL) to 8,276 sf of office space at the sole cost of MLSEL (approximately \$1.4M for capital upgrades and \$0.681M for office outfit) is a much better use of this space and allows the Board to earn additional rental income from previously unused space.

Comments:

The \$38.0M construction of the Ricoh Coliseum was completed on November 1, 2003. The financial viability of the Coliseum project was completely dependent on it being the home of a professional hockey team with attendance at the hockey games reaching an average of 7,000 paid attendance per game and on ancillary revenues from these games (merchandise, sponsorship, suite sales, food & beverage). Unfortunately, during the first year of operation by the CRC who held the AHL Roadrunners franchise, ticket sales were much lower than forecast and with the exception of building sponsorship (i.e. corporate advertising on the outside and inside of the building), the revenues associated with hockey did not meet pro-forma projections. As a result, by June 13, 2004, the CRC was in a negative cash flow position owing \$2.4M to BPC and had defaulted in payment of rent, services and the Affiliation Fee to the Edmonton Oilers. BPC demanded an immediate injection of cash by CRC but with no response, BPC terminated the CRC sublease on June 14, 2004.

Following termination of the CRC sublease, BPC began negotiating with several parties in an effort to enter into a sublease with an operator that was not only financially viable but would be able to provide the building with a stable and successful operation. Consequently, BPC recommended a sublease with MLSEL commencing on July 1, 2005, on terms and conditions approved by the Board and City Council.

As indicated above, the financial viability of Ricoh Coliseum is dependent on the attendance at hockey games, ticket sales and ancillary revenues from these games. The Toronto Marlies have been much more successful than the Roadrunners, with average attendance per game of approximately 4,563. In order to improve its ticket sales, MLSEL has invested significantly in Ricoh Coliseum. MLSEL has increased its sales staff substantially (from 4 (2005) to 16 (2013)); developed co-promotion with its other sport teams/franchises; increased television exposure; aggressively marketed the facility to bring concerts/other events to the building; invested in the guest experience; and made substantial investment in its core product, the Toronto Marlies, who have now been in the AHL playoffs two years in a row. The initiatives made by MLSEL have resulted in additional positive revenues to the Board. However, to maintain this direction which is led by the significant increase in marketing and sales staff, MLSEL requires additional office space.

Prior to the upgrade, the Premises of the Sublease located in the west annex building would be considered Class "C" space and was only used by the Royal Agricultural Winter Fair. It was impossible to lease the old Coliseum arena for concert events because of the many pillars causing visual obstructions. The ceiling heights and columns in the West Annex space limited significantly its usefulness as exhibition space. Consequently, the project which saw \$38.0M invested in this space with year-round use by a professional hockey franchise was a significant win for Exhibition Place/City and also provided significantly improved space for the Royal Agricultural Winter Fair (RAWF).

Both of the Subleases from BPC to CRC and MLSEL respectively, lease to the tenant the arena building and 19,900 sf on the ground floor within the west annex building of which 10,863 was to be used as the tenant's ticketing operation and staff offices. Because this office/ticketing area is in the southerly part of the west annex, access by authorized users to the north part of the west annex ground floor is limited to only loading doors and a freight elevator entering into secure storage areas as the office/ticketing area is exclusive to the tenant. All other parts of west annex (ground and second floor) are within the "Common Facilities" as defined by the Sublease and while the tenant/ subtenant does not have exclusive use of these areas, the Board can only use these areas (either permanently or temporarily) if such Board use does not materially reduce or impact the rights of the tenants/subtenants. For example, the fire egress from the arena is through the west annex ground and second floors and while the Board could licence use of the west annex space for an exhibition, it would not be able to do this if there was a hockey game/event on in the Ricoh Coliseum as the required fire egress would be compromised. However, the Board does lease the west annex for the RAWF as the north part of the west annex is used as the "hitching ring" but this can be done because at the same time MLSEL rents the arena to the RAWF for the horse show.

As noted above, the second floor of the west annex is already somewhat encumbered with the rights of the tenant and subtenant and is also not very saleable exhibition space. Generally, this space is now only used for storage. Therefore, upgrading this area to office space at a sole cost by MLSEL of \$1.4M capital expenditure would be a benefit to Exhibition Place and would result in additional income to the Board and at the end of the term as Exhibition Place would own the upgraded renovated space without cost. The MLSEL renovation plans include constructing 39 workstations, two washrooms, a lunch room and an internal staircase between the ground floor offices and the new second floor offices.

Exhibition Place has also consulted with BPC, the Tenant, as this project removes the proposed second floor office space area permanently from the Premises leased to BPC and the staircase

from the first to second floor encroaches onto the Premises. BPC have indicated they are willing to provide the necessary consent to this proposal and the encroachments proposed.

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Submitted by:

Dianne Young

Appendix "A"
Substantial Terms and Conditions of a proposed Lease between
Maple Leaf Sports & Entertainment Inc. ("**Tenant**") and Board of Governors of
Exhibition Place ("**Board**")

- (1) Landlord: Board of Governors of Exhibition Place
- (2) Leased Property: The area comprised of approximately 10,310 square feet, located on the second floor of the West Annex.
- (3) Context: The Board has entered into a lease with BPC Coliseum Inc. for a building known as the Coliseum Arena of The National Trade Centre dated June, 2005 (the "**Head Lease**") which included those areas known as the arena and the office space that is on the ground floor of the west annex (the "**Premises**") and with the consent of the Board, BPC Coliseum Inc. subleased the Premises as described in the Head Lease to the Tenant as subtenant for a term expiring June 30, 2025 (the "**Sublease**"). The Tenant has requested that the Board make additional space available to the Tenant to support its business operations carried on in accordance with the Sublease at the subleased premises through the expansion of the office space to the second floor of the west annex.
- (4) Permitted Use: The Tenant shall use the Leased Property solely for the purpose of general business offices in conjunction with the permitted use set out in Section 7.1 of the Sublease. Under no circumstances shall the Leased Property be used for anything other than office uses. Without limiting the generality of the foregoing, the Tenant agrees that the Prohibited Activities described in Section 7.2 of the Sublease shall also be prohibited under the Lease.
- (5) Term: Four (4) years, commencing on July 6, 2013, and ending on July 5, 2017. There shall be no right of renewal of the Term. If the Tenant, in the sole opinion of the Board acting reasonably, is not and has not been in material breach of the terms and conditions of the Lease, the Board agrees to enter into discussions with the Tenant regarding the possibility of extending or renewing the term for a period expiring no later than June 30, 2025, subject to the approval of City Council, but there shall be no automatic right of the Tenant to renew or extend the term of the Lease.
- (6) Schedule of Dates during the Term:
 - (a) Possession Date: July 6, 2013
 - (b) Fixturing Period: July 6, 2013 to and including December 31, 2013
 - (c) Rent Commencement Date: The earlier of the date on which the Tenant opens for business from the Leased Property and January 1, 2014.
- (7) Rent:
 - (a) The Tenant shall pay to the Landlord an annual net base rent calculated on the same basis as the existing net base rent paid for the Sublease Premises ("**Base Rent**"), plus applicable taxes, throughout the Term, in advance and in equal monthly installments, without set-off or deduction; provided however that during the Fixturing Period the Tenant shall not be required to pay Base Rent but shall be responsible for Additional Rent and all utility costs.
 - (b) Additional Rent: The Tenant agrees to pay Additional Rent as defined in Section (8) below, in the manner to be set out in the Lease.
 - (c) Percentage Rent: It is understood and agreed that the Tenant's business to be carried on at the Leased Property is an expansion of its existing business operations carried on at the Premises, as described in the Sublease. The Tenant will not maintain separate books and records related to revenue generated at the Leased Property, but shall include all business activities at the Leased Property as part of its ongoing business operations at the Premises pursuant to the Sublease. There shall be no percentage rent

payable pursuant to the Lease; provided however all revenue generated through the Tenant's business activities carried on at the Leased Property that would have constituted Gross Revenue had such revenue arisen through the Tenant's activities at the Premises, will be deemed to be Gross Revenue for the purposes of the Sublease and included in the calculation of Annual Percentage Rent owing by the Subtenant under the Sublease (as the terms Gross Revenue and Annual Percentage Rent are defined in the Sublease). All of the Subtenant's payment, reporting and record keeping obligations in the Sublease shall apply to the Tenant's business activities carried on at the Leased Property. For clarity, for the purposes of calculating Percentage Rent payable by the Tenant under the Sublease, all business conducted at the Leased Property shall be deemed to have been carried out at the Premises.

- (8) Definition of Additional Rent: “**Additional Rent**” means:
- (a) all costs of development and renovation/construction of the Leased Property to be paid by the Tenant to the appropriate and proper parties as contemplated in the Lease;
 - (b) all taxes, rates, local improvement rates, duties or assessments which may be levied, rated, charged or assessed against the Leased Property or any parts thereof, whether real or personal property, by any authority having jurisdiction, and any taxes which may be imposed by such authority on the Board, the City and/or the Tenant or anyone else with respect to the Leased Property;
 - (c) all costs of utilities and supplies for the Leased Property, including electrical power and all costs of operation, maintenance, replacement and repair of the Leased Property except as otherwise provided in this Term Sheet or in the Lease;
 - (d) all costs, expenses and charges incurred in and about the operation and management of the Leased Property except for such costs, expenses and charges which are required to be paid by the Board pursuant to this Term Sheet or the Lease; and
 - (e) any and all sums of money or charges required to be paid by the Tenant under this Term Sheet or the Lease (except for Base Rent) whether or not designated as “Additional Rent” or whether or not payable to the Board or to any other person.
- (9) Interest: Interest on overdue payments shall be subject to interest at a rate which is three (3) percentage points above the prime rate charged by The Toronto-Dominion Bank prevailing from time to time.
- (10) Taxes and Costs: The Tenant acknowledges that the Lease is fully net to the Board, and that the Tenant shall pay all Taxes (as defined in section 11 below) and the costs of all operating the Leased Property including, but not limited to, supplies, utilities, services, maintenance and repairs, security and insurance associated with and required for its operation, use and occupation of the Leased Property.
- (11) Definition of Taxes: “**Taxes**” shall means all taxes, assessments or levies, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of whatever nature or kind, which are from time to time levied, assessed, charged or imposed by any taxing authority or any government, municipal or other body having jurisdiction upon or against the lands comprising Exhibition Place or which may give rise to a remedy against the lands;
- (12) Leasehold Improvements: The Tenant accepts the Leased Property “as is”, and agrees that it shall be solely responsible for the cost of construction of any improvements or structures required for the purposes of its use and occupation of the Leased Property. The Tenant covenants and agrees to undertake capital improvements (the “**Additional Improvements**”) to the Leased Property having a minimum cost of \$1,390,954 (the “**Investment**”) during the first seven (7) months of the Term. The Tenant will provide the Board with a detailed estimate of the proposed Additional Improvements in a form satisfactory to the Board by no later than July 6, 2013 and upon completion of the Additional Improvements shall provide evidence to the Board, by way of receipted invoices, of having spent not less than the full amount of the Investment. The Tenant

agrees to provide the Board with copies of receipted invoices demonstrating the extent of the Tenant's investment in the Additional Improvements upon request by the Board from time to time. The Tenant acknowledges that the Coliseum Building is located adjacent to the Leased Property and that the Coliseum is a venue for numerous large events throughout the year. The Board makes no representation or warranty regarding quiet enjoyment of the Leased Property in respect of the potential noise penetration arising from events held at the Coliseum Building.

(13) Closure of the Exhibition Place Lands:

(a) The Tenant acknowledges that from time to time during the Term, Exhibition Place may be totally closed to the public on a temporary basis and/or an admission fee may be charged to enter the Exhibition Place. At such times, special provision will be made by the Board to facilitate access to the Leased Property by the Tenant.

(b) Closure for CNE and Honda Indy: Despite clause (a) the Tenant acknowledges that the Board shall have the right, for the purposes of the annual CNE, to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property commencing with the pre-CNE move-in period approximately one (1) week prior to the opening day of the CNE and including the move-out/tear down period after the end of the CNE. Further, the Tenant acknowledges that the Board shall have the right, during the annual Honda Indy Toronto weekend (Thursday starting at 8AM, Friday, Saturday, Sunday with a possible Monday "rain-day"), to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property except in cases of emergency within the Leased Property. In addition, the Tenant acknowledges that in the nine (9) to twelve (12) weeks in advance of the actual race weekend, the typical Honda Indy Toronto layout as shown on Schedule "B" is being constructed around the Leased Property. The CNE and Honda Indy are Grandfathered Events as set out in the Sublease and the Tenant's use of and access to the Leased Property shall be as set out in Section 6.2 of the Sublease;

(c) Other Closures: Despite clause (a) the Tenant acknowledges that the Board shall have the right, during or in connection with any future Olympics, Pan Am Games or World's Fair to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property. During such events, the Tenant's use of and access to the Leased Property shall be as set out in Section 6.3 of the Sublease;

(d) The Board will give the Tenant notice in writing not less than six (6) months prior to any proposed closing for the purposes set out in clause (c).

(e) If access to the Leased Property is prevented for any length of time due to any reason under clauses (a), (b) or (c), the provisions of the Sublease regarding the payment/abatement of rent and payment/abatement of Operating Costs shall apply.

(14) Restrictions/Conditions:

(a) The Tenant shall familiarize itself with the Central Waterfront Secondary Plan and/or the initiatives of the Toronto Waterfront Revitalization Task Force, and acknowledges that the Board may require that the use and occupation of the Leased Property conforms with all policies and processes that City Council may adopt as a result of the Waterfront Revitalization, except where such use may be specifically exempted by City Council;

(b) All collective agreements between the Board and all Labour/Trade Unions having jurisdiction at Exhibition Place must be recognized and complied with for all work at Exhibition Place. The Tenant acknowledges that it shall bear the full responsibility, including payment of any damages, that may result from failure to recognize and comply with all collective agreements at Exhibition Place;

(c) The Tenant agrees to negotiate and execute a Lease with the Board based on the Board's standard form of lease which incorporates the terms and conditions of this

Appendix "A" and such other terms as the parties agree upon, each party acting reasonably, within 60 days following the receipt of the form of lease from the Board.”

(d) The Tenant acknowledges that the Board is promoting the implementation of “green”, environmentally-sensitive practices and has adopted an environmental policy for Exhibition Place. The Tenant agrees to use reasonable best efforts to comply with the Board’s environmental policy as it may be amended from time to time, and to implement environmentally-friendly practices, including adopting procedures and systems in the conduct of its business at the Leased Property which will promote adherence to the Board’s environmental policy.

(15) Special/Standard Agreement Terms: The Tenant acknowledges and agrees that the Lease shall contain the following terms:

(a) The Lease may only be assigned with the prior consent of the Board and in conjunction with an approved assignment of the Sublease, and only to the party that will become the subtenant under the Sublease. A Change in Control (as that term is defined in the Sublease) of the Tenant, corresponding to a Change in Control of the Subtenant and provided it has been effected in accordance with the provisions of the Sublease, will be permitted.

(b) The Tenant shall indemnify the Board, the City of Toronto and the Association, their officers, elected officials, employees and agents against any and all claims, loss, costs and damages arising as a result of the Tenant’s operation and/or the operation of any agent, subtenant or concession in the use and occupation of the Leased Property except to the extent that such Claims (as defined in the Sublease) are due to the negligence or wrongful acts or omissions of the Board, the City of Toronto or the Association or those for whom they are in law responsible;

(c) The insurance requirements for the Subtenant and Landlord as set out in the Sublease shall apply equally to the Tenant's occupancy of the Leased Property;

(d) The Tenant shall be responsible, at its sole expense, for obtaining any and all government approvals required for its business operations within the Leased Property, and the construction of any required structures and improvements, including the issuance of any required permits;

(e) All plans for construction shall be subject to the prior written approval of the Board;

(f) The default provisions set out in Article 16 of the Sublease shall apply *mutatis mutandis* to the Lease. A default in the Sublease shall constitute a default in this Lease and a default in this Lease shall constitute a default in the Sublease;

(g) In the event of a controversy, claim or dispute arising out of relating to this Lease between the Landlord and Tenant, either party shall have the option of requiring that the matter be resolved in accordance with the Dispute Resolution Agreement pursuant to the Sublease, provided however that if the Dispute Resolution Agreement is invoked, then both this Lease and the Sublease shall be the subject matter of the referral and any resulting resolution;

(h) Subject to the terms and conditions set out above, the Landlord covenants with the Tenant for quiet enjoyment of the Leased Property.

(i) Such other terms as may be required by the CEO and the City Solicitor.