



Exhibition Place

Item No. 18

ACTION REQUIRED

June 26, 2013

To: The Board of Governors of Exhibition Place

From: Finance & Audit Committee

Subject: **BC Partnership (1475530 Ontario Inc.) Property Tax Assessment**
Summary:

This report provides background information with respect to the BC Partnership (1475530 Ontario Inc.) (the “Tenant”) specifically related to the property valuation and property taxes of the Leased Property located at 50 Prince Edward Island Crescent which is approximately 5720 sq. ft. of indoor restaurant space plus an outdoor patio which carries on business as Gossip Restaurant.

Recommendations:

It is recommended that the Board:

- 1) Direct staff to work with the Tenant to develop a plan for the payment of all outstanding property taxes by December 31, 2013 and communicate with the Tenant on the Board’s direction that the Tenant comply with its contractual obligations related to Property Tax as per Section 8.2 of the Lease; and**
- 2) Direct that the confidential report contained in Attachment 1 to this report remain confidential in its entirety and not be released publicly in order to protect the competitive position, future economic and legal interests of the Board.**

Financial Implications:

The financial implications resulting from this report are detailed in the Confidential Attachment I.

Decision History:

At its meeting of June 26, 2013, the Finance & Audit Committee reviewed subject report and recommended it to the Board for approval.

At its meeting of April 25 and May 30, 2003, the Board considered and approved the “Bandshell Park Redevelopment Opportunity – Bandshell Restaurant”; and approved of entering into a lease with the Tenant for the Leased Property for a term of 20 years and 11 months from Possession Date (February 1, 2005) which report was subsequently approved by City Council at its meeting of June 24, 25 and 26, 2003.

Issue Background:

The Confidential Report sets out in detail the steps and actions taken by staff with respect to the Tenant property valuation and related property taxes.

Comments:

The terms of the Lease which relate to this matter are as set out below:

Section 2.4 (2) – the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind, extraordinary as well as ordinary and foreseen as well as unforeseen relating to the Leased Property, the use and occupancy thereof, the contents thereof, and the business carried on therein.

Section 8.1 – Tax Receipts: If the Landlord permits the Tenant to make arrangements with any taxing authority for the payment of all or any portion of Taxes (which arrangements the Landlord in its sole discretion, may choose to permit) and the Tenant makes such arrangements, the Tenant will exhibit to the Landlord, within sixty (60) days after payment of any Taxes payable by the Tenant, official receipts of the appropriate taxing authority, or other proof satisfactory to the Landlord, certifying the payment thereof and will furnish to the Landlord copies of such receipts upon the Landlord request.

Section 8.2 – Tax Appeals: If and only if:

- (1) the Leased property is the subject matter of a separate assessment by the assessing authority, and the Tenant receives a tax bill from the taxing authority in respect of the Leased property and only the Leased Property;
- (2) the Tenant has provided security in the form and amount satisfactory to the Landlord acting reasonably; and
- (3) the proposed appeal may be prosecuted by the Tenant without risk of liability to the Landlord or risk of loss to forfeiture of the Lands or any part of the Lands.

The Tenant may elect to appeal the amount of that portion of Taxes exigible in respect of the Leased Property by appropriate proceedings. Any such appeal will be advanced by the Tenant diligently and in good faith, free of any cost or expense to the Landlord. No such appeal proceedings shall be deemed or considered in any way to have relieved the Tenant from the obligation to pay taxes, or to have modified or altered the Tenant's obligation to pay Taxes. The Tenant acknowledges that the Landlord, the City and the Association shall have the right to participate in and/or oppose the Tenant's appeal.

From October 2008 to May 2013, the Tenant has approached Exhibition Place staff regarding issues with its property valuation. During this period, staff have worked with the Tenant and Municipal Property Assessment Corporation ("MPAC") to assist the Tenant with explanations and information on the Tenant's position as detailed in the Confidential Attachment. At this point in time, Exhibition Place staff are of the opinion that MPAC will not be making any adjustments to its value assessment of the Leased Property.

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