



Exhibition Place

ACTION REQUIRED

Item No. 19

December 17, 2012

To: The Board of Governors of Exhibition Place

From: Dianne Young
Chief Executive Officer

Subject: **Muzik Clubs Inc. Lease Amendment**

Summary:

This report seeks authority to extend and amend the current lease with Muzik Clubs Inc. as per the terms and conditions outlined in this report.

Recommendations:

It is recommended that the Board, subject to approval by City Council, approve:

- 1) The confidential information in Attachment 1 not be released publicly in order to protect the competitive position and the future economic interests of the Board and City; and**
- 2) The amendments to the Lease with Muzik Clubs Inc. substantially on the terms and conditions contained in Appendix A of this report, and the Confidential Attachment, and such other terms and conditions recommended by the City Solicitor and the Exhibition Place CEO.**

Financial Impact:

The financial impact to the Board as a result of approving this recommendation is as set out in the Confidential Attachment.

Issue Background:

The Board approved a (20) twenty-year lease with Muzik Clubs Inc. for the entire Horticulture Building commencing February 16, 2004 and the lands surrounding the Building. Muzik Clubs Inc. has successfully operated a night club for over eight years, however, competition within this sector is very strong and in order to remain current the Tenant has had to improve its property every year and has approached the Board to further enhance the outdoor area at a cost of at least \$5.0M, and to seek an extension of the Lease Term in order to justify this significant investment.

Decision History:

This lease amendment supports the Board's Strategic Plan regarding Business Development to *Integrate each of the business enterprises across Exhibition Place to stimulate local and regional economic growth and promote Exhibition Place as an international centre of business excellence.*

At its meeting of April 23, 2003, the Board approved a Lease with Muzik Clubs Inc. for the entire Horticulture Building commencing February 16, 2004 and expiring on February 15, 2024.

Comments:

Muzik Clubs Inc. has successfully operated a night club within the Horticulture Building for over eight years. Currently the night club operates Saturday evenings and on occasional other days has booked parties. The original proposal presented by the tenant and approved by the Board envisioned a night club and outdoor patio. Since 2004 the tenant has seen increased competition in Toronto with many new clubs opening. In order to remain competitive the tenant plans enhance the outdoor area to keep the club at the leading edge.

Prior to tenancy by this tenant the Horticulture Building was rarely used and certainly, the tenancy has been positive and compatible with other operations and events on the grounds. Since the lease commencement date, Muzik Clubs Inc. have paid \$576,000 in rent, \$175,000 net services, contributed \$975,000 to parking revenues, and \$420,000 in property taxes.

Staff were approached by the Tenant in October of this year with a plan that would see the Tenant invest \$5.0M in the Leased Property over a two year period (no later than May 2014 – May 2016) to expand and enhance the outdoor patio area within the existing leased space. The plan modifies and expands the existing outdoor patio by adding three pools, cabanas, permanent washrooms and change rooms. The intent by the Tenant is to add additional activity to the club and enable more days of operation.

In order to finance this enhancement to the Leased Property the Tenant has requested a ten-year extension to the current lease term (to February 15, 2034) and other modifications to the terms and conditions of the existing lease as outlined in appendix A, and the Confidential Attachment. Staff believe this enhancement to the Leased Property will create more activity for the Leased Property and the grounds, and in turn, additional revenues to the Board and is a positive direction for the Board. The extension of the lease term will yield long term revenue to the Board through to February 15, 2034. As this is an amendment to the existing Lease, City Council approval is necessary.

Contact:

Jeff Gay, Director/Event Management Services

Tel: 416-263-3060

Fax: 416-263-3107

Email: jgay@explace.on.ca

Arlene Campbell, GM, Sales & Event Management

Tel: 416-263-3030

Fax: 416-263-3019

Email: acampbell@explace.on.ca

Submitted by:

Dianne Young
Chief Executive Officer

Appendix 'A'

Substantial Terms and Conditions of a Lease Amending Agreement regarding the Lease dated as of February 16, 2004 between Muzik Clubs Inc. ("Tenant") and Board of Governors of Exhibition Place ("Board")

- (1) Landlord: Board of Governors of Exhibition Place and the City of Toronto
- (2) Leased Property: definition unchanged. Approximately 37,820 square feet of leaseable area in the Horticultural Building, together with a basement area of approximately 3,000 square feet, and outdoor patio areas
- (3) Investment and Additional Improvements: The Tenant covenants and agrees to undertake capital improvements (the "Additional Improvements") to the Leased Property having a minimum cost of \$5,000,000.00 (the "Investment"). The Tenant will provide the Landlord with a detailed estimate of the proposed Additional Improvements in a form satisfactory to the Landlord by no later than March 31, 2013 and upon completion of the Additional Improvements shall provide evidence to the Landlord, by way of receipted invoices, of having spent not less than the full amount of the Investment. All of the provisions of Article 6 of the Lease entitled Construction of Leasehold Improvements and Fixtures, other than those specifically related to work done at the commencement of the Term, shall apply to the Additional Improvements.
- (4) Term:
 - (a) Subject to subsections (b) – (d) below, provided that the Tenant undertakes the Additional Improvements, completes not less than \$2,500,000 worth of work in connection therewith by May 31, 2015, and completes Additional Improvements having a total minimum cost equal at least to the Investment by May 31, 2016, and delivers satisfactory evidence to the Landlord of the expenditures on May 31, 2015 and May 31, 2016 respectively, then upon confirmation by the Landlord no later than June 30, 2016 that it is satisfied with such evidence, the Landlord agrees that the Term of the Lease will be extended for a further ten (10) years, to be fully completed on February 15, 2034. Notwithstanding these time frames, the Tenant acknowledges and agrees that no work related to any of the Additional Improvements shall be undertaken during the period from July 1, 2015 to July 31, 2015, which is the time period of the 2015 PanAm Games.
 - (b) Completion timelines are subject to City approvals of plans, project scope and required permit approvals. If the Tenant, having used commercially reasonable efforts to obtain all such approvals and permits in a timely fashion, encounters approval-related delays arising from matters beyond the control of the Tenant, the Landlord acting reasonably may make appropriate adjustments to the time frames stipulated herein.
 - (c) If, for any reason, the City does not grant approvals for the full extent of the proposed Additional Improvements, and as a result the Tenant proceeds with a project reduced in value, so that the total expenditure by the Tenant is less than the Investment, the Term of the Lease will only be extended for that portion of the ten (10) years which is proportionate to the total Investment by the Tenant, to end on the last day of the month in which the extension would be granted pursuant to said calculation.
 - (d) If the Tenant fails to complete the Additional Investments to the extent and in the time frames hereby required, the Tenant acknowledges and agrees that the Term will not be extended beyond its current expiry date. If the Term of the Lease is extended pursuant hereto, Section 3.2 of the Lease will be deleted at the same time that the Term is extended.
- (5) Basic Rent: See Confidential Attachment I.
- (6) Percentage Rent: See Confidential Attachment I.

- (7) Exclusive Use:
- (a) In addition to its current exclusive rights set out in s. 5.2, the Tenant shall be granted exclusivity in respect of its use of the Leased Property for the operation of a permanent seasonal outdoor pool-themed patio. This additional exclusivity will not be in effect against the CNEA, any existing tenants at Exhibition Place including the hotel complex to be constructed by the Princes' Gates LLP, or against any future hotel or casino development as approved by the City of Toronto.
 - (b) Notwithstanding that s. 5.2 prohibits the Tenant from using the Leased Property for the purposes of banquets, among other things, the Landlord agrees that if from time to time during the Term the Tenant has an opportunity that the Tenant would like to pursue to host an event that might fall within the meaning of a "banquet", then the Tenant may present the Landlord with the details of the proposed event and request permission to hold that specific event. The Landlord will give the request due consideration and advise the Tenant on a timely basis whether or not the Landlord consents to the event, but it is understood and agreed that the Landlord shall be under no obligation to act reasonably in making its decision.
 - (c) The parties confirm that the terms "banquet" and "trade and consumer shows" set out in s. 5.2 of the Lease will be interpreted in a manner consistent with the decision of Mr. Justice Belobaba as set out in his Endorsement dated 20070718 re Docket 07-CV-326782PD2, a copy of which will be added as a schedule to the Lease.
- (8) Parking: The Landlord and Tenant agree to create a parking protocol whereby the Landlord will use reasonable best efforts to provide parking for patrons attending the Leased Property. It is understood and agreed that the parking protocol may change from time to time as business and uses come and go from the Lands over the Term, so it will not form part of the Lease, but Section 5.9 of the Lease will be amended to include reference to the creation and existence of, and commitment to, a parking protocol.
- (9) Sponsorship and Naming Rights: The Landlord will retain naming and sponsorship rights as provided in the Lease. Section 7.5 will be amended to acknowledge that the Landlord is willing to consider paying a finder's fee to the Tenant in the event that the Tenant proposes a naming sponsor for the Building acceptable to the Board, and approved by City Council, which leads to a binding sponsorship contract, on terms and conditions to be negotiated should the situation arise, and the Tenant is permitted to market the opportunity accordingly provided however that the Landlord reserves the right to act unreasonably in making its determination. Section 7.5 will be further amended to allow the Tenant's current corporate sponsorship of single events and promotions to occur anywhere within the Leased Property, not just the Building, provided it is not directed towards the exterior of the Leased Property.
- (10) Signage: The Lease will be amended to clarify that the Landlord will not unreasonably withhold its approval of the Tenant's proposed Building name or directional signage, provided that the signage complies with all applicable laws, and is otherwise acceptable to Heritage Toronto.
- (11) Collective Agreements: The Tenant acknowledges having been notified that the Landlord has entered into a new collective agreement affecting the Lands, with Canadian Union of Public Employees Local 5116 (Security) however the Tenant may hire non-unionized security personnel to provide security services directly related to the operation of the Leased Property.
- (12) Assignment, Subletting: Section 15.2 of the Lease will be amended to provide that the Landlord may not arbitrarily and unreasonably withhold its consent to any Assignment, Major Sublease or Change of Control by the Tenant.

- (13) Closure for CNE: Notwithstanding Section 16.2(2) of the Lease regarding the Landlord's ability to close the grounds during the CNE, the Board agrees to use best efforts to include the following provisions on behalf of the Tenant in the Board's Master Agreement with the CNEA:
- (a) The CNEA shall construct the westerly fence line for the CNE to ensure that the westerly landscaped area and entrance that are part of the Muzik Leased Property are outside the CNE westerly perimeter and for clarity, the CNEA's westerly fence line is outside the limits of the Muzik Leased Property unless otherwise agreed to by Muzik;
 - (b) The CNEA shall work co-operatively with Muzik if Muzik decides to develop special programs that would be offered during the CNE;
 - (c) Muzik, its staff and invitees, shall have continuous and full access to the Muzik Leased Property during the CNE provided that all persons follow the CNEA rules applicable throughout the grounds during the CNE;
 - (d) Any persons attending programs at the Muzik Leased Property during the CNE and arriving after 10 p.m. shall be charged normal Exhibition Place parking rates not CNEA parking rates.