

July 15, 2010

To: The Board of Governors of Exhibition Place

ACTION REQUIRED

From: Business Development Committee

Subject: **Lease for Fountain Dining Room**

Summary:

The Fountain Dining Room (FDR) was built in 1957 and consists of a 5,690 sq ft dining room, two office/boardroom spaces, a lobby, washrooms and a commercial kitchen space location on the second floor above the Queen Elizabeth Executive offices. Generally, the FDR is underutilized compared to other spaces on the grounds. Exhibition Place has rented the venue 18 days in 2008; 18 in 2009; and 24 tentative or licensed bookings in 2010, to date, although Exhibition Place also holds its own internal meetings in the FDR.

One Goal of the 2009 Exhibition Place Strategic Plan was to “*Maintain a positive operating financial performance across Exhibition Place and all of its businesses*” with a specific objective of “*diversifying our revenue base*” through participation of the private sector in buildings that are underutilized. Accordingly, on May 27, 2010 a Request for Proposal (RFP) was issued through the City of Toronto Purchasing Department for the opportunity of a long-term leasehold interest in the FDR. Three parties attended the mandatory site meeting on June 7, 2010; the RFP closed on June 18, 2010; and 1673081 Ontario Ltd. was the only party that submitted a proposal. Since 2006, 1673081 Ontario Ltd. has been a tenant at Exhibition Place at the Queen Elizabeth Theatre (QET).

Mr. Bruno Sinopoli is the principal of 1673081 Ontario Ltd. and its sole shareholder. According to Mr. Sinopoli, 1673081 Ontario Ltd. is a company that has existed since 2006 but has no assets except for the leasehold interest in the QET and the assets that it has purchased for its ongoing business operations in the QET. Since 2006, 1673081 Ontario Ltd. has successfully brought more than 110 shows to the QET. Mr. Sinopoli is also the sole shareholder of Corner Pocket Billiards Club Inc. which carries on business in the name of The MOD Club on College Street.

1673081 Ontario Ltd. proposes to build upon its success in the QET by offering its customers and attendees greater entertainment options at Exhibition Place. It will be investing approximately \$800,000 in leasehold improvements in the FDR including upgrades to the kitchen, dining room and interior lobby. Mr. Sinopoli has been in the restaurant and entertainment business for fifteen years operating the successful MOD Club venue for seven years and will be the on-site manager at the FDR. The proposal for the FDR is to build onto his existing QET experience by adding a restaurant lounge experience.

Recommendations:

It is recommended that the Business Development Committee recommend that the Board:

- 1. Subject to approval of City Council, enter into a lease agreement with 1673081 Ontario Ltd. for the FDR substantially on the terms and conditions contained in this report and Schedule “A” attached and the Confidential Attachment 1 to this report and such other**

terms and conditions satisfactory to the Board's Chief Executive Officer and the City Solicitor; and

- 2. Direct that the confidential information contained in Attachments 1 to this report not be released publicly in order to protect the competitive position and future economic interests of Exhibition Place and the City of Toronto.**

Financial Implications:

The lease agreement with 1673081 Ontario Ltd. will provide an estimated positive financial return to the Board and the City of approximately \$2,175,598 over the term of the agreement.

Decision History:

At its meeting of July 15, 2010, the Business Development Committee considered and recommended this report to the Board of Governors for approval.

At its meeting of May 29, 2009, the Board approved of the 2009 – 2012 Exhibition Place Strategic Plan. One Goal of the 2009 Exhibition Place Strategic Plan was to “*Maintain a positive operating financial performance across Exhibition Place and all of its businesses*” with a specific objective of “*diversifying our revenue base*” through participation of the private sector in buildings that are underutilized.

Issue Background:

The FDR was built in 1957 and consists of a 5,361sq ft dining room, two office/boardroom spaces, a lobby, washrooms and a commercial kitchen space location on the second floor above the Queen Elizabeth Executive offices. Generally, the FDR is underutilized compared to other spaces on the grounds. Exhibition Place has rented the venue 18 days in 2008; 18 in 2009; and 24 tentative or licensed bookings in 2010, to date. In addition, Exhibition Place and the CNE hold their internal corporate meetings in the FDR and the proposed lease allows for these meetings to continue.

On May 27, 2010 a RFP was issued through the City of Toronto Purchasing Department and with 1673081 Ontario Ltd. the only party that submitted a proposal. Following a review of the proposal, the Evaluation Team is recommending 1673081 Ontario Ltd. as the successful proponent on the substantial terms and conditions outlined in Schedule “A” to this report.

Comments:

Mr. Bruno Sinopoli is the principal of 1673081 Ontario Ltd and its sole shareholder. According to Mr. Sinopoli, 1673081 Ontario Ltd. is a company that has existed since 2006 but has no assets except for the leasehold interest in the Queen Elizabeth Theatre (QET) and the assets that it has purchased for its ongoing business operations in the QET. Since 2006, 1673081 Ontario Ltd. has successfully brought more than 110 shows to the QET.

Mr. Sinopoli is also the sole shareholder of Corner Pocket Billiards Club Inc. which carries on business in the name of The Mod Club on College Street. Mr. Sinopoli has been in the restaurant and entertainment business for 15 years operating the successful MOD Club venue for 7 years and will be the on-site manager at the FDR. Mr. Sinopoli provided several reference letters from

concert production companies and artist agencies who have worked with MOD Club and the QET which were positive about their relationship with him.

While the marketing plan for operating the FDR in conjunction with the QET is not fully developed as yet by 1673081 Ontario Ltd., the proforma information submitted shows an expenditure of \$100,000 in advertising and marketing activities over the term of the Lease. Mr. Sinopoli will be working with his present clients to offer dinner in the FDR prior to a show in the QET and a lounge in the FDR afterwards. Approximately \$800,000 will be invested in leasehold improvements in the FDR including upgrades to the kitchen, dining room and interior lobby during the first six months of the Lease. The proposal calls for a six month construction period that would be rent free however 1673081 Ontario Ltd. will pay utility costs and property taxes during this period.

Since the proposed business model is tied to the activities in the QET, staff recommends that the term of the FDR lease be co-terminus with the expiration of the QET Lease being April 30, 2020, resulting in a term slightly less than ten years in length.

These lease terms do not obligate the Tenant to be solely responsible for the base building infrastructure. The reason for this is that the base building infrastructure (HVAC, structure walls) are totally integrated within the Queen Elizabeth Complex. Also most of the base building capital infrastructure was renewed prior to issuance of the RFP (replacement of HVAC system, doors and windows) and will not require major upgrades in the next 20 years. Instead, Exhibition Place staff have negotiated a rental structure to reflect that base building capital remains the responsibility of the Landlord. However, Mr. Sinopoli will be fully responsible for all interior upgrades and costs.

Accordingly, Exhibition Place staff are recommending that the Board approve of entering into a lease with 1673081 Ontario Ltd. on the terms and conditions set out in Schedule "A" attached and in Confidential Attachment I.

Contact:

Dianne Young, CEO

Tel: 416-263-3611

Fax: 416-263-3640

Email: dyoung@explace.on.ca

Schedule "A"
Substantial Terms and Conditions of a Lease Between
1673081 Ontario Ltd. ("Tenant") and Board of Governors of Exhibition Place ("Board")

(1) Leased Property: The Fountain Dining Room and ancillary areas such as the Presidents Suite, Board Room, Kitchen, Main Floor Lobby and loading dock area on the main floor.

(2) Permitted Use/Acknowledgement regarding Competing Entitlements: The Leased Property shall not be used by the Tenant for any purpose other than as a banquet facility with the ability to offer food and beverage events (the "Principal Use"). Under no circumstances will the Tenant permit all or any part of the Leased Property to be configured or used in such a way that it or they, as the case may be, could accommodate, under any circumstances, a standing room crowd capacity greater than 500 persons and less than 2,999 persons. The Tenant acknowledges that an existing lease of premises in the Horticulture Building (the "Horticulture Building Lease") gives to the tenant thereunder an exclusive right to use the premises leased to it as a live performance/venue nightclub for providing live and recorded musical entertainment for crowd capacities of greater than 500 persons but less than 2,999 persons (the "Horticulture Building Restriction"). The Tenant acknowledges that in its use and occupation of the Leased Property it is not permitted to violate the Horticulture Building Restriction, and that if it does so it and/or the Board may be exposed to a claim or claims by the tenant under the Horticulture Building Lease, its subtenants, licensees, invitees, successors, assignees and persons or entities having business with one or more of them, and by the Landlord (collectively, the "Claims"). The Tenant agrees to indemnify the Board from every claim whatsoever arising by reason of or in connection with the Claims and to release the Board from every claim whatsoever the Tenant might have against the Landlord arising by reason of or in connection with the Claims.

(3) Prohibited Uses – The use of the Leased Property by the Tenant shall be subject to all existing contractual obligations of the Board respecting the use of the Exhibition Place lands, including rights granted with respect to the Coliseum Arena, Allstream Centre, Ontario Government Building and Horticulture Building (the "Existing Rights"), and, in addition to the restrictions set out in Paragraph 2, immediately preceding, the Leased Property shall not be used for any of the following purposes:

- a themed dinner theatre;
- trade and consumer shows and any activities (including the provision of food and beverages) related to trade and consumer shows
- conferences
- professional sports events;;
- a casino; and
- a permanent indoor live performance venue/nightclub providing live and recorded musical entertainment for standing room crowd capacities of greater than 500 persons but less than 2,999 persons

(4) Term: Approximately ten (10) years, commencing on September 7, 2010, and ending on April 30, 2020. There shall be no right of renewal for the Tenant. 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 Agreement, near the end of the term the Board agrees to enter into negotiations with the Tenant for a further term of ten (10) years or less, but there shall be no automatic right of the Tenant to renew the Lease Agreement.

(5) Schedule of Dates during the Term:

- (a) Possession Date: September 7, 2010
 - (b) Leasehold Improvements and Pre-Construction/Construction Period: September 7, 2010 to March 6, 2011.
 - (c) Rent Commencement Date: March 7, 2011.
- (6) Deposit: Following approval of the Board, the Tenant shall provide to the Board a deposit in the form of a certified cheque in the amount CDN\$10,000.00 which shall be held as a security deposit and returned to the Tenant, without interest, at the end of the Term. If the Tenant and the Board fail to enter into a Lease Agreement, the Board will return the Deposit to the Tenant without interest
- (7) Rent: See Confidential Attachment I
- (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 Agreement;
 - (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 Letter or in the Lease Agreement;
 - (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 Letter or the Lease Agreement; and
 - (e) any and all sums of money or charges required to be paid by the Tenant under this Term Letter or the Lease Agreement (except for Annual Base Rent or Participation Rent) whether or not designated as “Additional Rent” or whether or not payable to the Board or to any other person.
- (9) Definition of Annual Gross Revenues: “Annual Gross Revenues” shall mean all revenues, net of HST, earned in relation to the Tenant’s operations in the Leased Property, including revenues from admissions, advertising, food and beverage sales, promotions, licensed merchandise sales, coat check, private functions, sponsorships and any other revenues which have been or should have been collected or received by the Tenant, including any percentage, commission or other revenue payable to the Tenant by any permitted licensee, or concessionaire during the Term.
- (10) Audit Rights: The Tenant will keep accurate, complete and up-to-date books and records in accordance with good accounting practices in order to allow the determination by the Board of the amount of the Annual Gross Revenues. The Board and its auditor shall, at the Tenant’s sole cost and expense, have the right during regular business hours and on reasonable notice to the Tenant, to examine the Tenant’s books and records to verify the Annual Gross Revenues. In the event that an audit as conducted by the Board or its auditor results in a determination that there has been an underpayment of the Participation Fee in any given year(s), the Tenant shall be required to promptly pay such overdue amounts.

(11) Taxes and Costs: The Tenant acknowledges that this Agreement is fully net to the Board, and that the Tenant shall pay all Taxes (as defined in paragraph 11 below) and the costs of all operating the Leased Property including, but not limited to, supplies, utilities, services, maintenance and repairs, auditing, security and insurance associated with and required for its operation, use and occupation of the Leased Property.

(12) Definition of Taxes: "Taxes" shall mean 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;

(13) 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, subject to the prior approval of the Board.

(14) Closure of the Exhibition Place Lands/Leased Property:

- (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: Despite clause (a) the Tenant acknowledges that the Board shall have the right, during the annual CNE, to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property. During the CNE, the Board will facilitate access to the Leased Property by Tenant's staff for essential business operations only. Any other access or operation of the Leased Property will be subject to the prior consent of the Canadian National Exhibition Association ("Association").
- (c) Closure for Honda Indy Toronto: Despite clause (a) the Tenant acknowledges that the Board shall have the right, during the annual Toronto Grand Prix weekend (Wednesday starting at noon, Thursday, 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 "G" is being constructed around the Leased Property
- (d) Closure of Fountain Dining Room: Despite clause (a) the Tenant acknowledges that the Board shall have the right, during or in connection with any future Olympics, Pan Am Games, World's Fair or any similar such event to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property. During such events, the Board will facilitate access to the Leased Property by Tenant's staff for essential business operations only.
- (e) 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 (d).
- (f) If access to the Leased Property is prevented for any length of time due to any reason under clauses (a), (b) or (c) above, there shall be no abatement or reduction in Annual Base Rent, Additional Rent or Percentage Rent, nor shall the Tenant

receive any compensation for loss of business or claim of any kind. In the event that access to the Leased Property is prevented under clause (d), the Tenant shall be entitled to an abatement of the Annual Base Rent applicable to the period for which access is denied, which shall be the only relief or compensation to which the Tenant shall be entitled under the Lease Agreement. If access to the Leased Property is prevented for any length of time due to reasons of "force majeure" or any other reason not within the control of the Board, there shall be no abatement or reduction of Annual Base Rent, Additional Rent or Participation Rent, or any compensation for loss of business or claim of any kind.

(15) Shared Use by the Board: The Board shall have the right to book the Leased Property for third party events and events and meetings of the Board of Governors of Exhibition Place and the CNEA with a duration of no longer than 5 days provided that the Board can only book an event not more than three (3) months in advance or in the case of community programming not more than (1) month in advance of the event date (unless otherwise agreed by the Tenant, acting reasonably) provided that:

- (a) the Tenant's events will have first priority for any dates where there is a conflict;
- (b) the Board pays the Tenant for all event day costs including a proportionate share of base building costs plus an administrative fee of 12%;
- (c) the Board indemnifies the Tenant for any damages or liabilities arising from the Board event;
- (d) the Board provides all necessary insurance for the event as required by the Tenant, acting reasonable; and
- (e) once the Board's booking is confirmed through the execution of a licence agreement by the third party and payment of a licence deposit, the Board's event will take priority over any possible future booking for the Tenant.

(16) 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. A list of the Board's current collective agreements is attached as Schedule "E" of the Term Letter. 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 execute a Lease Agreement prior to taking possession of the Leased Property;
- (d) The Tenant acknowledges and agrees that the Board shall, except as set out herein, retain sole and exclusive claim to all sponsorship rights, including naming rights and signage, within all public spaces and grounds and upon all existing and proposed buildings within Exhibition Place, including the Fountain Dining Room. The Tenant shall have rights to install identification (but not commercial or third-party advertising) signage on the exterior of the Foyer and entrance to Fountain

Dining Room, and within the Leased Property itself, and all such signage shall be subject to the approval of the Board;

- (e) The Board will provide non-exclusive non-reserved parking for the Tenant's visitors/attendees except during the period of the CNE and the Honda Indy Toronto. The Tenant acknowledges that the Board may impose charges for visitors/attendees parking at Exhibition Place, and the Board shall retain all revenues from the operation of all parking facilities (surface and underground) owned and operated by the Board;
 - (f) The Tenant agrees to work with the Association on a cooperative basis to incorporate its attraction into the operation of the annual CNE each year during the Term, at discounted or special admittance fees (as negotiated by the Tenant and the Association);
 - (g) The Tenant shall comply with all governing policies, bylaws, regulations and conditions that may be imposed from time to time by the Board and the City in connection with food and beverage handling and, in particular, the Tenant shall comply with the regulations as set out in the Food Handler's policy of the Board and the SMART serve policies of the Ontario Alcohol and Gaming Commission;
 - (h) The Tenant must obtain its own liquor license for the sale of alcoholic beverages and must comply with all regulations, bylaws and polices related to that license; and
 - (i) The Lease shall contain an acknowledgement by the Tenant that the uses of the Leased Property shall be operated separately from the Tenant's business in the Queen Elizabeth Theatre..
- (17) Special/Standard Agreement Terms: The Tenant acknowledges and agrees that the Lease Agreement shall contain the following terms:
- (a) No assignment of the Lease Agreement or the rights thereunder shall be permitted without the prior consent of the Board, and "assignment" shall include an effective change in control of the Tenant;
 - (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 for the use and occupation of the Leased Property;
 - (c) The Tenant shall provide adequate security and insurance in a form and amount satisfactory to the Board and the City and will further ensure that all agents, operators, sub-tenants and concession operators of the Tenant maintain adequate security and insurance in a form and amount satisfactory to the Board and the City;
 - (d) The Tenant shall be responsible, at its sole expense, for obtaining any and all government approvals required for the operation of the concept, and the construction of any required structures and improvements, including the issuance of any required permits;
 - (e) The Tenant shall provide the Board with a performance bond in a form and amount satisfactory to the Board for the purpose of securing the proper performance of any construction work undertaken by the Tenant or its agents, and the vacating of any valid claims for lien or certificate of action related to the Leased Property or Exhibition Place;
 - (f) All plans for construction shall be subject to the prior approval of the Board;

- (g) The Board shall be entitled to terminate the Lease Agreement upon the failure by the Tenant to remedy any default related to safety/personal safety, legislation, permit to operate, or bankruptcy/insolvency issues within ten (10) days of the receipt of notice of default, and that the Board shall be entitled to terminate the Lease Agreement upon the failure by the Tenant to remedy any other default not identified in this clause within thirty (30) days of the receipt of notice of default, in addition to its other legal remedies for default by the Tenant, the Board shall have the right to take possession of the Leased Property and distrain the Tenant's goods and property therein;
- (h) The Board will provide up to a maximum of 10 parking passes at no charge for the Tenant's permanent full-time staff to access designated parking facilities (as designated from time to time by the Board in its sole discretion) at Exhibition Place which shall be valid throughout the term of the Lease Agreement save and except for the period of the annual Honda Indy Toronto and the CNE when parking passes may be restricted and/or a fee may be assessed;
- (i) The Board at its sole expense will maintain the grounds around the Leased Property including snow removal to a service level provided throughout the grounds of Exhibition Place;
- (j) The Board will promote the Leased Property as a venue (but excluding individual events being held in the Leased Property) at no charge through its electronic billboard signs on the Gardiner Expressway in accordance with the policy of the Board.
- (k) Such other commercial terms as may be required by the CEO of the Board and the City Solicitor.