



# Exhibition Place

## Item No. 9

**ACTION REQUIRED**

October 31, 2014

To: The Board of Governors of Exhibition Place

From: Dianne Young  
Chief Executive Officer

Subject: **Assignment of Agreement with Direct Energy Marketing Limited**

### Summary:

Direct Energy Marketing Limited ("Direct Energy") and the Board entered into an Sponsorship Agreement dated December 31, 2005 (the "Agreement") for a long-term naming sponsorship for the building previously named The National Trade Centre to Direct Energy for a term of 10 years set to expire on June 5, 2016.

Section 10.6 of the Agreement allows Direct Energy the right of assignment of the Agreement with Board consent and Direct Energy has requested such an assignment to EnerCare Home and Commercial Services Limited Partnership ("EnerCare Inc."). This report reviews the business and financial information of EnerCare Inc. and recommends consent to the assignment on the terms and conditions set out in this report.

### **Recommendations:**

**It is recommended that the Board:**

- 1) Consent to the assignment of the Agreement from Direct Energy to EnerCare Inc. in accordance with the terms and conditions set out in this report and the Confidential Attachment I and such other terms and conditions required by the City Solicitor and the CEO of Exhibition Place; and**
- 2) Direct that the confidential information contained in Confidential Attachment 1 to this report remain confidential in its entirety and not be released publicly as it may affect the Board economic interests or the security of the property of the Board.**

### Financial Implications:

There are no financial implications arising from the approval of this report. All naming rights sponsorship fees due over the initial 10 year term of the agreement with Direct Energy have been received in full. As of the date of this report, there are no outstanding naming fees due in respect of the naming agreement.

### Decision History:

The Exhibition Place 2014-2016 Strategic Plan had a Financial Goal *to maintain a positive operating financial performance across Exhibition Place and all its businesses* and as a Strategy to support this Goal *we will seek additional revenue opportunities*.

At its meeting of March 4, 2005, the Board approved entering into an agreement with Direct Energy for the naming rights to The National Trade Centre.

At its meeting of April 12, 13 and 14, 2005, City Council approved of Clause No. 34 of Report No. 4 of the Policy & Finance Committee, which was the naming rights report from the Board.

Issue Background:

Section 10.6 of the Agreement provides for a right of assignment, the pertinent parts read as follows:

*“10.6 Neither party to this Agreement may assign or transfer its interest herein except with the prior written consent of the other party which consent may not be unreasonably withheld, provided that where the Agreement is in good standing (a) the Owner may assign and transfer its interests hereunder to the City of Toronto or to any purchaser who acquires the Owner’s interest in and to the Facility except to the extent such purchaser is a competitor of Sponsor, and (b) the Sponsor may assign and transfer its interests hereunder to any Affiliate or otherwise as part of an internal reorganization or to a purchaser of all or substantially all of the Sponsor’s assets. In the case of any assignment, with or without the consent of the non-assigning party, the assigning party and the proposed assignee shall enter into an agreement with the non-assigning party agreeing to assume the rights and obligations and comply with the terms and conditions of this Agreement.”*

Comments:

On October 20, 2014, Direct Energy sold its Direct Energy-branded home and small commercial services business in Ontario to EnerCare LP, a wholly-owned subsidiary of EnerCare Inc. (“EnerCare”) (the “Transaction”). Direct Energy and EnerCare have jointly served customers in the home services and water heater rental business for more than 12 years, with EnerCare Inc. owning the water heater and other assets and Direct Energy providing servicing and managing the customer relationships. The Transaction will combine these operations under the EnerCare banner, which will be wholly-owned and managed by EnerCare Inc.

In connection with the Transaction, Direct Energy has agreed to assign its rights and obligations under the Sponsorship Agreement relating to the use of Direct Energy’s name, logos and trademarks and Direct Energy’s sponsorships of Exhibition Place. Direct Energy has agreed to retain the rights and obligations of the Sponsorship Agreement relating to the supply of Natural Gas Services and Electricity Services (as such terms defined in the Sponsorship Agreement)

EnerCare is a strong public company trading on the Toronto Stock Exchange with its head office in Toronto with a compelling business model. Established in 2002 as The Consumers Waterheater Income Fund, the company’s January 2011 conversion to a dividend-paying corporation, and its acquisition and growth strategy, has enabled it to become an industry leader in the energy-related businesses in which it operates. EnerCare is primarily engaged in the rental of water heaters (1.1M households) and other energy related assets and the sub-metering of multi-unit residential and commercial properties. EnerCare Connections (a wholly owned subsidiary of EnerCare Inc.) is also the largest non-utility sub-metering company in Canada. EnerCare works with condominiums and apartments in Ontario, Alberta and elsewhere in Canada to help clients and residents take control of their utility costs.

Direct Energy is a sales channel for EnerCare in Ontario. Their field technicians represent EnerCare products to homeowners while Direct Energy’s sales force sell their products into the new home construction market. In addition, should Direct Energy successfully establish a significant base of rental water heater customers elsewhere in Canada, EnerCare has right of first refusal to acquire the portfolio.

Contact:

Hardat Persaud

Chief Financial Officer

Tel: 416-263-3031

Fax: 416-263-3690

E-mail: [Hpersaud@explace.on.ca](mailto:Hpersaud@explace.on.ca)

Arlene Campbell

General Manager, Sales and Events

Tel: 416-263-3030

Fax: 416-263-3690

E-mail: [Acampbell@explace.on.ca](mailto:Acampbell@explace.on.ca)