



November 13, 2003

To: The Board of Governors of Exhibition Place

From: Dianne Young
General Manager & CEO

Subject: **Renewal of Lease with Ernie's Arcade for the Snack Bar**

Recommendation(s):

It is recommended that the Board enter into an agreement with the Ernie's Arcade for the operation of the Snack Bar, located on the southwest corner adjacent to the Food Building, for a period of one year, to December 31, 2004, on the terms and conditions recommended in this report and such other terms as are required by the City Solicitor.

Background:

At its meeting of October 20, 2000 the Board approved the terms of a three-three lease with Ernie's Arcade for the operation of the Snack Bar. This lease expires December 31, 2003.

Discussion:

While staff initially proposed a three-year lease with Ernie's Arcade for the operation of the Snack Bar, the tenant expressed concerns over the recent media coverage of a proposed stadium development on the footprint of the existing Food Building. Furthermore, the tenant's sales in 2003 suffered as a result of lower attendance and/or cancellation of events and shows due to SARS, and poor weather conditions during events such as Caribana.

For the Board's information, the Snack Bar is now the only location on site that serves light lunches and non-alcoholic beverages to employees seven days a week and, especially during the winter months, it is the employees of the Board and the Board's tenants who are the primary users of the Snack Bar. Information provide by the Tenant to staff indicate that during the winter months the tenant's operating costs exceed the revenue generated from sales.

Given all of the Tenant's concerns and the need for the Board to be able to provide some level of service to employees, staff are proposing a one-year renewal with Ernie's Arcade with some modifications to the minimum rent structure, which will be reviewed again by staff at the end of 2004. Specifically, staff recommends that the minimum rent during the months of January, February, March, April and December 2004 be reduced from \$1,000.00 per month to \$500.00 per month plus 8% of sales not to exceed \$1,000.00 per month. With this rent calculation, the tenant will be able to remain open and will continue to provide service to the Board's employees however, should sales increase, the Board will receive a proportionate share of these sales though

the percentage rent calculation. Furthermore, Exhibition Place will receive audited financial statements from the tenant, which it will use in developing future recommendations.

Accordingly, staff recommend that the lease with Ernie's Arcade for the Snack Bar be renewed for one year on the following terms and conditions:

- (a) Term: One year commencing January 1, 2004 and expiring December 31, 2004;
- (b) Rent: \$9,500.00 per annum plus 8% of gross sales not to exceed \$12,000.00 annually;
- (c) Additional Rent: The Tenant acknowledges that this agreement to lease is fully net to the Board, and that the Tenant shall pay all taxes, and all rates and levies associated with its occupation of the premises including but not limited to utilities, services, insurance, maintenance including all interior maintenance costs and any other associated occupancy costs;
- (d) Permitted Uses: the operation of an unlicensed food and beverage business;
- (e) Insurance: Property and liability insurance with limits of \$5 million in form satisfactory to City;
- (f) Special Conditions: Restrictions/Conditions:
 - i) Closure of Lands Closure of Lands – (a) The Tenant must recognize 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 Exhibition Place. At such times, special provision will be made by the Board to facilitate access to the Snack Bar; (b) the Tenant acknowledges that the Board shall have the right during the Molson Indy and the Canadian National Exhibition to close the grounds of Exhibition Place, including the Snack Bar. In such cases, the Board will deliver advance notice in writing to the Tenant no less than six (6) months prior to any such closing;
 - ii) The Tenant must familiarize itself with *Our Toronto Waterfront*, a report presented to and adopted by City Council by the Toronto Waterfront Revitalization Corporation ("TWRC") led by Robert A. Fung (the "Waterfront Report"). The Tenant agrees its rights under the Lease shall be subject to the authority and rights of TWRC, and to any redevelopment of all or portions of Exhibition Place as contemplated by the Waterfront Report (the "Waterfront Redevelopment").
 - iii) The Tenant agrees that this clause shall constitute notice from the Board that the Front Street Extension project will be proceeding and will have an impact on the Exhibition Place grounds and that the Tenant shall not be entitled to any compensation with respect to any disruption caused by this project;
 - iv) All collective agreements between the Board and Labour/Trade Unions must be recognized and complied with for all work at Exhibition Place;
 - v) The Tenant acknowledges that the Board retains 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;
 - vi) The Tenant acknowledges that the Board retains all rights to the operation of all present parking facilities (surface and underground). The Board will provide 3 parking passes at no charge for the Tenant's permanent full-time staff to access

designated parking facilities at Exhibition Place which shall be valid throughout the term of the Lease save and except for the period of the Molson INDY and the Canadian National Exhibition when parking passes may be restricted and/or a fee may be imposed;

- vii) Demolition Clause: In not less than six months written notice to the Tenant, the Board shall at any time during the term of the lease have the right to terminate the lease without compensation or penalty in order to facilitate the demolition of the Food Building;
 - viii) The Tenant will provide audited financial statements within 60 days of its fiscal year end;
- (g) Operation during the Canadian National Exhibition: The Tenant agrees to operate the Snack Bar under a standard CNE Concession License Agreement for the period of the annual CNE and that the fees for such a License Agreement are in addition to the rent(s) specified in section (b) above; the Board agrees to waive Minimum Rent during the period of the annual Canadian National Exhibition ("CNE") if the Tenant is required to remit commissions on sales from this location to the Canadian National Exhibition Association ("CNEA") for that period; the Tenant agrees that it will operate the Snack Bar during the hours of operation as prescribed by the CNEA.
- (h) Hours of Operation: During the period outside the CNEA, the Snack Bar will observe hours of operation during the balance of the operating year as prescribed by the General Manager and CEO.

Conclusion:

This report recommends extending the current agreement with Ernie's Arcade for the operation of the Snack Bar for a period of one year, to expire on December 31, 2004, on the terms and conditions set out and such other terms required by the City Solicitor.

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Submitted by:


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