

## **Amendment to Coca-Cola Coliseum Lease and Sublease**

**Date:** September 18, 2023

**To:** General Government Committee

**From:** Deputy City Manager, Corporate Services and Chief Executive Officer,  
Exhibition Place

**Wards:** 10 - Spadina-Fort York

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report deals with a position, plan, procedure, criteria or instruction to be applied to negotiations carried on or to be carried on by or on behalf of the City and The Board of Governors of Exhibition Place.

### **SUMMARY**

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The City and the Board of Governors of Exhibition Place (the "Board"), (collectively the "Landlord"), and BPC Coliseum Inc. ("BPC", the "Tenant") (now part of Oxford Properties), entered into a lease (the "Head Lease") dated June 16, 2005 for the premises now known as the Coca-Cola Coliseum (the "Leased Premises") for 49 years that expires October 31, 2052. Concurrently, BPC (the "Sublandlord"), and Maple Leaf Sports and Entertainment Ltd. ("MLSE", the "Subtenant") entered into a sublease (the "Sublease") dated July 1, 2005 for the use of the Premises as the home arena of the Toronto Marlies hockey club.

The Sublease term is for a 20-year period from July 1, 2005 to June 30, 2025. The Subtenant has a right, upon written notice on or before June 30, 2023 and subject to certain other conditions, to extend the term of the Sublease for a successive period of 10 years to June 30, 2035. In 2005, the annual basic rent, percentage rent and supplemental rent for the extension term were negotiated and included in the Sublease. These existing provisions are set out in Confidential Attachment 1.

MLSE is requesting to amend the Sublease for additional term with changes to the rent structure for basic rent, percentage rent and supplemental rent (which is the capital contribution in the Sublease). MLSE and BPC have entered into a conditional agreement setting out the proposed terms of the extension of the Sublease. Under the

Head Lease, the Landlord's consent is required for any amendment to the Sublease. Accordingly, BPC has approached the City and Board requesting consent to the proposed amendments for the Sublease.

Due to a number of recent and long term factors, including COVID-19 restrictions and historical sporting event attendance during the initial term of the Sublease, it has been necessary for the Board, the City and BPC to revisit the financial and revenue assumptions made in 2005. Accordingly, this report recommends that City Council consent to the proposed amendments to the Sublease, as set out in Appendix B and Confidential Attachment 1, provided that BPC agrees to amend the Head Lease to increase the share of Sublease rent payable to the City and Board, as approved by the Board, subject to obtaining the necessary City authorization, by adoption of Item EP5.11 at the Board's meeting of September 15, 2023.

## **RECOMMENDATIONS**

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The Deputy City Manager, Corporate Services and Chief Executive Officer, Exhibition Place recommend that:

1. Subject to the execution of the head lease amending agreement set out in Recommendation 2:
  - a. City Council, pursuant to the head lease dated June 16, 2005 (the "Head Lease"), between the City of Toronto and the Board of Governors of Exhibition Place (collectively, the "Landlord"), and BPC Coliseum Inc. (the "Tenant"), consent to the amendments to the sublease dated July 1, 2005 (the "Sublease") between BPC Coliseum Inc. (the "Sublandlord"), and Maple Leaf Sports and Entertainment Ltd. (the "Subtenant"), for the Sublease extension term of 10 years commencing July 1, 2025 and ending June 30, 2035, with an option to extend for a further 10 years to 2045, substantially on the terms and conditions set out in Appendix B and Confidential Attachment 1, and such other and amended terms and conditions deemed appropriate by the Deputy City Manager, Corporate Services and the Chief Executive Officer, Exhibition Place, and in a form satisfactory to the City Solicitor.
2. As a condition of granting the consent in Recommendation 1, City Council authorize the City and the Board to enter into a Head Lease amending agreement with BPC Coliseum Inc. as set out in Schedule "B", whereby during the 10 year extension term from 2025 to 2035, the share of sublease rent, after payment of realty taxes and any other amounts provided for in the Head Lease, be distributed 75 percent to the City and the Board, as Landlord, and 25 percent to BPC Coliseum Inc., as Tenant, rather than 50 percent to each of the Landlord and Tenant as currently provided in the Head Lease.
3. City Council authorize the Director, Transaction Services to execute the Head Lease amending agreement set out in Recommendation 2, any agreements to give effect to the City consent set out in Recommendation 1, and any related documents, on behalf of the City.

4. City Council direct that the confidential information contained in Confidential Attachment 1 to this report remain confidential in its entirety, as it pertains to a position, plan, procedure, criteria or instruction to be applied to negotiations carried on or to be carried on by or on behalf of the City and the Board.

5. City Council direct the Chief Executive Officer, Exhibition Place to continue to optimize community use opportunities at Coca-Cola Coliseum such as public skating through engagement, partnerships and sponsorships with the Tenant and Subtenant for their allotted days as well as over Landlord allotted days.

## **FINANCIAL IMPACT**

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It is estimated that the positive financial implications of the proposed Head Lease and Sublease amendments over the 10-year Sublease extension term (July 1, 2025 to June 30, 2035) will be \$14.881 million as outlined in Confidential Attachment 1. The capital contribution of supplemental rent in the amount of \$5.47 million for the 10 years is in addition to the positive financial implications noted above. The annual property taxes currently paid to the City is approximately \$356,920.

If the Subtenant exercises their option to extend the term of the Sublease for a successive period of 10 years to June 30, 2045, it will be on the same terms and conditions as set out in the Sublease with the exception that the Subtenant shall have no further right to extend the term of the Sublease and the annual basic rent shall be increased by an amount to be agreed upon by the parties, provided that in no event shall it be less than the amount payable in the last year of the of the extension term.

Additional financial impact information is identified in Confidential Attachment 1.

The Interim Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

## **DECISION HISTORY**

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At its meeting of June 9, 2022, the Board approved the Exhibition Place 2022 – 2026 Strategic Plan by adoption of Item EP24.12, which has a financial goal to maintain a positive financial performance across Exhibition Place and all its businesses, and as a strategy to support this goal to ensure operating results meet or show positive revenue surplus or positive under expenditure to budget. The 2022 – 2026 Strategic Plan also has a business development goal to grow event activity, maintain strong relationships with existing clients, and identify areas for revenue enhancements.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.EP24.12>

At its meeting of September 28-30 and October 1, 2004, by adoption of Policy and Finance Committee Report No. 7(4), City Council consented to the granting of a Sublease by BPC Coliseum Inc. to MLSE with certain amendments to the Head Lease.

<https://www.toronto.ca/legdocs/2004/minutes/council/cc040928.pdf>

At its meeting of August 12, 2004, the Board consented to the granting of a Sublease by BPC Coliseum Inc. to Maple Leaf Sports and Entertainment (MLSE) with certain amendments to the Head Lease.

<https://www.explace.on.ca/files/file/5cfab766702bc/Item-1---No-Reports-All-Confidential.pdf>

At its meeting of November 26 –28, 2002, by adoption of Policy and Finance Committee Report No.15(12), City Council approved of moving forward with the renovation of the Ricoh Coliseum at a total cost of \$38 million and entering a long-term lease arrangement with BPC.

<https://www.toronto.ca/legdocs/2002/agendas/council/cc021126/pof15rpt/cl012.pdf>

## **COMMENTS**

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### **Background**

In November 2002, City Council approved the renovation of the Ricoh Coliseum (now Coca-Cola Coliseum) at a total cost of \$38.0 million. Renovation of the Ricoh Coliseum was completed on time and on budget with the Coliseum opening for its first Toronto Roadrunners game on November 1, 2003. After one full hockey season, the original subtenant, Coliseum Renovation Corporation ("CRC") defaulted on its monetary obligations under the CRC sublease and owed significant amounts of money to the City and BPC. Due to no resolution to this situation, BPC terminated the CRC sublease on June 14, 2004.

Following termination of the CRC sublease, BPC negotiated with several parties in an effort to enter a sublease with an operator that would be financially viable and provide the building with a stable and successful operation. BPC presented to staff of Exhibition Place and the City, a recommendation that the Board and City consent to BPC entering into a sublease with MLSE commencing on July 1, 2005, on terms and conditions which would vary from the CRC sublease. MLSE's proposed use of the Premises was as the home arena for the Toronto Marlies hockey club.

### **Existing Sublease with MLSE**

The Sublease with MLSE is for term of 20-years commencing July 1, 2005 to June 30, 2025. Subject to certain conditions, the Subtenant has a right, with written notice given on or before June 30, 2023 to extend the term of the Sublease for a successive period of 10 years to June 30, 2035 with no further right to extend the term after. The annual basic rent, annual percentage rent and annual supplemental rent for the extended 10-year term that were negotiated in 2005, are provided for in the Sublease, and are set out in Confidential Attachment 1.

## **Amendment to Head Lease and Sublease**

MLSE now wishes to extend the Sublease term for an additional 10 years (2025 to 2035). However, it has proposed certain amendments to the Sublease for the extension term including with respect to basic rent, percentage rent and supplemental rent. MLSE and BPC have entered into a conditional agreement setting out the proposed terms of the extension. Under the Head Lease, the Landlord's consent is required for any amendment to the Sublease. Accordingly, BPC has approached the City and Board requesting consent to the proposed amendments.

Based on attendance and ticket sales during the initial term of the Sublease, it has been necessary for the Board, the City and BPC to revisit the financial and revenue assumptions made in 2005. Accordingly, this report recommends that City Council consent to the proposed amendments to the Sublease, as set out in Appendix B and Confidential Attachment 1. As a condition of this consent, BPC would be required to enter into a Head Lease amending agreement with the City and Board whereby the share of Sublease rent, after payment of realty taxes, be distributed 75 percent to the City and the Board, as Landlord, and 25 percent to BPC, as Tenant, rather than 50 percent to each of the Landlord and Tenant as currently provided in the Head Lease.

Under the amended Sublease, MLSE will continue to invest in various state of good repairs on an annual basis through its contribution to the supplemental rent reserve held by BPC for capital infrastructure expenditures based on building condition assessment audits.

The proposed Sublease and Lease amendments were negotiated by staff from Exhibition Place and Corporate Real Estate Management (CREM), with input from Legal Services on legal matters. Staff consider the proposed Sublease amendments, together with the Head Lease amendments, to be fair, reasonable, and reflective of market value.

Additional details are further discussed in Item EP5.11 adopted by the Board on September 15, 2023.

## **CONTACT**

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Alison Folosea, Director, Transaction Services, Corporate Real Estate Management, 416-338-2998, [Alison.Folosea@toronto.ca](mailto:Alison.Folosea@toronto.ca)

## **SIGNATURE**

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Josie Scioli  
Deputy City Manager, Corporate Services

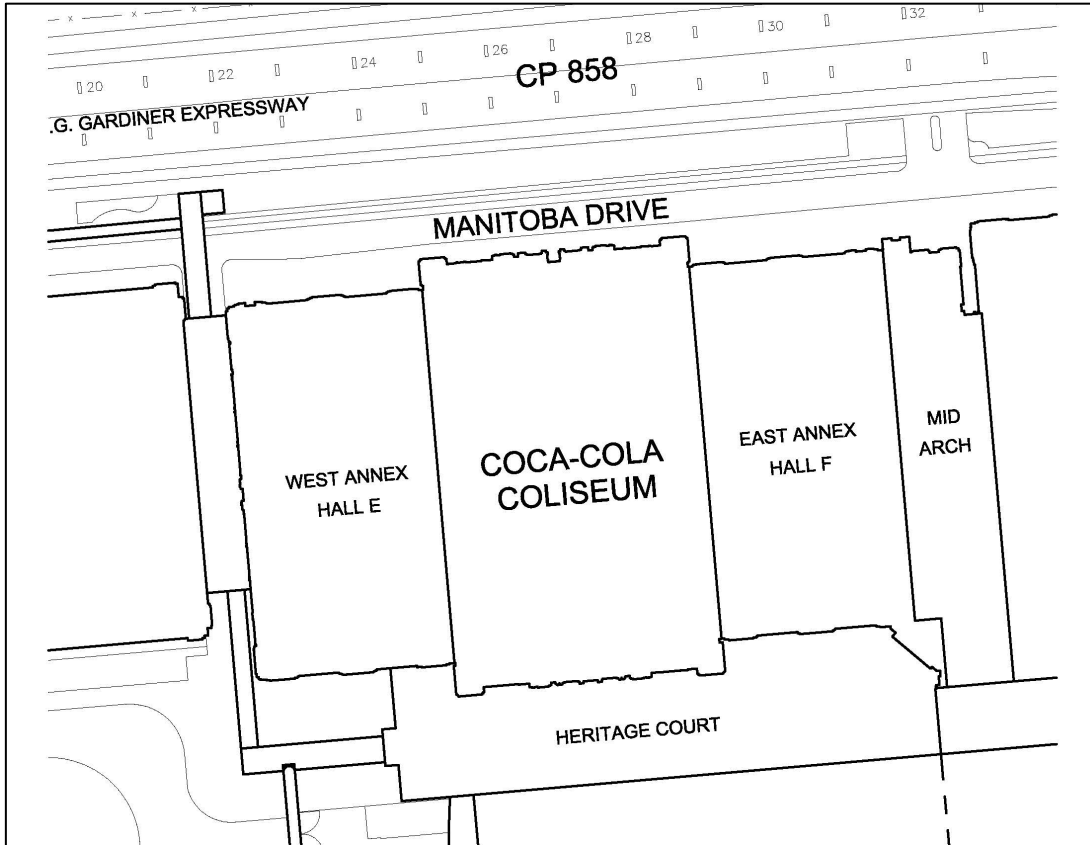
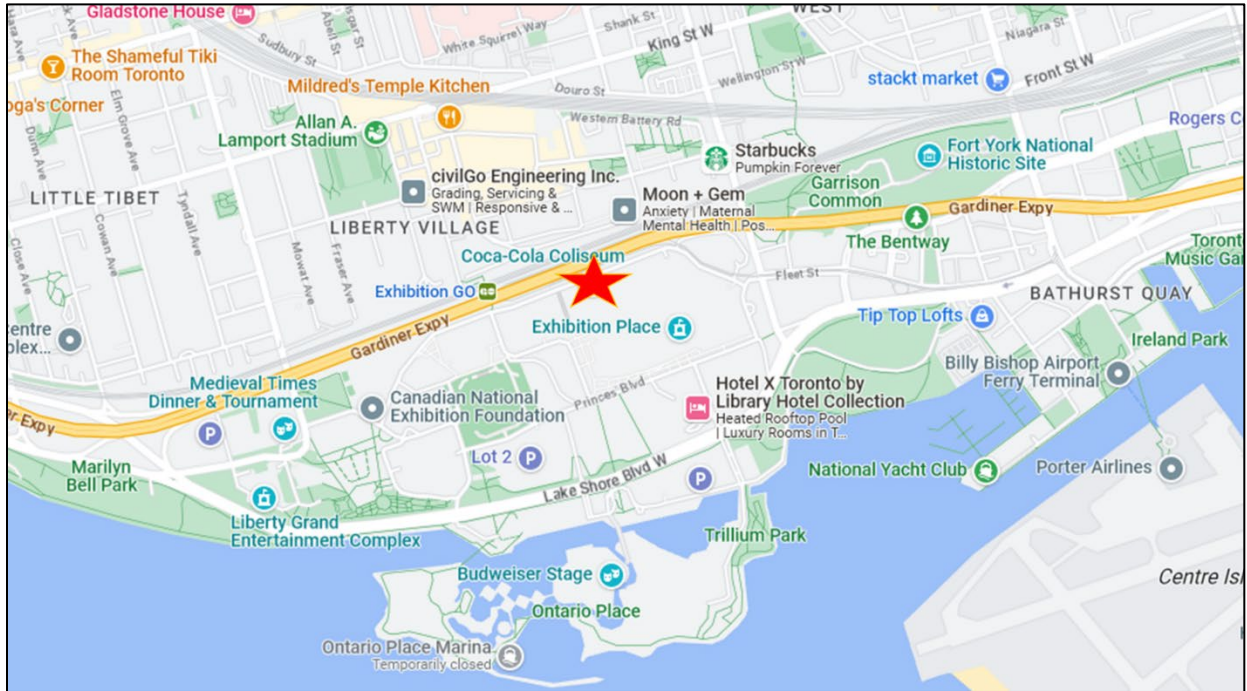
Don Boyle  
Chief Executive Officer, Exhibition Place

## **ATTACHMENTS**

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Appendix A - Coca-Cola Coliseum Site Location  
Appendix B - Terms and Conditions of Extended and Amended Sublease and Head Lease  
Confidential Attachment 1 - Financial Analysis and Terms

# Appendix A - Coca-Cola Coliseum Site Location



## **Appendix B - Terms and Conditions of Extended and Amended Sublease and Head Lease**

### *Amendments to Sublease*

Existing Sublease: The Amended Sublease shall be materially on the same terms and conditions as the Existing Sublease, save as modified or amended herein.

Sublandlord: BPC Coliseum Inc.

Subtenant: Maple Leaf Sports and Entertainment Ltd.

Leased Property: The Building known as the Coliseum as defined in the Existing Sublease and shown attached hereto on Appendix A (Site Location) and Appendix B (Schedule A – Site Plan of Leased Property).

Term: 10 years, commencing July 1, 2025 and expiring June 30, 2035 (the "Extension Term").

Basic Rent: The Subtenant has requested an amendment to the previously approved amount of Annual Basic Rent. See Confidential Attachment 1.

Percentage Rent: The Subtenant has requested an amendment to the previously approved Annual Percentage Rent. See Confidential Attachment 1.

Supplemental Rent: The Subtenant has requested an amendment to the previously approved Annual Supplemental Rent. See Confidential Attachment 1.

Additional Rent: The Subtenant shall pay Additional Rent in accordance with the Existing Sublease.

Conditions of Premises (Leased Property): Subtenant accepts the Premises in a "then as is" condition.

### *The Sublease shall be amended as follows:*

(i) Section 1.1 of the Sublease shall be amended as follows: (i) the following words shall be deleted from the definition of "Capital Repairs": "...and cost in excess of \$75,000 subject to an increase in each Lease Year following the tenth Lease Year in accordance with the CPI Index"; and (ii) the definition of "Improvements" shall be deleted and replaced with the following:

"Improvements" means all fixed improvements, structures, equipment, mechanical and electrical systems, machinery and installations located on, in, under or affixed to the Premises that are necessary or required for its operation and use (excluding Subtenant's Trade Fixtures) and further includes, for greater certainty, all fixed improvements, structures, equipment, mechanical and electrical systems, machinery and installations located on, in, under or affixed to the roof of the West Annex which exclusively serves the Premises."



(ii) Section 6.2(a) of the Sublease shall be amended to reduce the number of Landlord Event Days from 115 days to 104 days.

(iii) Section 10.2(i) of the Sublease shall be amended to delete the references to "\$500,000" during the extension term and to replace such references with "\$1,000,000" (such that the maximum Additional Supplemental Rent during the Extension Term and any further extension shall be \$1,000,000). In addition, such section shall be amended to state, for clarity, if there is any surplus in Additional Supplemental Rent at the expiry or termination of the Sublease, such surplus funds shall, in the case of an extension be carried over and added to the Subtenant's obligations for such future extension term, and in the case of an expiry or earlier termination of the Sublease, remain the property of the Sublandlord.

(iv) Schedule "H" of the Sublease shall be amended as required in accordance with the terms of this Proposal.

(v) Provided that: (i) the Sublease has not previously been terminated; (ii) the Subtenant is not then in default under the Sublease by a reason of a notice of default having been given and the time for remedying such default having expired; and (iii) the Subtenant giving to the Sublandlord written notice of its intention to extend the Term of the Sublease on or before June 30, 2033, the Subtenant may further extend the Term of the Sublease for a successive period of 10 years to June 30, 2045 on the same terms and conditions as set out in the Sublease save and except the Subtenant shall have no further or other right to extend the Term of the Sublease and that the Annual Basic Rent shall be increased by an amount to be agreed upon by the parties, acting reasonably, provided that in no event shall it be less than the amount payable in the last year of the Extension Term. If the parties are not able to agree upon the Annual Basic Rent payable during such extension term by the date which is 18 months prior to the expiry of the Extension Term, it shall be determined by arbitration in accordance with the Arbitration Act (Ontario). If there is an arbitration to determine the Annual Basic Rent payable during such extension term and such arbitration results in an increase to Annual Basic Rent greater than 10 percent of the amount payable during the last year of the Extension Term, then the Subtenant may elect to terminate the Sublease by delivering written notice to the Sublandlord within 15 days of receipt of the decision from the arbitration and such termination shall be effective on the later of: (i) June 30, 2035, and (ii) 60 days following the date of receipt of the termination notice by the Sublandlord. The Annual Supplemental Rent shall continue to increase by two percent each year during such extension term.

(vi) Such other reasonable amendments as are required by the Sublandlord, including any amendments required in order to waive the Sublandlord conditions as mutually agreed to by the parties.

Amending Agreement: The provisions of this Proposal shall be documented by way of Sublandlord's standard form of amending agreement, which agreement shall be subject to Subtenant's non-financial amendments as agreed to by Sublandlord, both parties acting reasonably (the "Amending Agreement"). The Amending Agreement shall be

conditional upon executive approval of the Sublandlord and approval by the City of Toronto and the Board of Governors of Exhibition Place (the "Board").

#### *Amendments to the Head Lease*

Section 3.2 of the Head Lease shall be amended so that the Sublease Rent, after payment of Realty Taxes, shall be shared during the 10-year Extension Term at 75 percent to the Landlord and 25 percent to the Tenant. Thereafter, if the Subtenant exercises its right to further extend the Term as set out in subsection (v) above, the parties will negotiate the appropriate share depending on Annual Basic Rent payable under the Sublease at the time, such that the City/Board obtains a share of Sublease Rent which represents fair market value (given the structure of the Head Lease and Sublease), provided that in no event will the amount of net revenue received by the City/Board be less than the net revenue received in year 10 of the Extension Term. In the event the parties are unable to agree upon the appropriate share, the matter will be determined by arbitration.

Section 6.7 Community Ice Skating of the Head Lease shall be amended from "The Tenant shall permit access to the Premises to the general public, without an imposition of an admission fee or other cost, for the purpose of charitable or not-for-profit community skating for four-hour periods on eight separate occasions during each Lease Year of the Term; so that it now reads; "The Tenant shall permit access to the Premises to the general public, without an imposition of an admission fee or other cost, for the purpose of charitable or not-for-profit community skating for two and half hour periods on twelve separate occasions from October to March during each Lease Year of the Term".