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Exhibition Place

November 15, 2011

To: Board of Governors of Exhibition Place

ACTION REQUIRED

From: Dianne Young, CEO

Subject: **BMO Field – Settlement with Canadian Soccer Association**

Summary:

In November 2005, Maple Leaf Sports & Entertainment (MLSE), the City of Toronto (City), the Board and the Canadian Soccer Association (CSA) entered an initial Letter of Intent (CSA LOI) that provided for the construction and future use of a national soccer stadium (i.e. BMO field) at Exhibition Place. Included in the LOI were certain terms and conditions for use of BMO Field by the CSA. In particular, the LOI contemplated that the CSA would use the stadium for a minimum of six national team games annually.

In 2007, the CSA met all the terms and conditions set out in the CSA LOI. In 2008, the CSA and MLSE began to debate the fulfilment of the LOI after only two national team games and one Canada U20 game were hosted at BMO Field. However, in 2009 and 2010, MLSE, acting as manager for the Board, indicated that the CSA did not fulfil its obligations under the CSA LOI and because of this held back box office sales from the CSA for games played at BMO Field in those years pending resolution of the terms and conditions of the CSA use of BMO Field.

The parties have now reached a proposed agreement that is mutually beneficial to all parties and are proposing the terms of the CSA LOI be amended and the parties enter into a Licence Agreement on the basis of the original LOI as amended, including a settlement with respect to the CSA use in 2008, 2009 and 2010.

Recommendations:

Subject to approval of City Council, it is recommended that the Board approve an amendment to the terms and conditions with respect to the CSA use of BMO Field as provided in this report and that the Board and MLSE enter into a license agreement with CSA on the terms and conditions outlined in Appendices A to D of this report and the original Letter of Intent (November 14, 2005) between the parties, and such other terms and conditions as may be satisfactory to the Chief Executive Officer, the City's Deputy City Manager & Chief Financial Officer and the City Solicitor.

Financial Impact:

Approval of the proposed modifications to the CSA LOI will result in a net positive income stream to BMO Field of \$442,300 for the year-end 2011 related to amounts owing from CSA for the years 2009 and 2010.

With respect to future financial impacts, the proposed amendments will be positive for BMO Field / Exhibition Place when compared to the potential revenues to be received by BMO Field under the

existing terms of the CSA LOI in years where the CSA fails to meet its minimum ticket sale commitment. In future years where the CSA does meet the minimum ticket sale commitment, there will be no negative impact to BMO Field / Exhibition Place when the amended terms are compared to the potential revenues under the existing CSA LOI.

Issue Background:

From the standpoint of MLSE / Exhibition Place, the CSA received favourable terms in the original CSA LOI based on fulfilling a minimum commitment of playing six national team games at BMO Field annually. The view of the CSA is that it could not meet the six game commitment agreed to in the CSA LOI on a consistent basis and that it may only reach the six games requirement every four years during World Cup Qualifiers. Because of this reality, the parties have worked together to resolve the disagreement and have proposed a realistic annual commitment based on fulfilling a minimum attendance guarantee rather than the number of games annually. These amendments to the CSA LOI would result in more revenues for BMO Field should the CSA not meet the proposed guarantee.

Comments:

Existing CSA LOI Terms

The current CSA LOI as approved by Council in 2005 provided for a number of agreements between the City, the Board, MLSE and the CSA with respect to the construction and use of the national soccer stadium at Exhibition Place.

In summary, the contemplated arrangement was that MLSE would construct and manage the stadium as manager for the Board/City. The Toronto FC and CSA would have rights of use of the stadium for soccer games/events, and rights would also be reserved for community use (50% of available time), the CNE and other major events (e.g. Olympics, World's Fair, Honda Indy). The City, provincial government, federal government and MLSE all made financial contributions to the construction of the stadium. Under the financial arrangements, the City and MLSE would share both the operating obligations and revenues generated by the stadium. The City and provincial and federal governments required the use of the stadium for community purposes as well as for professional soccer games.

The CSA, which helped to facilitate the political approvals for the project, was provided with the rights of use as described above and was also given the opportunity to share in stadium "excess cash flow", after satisfaction of any operating cost and capital contributions made by the City/MLSE. The CSA's participation would at that point be 33% of any remaining excess cash flows, with the remaining portion (67%) to be shared between the City and MLSE. The original LOI also provides that the CSA would receive the following from all CSA events: 45% of the Capital Replacement Fund (CRF) surcharges on tickets to CSA events; 25% of gross food and beverage revenue; and 85% of gross merchandise revenue. These terms are contained in Appendix "E" to this report.

Section 5(b) of the CSA LOI also states that the CSA would pay 7% of all gate receipts from all CSA events to BMO Field and that these user fees will be included as revenue for BMO Field operations. Section 5(b) also indicates that CSA would host "a minimum of six (6) national team games annually" at BMO Field.

In 2009, the CSA only played one national team game at BMO Field and this caused MLSE, on its own behalf and as manager of the facility for the Board/City, to seek a financial penalty for the five remaining games needed to reach the minimum annual commitment under the CSA LOI. In 2010 the CSA only played two games at BMO Field, causing MLSE to seek an additional financial penalty for the un-played games. MLSE has withheld \$442,300 in payments to the CSA pending the 2009 and 2010 settlements that have been in dispute. The CSA had argued that non-national team games such as the Nutrilite Canadian Championship (NCC) matches should be included towards the six games commitment because the CSA controls the commercial rights to the tournament.

Proposed Amendments

The proposed agreement as set out in Appendix "A" to this report includes amendments to the CSA LOI with respect to the financial terms and confirms the requirement for the execution of the outstanding long form agreement between the CSA and the Board. The proposal includes three tiers of financial terms based on the number of tickets sold by replacing the minimum number of games requirements with an annual "minimum attendance commitment" based on attendance at "CSA Qualifying Events" as defined in Appendix "A".

The per game revenues which the CSA was to receive under the original CSA LOI would be adjusted based on three "tiers" of minimum attendance levels as per the chart included in Appendix "B". The original percentages would not be applied unless the CSA reaches Tier 3 of the financial terms (as outlined below) based on a minimum attendance of 46,001 paid in a given year.

In the event that the lowest minimum attendance level (i.e. 16,000 paid tickets) is not met, the CSA shall be required to make a financial contribution to the stadium in an amount equal to the difference between the actual attendance figure and the minimum threshold based on a ticket value of \$6.00, increased annually by the increase in the applicable C.P.I. Should the stadium achieve an excess cash flow in any year in which the CSA is required to make a contribution, the CSA shall be entitled to participate solely in that year to the extent of 15% of excess cash flow (as defined in the original CSA LOI) up to the amount of its financial contribution for that year. In years where the CSA has greater than 16,000 paid tickets the CSA participation in excess cash flow falls under the same terms as the LOI.

Under the proposed agreement qualifying events to the new minimum attendance commitment are more clearly defined and do not include the NCC matches but do allow for consideration of non-national teams where the CSA acts as local promoter to qualify towards the minimum attendance commitment. In addition, as part of this arrangement, the CSA agrees to release any of its claims to the money held by BMO Field for the 2009 and 2010 contract years.

Below is a summary of the financial impact of the amendments when compared to the original CSA LOI:

Approximate # of Games: Assumed # of Tickets Sold:	1 Game		3 Games		6 Games	
	8,000		24,000		48,000	
	LOI	Proposal	LOI	Proposal	LOI	Proposal
CSA Facility EBITDA	62,300	103,000	186,900	253,900	373,800	373,800
Penalty	-	48,000	-	-	-	-
Total Facility EBITDA	62,300	151,000	186,900	253,900	373,800	373,800
	\$ Variance	88,700	\$ Variance	67,000	\$ Variance	-
	% Variance	142%	% Variance	36%	% Variance	0%

Resolving the disagreement with the CSA will benefit BMO Field and will help build our future business with the CSA. It provides a clearer document to work from and will form the foundation of the final licence agreement. Converting the CSA's commitment from national team games played to a minimum number of tickets sold benefits BMO Field by reducing the risk associated with the terms of the CSA LOI. There is greater benefit to the stadium by hosting quality games with higher ticket sales than by hosting a greater number of games with low ticket sales. There are at least seven national teams but ticket sales have shown the greatest demand is for the men's followed by the women's national teams. The men's and women's under 17 and under 20 teams while still considered national teams, would not have the same demand or benefit to BMO Field if their games were used to fulfil a minimum game commitment as provided in the CSA LOI. It should also be recognized that half of any risk associated with these recommended changes falls with MLSE, not the Board, given the terms and conditions of the management agreement between the Board / MLSE.

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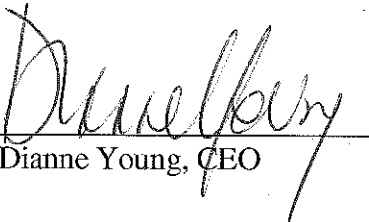
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Dianne Young, CEO

Appendix "A"

Terms and Conditions of Amended Canadian Soccer Association (CSA) LOI

1. The financial terms (i.e. rent, user fee participation, food and beverage revenue participation and merchandise revenue participation) set out in Section 5(b) and (c) of the LOI will be replaced by a "three-tiered settlement model" based on annual paid ticket figures for CSA "qualifying" matches held at the Stadium / BMO Field. The financial terms of each "tier" are set forth in Appendix B to this amended LOI. In each contract year, CSA "qualifying" matches will initially be settled under Tier I along with reconciliation of the final attendance numbers at year end and, if applicable, a re-settlement of events will occur to the extent that final attendance figures push the CSA into one of the other two tiers. A sample calculation of an annual reconciliation is attached as Appendix C.
2. In exchange for the removal of the minimum 6 game commitment enshrined in the LOI, the CSA will agree to an annual "minimum paid attendance commitment" (the "MAC") of 16,000 paid tickets. Failure of the CSA to achieve the MAC in any contract year will require the CSA to make a financial contribution (the "CSA Contribution") to the Stadium/ BMO Field equal to the difference between the MAC and the actual annual paid tickets for CSA "qualifying" matches in a given contract year multiplied by \$6.00 (the "Multiplier"). The Multiplier will increase annually by CPI on an annual basis. A sample calculation of a CSA Contribution is set forth in Appendix D to this letter. However, the CSA Contribution would not be applicable in any year in which the City declines to participate in a major soccer event hosted by the CSA (e.g. 2015 FIFA Women's World Cup).
3. For purposes of the MAC, "CSA Qualifying Events" shall mean:
 - (i) all Canadian "national" team soccer matches played at BMO Field for which the CSA is the local "promoter";
 - (ii) save and except for "NCC Matches", any other soccer match held at the Stadium/BMO Field for which CSA acts as the local "promoter"; or
 - (iii) "Special CSA Events".

"NCC Matches" shall mean soccer matches played at the Stadium/BMO Field as part of the Nutralite Canadian Championship tournament (as the same may be renamed, reconstituted or modified over the term), which, for certainty, shall not count towards the MAC.

"Promoter" shall mean, in respect of an event, the person who takes the "promotion risk" by underwriting the promotion and presentation costs of an event in exchange for the right to receive ticket proceeds from such event.

"Special CSA Events" shall mean certain soccer matches that are

- (i) organized by the CSA but for which it has shifted, reduced and/or mitigated some or all of the event promotion risk through an agreement with a third party (e.g. local promoter); and,
 - (ii) the Board (or its designee), on behalf of the Stadium, has agreed in advance (acting reasonably) that such event should qualify as a "CSA Qualifying Event" notwithstanding that the CSA has not assumed the promotion risk.
4. In any contract year in which the CSA is required to make a CSA Contribution and the Stadium/BMO Field generates "Excess Cash Flow", then the CSA shall be entitled to participate with the City and MLSE in the first distribution of Excess Cash Flow on a 15% (CSA) 85% (City /MLSE) basis up to an amount equal to its CSA Contribution. "Excess Cash Flow" to be defined as gross stadium revenues less Stadium/BMO Field operating costs, realty taxes and the amount of any reimbursements to MLSE and/or the City in respect of the funding of operating cost shortfalls and/or capital contributions for capital expenditures by MLSE and/or the City. In such circumstances, the CSA shall not be entitled to any "user fee rebate" as contemplated in Section 5(g) of the LOI. In all other circumstances (i.e. Tier 2 and Tier 3), the provisions of Section 5(g) of the LOI shall govern.
 5. The CSA shall negotiate and execute a long term user agreement with the Board as contemplated by the amended LOI based on the Stadium's/BMO Field's standard form user agreement which incorporates the provisions of the LOI, as amended by the terms of this amended LOI, together with such other changes as the parties may agree upon (the "CSA User Agreement").
 6. The CSA confirms that the terms of this amended LOI have been approved by the CSA's Board of Directors and there are no further consents, approvals, permissions or licenses to be obtained or secured by the CSA that are necessary or required for the implementation of the terms of this amended LOI and the negotiation and execution of the CSA User Agreement.
 7. The CSA confirms that as partial consideration for amending the terms of the CSA LOI as stated herein that it does hereby fully and forever release MLSE, the Board, the City and the Stadium / BMO Field of and from any and all claims, debts, liabilities, actions, causes of action, sums, losses, costs complaints, and demands of every nature or kind which CSA ever had, now has, or hereafter may have in respect of any cause, matter or thing arising out of or in connection with the settlement of CSA events at the Stadium for the 2009 and 2010 contract years, Including, without limitation, any claim or entitlement to the sum of \$442,300 currently held by the Stadium / BMO Field in respect of such contract years.

Appendix "B"
Proposed Financial Terms

	Tier 1	Tier 2	Tier 3
Number of Tickets Sold	0 – 16,000	16,001 – 46,000	46,001 +
User Fee paid to BMO Field (as a percentage of gate, net of taxes and CRF)	15%	10%	7%
Merchandise Commission (facility share)	25%	20%	15%
CSA Share of CRF	0%	0%	45%
CSA Share of Food & Beverage Sales	0%	10%	25%
Participate in Excess Cash Distribution	Yes – capped at the financial top-up paid by the CSA. Under Tier 1, the CSA does not get an opportunity to a rent rebate as stipulated in the CSA LOI.	Yes – consistent with the terms of the CSA LOI, capped at the rent paid by the CSA.	Yes – consistent with the terms of the CSA LOI, capped at the rent paid by the CSA.

Appendix "C"
Sample Reconciliation

The following is a sample calculation for event settlements in a year based on the three Tiers. The key assumptions used in the calculation are:

1. Average ticket price, net of tax - \$20.00
2. Tickets sold equals Stile Count
3. Food & Beverage per caps - \$7.50
4. Merchandise per caps - \$1.50
5. CRF, net of tax - \$1.55/ticket

	Tier 1	Tier 2	Tier 3
Tickets Sold	8,000	24,000	48,000
User Fee Paid to BMO	(24,000)	(48,000)	(67,200)
Merchandise Commission Paid to BMO Field	(3,000)	(7,200)	(10,800)
CRF Revenue share received from BMO Field	0	0	33,480
Food & Beverage Revenue share received from BMO Field	0	18,000	90,000
MAC	(48,000)	0	0

Appendix "D"
Sample "MAC" Calculation

	Example 1	Example 2	Example 3
Tickets sold at CSA Qualifying Events	8,000	24,000	48,000
MAC threshold	16,000	16,000	16,000
Ticket Excess (Shortfall)	(8,000)	8,000	32,000
MAC (\$6 x ticket shortfall)	\$48,000	\$0	\$0

Appendix "E"
Existing CSA LOI Terms

As contemplated above, CSA would enjoy certain usage rights with respect to the Stadium on the following basis:

1. CSA User/Participation Agreement:

(a) Term:

Participation term commencing on Stadium opening and terminating December 21, 2027.

(b) User Fees:

The CSA would pay seven percent (7%) of all gate receipts from all CSA events. Such user fee shall be included in revenues for Stadium operations. CSA would host a minimum of six (6) national team games at the Stadium annually.

(c) Share of Stadium Revenues:

CSA would receive the following share of revenues:

- 45% of all "facility user fees" from the sale of CSA tickets;
- 25% of gross food and beverage revenue from CSA events. MLSE to be responsible for staffing and cost of goods; and
- 85% of gross merchandise revenue from CSA events. CSA to be responsible for providing products for sale, whereas MLSE would be responsible for staffing.

(d) Event Day Costs:

CSA would be responsible for customary direct event day operating costs excluding (without limitation) parking attendants, food and beverage staff, and merchandise vendors.

(e) Capital Expenditures:

CSA would not be responsible for post completion capital repairs and improvements, unless made necessary as a result of CSA's acts or omissions.

(f) Realty Taxes:

CSA would be responsible for any realty taxes assessed in respect of its use, including in respect of any space which it occupies only. Subject to the approval of City Council, the City/Board will cooperate with CSA and MLSE in structuring this arrangement in a manner so that realty taxes payable are minimized provided that the changes in question don't materially impact the City's risk profile. For greater certainty, "co-operation" shall not include any obligation on the City to exempt the Stadium from the payment of realty or other taxes.

(g) User Fee Rebate:

A portion of excess cash flow from the Stadium shall be allocated in accordance with subsection 3(c) as a rebate in any given year against the User Fees payable by CSA in that year.

(h) Insurance/Indemnity:

CSA shall be responsible for obtaining and maintaining insurance in accordance with industry standards, including:

- comprehensive general liability insurance (minimum \$5 million per occurrence);
- property insurance in full replacement value of all property owned by CSA or for which it is legally liable, including inventory and stock, furnishings and chattels located within the Stadium; and
- owned and non-owned automobile liability (minimum \$2 million per occurrence),

all in such form (e.g. clauses re: additional insureds, severability of interest, waiver of subrogation, notice of cancellation, etc.) and amount as may be required by the City's Insurance and Risk Management Group.

CSA and the City/Board shall agree to mutually indemnify each other for their breach, negligence and willful misconduct in respect of the Stadium.

(i) Participation in Revenue:

In each year of the Management Agreement (or any portion thereof), the City/Board and MLSE would be entitled to participate in the Excess Cash Flow (defined below) received in connection with the operation of the Stadium in the following order of priority:

- (i) to MLSE in respect of any contribution to operating costs made pursuant to paragraph 3(h)(i) below;
- (ii) to the City/Board and MLSE, *pari passu* and *pro rata* to the extent of any prior contributions to excess operating costs (as referred to in paragraph 3(h)(ii) below);
- (iii) to the City/Board \$250,000 and to MLSE \$250,000, *pari passu* (CPI adjusted annually); and
- (iv) thereafter, *pari passu* to:
 - ☐ CSA, 33%, as a rebate of its user fees, up to the amount of such fees for the year in question; and
 - ☐ the City/Board and to MLSE the balance (50:50).

"Excess Cash Flow" to be defined as all receipts allocated to the Stadium after deduction of realty taxes (to the extent eligible), operating costs, MLSE's basic management fee referred to in subsection 3(b) above and Capital Contributions, in that order).

(j) City/Board/CNEA Use:

The City/Board shall be entitled to 50% of the available operating days in respect of the Stadium for a usage fee set at an amount sufficient to cover incremental Stadium operating costs only. The actual designated days and weeks for such City/Board use shall

be as agreed upon annually between MLSE and the City/Board, each acting reasonably and each giving priority to the scheduling of CSA and Team events, and in particular, subject to adjustment on no less than 8 weeks prior written notice in respect of major stadium events that were not anticipated at the time of the annual scheduling.

City/Board also to have the right to use the Stadium in the event that Toronto hosts the Olympics, the World's Fair or other international event provided that, in the case of the World's Fair or another such international event of significant duration (other than the Olympics,) MLSE shall be able to continue to use the Stadium for regularly scheduled professional soccer games and CSA shall be able to continue to use the Stadium for official FIFA qualifying games. Revenue from World's Fair, the Olympics or any other international event shall be included in revenues for Stadium Operations.

(k) CNEA/Molson Indy Use:

The use of the Stadium will be restricted during certain site-wide events held at Exhibition Place including, without limitation, the CNE and the Molson Indy. Scheduling of such site-wide events (excluding the CNE and the Molson Indy) shall be made in accordance with a booking protocol to be established by the parties, each acting reasonably. During the CNE Period, MLSE shall be able to continue to use the Stadium for its regularly scheduled professional soccer games and CSA shall be able to continue to use the Stadium for official FIFA qualifying games, each in accordance with a CNE booking protocol to be established by the parties or otherwise approved by the CNEA in writing. The CNE booking protocol shall provide that MLSE and CSA shall be permitted up to two (2) games each during the annual CNE 18 day period (the "CNE Period"); provided that each of MLSE and CSA shall use their best efforts to schedule such games on weekdays during such period or on the first weekend of such period. A ticket to such games within the Stadium will also operate as a ticket into the CNE generally. The use of the Stadium during the Molson Indy by MLSE or CSA shall only be permitted with the prior approval of the Molson Indy in writing, which is to be obtained prior to December 15, 2005.

Provided that MLSE and CSA are permitted their minimum usage of the Stadium as set out in the previous paragraph, the CNEA would have the opportunity to use the Stadium during the annual CNE Period provided that such CNE event was either available to the CNE visitors as part of the general admission to the CNE (in which event the CNE would pay only the incremental costs of using the Stadium) or was available at a premium over the general admission price, in which event a percentage of the premium (to be agreed with the CNEA) shall form part of revenues for Stadium operations.

(l) Parking:

The Board will provide non-reserved parking for the Stadium. In addition, except for the periods of the CNE and Molson Indy, the Board will, for the Team and CSA events held at the Stadium, provide two reserved parking (at no fee) per suite for suite holders and in addition, the Board will provide a maximum of fifty non reserved annual parking passes for staff and players of MLSE and the Team. The Board will retain full control over the location and manner of such parking, and any charges in respect of such parking. The Board will be responsible for all operating costs in respect of such parking, and will be entitled to retain all revenue from such parking.