



Exhibition Place

2

October 9, 2015

ACTION REQUIRED

To: The Board of Governors of Exhibition Place

From: Dianne Young
Chief Executive Officer

Subject: **Muzik Clubs Lease Terms and Conditions**

Summary:

This report provides information as requested by the Board in relation to the lease agreement between the Board and Hypnotic Clubs Inc. (successor to Muzik Clubs Inc.) (the "Muzik Clubs Lease") and other leases for the grounds. If the Board recommends amendments to the substantive terms of any of the leases, the agreement of any affected tenant will be needed, as well as approval of City Council for leases with terms that are longer than four (4) years. Revisions to the "use" clauses in any lease would be considered a substantive term and would have been part of the terms in the Letter of Intent for the Muzik Clubs Lease approved by City Council.

Recommendations:

It is recommended that the Board:

- 1) Direct Exhibition Place staff to negotiate with Muzik Clubs with a view to reaching an agreement to allow Muzik Clubs to operate during the CNE Period generally on the same terms and conditions agreed to by the Board and Hypnotic Clubs Inc. in 2014 as set out in Appendix "C" and to report back to the Board on the outcome of such negotiations and for approval of such an agreement, if any, at its meeting no later than January 2016; and**
- 2) Direct Exhibition Place staff to deliver a notice to Hypnotic Clubs Inc. to desist from marketing its premises for events which do not comply with the use provisions of the Muzik Clubs Lease.**

Financial Impact:

There are no financial consequences to this report.

Decision History:

The Exhibition Place 2014 to 2016 Strategic Plan had a Financial Goal to *seek additional revenue opportunities* and as a strategy to support this Goal *we will seek new and / or expand revenue opportunities within our existing operations and increase revenues from tenants / naming partnerships / third parties.*

At its meeting of September 4, 2015, the Board adopted Motion MM (e) requesting staff to report on the ability for the Board to prohibit Muzik Clubs ("Muzik") from using its leased premises for the OVO Fest after party or similar events in future years and to examine other permitted uses currently allowed (or not allowed) under the Muzik Clubs Lease. A number of other questions respecting the Muzik Clubs Lease also arose at the Board meeting, in particular with respect to the closure of Muzik during the 2015 CNE.

Issue Background:

This report addresses the issues of principal use/ancillary use/ exclusive use/prohibited use set out in the Muzik Clubs Lease and the relationship of these provisions to other leases on the grounds and also addresses the Muzik Clubs Lease provisions respecting the closure of Muzik Clubs during the CNE period.

Comments:

Closure during the 2015 CNE Period

At its meeting of September 4, 2015, during depositions, a representative for Muzik alleged that Exhibition Place staff had threatened him with respect to closure during the period of the CNE. It is unclear as to what threat the deponent was referring to, however attached as Appendices "A" and "B" is all correspondence relating to the operation of Muzik Clubs during the 2015 CNE. The deponent may have been referring to the notice set out in the February 26, 2015 correspondence from Exhibition Place staff, attached as Appendix "B", advising Muzik that it could not operate during the 2015 CNE. This notice was sent to Muzik in accordance with the terms of the Muzik Clubs Lease, section 16.2(2), which provides that the Board "shall have the right during the CNE to close the Lands, and to interfere with, interrupt or prevent access to the Building." The circumstances leading up to sending the letter are as follows:

- Since its opening in 2004, the CNEA and the Board have worked cooperatively with Muzik to allow for the night club to operate within the Muzik building during the CNE without any formal agreement which is exactly the same as the CNE does for other tenants on the grounds (Liberty Grand, Medieval Times) whose operations were inside building premises and had little impact on the outdoor programming of the CNE.
- In 2013, Muzik Clubs built its patio and wanted to program the patio throughout the CNE period. Because the patio is next to an important CNE program area (Bandshell Stage), the CNEA (now an independent 3rd party licensee of the Board) requested an operating agreement and the parties (CNEA, Muzik, and Board) executed an agreement.
- The CNEA concerns grew in 2014 when the Muzik patio expanded, increasing the patio capacity to 5654 patrons at any one time and substantially increasing its sound equipment capacity. Again, to meet the CNEA concerns, the Board approved an agreement and the parties executed the 2014 CNE Operating Agreement.
- In 2014, the CNEA gave notice to the Board that the Master Agreement between the Board and the CNEA did not allow Muzik to open for business during the CNE period. The Board disputed this interpretation of the Master Agreement and the CNEA invoked the arbitration clause of the Master Agreement. The arbitration hearing took place in late January 2015 with a decision rendered on April 1, 2015
- Until the arbitration decision was rendered, the Board was in an uncertain situation. The arbitrator might have ruled that the Master Agreement between the Board and the CNEA did not allow Muzik to open during the 2015 CNE period. Since Muzik was not a party to the arbitration, the only way the Board would be able to comply with such a ruling would be to exercise its rights under the Muzik Clubs Lease to prevent Muzik from operating during the CNE. The Lease requires six months' prior written notice in order to invoke the closure provision, so pending the outcome of the arbitration; notice was given to Muzik, to preserve the Board's legal position, caught as it was in the middle between the competing positions of the CNEA and Muzik. So, by way of the letter dated February 26, 2015, we advised Muzik that it would not be permitted to operate during the 2015 CNE. The letter also indicated that the notice of closure would be revoked depending on (1) the outcome of the CNEA arbitration; and (2) the parties working out agreeable operating and security protocols as in the past (i.e. similar to those agreed to and executed in 2014 as attached as Appendix C).
- Following the arbitration award issued on April 1, 2015 which held in favour of the Board, Exhibition Place staff approached Muzik to update the 2014 CNE Operating Agreement so

that the notice of closure could be revoked. When no agreement had been reached through staff, the Exhibition Place Chief Executive Officer initiated written correspondence to Muzik's solicitor, Mr. Binetti, on May 20, 2015 which continued to August 27, 2015 (see Appendix "A") to negotiate an update to the 2014 CNE Operating Agreement / security protocol to reflect 2015 circumstances. In the end, no agreement was executed and Muzik decided not to open during the 2015 CNE.

Exhibition Place staff believe that the 2014 CNE Operating Agreement was very positive as it set out the rights of both Muzik and the CNE and allowed each to operate without conflicts and to the benefit of their respective attendees. There were no major conflicts during the 2014 CNE and therefore, Exhibition Place staff are recommending that an agreement on the same terms and conditions be entered between the Board and Hypnotic Clubs Inc. for a term of one to four years commencing in 2016.

Principal/ Ancillary Uses/ Exclusive Uses of Leasehold Interests

A significant provision of all Exhibition Place leases are clauses setting out the principal / ancillary uses granted to the tenant. In addition, most leases include clauses setting out specific areas of business that cannot be carried on by the tenant. Finally, some leases also include exclusive uses granted only to one specific tenant on a lease-by-lease basis. Exclusive uses are not uncommon in commercial settings where a mix of tenant uses is desirable and exclusivity is necessary in order to attract certain tenants.

As noted in Appendix "D", the principal use in the Muzik Clubs Lease is activities related to typical nightclub and live performance venue which provide both recorded and live music for dancing and entertainment and serve food and beverages, including alcoholic beverages. Ancillary uses include hosting special events, televised sporting events, radio and internet broadcasting and product launches which specifically relate to the products and services used in a night club, concert hall and live performance businesses. The OVO after party fits clearly within the principal use clause for the Muzik Clubs Lease and therefore, the Board has no ability to ban this event.

With respect to exclusive uses, generally, Exhibition Place staff are reluctant to provide these rights to tenants because it limits the future rights of the Board. Conversely, tenants seek to have exclusive rights across the grounds for the term of their lease to limit their competition. Accordingly, such exclusive use clauses have, in every lease across the site, been the subject of intense negotiations and eventually mutually agreed to by both parties and are always included in the Letter of Intent that is approved by the Board and City Council and which sets out the principal terms of the proposed lease.

Exclusive uses are negotiated with a tenant in the context of the overall business terms including the length of the term, the level of capital investment by the tenant and the base rent, as well as landlord considerations such as the impact to our business model and future leasing opportunities at Exhibition Place. Attached as Appendix "D" to this report are the list of all commercial leases on the grounds and the use clauses within those leases. Any exclusive uses granted to a tenant will of necessity limit any rights that can be granted to a new tenant. Once granted, the Board has a legal obligation to enforce an exclusive use provision against all other tenants.

An example of how the exclusive use provisions have evolved is the one granted to the first tenant on site (Medieval Times) in 1993 for the exclusive right to be the only operator of a themed dinner theatre on the grounds. When the Board first issued a request for proposal for a long-term tenancy of the Ontario Government Building, it received a proposal for a Cuban dinner theatre experience. The Board approached Medieval Times to request it waive its rights to exclusive use; however Medieval Times declined for business reasons and the proposal was

rejected.

In 2004, the Board granted Muzik an exclusive use right for “a permanent indoor live performance venue/nightclub which operates as a permanent liquor licensed venue solely for the purpose of providing live and recorded musical entertainment for standing crowd capacities of greater than 500 persons but less than 2,999 persons.” The Board has enforced this right against all other tenants that have entered lease agreements since 2004. Recently, the Queen Elizabeth Theatre tenant approached Exhibition Place with a proposal to remove some of its fixed seating in the theatre to allow for standing room crowds similar to venues of its Toronto competitors. The Queen Elizabeth Theatre tenant would only be allowed to use the newly configured space for live performances and not taped music. However, the standing capacity projected by the Queen Elizabeth Theatre tenant was over 500 persons and this would conflict with the Muzik exclusive use clause and therefore, Exhibition Place staff advised the QE tenant that Muzik would have to approve and waive its rights in order to permit the renovation of the Queen Elizabeth Theatre as proposed.

Prohibited Uses

Every lease at Exhibition Place contains clauses which limit the rights of the tenants to carry on certain businesses. One of the key ones for the Board is to protect its core business which revenues generally allow Exhibition Place to be revenue neutral for the Toronto tax base. Our core business is trade and consumer show events which produces annual rental revenues of \$12.0M compared to tenanted rents totaling \$2.0M annually. It would not be in the best interests of the Board to jeopardize this major revenue source in any way.

The other key limitation in all leases is a prohibition on use of tenanted properties for a casino which is a limitation in keeping with the direction taken by City Council.

Other than these two core limitations, each lease contains limitations based on various factors:

- limitations stipulated in the original offer to the public
- uses proposed by the successful respondent to a particular request for proposal
- negotiated terms approved by the Board and City Council
- any exclusive use clauses of other tenants / contractors
- rents negotiated could be tied to the limitations imposed

With respect to the Muzik Clubs Lease, a public request for proposals was issued and Muzik responded to the RFP with a proposal for a year-round entertainment venue for concert performance and a nightclub which would have activities scheduled in the evening with an emphasis on weekends. The concept as proposed would be similar to existing venues such as the Docks, Phoenix, Concert Hall, Government and Cool House. Negotiations of the terms and conditions of the lease included a prohibition on use of the leased premises for banquets as this was the principal use of Liberty Grand and the Fountain Dining Room. These terms were subsequently approved by the Board and City Council and the rent bid accepted by the Board was also based on its primary business nightclub type events.

Despite the provisions in the Muzik Lease prohibiting banquets and trade and consumer shows as a permitted use (see Appendix D), Muzik in 2006/ 2007 started to book these activities. This was reported to the Board and following unsuccessful negotiations with Muzik, a court interpretation of the Muzik Clubs Lease was sought and the court ruled in favour of the Board. Specifically, the court stated that “corporate sponsored, sit down dinner for a large number of people, with a catered menu and table service, that is organized to celebrate for example a company milestone, or a holiday, or someone’s retirement, is a banquet”. However, the court also went on to state that “I am not deciding whether these events would still qualify as banquets if any of the indicia noted above was absent – for example, if there were food stations and no table service, or if the event was a lunch or a breakfast.”

Exhibition Place staff have generally taken a narrow view of the definition of “banquets” to mean a sit down dinner for a large number of people, with a catered menu and table service. Any other corporate event would not fall within the scope of the prohibited use and can be booked by Muzik as of right. Furthermore, if a client specifically wants to have its “banquet” event at Muzik, Muzik typically requests permission of Exhibition Place and in all such cases permission has been granted. The decision is made by Exhibition Place staff after due consideration as to the nature of the proposed event and whether it might be held more appropriately at another venue on the grounds.

Recent electronic advertisement by Muzik seems to be again contemplating a breach of the Muzik Clubs Lease and the court decision (see Appendix “E”). Perhaps Muzik assumes that the Board will in all instances approve of any “sit down dinners” as the Board has done this in the past, so pursuing this market is now an opportunity open to Muzik. However, it is contrary to the intent of the “use” provisions of the Muzik Clubs Lease and it is very difficult to continue to do on a “one-off” basis by staff. Accordingly, in consultation with City Legal, Exhibition Place staff would recommend to the Board that as the landlord it should enforce the existing terms of the lease, so that neither this tenant nor others tenants on the grounds develop the view that they are not bound to honour the terms of their lease agreements with the Board.

Contact:

Dianne Young, Chief Executive Officer
Tel: 416-263-3611
Fax: 416-263-3040
Email: dyoung@explace.on.ca

Appendix "A"
2015 CNE Period Operating Agreement Correspondence

From: Dianne Young
 Sent: Thursday, August 27, 2015 8:56 AM
 To: Michael Binetti (mbinetti@agmlawyers.com)
 Cc: Francesca Colussi; Arlene Campbell; bcappell@toronto.ca; francis.bergen@torontopolice.on.ca; Dianne Young
 Subject: RE: Muzik Opening During the 2015 CNE

Hi Michael

I have heard from TPS that your client intends to open the Club on September 12 2015 and am assuming then that Muzik does not intend to open during the CNE Period.

Can you confirm this for me?

Could you also provide a copy of the new Liquor Licence for the Premises.

Thank you for the insurance certificate which I have sent to our Risk Manager.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young
 Sent: Monday, August 24, 2015 2:35 PM
 To: Michael Binetti (mbinetti@agmlawyers.com)
 Cc: Francesca Colussi; Arlene Campbell; bcappell@toronto.ca; Dianne Young; francis.bergen@torontopolice.on.ca
 Subject: Muzik Opening During the 2015 CNE

Dear Michael

Just wanted to do a follow-up email to you from Friday given we had no final confirmation from you about w/end opening / non-opening of Muzik but in fact Muzik did not open.

Again, Exhibition Place is willing to work with you and your client this week on opening during the 2015 CNE if there is a desire to do this.

From our understanding what is outstanding is as follows:

1. Security Protocol – as indicated, we think updating the 2014 protocol would be what is needed along with adding reference to the executed Liquor Licence conditions
2. Insurance – Barb Cappell sent you the comments from the City Risk Manager on some language that needs to be added to reflect the lease provisions in the Muzik insurance certificate
3. 2015 CNE Operating Agreement – I sent you a revised draft on Friday which included a commitment by EP to providing parking & then putting back in the noise provisions
4. Parking Lot Availability – EP has committed to providing paid duty in the lots so that CNEA will keep them open for use by Muzik. However, to order paid duty from TPS it looks like generally EP will need 48-hours to get paid duty assigned

Thank you again Michael for your constant work on this matter last week and if we can assist to move this

along, just let me know.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young

Sent: Friday, August 21, 2015 3:40 PM

To: 'Michael Binetti'

Cc: Dianne Young; bcappell@toronto.ca

Subject: Muzik agreement re CNE

Michael

I amended this again based on premise that we commit to opening the Parking Lots as in previous years & therefore put back in the amended noise clause

Dianne

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Wednesday, August 19, 2015 3:31 PM

To: Dianne Young

Subject: Muzik agreement re CNE

Without Prejudice

Dianne,

Attached are the black-lined and clean versions of what is our last proposal for an agreement. As discussed, where there is no agreement on parking, there can be no agreement on noise. You mentioned potentially getting an agreement from the CNEA on access to parking, which may facilitate an agreement on noise. Until then, both clauses have to come out in our opinion. We will be governed by the friendly agreement as discussed on the phone, which as you mentioned worked perfectly fine in years past.

I will send the Security Plan in another email.

Michael

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: August-18-15 4:28 PM

To: Fatima Scagnol

Subject: Muzik Protocol re CNE

Ms Scagnol,

We are the lawyers for Muzik Clubs Inc. Our client hereby requests an urgent Board of Governors meeting to discuss a protocol with respect to the CNE. The breadth of additional requests being made for this year's CNEA protocol are such that our client requests the opportunity to address its concerns directly to the Board of Governors on an urgent basis. For example, no assistance is being offered with respect to parking of Muzik

patrons during the CNE. The only logical inference to be drawn is that patrons would park off site in the surrounding community. Moreover, additional music restrictions are being sought as well as the involvement of third party organizations in security protocol discussions. Our client is in fact willing to agree to some of the requests, but when the requests are considered at large, our client needs to have its concerns heard by the Board of Governors.

A purported notice of closure during the CNE was delivered to our client on February 26, 2015. It was silent as to whether it was authorized (or needed to be) by the Board of Governors. In any event, contrary to the Lease with Muzik, the purported notice of closure was delivered late as it was to have been delivered not less than six months before the proposed closure. Leaving that issue aside for the moment, our client would like to make submissions to the Board of Governors with a view to concluding a fair and balanced CNE protocol at the Board's earliest convenience.

Sincerely,

Michael Binetti

From: Dianne Young
Sent: Monday, August 17, 2015 6:20 PM
To: 'Michael Binetti'
Cc: bcappell@toronto.ca; Dianne Young
Subject: Muzik - security measures

Michael

As we discussed.

EP will not be able to execute any Agreement until we have received Muzik's full written 2015 Security Plan - I am not taking issue with your email per se but I cannot indicate to you that your direction would be acceptable to EP as until we receive the actual Security Plan I am in no position to comment or approve.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young
Sent: Monday, August 17, 2015 6:13 PM
To: 'Michael Binetti'
Cc: bcappell@toronto.ca; Dianne Young
Subject: RE: Muzik 2015 Consent Agreement One Year Only BL to 2014 AGM ver 2015-08-17

Michael

I am reviewing with Barb Cappell, City Legal and EP staff and we hope to have our changes (either from me or from Barb) back to you tomorrow, Aug 18 2015

Dianne

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Monday, August 17, 2015 1:16 PM

To: Dianne Young

Subject: Muzik - security measures

Dianne,

As discussed, and until we can get the following incorporated into a CNE-specific document, we are working on the premise that last year's security plan will be reactivated along with:

-security sweeps prior to opening

-to the extent possible, some camera coverage for next weekend at entrances and exits -posting signs (be considerate of community; premises being monitored, no gangs) -log books for security sweeps and cameras

-(temporary) lighting at entry points

-security personnel readily identifiable -for all types of event until agreement on security to be applied to different types of event, everyone to pass through walk-through metal detector and physical searches -searching of deliveries -walk-through metal detectors and wandering of patrons -continued security patrols of perimeter

As the above is satisfactory to the AGCO and in turn the Toronto Police Service for paid duty officers to be provided, we trust they are satisfactory to you as well. In fairness to the others, these are interim measures that require finalization and final approval by the AGCO and TPS.

Please let me know your expected availability to finalize matters.

Michael Binetti

Affleck Greene McMurtry LLP

From: Dianne Young

Sent: Monday, August 17, 2015 6:14 PM

To: 'Michael Binetti'

Cc: bcappell@toronto.ca; Dianne Young

Subject: RE: Muzik 2015 Consent Agreement One Year Only BL to 2014 AGM ver 2015-08-17

Michael

We will address this entire issue in the revised document EP sends tomorrow
Dianne

Dianne Young | Chief Executive Officer |

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Monday, August 17, 2015 11:42 AM

To: Dianne Young

Subject: RE: Muzik 2015 Consent Agreement One Year Only BL to 2014 AGM ver
2015-08-17

Dianne,

If we need to clarify the parking comment, it is that parking for Muzik
patrons should be in Lots 5 and 6.

Michael

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Monday, August 17, 2015 11:16 AM

To: Dianne Young

Subject: Muzik 2015 Consent Agreement One Year Only BL to 2014 AGM ver 2015-
08-17

Without Prejudice

Dianne,

As discussed just now, our proposed revisions and comments to the agreement
are attached.

I will send in another email either a revised security plan, or as discussed,
the additional measures that Muzik is taking further to our meeting with the
AGCO, the Toronto Police Service and the Ontario Provincial Police. It may
just be that we use the same security plan from 2014 with the additional
measures read-in to that plan in the interim.

Please call or write if you have any questions.

Michael

Michael I. Binetti

mbinetti@agmlawyers.com

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Saturday, August 15, 2015 5:15 PM

To: Dianne Young

Subject: Re: CNE Operating Agreement for 2015 CNE which event Aug 21 2015

Dianne,

Are you free to discuss this over the weekend? Sorry for the weekend ask.
Otherwise, Monday morning?

Michael Binetti

Affleck Greene McMurtry LLP

From: Dianne Young

Sent: Tuesday, August 11, 2015 5:34 PM

To: 'Michael Binetti'

Cc: Martin Kenneally; Dianne Young

Subject: CNE Operating Agreement for 2015 CNE which event Aug 21 2015

Thanks Michael - EP staff have not heard anything from Zlatko by email or otherwise. Martin is now back from holidays and we can contact Zlatko if you think that would be helpful or just leave with you?

Mark Grimes is trying to get a meeting next week with TPS.

Again, give me a call if you want to discuss options.

Dianne

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Tuesday, August 11, 2015 5:12 PM

To: Dianne Young

Cc: Dianne Young; Martin Kenneally

Subject: Re: CNE Operating Agreement for 2015 CNE which event Aug 21 2015

I will seek instructions, although from two messages ago, I wasn't under the impression that we were getting back to you at this time.

Michael Binetti

Affleck Greene McMurtry LLP

From: Dianne Young

Sent: Tuesday, August 11, 2015 5:08 PM

To: Michael Binetti

Cc: Dianne Young; Martin Kenneally

Subject: CNE Operating Agreement for 2015 CNE which event Aug 21 2015

Dear Michael

Thought I better send an update to you on this matter and to my email from last week given I have not heard from you or from your client.

Exhibition Place has not had a chance yet to consult with the TPS on outstanding security issues for Muzik Clubs although Mark Grimes, Chair of

the Board is working on setting up this meeting.

I know that your client was closed this past weekend and he is not showing any events happening at the venue on his website for the rest of August nor has he communicated with Exhibition Place staff any direction that he is thinking on taking.

Also, with the announcement from TPS that it will not be supplying paid duty police to the venue in the near future or at least until after its review, it may be very difficult to develop a security plan acceptable for the CNE Period as in 2013 and 2014, paid duty security were an essential part of that plan.

Again, the Board is willing to work with you and your client and wondering if you have any information or directions from your client on possible next steps?

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young

Sent: Tuesday, August 04, 2015 4:25 PM

To: Michael Binetti (mbinetti@agmlawyers.com)

Cc: Dianne Young

Subject: CNE Operating Agreement

Dear Michael

I know it has been a very stressful day for your client and don't want to burden you with this matter. However, given the incident this morning, executing the proposed agreement at this time will now require more discussion on my part with my Board members, Toronto Police and the CNEA. I know that this will not be your client's priority right now so we can discuss in the next few days.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young

Sent: Friday, July 31, 2015 4:39 PM

To: Michael Binetti (mbinetti@agmlawyers.com)

Cc: Martin Kenneally; Dianne Young

Subject: CNE Operating Agreement

Michael

Was talking to staff about definitive time for no amplified music on patio stated strictly in agreement rather than general wording – if we were going to agree to a definitive time then EP staff have indicated we would want 730 to 10 pm - while the CNE Concert schedule shows the start at 730 they often start late & then have encores – however Zlatko would actually know when the concert wrapped up if early and the caveat would be that if it stops early then patio music could start

Thanks

Dianne

Dianne Young | Chief Executive

From: Dianne Young

Sent: Monday, July 27, 2015 2:12 PM

To: 'Michael Binetti'

Cc: Dianne Young; Martin Kenneally

Subject: RE: 2015 CNE Event Operating & Security Protocols

Michael

Fantastic - that is good news.

Thanks again especially doing this on your vacation.

Look forward to your additions & we will look at this immediately and hopefully get execution copies out to your client this week.

Regards

Dianne

Dianne Young | Chief Executive

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Monday, July 27, 2015 1:20 PM

To: Dianne Young

Subject: RE: 2015 CNE Event Operating & Security Protocols

We have high-level buy-in on my end. I'll write to you overnight.

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Friday, July 24, 2015 10:03 AM

To: Dianne Young

Cc: Dianne Young; Martin Kenneally

Subject: Re: 2015 CNE Event Operating & Security Protocols

I am seeking instructions.

Michael Binetti

Affleck Greene McMurtry LLP

From: Dianne Young
Sent: Friday, July 24, 2015 9:56 AM
To: Michael Binetti
Cc: Dianne Young; Martin Kenneally
Subject: 2015 CNE Event Operating & Security Protocols

Hi Michael

I apologize for my frequent emails but I know your client will be getting very busy as Caribana weekend nears on the holiday w/end in August so I think our window of opportunity to sign this agreement is the beginning of next week because immediately following Caribana on Aug 4th is the move-in of the CNE and EP needs to inform the CNEA if Muzik will be closed as per our notice to Muzik or open and on what dates and times.

Do you think it would be possible to feed back to me any issues you have on the agreement so I can address.

Thank you again.

Regards

Dianne

Dianne Young | Chief Executive

Sent: Tuesday, July 21, 2015 11:19 AM
To: Dianne Young
Subject: RE: 2015 CNE Event Operating & Security Protocols
It is. Sorry. Didn't show up on BlackBerry as such.

From: Dianne Young [<mailto:DYoung@Explace.on.ca>]
Sent: Tuesday, July 21, 2015 11:01 AM
To: Michael Binetti
Cc: Martin Kenneally
Subject: RE: 2015 CNE Event Operating & Security Protocols

Hi Michael

This is blacklined - is it not appearing like that - do you want me to PDF it?

Dianne

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]
Sent: Tuesday, July 21, 2015 10:44 AM

To: Dianne Young
Cc: Martin Kenneally; Dianne Young
Subject: Re: 2015 CNE Event Operating & Security Protocols
Can I have a black-lined version. Thanks.
Michael Binetti
Affleck Greene McMurtry LLP

From: Dianne Young
Sent: Tuesday, July 21, 2015 10:39 AM
To: Michael Binetti
Cc: Martin Kenneally; Dianne Young
Subject: 2015 CNE Event Operating & Security Protocols
Hi Michael

While I know you said below that you could look at the 4 year agreement and change to a one year, I thought it may be easier and expedite matters if I just redo the agreement to one year - less words, less blacklining. Given the outstanding notice of closure, our aim would be to get this executed and security protocol in place prior to August 1st so we can both agree on the parameters of the Muzik opening during the CNE Period and also address any issues with the CNEA.

Accordingly, here is the one year agreement for review by you and your client.

Again, changes are generally in the nature of clarity and formatting.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]
Sent: Tuesday, July 21, 2015 9:04 AM
To: Dianne Young; Dianne Young
Cc: Martin Kenneally
Subject: Re: 2015 CNE Event Operating & Security Protocols

I don't have instructions for a four year deal. As you rightly point out, there is just not enough time between now and the Board meeting. I made that point in my previous email and we cannot rush a four year agreement in such a short time.

We have your proposed revisions and we'll get back to you on them.

Michael Binetti

Affleck Greene McMurtry LLP

From: Dianne Young
Sent: Tuesday, July 21, 2015 9:00 AM
To: Michael Binetti; Dianne Young
Cc: Martin Kenneally
Subject: 2015 CNE Event Operating & Security Protocols

Hi Michael

Wondering if you have any further particulars of changes you want to see to the agreement?

If your client definitely wants only a one year agreement, I can easily make those revisions.

We are running out of time to make the Board agenda for a 4 year agreement so your early direction on this is appreciated.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young
Sent: Friday, July 17, 2015 4:17 PM
To: 'Michael Binetti'
Cc: Francesca Colussi; Martin Kenneally; Dianne Young
Subject: RE: 2015 CNE Event Operating & Security Protocols

Dear Michael

Thank you for your email.

Can we discuss what parts of the 2015 draft you believe add more restrictions. I thought that EP had actually removed some restrictions and we also are suggesting a 4 year agreement rather than a one year agreement. However, we would be pleased to address any concerns you have if you can provide details.

The other venues at Exhibition Place mentioned in your email below do not enter into a separate operating agreement for the CNE period and the difference is the outdoor nature of the Muzik venue which could impact the CNE outdoor activity. Your client can advise you that before 2014 and the opening / major renovation of the patio for Muzik, there was also no formal operating agreement with Muzik.

Look forward to speaking with you next week and we certainly can make ourselves available to meet your schedule.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Friday, July 17, 2015 3:45 PM

To: Dianne Young

Cc: Francesca Colussi; Martin Kenneally; Michael Binetti

Subject: RE: 2015 CNE Event Operating & Security Protocols

Ms Young,

Thank you for writing. Muzik is prepared to work cooperatively with Exhibition Place and the Board of Governors as it has in the past. There are some preliminary issues to discuss at this point; I am sure that there will be others.

The agreement proposed in your email of Tuesday, July 14th causes us some concerns. As you know, the CNEA brought an arbitration to decide whether it had the power under its Master Agreement to require Exhibition Place to in turn require Muzik to cease operations during the CNE. The CNEA was not successful. Moreover, the Lease between Exhibition Place and my client does not permit the CNEA to exercise (directly or indirectly) the clause in question. On February 26, 2015, you wrote: "If, as we hope, Exhibition Place is successful on the arbitration, we plan to revoke this notice and allow Muzik to operate during the 2015 CNE, subject to working out mutually agreeable operating and security protocols as in the past."

Given Exhibition Place's success in the arbitration, we are puzzled as to why additional and more restrictive terms are being proposed for the 2015 CNE period than was the case for the 2014 CNE period (if Exhibition Place was in fact, seeking to work out a mutually agreeable protocol as in the past.) Before agreeing to any restrictions or a protocol specific to Muzik, and out of a sense of fairness to my client, would you please provide us with the details of the protocols that Exhibition Place is negotiating or has concluded with its other tenants for the CNE period (e.g., Liberty Grand, BMO Field, Medieval Times, etc.).

As to a multi-year agreement, because the first time we saw a draft multi-year agreement was on Tuesday, July 14th, there is simply not enough time to be able to give that the required amount of consideration at this time.

We look forward to receiving the above information.

Sincerely,

Michael Binetti

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Thursday, July 16, 2015 5:39 PM

To: Dianne Young

Cc: Dianne Young

Subject: Re: 2015 CNE Event Operating & Security Protocols

I'm working on a letter to you, but we won't be able to agree to a four-year just yet. I wouldn't stay late for that. That may change but it seems headed that way.

Michael Binetti

Affleck Greene McMurtry LLP

From: Dianne Young

Sent: Thursday, July 16, 2015 5:34 PM

To: Michael Binetti

Cc: Dianne Young

Subject: RE: 2015 CNE Event Operating & Security Protocols

Hi Michael

Wonder if you have had a chance to speak to your client about this and have any initial reaction. Thought I would be optimistic and will draft a Report to the BOG for approval at its meeting of July 31st with agenda closing on July 24th and then I can just drop in the final agreement terms once settled? Need BOG approval for 4 year agreement.

Regards

Dianne

Dianne Young | Chief Executive

From: Dianne Young

Sent: Wednesday, July 15, 2015 10:54 AM

To: 'Michael Binetti'

Cc: Dianne Young

Subject: RE: 2015 CNE Event Operating & Security Protocols

Thanks Michael - again, made minimal changes to the one executed last year so hoping this is not controversial.

Dianne Young | Chief Executive Officer

From: Michael Binetti [<mailto:mbinetti@agmlawyers.com>]

Sent: Wednesday, July 15, 2015 10:21 AM

To: Dianne Young

Subject: Re: 2015 CNE Event Operating & Security Protocols

Dianne,

I got your voicemail (not at my desk right this minute). I have sought instructions from my client. Once I get instructions, I'll call or write. We're on it.

Michael Binetti
Affleck Greene McMurtry LLP

From: Dianne Young
Sent: Tuesday, July 14, 2015 4:34 PM
To: Michael Binetti
Cc: Francesca Colussi; Martin Kenneally; Dianne Young
Subject: RE: 2015 CNE Event Operating & Security Protocols

Michael

Sorry - previous email should read that Exhibition Place staff and your client have been unable to meet due to busy schedules and that is why I am requesting some assistance if you can provide.

Please let me know.

Thanks

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young
Sent: Tuesday, July 14, 2015 3:06 PM
To: Michael Binetti (mbinetti@agmlawyers.com)
Cc: Francesca Colussi; Martin Kenneally; Dianne Young
Subject: 2015 CNE Event Operating & Security Protocols
Importance: High

Dear Michael

Wondering if you could assist. As noted in my emails below, notice had been given to your client for closure during the 2015 CNE subject to allowing full opening on execution of a 2015 CNE Operating agreement.

EP staff and your client have been able to confirm a time to meet on the 2015 CNE Operating agreement. Therefore I have taken the 2014 Operating Agreement and updated it for 2015. I have also proposed in this agreement renewals for 3 additional years. However, this 4 year agreement needs approval of the Board and therefore, to meet the Board agenda closing, the parties must conclude the terms prior to July 22, 2015.

Would you please let me know if you can assist with these matters with Muzik or if I should be addressing this issue directly with your client, Muzik.

Thank you in advance for your reply.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young

Sent: Thursday, May 28, 2015 7:35 PM

To: Michael Binetti (mbinetti@agmlawyers.com<<mailto:mbinetti@agmlawyers.com>>)

Cc: Arlene Campbell; Dianne Young

Subject: FW: 2015 CNE Event Operating & Security Protocols

Dear Michael

While I have not received a reply from you to my email below, I did want to send this follow up especially because I will be away from the office from May 31 to June 16 inclusive.

I understand that your client has approached Ms. Francesca Colussi, Director at EP to discuss CNEA security protocols and I think Ms. Colussi is in the process of setting up meetings with your client. This is a very positive direction. It is especially important to move forward on this given the position you indicated to me in your email relating to Repairs to the Greek Gods and your clients intent to remain open every day in August.

If in my absence you or your client have any issues with the direction stated below or the discussions between your client and EP staff, would you please contact Arlene Campbell, GM, EP directly with any concerns.

Thank you.

Regards

Dianne

Dianne Young | Chief Executive Officer

From: Dianne Young

Sent: Wednesday, May 20, 2015 9:32 AM

To: Michael Binetti (mbinetti@agmlawyers.com<<mailto:mbinetti@agmlawyers.com>>)

Cc: Dianne Young; Arlene Campbell

Subject: 2015 CNE Event Operating & Security Protocols

Dear Michael

As you are aware, the attached letter / notice of closure for the period during the 2015 CNE event was sent to your client in February 2015 pursuant to the provisions of the Muzik lease. In the letter we stated the following:

"If, as we hope, Exhibition Place is successful on the arbitration, we plan to revoke this notice and allow Muzik to operate during the 2015 CNE, subject to working out mutually agreeable operating and security protocols as in the past."

Since the finalization of the CNEA arbitration and the award in favour of the

Board, Exhibition Place staff have been in contact with your client in order to work out "mutually agreeable operating and security protocols" for the 2015 CNE event. However, your client has expressed his unwillingness to enter into any discussions with Exhibition Place staff without legal counsel. What we are proposing to your client is to enter into the same agreement relating to operations during the 2015 CNE event that were entered in 2013 and 2014. I have attached a copy of that agreement for your information. As you will note, there are operating conditions in the 2014 agreement specific to that year that would have to be updated by the parties. However, Exhibition Place believes the basic terms of the agreement are satisfactory and we were suggesting to your client that we could enter into a similar agreement with a term of 4 years that would have specific operating schedules that could change on an annual basis.

Could you please address this issue with your client as time to complete this agreement is becoming urgent and as noted from the Feb letter, opening for the CNE period is subject to getting this completed.

Thanks again. Regards

Dianne

Dianne Young | Chief Executive