

April 13, 2010

To: Board of Governors of Exhibition Place

ACTION REQUIRED

From: Dianne Young, Chief Executive Officer

Subject: **Lease for Queen Elizabeth Theatre**

Summary:

The Queen Elizabeth Theatre (QET) is a 1,300-seat theatre that was built in 1957. The stage structure consists of a stage 86 foot by 36 foot, a 43-foot fly floor and 9 dressing rooms below the stage level. A Request for Proposals was issued by the Board in 2007 to the private sector for the year-round operation of the QET and at its meeting on March 6, 2008, the Board approved entering into a lease with 16730801 Ontario Ltd (the "Tenant") as the successful proponent (the "Lease"). The approved Lease term was for 3 years commencing May 1, 2008 and concluding April 30, 2011 and includes the substantive terms and conditions as set out in Appendix "A" to this report.

Since being awarded the Lease, the principal shareholder, Mr. Sinopoli, has invested approximately \$550,000 in renovations and audio/ lighting equipment in the QET. He has booked 60 shows to date and has another 85 dates on hold for future events and has attracted approximately 60,000 attendees to the grounds. This activity is substantial new business to Exhibition Place grounds as previously the QET was only booked on average 40 days a year.

The financial return to the Board from this leasehold from May 1, 2008 to December 31, 2009 is approximately \$420,000 which includes rent, percentage rent, parking revenues, and administrative charges but excludes property taxes paid to the City of Toronto which are estimated to be \$55,000.

To grow the business, Mr. Sinopoli is now intending to further invest at least \$850,000 to renovate the QET within the next 3 to 5 years to remodel washrooms, repair/replace seating, carpet, lighting, dressing rooms, staging etc. to bring the facility up to competitive industry standards. Because of this planned investment, Mr. Sinopoli is requesting an amendment to the Lease Term, the Basic Rent and Participation Rent and is also requesting a Renewal Team for an additional 10 years.

Recommendations:

It is recommended that the Board:

- 1. Subject to approval of City Council, approve of entering into an amendment to the existing Lease with 16730801 Ontario Ltd. for the QET substantially on the terms and conditions contained in this report and such other terms and conditions satisfactory to the Board's Chief Executive Officer and the City Solicitor; and**
- 2. Direct that the confidential information contained in Attachment 1 to this report not be released publicly as the Attachment contains advice which is subject to solicitor-client privilege and information which could prejudice the economic interests or competitive position of the Board.**

Financial Implications:

The amendments to the Lease with 16730801 Ontario Ltd. proposed in this report will provide an estimated positive financial return to the Board and the City of approximately \$2.75M over the Amended Term of the agreement.

Decision History:

As part of the 2009 Strategic Plan, the Board approved of a Financial Goal to *Maintain a positive operating financial performance across Exhibition Place and all of its businesses.*

At its meeting of May 2007, the Business Development Committee considered a report regarding the responses to an RFP with respect to a lease for the QET and recommended that Exhibition Place enter into negotiations with 16730801 Ontario Ltd for a three-year lease of the QET and report back to the Business Development Committee on the proposed lease terms.

At its meeting of March 6, 2008, the Board approved of the staff recommendation for an initial 3 year lease with 16730801 Ontario Ltd. generally on the substantial terms and conditions set out in Appendix A to this report commencing on May 1, 2008.

Issue Background:

One of the terms and conditions of the existing lease between 16730801 Ontario Ltd. and the Board is the right for the Tenant to request a review of the length of the Term after 12 months of full operation (excluding any construction period) which review was initiated by the Tenant in the Fall 2009.

Comments:

As part of the Strategic Plan, Exhibition Place staff as part of the Outcome to *Foster partnerships and alliance with public and private sector agencies* set as an Objective to *Conclude a long-term lease agreement for the Queen Elizabeth Theatre.*

The QET is a 1,300 seat theatre that was built in 1957. The stage structure consists of a stage 86 foot by 36 foot, a 43-foot fly floor and 9 dressing rooms below the stage level. Generally, prior to the lease of the QET to 16730801 Ontario Ltd., the facility was underutilized compared to other buildings on the grounds and in 2007 had only 34 days booked.

There are several reasons why it is difficult to book productions into the QET which include: an over-capacity of theatre seats in the City of Toronto all of which are marketed to the same producers and promoters; the location of the QET is distant from the City's "theatre district" and ancillary venues used by the theatre customer such as restaurants, hotels etc; staging a production in the theatre is expensive for small companies and community groups because of the union agreements that govern the grounds; and the fly floor height is below industry standard which limits its use for commercial theatre productions. In the past, Exhibition Place events booked at the QET required substantial rent subsidies to be able to afford the IATSE costs associated with stage productions.

Because booking concert acts outside the CNE period is really not the core business of Exhibition Place, direction was given to issue a Request for Proposal to find a private sector

partner willing to lease the QET. The successful proponent of this 2007 RFP was 16730801 Ontario Ltd. whose sole shareholder is Mr. Sinopoli, the principal of the company. Mr. Sinopoli is also the sole shareholder of Corner Pocket Billiards Club Inc. which carries on business in the name of The Mod Club on College Street which is in the business of concert promotions and productions.

Mr. Sinopoli has been in the restaurant and entertainment business for 15 years operating the successful MOD Club venue for 7 years and has been the on-site manager at the QET since taking possession of the QET in 2008. Since being awarded the lease Mr. Sinopoli has invested approximately \$550,000 in renovations and audio/ lighting equipment in the theatre. He has been very successful booking events into a theatre that use to stand empty and has booked 60 shows to date with another 85 dates on hold for future dates. To date close to 60,000 people have attended events booked in the QET by the Tenant. Mr. Sinopoli has been successful in leveraging his relationship in the live entertainment industry and has established the QET as one of Toronto's premier venues of its size. He has worked cooperatively with Exhibition Place staff in accommodating the Board's entitlement to book specific Community and CNE events in the QET.

The substantial terms and conditions of the existing Lease between the Board and 16730801 Ontario Ltd. are set out in Appendix "A" attached. Exhibition Place staff are now recommending amendments to these Lease terms as follows:

- a) Amended Term: The Amended Term will be for a period of twelve years (12) commencing May 1, 2008 and ending on April 30, 2020
- b) Renewal Term: Provided that Tenant is in good standing and subject to negotiation by the parties of Basic Rent and Participation Rent, the Tenant may renew the Lease on the same terms and conditions for a renewal term of ten (10) years.
- c) Amended Basic Rent: the Tenant shall pay Basic Rent of thirty-six thousand (\$36,000.00) dollars CDN for the first twelve (12) months of the Amended Term in equal monthly installments, in advance, which Basic Rent shall increase by the CPI Index Ratio on May 1, 2009 and May 1, 2010 respectively. Base Rent for each subsequent year of the term are as follows: Year Four is \$53,123; Year Five \$60,712; Year Six is \$60,712 increased by the CPI Index Ratio; Year Seven is \$83,479, Year Eight is \$83,479 increased by the CPI Index Ratio; Year Nine is \$91,068; Year Ten is \$98,657; Year Eleven is \$106,246; and Year Twelve is \$121,424.
- d) Amended Participation Rent: The Tenant shall pay to the Landlord an annual Participation Rent equal to the percentage of Gross Revenues as set out below together with 7% GST to be calculated on an annual basis to be paid together with Basic Rent:
 - (i) 3% of Gross Revenues in the first Lease Year in one (1) installment on February 1, 2009, for the period from Possession Date to December 31, 2008;
 - (ii) 3% of Gross Revenues in the second, third, fourth, fifth, and sixth Lease Year in four (4) cumulative installments paid no later than fifteen (15) days after the end of each fiscal quarter (ie April 15th, July 15th, October 15th and January 15th)
 - (iii) 5% of Gross Revenues in the seventh, eighth, ninth, tenth, eleventh and twelfth Lease Year in four (4) cumulative installments paid no later than fifteen (15) days after the end of each fiscal quarter (ie April 15th, July 15th, October 15th and January 15th)
- e) Additional Investment in the QET: The Tenant agrees, to construct or cause to be constructed and to install or cause to be installed on the Leased Property and in the Building

improvements (including leasehold improvements) with a fair market, arm's value of not less than \$0.850M in the period from May 1, 2010 to the April 30, 2015.

- f) Tenant's Right of Early Termination: The Tenant shall have the right to terminate the agreement with no less than one year's notice should there be an increase of 15% or more in any one year in cost of operating the QET due to increase in IATSE labour costs due to increase hourly labour costs or increase in the number of IATSE personnel required on calls in the theatre due to increased jurisdiction.
- g) Use only of Lobby Portion: Section 5.1 is amended to remove the wording "on approval by the Landlord on an event-by-event basis".
- h) Shared Use by the Board: The time period of shared used by the Board as set out in Section 5.6 is amended as follows:
 - (i) The Board shall have the right to book the Leased Property (either whole or partially) for third party events for a minimum of sixty (60) days in each of the third, fourth, fifth, sixth, seventh and eighth year of the Term and thirty (30) days in each of the ninth, tenth, eleventh and twelfth year of the Term provided that each such event shall have a duration of no longer than five days and these events shall not (except as otherwise agreed by the Tenant, acting reasonably) be booked consecutively.
- (i) Shared Use by Tenant: Section 5.8 is deleted and replaced with the following:

If the Board (or any third party operator) does not have an event booked or leased for the Fountain Dining Room, the Boardroom or President's Room next to the Fountain Dining Room, the Tenant shall have the right to use, during an event held in the Leased Property, the washrooms and the elevator in the lobby area for the Fountain Dining Room and/or the bar area within the Fountain Dining Room subject to:

 - (i) the Tenant paying all costs associated with use of these areas including but not limited to cleaning costs or security costs, as required by the Board;
 - (ii) the Tenant obtaining all necessary permits and licences and permission from Centerplate with respect to its use of the Fountain Dining Room bar; and
 - (iii) if the area is operated by a third party operator, the Tenant entering into a licence agreement with the third-party operator with respect to use of this area.

These existing and amended lease terms do not obligate the Tenant to be solely responsible for the base building infrastructure. The reason for this is that the base building infrastructure (HVAC, structure walls) are totally integrated within the Queen Elizabeth Complex. Also most of the base building capital infrastructure was renewed prior to the commencement of the existing lease (replacement of HVAC system, doors and windows) and will not require major upgrades in the next 20 years. Instead, Exhibition Place staff have negotiated a rental structure to reflect that base building capital remains the responsibility of the Landlord. However, the Tenant will be fully responsible for all interior upgrades and costs.

Contact:

Dianne Young, Chief Executive Officer

Tel: 416-263-3611

Fax: 416-263-3640

Email: dyoung@explace.on.ca

Appendix "A"
Substantial Terms and Condition of the Existing Lease

- a) **Leased Property:** Queen Elizabeth Theatre (stage, seating areas, backstage and dressing rooms, entrance, box office, front of house, concession/bar areas, administrative area, public washrooms) which excludes certain areas relating to HVAC services for the entire Queen Elizabeth Buildings and also allows Exhibition Place access through areas required for maintenance operations.
- b) **Prohibited Uses:** The Leased Property shall not be used for any of the following purposes:
 - (i) a themed dinner theatre;
 - (ii) trade and consumer shows and any activities (including the provision of food and beverages) related to trade and consumer shows;
 - (iii) conferences, weddings or social events or receptions;
 - (iv) professional sports events;
 - (v) formal sit-down banquets;
 - (vi) a casino; and
 - (vii) a permanent indoor live performance venue/nightclub providing live and recorded musical entertainment for standing room crowd capacities of greater than 500 persons but less than 2,999 persons
- c) **Audit Rights:** The Tenant will keep accurate, complete and up-to-date books and records in accordance with good accounting practices at a location within the City of Toronto in order to allow the determination by the Board of the amount of the Annual Gross Revenues and ticket surcharges to be paid to the CNEA for events held in the Leased Property during the CNE.
- d) **Taxes and Costs:** The lease is fully net to the Board, and that the Tenant shall pay all Taxes and the costs of operating the Leased Property.
- e) **Leasehold Improvements:** The Tenant accepts the Leased Property "as is", and agrees that it shall be solely responsible for the cost of construction of any improvements or structures required for the purposes of its use and occupation of the Leased Property, subject to the prior approval of the Board.
- f) **Closure of the Exhibition Place Lands:** The Tenant acknowledges 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 the Exhibition Place.
- g) **Closure for CNE:** The Tenant acknowledges that the Board shall have the right, for the annual CNE, to close the grounds of Exhibition Place commencing with the pre-CNE move-in period approximately one week prior to the opening day of the CNE and including the move-out/tear down period after the end of the CNE. The Board will facilitate access to the Leased Property by Tenant's staff for essential business operations only. Any other access or operation of the Leased Property will be subject to the prior consent of the CNEA. There shall be no abatement of rent.
- h) **Closure for Honda Indy:** The Board shall have the right, during the annual Honda Indy weekend (Wednesday starting at 12 noon, Thursday, Friday, Saturday, Sunday with a possible Monday "rain-day"), to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property except in cases of emergency within the Leased Property. There shall be no abatement of rent.
- i) **Closure of QE Theatre:** The Board shall have the right, during or in connection with any future Olympics, Pan Am Games or World's Fair to close the grounds of Exhibition Place, and to interfere with, interrupt or prevent access to the Leased Property. The Board will facilitate access to the Leased Property by Tenant's staff for essential business operations only. There shall be an abatement of rent for period that access is denied.

- j) **Shared Use by the Board:** The Board shall have the right to book the Leased Property (either whole or partially) for third party events for a minimum of eighty (80) days in each year of the Term provided that each such event shall have a duration of no longer than five days and these events shall not (except as otherwise agreed by the Tenant, acting reasonably) be booked consecutively. No Board event shall be booked on an event date where the Tenant has previously contracted for the same event dates and shall not include any events that are predominately ticketed musical or dance performances unless such performances are part of a larger trade, consumer or corporate event booked by Exhibition Place. In addition, the Board shall also have the right to book additional third party events exceeding eighty days in each year provided that each such event shall have a duration of no longer than five days and booked no more than one month in advance of the event date. For the Board events, the Board shall pay all event day costs including a proportionate share of base building costs plus an administrative fee of 12% which will include all expenditures incurred by the Tenant in servicing the Board events but shall NOT include any Tenant overhead costs including the amortization of capital improvements or upgrades of the Leased Property, taxes or license fees of any kind paid by the Tenant in connection with the Leased Property..
- k) **Restrictions/Conditions:**
- (i) The Board may require that the use and occupation of the Leased Property conforms with all policies and processes that City Council may adopt as a result of the Waterfront Revitalization, except where such use may be specifically exempted by City Council;
 - (ii) All collective agreements between the Board and all Labour/Trade Unions having jurisdiction at Exhibition Place must be recognized and complied with for all work at Exhibition Place.
 - (iii) The Board shall retain 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 within Exhibition Place, including the Queen Elizabeth Theatre. The Tenant shall have rights to install identification (but not commercial or third-party advertising) signage on the exterior of the foyer and entrance to the Theatre, and within the Leased Property itself, and all such signage shall be subject to the approval of the Board.
 - (iv) The Board will provide non-exclusive non-reserved parking for the Tenant's visitors/attendees except during the period of the CNE and the Honda Indy, when parking within Exhibition Place shall not be available. The Tenant acknowledges that the Board shall retain all revenues from the operation of all parking facilities (surface and underground) owned and operated by the Board.
 - (v) The Tenant agrees to work with the CNEA to incorporate the QET into the operation of the annual CNE on terms and conditions to include the following: (A) have no claim against the Board or CNEA with respect to the disruption of any event or performance in the Leased Property; (B) any event held during the CNE shall be in good taste and of a nature compatible with a community family event such as the CNE; (C) certain CNE events previously held in the Leased Property, including the CNE Ambassador Finals event shall be deemed to have priority for use; and (D) separate admission to the CNE shall not be charged to patrons seeking entrance to the CNE and as compensation for this right the Tenant shall pay the CNEA one dollar per each ticket sold or provided by the Tenant at no cost for any performances of any kind held in the Leased Property during the annual CNE.
 - (vi) The Tenant has the right to operate food and beverage concessions within the foyer, on the condition that the Tenant complies with all governing policies, bylaws, regulations and conditions that may be imposed from time to time by the Board and

the City and, in particular, that the Tenant complies with the regulations as set out in the Food Handler's policy of the Board and the SMART serve policies of the Ontario Alcohol and Gaming Commission.

- (vii) The Tenant must obtain its own liquor license for the sale of alcoholic beverages and must comply with all regulations, bylaws and policies related to that license.
- l) Assignment: No assignment shall be permitted without the prior consent of the Board, and "assignment" shall include an effective change in control of the Tenant.
- m) Indemnification: The Tenant shall indemnify the Board, the City of Toronto and the Association, their officers, elected officials, employees and agents against any and all claims, loss, costs and damages arising as a result of the Tenant's operation and/or the operation of any agent, subtenant or concession in the use and occupation of the Leased Property;
- n) Insurance: The Tenant shall provide adequate security and insurance in a form and amount satisfactory to the Board and the City and will further ensure that all agents, operators, subtenants and concession operators of the Tenant maintain adequate security and insurance in a form and amount satisfactory to the Board and the City. The Tenant shall provide a performance bond in a form and amount satisfactory to the Board for the purpose of securing the proper performance of any construction work undertaken by the Tenant or its agents, and the vacating of any valid claims for lien or certificate of action.
- o) Termination: The Board shall be entitled to terminate the Lease Agreement upon the failure by the Tenant to remedy any default related to safety/personal safety, legislation, permit to operate, or bankruptcy/insolvency issues within ten days of the receipt of notice of default, and that the Board shall be entitled to terminate the Lease Agreement upon the failure by the Tenant to remedy any other default not identified in this clause within thirty days of the receipt of notice of default, in addition to its other legal remedies for default by the Tenant, the Board shall have the right to take possession of the Leased Property and distrain the Tenant's goods and property therein.
- p) The Board will provide up to a maximum of 10 parking passes at no charge (save and except for the applicable PST charge to be collected and remitted by Exhibition Place to the provincial taxing authority) for the Tenant's permanent full-time staff to access designated parking facilities except for the period of the annual Toronto Grand Prix and the CNE.
- q) The Board at its sole expense will maintain the grounds around the Leased Property including snow removal to a service level provided throughout the grounds of Exhibition Place.
- r) Definition of Annual Gross Revenues: "Annual Gross Revenues" shall mean all revenues, net of GST and PST, earned in relation to the Tenant's operations in the Leased Property, including revenues from admissions, advertising, food and beverage sales, promotions, licensed merchandise sales, coat check, private functions, sponsorships and any other revenues which have been or should have been collected or received by the Tenant, including any percentage, commission or other revenue payable to the Tenant by any permitted licensee, or concessionaire during the Term.
- s) Definition of Additional Rent: "Additional Rent" means:
 - (i) all costs of development and renovation/construction of the Leased Property;
 - (ii) all taxes, rates, local improvement rates, duties or assessments which may be levied, rated, charged or assessed against the Leased Property;
 - (iii) all costs of utilities and supplies for the Leased Property;