



Exhibition Place

Item No. 10

February 3, 2014

To: The Board of Governors of Exhibition Place

ACTION REQUIRED

From: Dianne Young, Chief Executive Officer

Subject: **Amendment to Muzik Clubs Inc. Lease Agreement**

Summary:

This report provides information about the request from Muzik Clubs Inc. (the “Tenant”) to amend the exclusivity provisions of its Lease Agreement between Muzik Clubs Inc. and the Board dated February 16, 2004 (the “Lease Agreement”).

Recommendations:

It is recommended that the Board direct that the confidential information contained in Confidential Attachment 1 to this report not be released publicly in order to protect the competitive position and future economic interests of Exhibition Place.

Financial Impact:

There is no immediate financial impact of this information report.

Decision History:

The Exhibition Place 2009 - 2012 Strategic Plan had a Financial Goal to *Maintain a positive operating financial performance across Exhibition Place and all its businesses* and as Strategies to support this Goal *to seek new or expand revenue opportunities within our existing operations and ensure operating budgets are met or show a positive surplus to budget.*

At its meeting of January 25, 2002, the Board established an REOI call for of the Bandshell Park Redevelopment Opportunity to secure long-term private sector developers/operators to lease and operate the Horticulture Building, the Bandshell Restaurant Building and a portion of the Better Living Centre. One of the purposes of the redevelopment of these buildings would be to create a positive financial contribution to the Board while reducing the Board’s capital and operating expenses.

At its meeting of September 27, 2002, the Board approved of entering into a 90-day letter of intent with Concert Hall Productions for the development of the Horticulture Building and at its meeting of January 2003, extended this letter of intent for 60 days and requested a report back to the Board’s April 25, 2003 meeting.

At its meeting of April 1, 2003, the Board’s Business Development Committee received a presentation by the Tenant and considered a report from Exhibition Place GM/CEO and amended the report to delete any rights to Exclusive Use within the terms and conditions.

At its meeting of April 25, 2003, the Board considered the report from the Business Development Committee and amended this report to include an exclusivity provision as part of the terms and conditions of the lease which report was then approved by the City Policy and Finance Committee at its meeting of June 12, 2003, and then by City Council at its meeting of June 24, 25 and 26, 2003.

Issue Background:

The “Tenant”, through its President Mr. Starkovski, sent a communication to the Board attached as Appendix “A” to this report requesting an amendment to the terms of the exclusivity provision of the Lease Agreement.

Comments:

As referred to in the letter from the Tenant, Section 5.2 of the Lease Agreement includes the following exclusivity provision:

"Subject to existing contractual obligations, the Tenant shall have the exclusive right to use the Building [the Horticulture Building] as a permanent liquor licensed venue solely for the purpose of providing live and recorded musical entertainment for standing room crowd capacities of greater than 500 persons but less than 2,999 persons which capacity may be adjusted downward, subject to the final occupancy permit for the Leased Property. In this paragraph “permanent use” shall mean continuous marketing and operation of the Leased Property for the sole purpose of live musical performances and dancing in the manner set out above, and shall not preclude other events on the Lands such as weddings, banquets, or public gatherings which may include dancing and other forms of entertainment.”

Not only is the exclusivity provision limited in number of attendees (500 to 2,999), it applies only to “permanent uses” and the definition of permanent excludes "public gatherings which may include dancing and other forms of entertainment".

Certainly, as noted by the Tenant there is no direct relationship between the occupancy numbers in the Liquor Licence issued by the Alcohol & Gaming Commission to the Tenant and the exclusivity clause in the Lease Agreement and there is no intent that they should be the same. The number in the exclusivity clause was negotiated on the basis of the impact this limitation would have on existing and future businesses operating on our 192 acre site. For example, the new hotel operator business operations will be limited in its business operations because it cannot have a similar permanent nightclub establishment with capacities of 500 persons to 2,999 within its leased premises.

However, it is important to understand the narrow parameters of the exclusivity clause negotiated:

- It does not apply to the Tenant’s entire Leased Premises (building and outside space) but only to the Building indoor space.
- It applies only to “permanent uses” and not temporary uses. In other words, the exclusivity clause was to give this Tenant rights against any future “permanent” tenants on the site.
- It is not enforceable against other third parties that had contractual agreements with the Board prior to 2004 which included Liberty Grand, Medieval Times and Ricoh Coliseum all of which have large spaces and in the case of Liberty Grand and Ricoh Coliseum contemplate concerts / dance parties / nightclubs of any genre.

- It did not apply with respect to any temporary music entertainment that was typically carried on by Exhibition Place within its managed exhibition / event space and certainly, Exhibition Place had decades of history of holding music events / concerts / dance events on the grounds.
- An amendment to the Exclusivity Provision of the Lease Agreement would have to be approved by both the Board and City Council.

Contact:

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Submitted by:

Dianne Young
Chief Executive Officer

Appendix "A"

From: Zlatko Starkovski
Sent: January 29, 2014 4:03 PM
To: Dianne Young
Cc: Zlatko Starkovski; rlean@heenan.ca; Jenny Andonov
Subject: MUZIK Clubs Inc.

Ms. Dianne Young
Chief Executive Officer of Exhibition Place
200 Princes' Boulevard
Exhibition Place
Toronto, Ontario
M6K 3C3

Dear Ms. Young

This is further to my email sent to you on and Mr. Mark Grimes on January 14, 2014 (copy attached for your ease of reference). I still await your response to my request to address the Board of Directors of Exhibition Place at the board meeting scheduled for February 14 2014.

Over the last twelve (12) years Muzik Clubs has invested over 15 million dollars into our premises. We recently have started a multi-million dollar renovation project, which when complete, will bring over twenty thousand people a week to the grounds of Exhibition Place.

As you know, Muzik Clubs has established itself as the premier nightclub location in Toronto. We believe that in order to protect our investment, reputation and continue to offer our customers the best entertainment possible; we need to protect our interests further than what is currently outlined in our lease.

Muzik currently operates with a liquor license that has a capacity of 8,739. As you may be aware, this encompasses a 5,654 person capacity outside with a 3,085 person capacity inside. Unfortunately the exclusivity clause found in our current lease was established in 2003 before Muzik Clubs commenced operation and received its actual liquor license from the AGCO (Alcohol Gaming Commission of Ontario). This current exclusivity clause gives Muzik Clubs protection for nightclub type events up to 3,000 people. By increasing this clause to reflect our actual licensed capacity, it would provide the necessary protection from "one-off" events and will give Muzik Clubs the certainty it requires to ensure that its business remains successful.

Once again, as a long standing important tenant, we strongly request the opportunity to address our concerns to the entire Board of Governors on February 14, 2014, for their immediate consideration of this matter, which is critical to our continued success.

Thank you in advance for your assistance in this matter.

Sincerely,

Zlatko Starkovski
Muzik Clubs Inc.
President