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EXHIBITION PLACE

February 22, 2008

To: Business Development Committee

From: Dianne Young, CEO

ACTION REQUIRED

Subject: Lease for Queen Elizabeth Theatre

Summary:

The Queen Elizabeth Theatre (QET) is a 1300-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, the QET is underutilized compared to other buildings on the grounds. The CNE last used this venue in 1998 as part of the annual Fair for its KidsWorld entertainment package. Exhibition Place has rented the venue 37 days in 2005; 80 in 2006; 21 in 2007; and 45 tentative or licensed bookings in 2008, to date.

There are several reasons why it is difficult to book the QET which include: an over-capacity of theatre seats in the City; the location of the QET outside the City's "theatre district"; 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 limiting its use for theatre productions.

However, in 2006 there were two parties who were expressing an interest in leasing the QET. Accordingly, a Request for Proposal (RFP) was released March 2007 with return in April 2007. Following a review of the proposals, the Evaluation Team recommended 16730801 Ontario Ltd. as the successful proponent to the Business Development Committee at its meeting in May 2007 and since that time, Exhibition Place have been in negotiations with 16730801 Ontario Ltd. on the terms and conditions of a Letter of Intent (LOI).

16730801 Ontario Ltd. is a company that has existed since 2006 but has no assets. Mr. Sinopoli, the principal is the sole shareholder. 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. The principal has been in the restaurant and entertainment business for thirteen years operating the successful MOD Club venue for five years and will be the on-site manager at the QET. The proposal for the QET is to build onto his existing MOD Club enterprise except that the QET will be a seated-theatre-style venue.

Over the last ten months, Mr. Sinopoli has been working closely with show/concert producers to understand fully their potential use of the QET and his intent is to open the QET as quickly as possible after approval of the Board, finishing any necessary upgrades and obtaining his liquor licence.

THE BOARD OF GOVERNORS OF EXHIBITION PLACE



Exhibition Place, Toronto, Ontario M6K 3C3 Tel: (416) 263-3600 www.explace.on.ca

Recommendations:

It is recommended that the Business Development Committee recommend that the Board:

- 1. Approve of entering into a three-year agreement with 16730801 Ontario Ltd. for the QET substantially on the terms and conditions contained in this report and the Confidential Attachments 1 and 2 to 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 Attachments 1 and 2 to this report not be released publicly as the Attachments contain 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 lease agreement with 16730801 Ontario Ltd. will provide an estimated positive financial return to the Board and the City of approximately \$850,000 over the term of the agreement.

Decision History:

At its meeting of May 2007, the Business Development Committee considered a report from Exhibition Place staff 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.

Issue Background:

The QET is a 1300 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, the QET is underutilized compared to other buildings on the grounds. In April 2003, the Board approved a three-year lease with Peacock Circus Inc. for the QET however, in November 2003, this lease was terminated due to several causes: the tenant not abiding by the requirements of the collective agreements; non-payment of accounts; and poor quality of production compared with original proposal to the Board. Prior to the lease with Peacock Circus, the last major production using this venue was "Patsy" which ran for about eight months in 1996. The CNE last used this venue in 1998 as part of the annual Fair for its KidsWorld entertainment package. Exhibition Place has rented the venue 37 days in 2005; 80 in 2006; 21 in 2007; and 45 tentative or confirmed bookings in 2008, to date.

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.

Over 2006, two parties approached Exhibition Place staff with interest in a lease for the exclusive use of the QET: one to use the QET as a first-run cinema and the second to use the QET for theatre performances/concerts. Given this interest, both parties were requested to respond to a Request for Proposal released in March 2007.

Comments:

Following a review of the proposals received, the Evaluation Team recommended 16730801 Ontario Ltd. as the successful proponent to the Business Development Committee. 16730801 Ontario Ltd. is a company that has existed for a year and Mr. Sinopoli, the principal, is the sole shareholder. 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. The principal has been in the restaurant and entertainment business for 13 years operating the successful MOD Club venue for 5 years and will be the on-site manager at the QET. Mr. Sinopoli provided several reference letters from concert production companies and artist agencies who have worked with MOD Club which were positive about their relationship with him. While the marketing plan for 16730801 Ontario Ltd. are not fully developed in the QET, the proforma shows \$300,000 in advertising expenditure over 3-year period. Mr. Sinopoli will be working with his present clients who are seeking venues larger than the MOD Club and over the last 10 months, he has been working closely with concert producers to understand fully their potential use of the QET and his intent is to open the QET as quickly as possible after approval of the Board, finishing any necessary upgrade and obtaining his liquor licence.

Accordingly, Exhibition Place staff are recommending that the Board approve of entering into a Letter of Intent (LOI) with 16730801 Ontario Ltd. on the terms and conditions set out in Schedule "A" attached and in Confidential Attachments I and II

Contact:

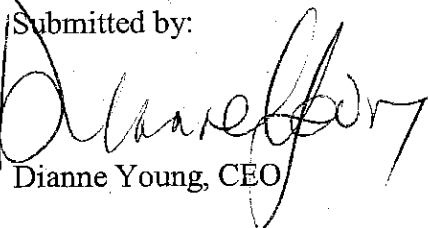
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Submitted by:



Dianne Young, CEO

Schedule "A"

- (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) Term: Three (3) years (including construction period), commencing May 1, 2008 and ending on April 30, 2011. There shall be no right of renewal for the Tenant. If the Tenant, in the sole opinion of the Board acting reasonably, is not and has not been in material breach of the terms and conditions of the Lease Agreement, the Board agrees that the length of the Term may be reviewed after 12 months of full operation (excluding any construction period), provided that any extension of the Term as approved by the Board, in its sole discretion, shall be on the same terms and conditions (except that the Tenant shall be required to assume responsibility for capital up-grades and repairs to the Leased Property and the rental structure shall be adjusted for increased rents in recognition of the longer lease term) or as varied by agreement of the Board, subject to the approval of the Council of the City of Toronto, in its sole discretion.
- (d) Schedule: Possession Date will be no later than May 1, 2008, and commencement date no later than August 1, 2008, which date may be extended by one additional month if the Tenant is prevented from opening for business due to the failure to receive the necessary occupancy permit or liquor licence provided the Tenant has diligently taken all necessary steps to obtain such permits.
- (e) Deposit: The Tenant shall pay a deposit of CDN\$10,000.00 which shall be held as a security deposit and returned to the Tenant, without interest, at the end of the Term. If the Tenant and the Board fail to enter into a Lease Agreement, the Board will return the Deposit to the Tenant without interest.
- (f) 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.
- (g) 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.

- (h) 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.
- (i) 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.
- (j) 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.
- (k) Closure for Toronto Grand Prix: The Board shall have the right, during the annual Toronto Grand Prix weekend (Thursday starting at 12 noon, 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.
- (l) Closure of QE Theatre: The Board shall have the right, during or in connection with any future Olympics 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.
- (m) 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 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.
- (n) Shared Use by Tenant: If the Board does not have an event booked 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 in the lobby area for the Fountain Dining Room, the elevator and/or the bar area within the Fountain Dining Room subject to 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 and subject to the Tenant obtaining all necessary permits and licences and permission from CenterPlate with respect to its use of the Fountain Dining Room bar.

(o) 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 Toronto Grand Prix, 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.
- (p) 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.

- (q) 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;
- (r) 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.
- (s) 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.
- (t) 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.
- (u) 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.

