

SPECIAL MEETING OF THE STATE PROPERTIES COMMITTEE

TUESDAY, JULY 29, 2008

The meeting of the State Properties Committee was called to order at 10:04 a.m. by Chairman Kevin M. Flynn. Other members present were Robert Griffith representing the Rhode Island Department of Administration; Richard Woolley representing the Rhode Island Department of Attorney General; Robert W. Kay and John A. Pagliarini, Jr., Public Members. Others in attendance were Marc Malkasian and John Glynn from the Rhode Island Department of Transportation; Michael Mitchell from the Rhode Island Department of Administration; Bruce Leach and James McCarvill from the Rhode Island Convention Center Authority; Steven Feinberg from the Rhode Island Film & Television Office; Audra Gorman and Donna Bloom from Brotherhood Productions, Inc. W. Thomas Humphreys from the law firm of Hinckley, Allen & Snyder, LLP; Judge Robert G. Flanders from the Veterans Memorial Auditorium Foundation.

Chairman Flynn noted for the record that the State Properties Committee did have a quorum present.

ITEM A – Department of Administration – A request was made for approval of and signatures on both the Second Amendment to the Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement by and between the Veterans Memorial Auditorium Foundation and the Rhode Island Convention Center Authority. Mr.

Mitchell provided the State Properties Committee with a detailed summary of the events leading up to the request before the Committee today. Mr. Woolley requested that a member of the panel explain the significance of the Urban Heritage Providence Hotel LLC (the "Hotel") and Prudential Insurance Company of America (the "Lender") having to sign off on the subject documents. Mr. Leach explained that in 2004, when the Veterans Memorial Auditorium was separated into two (2) condominium units to provide a subbasement, which could be leased and ultimately conveyed to the Hotel, the Hotel was concerned about the future of Unit No. 2, which is the Veterans Memorial Auditorium portion of the project. The Hotel entered into an agreement with all interested parties consisting of the Rhode Island Refunding Bond Authority, the Rhode Island Department of Administration and the Rhode Island Economic Development Corporation, which essentially said that the Lease Agreement by and between the State of Rhode Island and the Refunding Bond Authority as well as the Sublease by and between the State of Rhode Island and the Veterans Memorial Auditorium Foundation would not be modified, cancelled or interfered with in any way, and that any such change would not be binding upon the Hotel without its expressed written permission for said modification(s). Subsequently, in 2007, ownership of the Hotel was transferred to a new owner and an Amended Subordination Estoppel, Attornment and Non-Disturbance Agreement was executed, which stated that without the permission of the Hotel and/or the Lender, the Lease Agreement by and between the State of Rhode Island and the Veterans Memorial Auditorium

Foundation could not be amended, terminated or modified in any manner without the Hotel or Lender's permission. In the event that the Lease Agreement was amended, terminated or modified, said transaction would not be binding upon the Hotel. Questions have been raised regarding what impact an amendment, termination or modification of the Lease Agreement would have on the other interested parties if it is not binding upon the Hotel. It is Mr. Leach's understanding that the Veterans Memorial Auditorium Foundation is somewhat concerned about said provision as the Hotel could take the position that the Veterans Memorial Auditorium Foundation is still a party to the Lease Agreement although it no longer wishes to be. Therefore, the Veterans Memorial Auditorium Foundation has requested the Hotel's permission to proceed with the subject transaction. The Hotel's attorney amended the original Agreement and the Veterans Memorial Auditorium Foundation believes that the Hotel has agreed to the final language, which grants its consent. The Veterans Memorial Auditorium Foundation is satisfied with the proposed amended document and anticipates execution by the Hotel within the next few days. Therefore, in the event the State Properties Committee approves and executes the Second Amendment to Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement, the transaction will not be complete until the Hotel grants its consent by executing the amended Agreement. Mr. Woolley noted that Exhibits attached to the Second Amendment to Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement reference certain rights, which the Hotel is unwilling to

waive. Mr. Woolley asked what those rights are as they relate to Condominium Unit No. 2. Mr. Leach explained that the Veterans Memorial Auditorium property contains two (2) units. One unit is the subbasement, which is leased to the Hotel. The Hotel will ultimately have the legal right to purchase the subbasement once the bonds are repaid. The other unit, known as Unit No. 2, consists of the Auditorium itself, the building that houses the Auditorium and the parking lot. Mr. Leach explained that a document was prepared in 2004, to the lease the subbasement to the Hotel so that it could obtain operating license. Said document contains a “right of first refusal” provision, which stipulates that if Unit No. 2 is ever sold to any entity other than the Veterans Memorial Auditorium Foundation, the Hotel has the right to exercise its right of first refusal. In addition, the condominium documents reference the fact that the Veterans Memorial Auditorium Foundation will be the owner of the other unit; therefore, those documents will ultimately have to be revised to reflect that the Veterans Memorial Auditorium Foundation will not be the owner of said unit. Lastly, Mr. Leach indicated that the Hotel has expressed concern that its consent of the subject transaction will be interpreted as a waiver of its right to object to any future transaction. Mr. Leach explained that as the Rhode Island Convention Center Authority ultimately wishes to purchase the property, it could have requested that the Hotel grant all consents at this time; however, the Hotel indicated that the process of granting all consents at this time could take three or more months to accomplish as it is required to first obtain consent from its Lender. However, giving its consent for

the Second Amendment to Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement can be done in a far more expeditious manner, which is certainly the preference of the Department of Administration and the Rhode Island Convention Center Authority. The Rhode Island Convention Center Authority and Department of Administration believe it is necessary for the Authority to take over the operation of the Veterans Memorial Auditorium building as soon as possible to ensure that any and all commitments and obligations of the Foundation are honored. Mr. Woolley asked if the Declaration of Condominium was presented to the State Properties Committee for its consideration or approval. Mr. Leach indicated that the Rhode Island Convention Center Authority was not a party to said transaction; however, he believes that the transaction was arranged through the Refunding Bond Authority and the Rhode Island Economic Development Corporation and both were unaware that the transaction should have been presented to the State Properties Committee for its consideration and approval. Mr. Woolley indicated that he wished to clarify for the record that the Declaration of Condominium was neither considered nor approved by the State Properties Committee. Mr. Woolley stated that he understood that neither the Rhode Island Economic Development Corporation nor the Refunding Bond Authority were under any statutory requirement to come before the State Properties Committee.

Mr. Pagliarini stated that he is concerned that the State Properties Committee is being asked to execute documents with various consents to follow. Mr. Pagliarini indicated he would be much more

comfortable if said consents were obtained prior to the Committee granting approval of the subject documents. Mr. Pagliarini indicated that he understood that the Rhode Island Convention Center Authority and Department of Administration have an obligation to ensure that the commitments and obligations of the of the Veterans Memorial Auditorium Foundation are honored and that continuous operation of the facility is maintained; therefore, he asked if any other mechanism was investigated, which would allow the Rhode Island Convention Center Authority to assume operation of the Auditorium without addressing the Lease Agreement at this time. Mr. Pagliarini stated that he is concerned with the parking lot and the potential for the Hotel to invoke its right of first refusal. Mr. Leach explained that if the Veterans Memorial Auditorium Foundation planned to purchase the property there would be no right of first refusal issue; however, if any other entity comes forward to purchase the property, the Hotel can exercise its right of first refusal. Mr. Leach noted that the Hotel has implied to both the Rhode Island Convention Center Authority and Department of Administration it will not exercise its right of first refusal as it is pleased the Authority is taking over the Lease Agreement. The Hotel's position is that the more successful the Veterans Memorial Auditorium becomes the more it will enhance the value of the Hotel. Mr. Leach confirmed that not all issues have been resolved regarding this transaction, but he does not believe the Hotel's attorney would have prepared an amended document and indicated its intention to execute said document if the Hotel planned to withhold its consent. Mr. Mitchell stated that if there is ultimately a

transfer of title, it will either come from the Refunding Bond Authority, which is not required to come before the State Properties Committees, or the Refunding Bond Authority will transfer title of the property to the State of Rhode Island, which will then transfer title to the Rhode Island Convention Center Authority. If that happens, said transaction will have to come before the State Properties Committees for approval regardless of the existence of the right of first refusal provision. Mr. Pagliarini asked whether in accordance with the right of first refusal provision, the Hotel can exercise any other right that could diminish the State's asset. Mr. Pagliarini questioned whether the Hotel would be allowed to claim the parking lot for example. Mr. Mitchell indicated that any property would be sold for fair market value. Mr. Pagliarini indicated that money is not always the sole consideration, especially in Providence where parking is in such demand. Chairman Flynn indicated that the parking lot consists of only eight parking spaces and therefore would be of very little value to the Hotel. Mr. Woolley indicated that the deed will contain restrictions that require the facility to continue to operate as an arts and cultural center. Therefore, regardless of who purchases the property, the facility will continue to operate as an arts and cultural center. Mr. Mitchell agreed that there are deed restrictions and an architectural preservation clause contained in the Lease Agreements and other documents, which require that the facility continue to operate for public use as an arts and cultural center and require that the existing murals must be preserved. Mr. Humphreys addressed Mr. Pagliarini's previous question regarding whether the parties

explored alternative mechanisms, which would allow the Rhode Island Convention Center Authority to assume operation of the Auditorium without addressing the Lease Agreement at the present time. Mr. Humphreys stated that a Letter Agreement was executed, which allowed the Rhode Island Convention Center Authority to provide security and to inspect the building twice per day to ensure that the facility is intact. Mr. Humphreys stated that the parties chose to utilize a Second Amendment to the Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement to transfer operation and control of the property because the Lease Agreements needed to be amended; otherwise, the Foundation would not be able to fulfill its obligations under the Lease Agreement due to the changes concerning the payment of operating costs, which took effect on July 1, 2008. Mr. Humphreys explained that was the primary stimulus for utilizing the Second Amendment to the Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement. Mr. Kay stated that he believes that any outstanding issues should be resolved and all consents obtained prior to the State Properties Committee approving the documents. Chairman Flynn commented that any the existence of unresolved issues is certainly not due to lack of effort on the part of the parties and their attorneys. Chairman Flynn added that the transaction is further complicated as it involves not only the Hotel, but also its Lender. Chairman Flynn stated that the practical consideration is that the parties and the Committee do what is in the best interest of the State and the Veterans Memorial Auditorium. Chairman Flynn explained

that events are scheduled as early as the end of August 2008; therefore, the facility needs to be open and maintained to ensure that all commitments and obligations are honored. Chairman Flynn indicated that the State of Rhode Island will continue to conduct due diligence; however, a great deal has been accomplished thus far. Mr. Woolley stated that the proposed Second Amendment to the Veterans Memorial Auditorium Foundation Lease and the Assignment Agreement by and between the Veterans Memorial Auditorium Foundation and the Rhode Island Convention Authority are a vast improvement over the documents currently in place and upon that basis a motion to approve was made by Mr. Woolley with the understanding that the approval of these two (2) documents in no way endorses or makes any comment whatsoever relative to the Declaration of Condominium or the Subordination Estoppel and Attornment and Non-Disturbance Agreement or any other related documents, which were not previously presented, considered, or approved by the State Properties Committee and subject to the approval of the Rhode Island Refunding Bond and the aforementioned consents without deeming said consents necessary. Said motion was seconded by Mr. Pagliarini.

Passed Unanimously

ITEM B – Department of Transportation – A request was made for approval of and signatures on a Blanket Letter of Authorization to allow Brotherhood Productions, Inc. to utilize Department of Transportation controlled property for purposes of filming the third season of the “Brotherhood” television series. Mr. Malkasian

thanked Chairman Flynn and the members of the State Properties Committee for allowing this item to be placed on the agenda of this special meeting. Mr. Malkasian indicated that although the Department of Transportation had been diligently working on this Blanket Letter of Authorization for several weeks; there were unresolved issues, which prevented the Department from presenting said request in time for the July 22, 2008, meeting of the State Properties Committee. Mr. Malkasian explained that before the Committee today is a Blanket Letter of Authorization, which is modeled after the document that was previously approved by the State Properties Committee on behalf of the Department of Administration and Brotherhood Productions, Inc. Mr. Malkasian explained that the Blanket Letter of Authorization allows Brotherhood Productions, Inc. the use of Department of Transportation controlled property, with the Department's permission commencing July 30, 2008, through the end of the series third season on or about October 31, 2008. Mr. Malkasian explained that each time Brotherhood Productions, Inc. requests use of Department of Transportation controlled property, it is required to provide the Department with five (5) days advance notice during which time the Department conducts due diligence relative to said request. Mr. Malkasian indicated that Brotherhood Productions, Inc. pays compensation to the State of Rhode Island in the amount of \$1,500 per day for each day it utilizes Department of Transportation controlled property for filming. Mr. Malkasian explained that in the event Brotherhood Productions, Inc. requests use of property, which is considered to be of a sensitive

nature, the Department of Transportation reserves the right to have members of its staff present. During the next two (2) days, such property will be utilized by Brotherhood Productions, Inc.; therefore, the Department will require that resident engineers be on site as well as an electrical inspector to witness the filming. Brotherhood Productions, Inc. will compensate the State of Rhode Island via the force account method, which is the method that has been previously been utilized for the film industry. Mr. Malkasian explained the particular circumstances involved in the proposed filming locations using site maps. Additionally, Mr. Malkasian indicated that the proposed filming will have no impact on current road work whatsoever. Further, the Department of Transportation has obtained the consent of the Cardi Corporation and J. Cashman Construction regarding this request. Mr. Malkasian indicated that police officers have been engaged to monitor and address safety conditions at the filming sites. Mr. Malkasian indicated that Mr. Feinberg, Audra Gorman and Donna Bloom are also present to answer any questions and/or address any concerns the State Properties Committee may have. Ms. Bloom explained that the scenes being filmed are very basic and tomorrow's scene involves a murder and the subsequent investigation of said murder by the police department. It is a dialogue scene between two detectives who are discussing the appropriate jurisdiction of the crime scene. Subsequently, there is a fight scene wherein Michael Caffey assaults another individual. Chairman Flynn asked if this is the only proposed filming site or if there are others. Mr. Malkasian explained that he anticipates there will be other

proposed location for filming. Brotherhood Productions, Inc. must provide the Department of Transportation with detailed information regarding the nature of any proposed filming. Mr. Malkasian indicated that four meetings were conducted between the Department of Transportation and Brotherhood Productions, Inc. regarding just these two scenes both at the sites and in the office. Brotherhood Productions, Inc. was allowed to enter the Traffic Management Center and to see the placement of all Department of Transportation's cameras. The manager of the Traffic Control Center has already consented to the proposed filming and is in fact allowing Brotherhood Productions, Inc. to utilize the Department's cameras to identify several future film location sites. Mr. Malkasian stated that the Department's Traffic Control Center will actually have the ability to witness the scenes being filmed tomorrow. Chairman Flynn asked how the Department of Transportation would address a request to utilize a portion of the State's highway system for filming as such a request could potentially interrupt or in some way impact traffic flow. Chairman Flynn asked if the Department can assure the Committee that such a request will require an appearance before the State Properties Committee and not simply fall under the terms and conditions of the Blanket Letter of Authorization. Mr. Malkasian explained that in the event Brotherhood Productions, Inc. requests use of a State highway, the Department of Transportation would only consider granting said request after an exhaustive investigation regarding any and all safety issues and any possible impact on commuters. Mr. Malkasian indicated that the only time the

Department allowed a State highway to be utilized for filming was during the filming of "Dan in Real Life." The Department sought the approval of the State Properties Committee to allow the filming on a ramp located along Route 10. The Department utilized a rolling road block, which was approved by the State of Rhode Island Traffic Commissioner. Mr. Malkasian indicated that the State Police, the Department of Transportation's Engineering Division and the Chief Engineer together with the Construction Department signed approved use of that portion of the State's highway system. Mr. Malkasian explained that this sort of attention to detail is standard procedure for the Department when considering any request to utilize a portion of the State's highway system. Chairman Flynn asked if any request of that nature would fall under the subject Blanket Letter of Authorization. Mr. Malkasian indicated that the Department of Transportation does not anticipate any request of that nature being made by Brotherhood Productions, Inc. Mr. Feinberg explained that the very essence of filming a television series is the reason the Department of Transportation and the Office of Film and Television is before the State Properties Committee seeking approval of a "Blanket" Letter of Authorization. Mr. Feinberg explained that the process for filming a television series is far different from that of filming a feature film, especially episodic television. Mr. Feinberg indicated that due to the fast-pace and extremely unpredictable nature associated with episodic television, production is often on a very tight schedule and decisions must be made rapidly. As the State Properties Committee meets every other week, individual

State-agencies must be granted a certain amount of flexibility and freedom to make “on the spot” decisions relative to filming. The State can be confident that the agencies will render sound decisions based upon the safety of its residents and visitors. Mr. Malkasian indicated that the Department has previously allowed use of Route 403, which is closed and its use poses no threat to public safety. Mr. Pagliarini asked Mr. Malkasian to define what property the Department of Transportation controls. Mr. Pagliarini asked if the Department of Transportation would allow use of the Department of Transportation’s administration building, the Jamestown Verrazano Bridge or Route 95 for filming. Mr. Pagliarini stated that the State Properties Committee is being asked to sign a Blanket Letter of Authorization for the potential use of every property the Department of Transportation controls. Mr. Malkasian explained that the types of properties that Brotherhood Productions is seeking to utilize at this time are not problematic. Mr. Malkasian stated that Brotherhood Productions allows him to review scripts as they become available in order to anticipate and assess any future problems. Mr. Pagliarini stated that the State Properties Committee will be setting a precedent by executing this Blanket Letter of Authorization and that fact causes him pause. Mr. Malkasian indicated that the Department of Transportation executed a Blanket Film Location Agreement with Hachiko Productions, Inc. for use of the Woonsocket Depot; and therefore, this was not the first time the Department of Transportation has entered into a blanket agreement for purposes of filming. Mr. Feinberg indicated that due diligence is carefully conducted relative

to filming requests and neither the Film and Television Office, nor the Department of Transportation is attempting to avoid appearing before the State Properties Committee, but rather it is trying to satisfy the film industry's requests as well as maintain and/or exceed the standard of safety expected and required under the guidelines set forth by the State of Rhode Island. Mr. Pagliarini pointed out that the Hachiko Blanket Film Location Agreement involved one building; however, this agreement blankets the entire State of Rhode Island. Mr. Pagliarini stated that under this agreement the Film and Television Office can do whatever, wherever it wishes without the knowledge or approval of the State Properties Committee provided it satisfies the requirements of the Department of Transportation. Mr. Feinberg indicated that myriad entities must be consulted regarding proposed filming sites including the Rhode Island State Police, local police and the State of Rhode Island Traffic Commission. Mr. Malkasian indicated that if the Department of Transportation was planning a construction or engineering project, it would be required to conduct the same level of due diligence for that purpose as is required for the utilization of a State highway for filming. Mr. Feinberg stated that the Film and Television Office continually seeks and utilizes the expertise of the officials employed by the State regarding the use of State property for filming. The information gathered is then presented to the State Properties Committee for its consideration in granting final approval of a request. Mr. Pagliarini indicated that recently the State Properties Committee was presented with a request to grant the Department of Transportation the authority

to make independent decisions regarding requests from third parties to utilize State-owned property for de minimis purposes such as erecting signs for short periods of time or to grant permission for non-profit organizations such as the Boy Scouts to access State-owned property for organized clean-up efforts. The State Properties Committee discussed in great detail the benefits as well as and the potential for liability exposure to the State in granting the Department of Transportation authority to make even seemingly inconsequential independent decisions, however, the Committee is now being asked to grant approval of a blanket agreement, which will essentially abdicate the authority of the State Properties Committee while simultaneously delegating responsibility and entrusting the Department of Transportation to make independent decisions involving the State of Rhode Island's most vital real estate. Mr. Pagliarini pointed out the lack of consistency on the part of the Committee to even entertain approving said agreement. Chairman Flynn indicated that Mr. Pagliarini's position was certainly one prospective; however, another prospective is that given the nature of this production, the Film and Television Office and the Department of Transportation could potentially be required to appear before the Committee every other week for approval to film even the most innocuous scenes utilizing State-owned property of no particular sensitive nature. Therefore, Chairman Flynn questioned Mr. Pagliarini's assertion that the Blanket Letter of Authorization only serves to undermine the intended authority of the State Properties Committee or whether the Committee's denial of such an agreement

would actually prove to be not only onerous to all interested parties, but also be viewed as an attempt by the Committee to micromanage the authority of the various State-agencies and an abuse its intended authority. Mr. Pagliarini asked Mr. Feinberg to estimate the number of times the Film and Television Office has appeared before this Committee concerning this one production. Mr. Feinberg indicated that previously the Film and Television Office was responsible for the scheduling of countless emergency meetings of the State Properties Committee; to such a degree that they became challenging, not only for the Committee, but for his office and the production companies as well. Mr. Feinberg indicated that the "Blanket Film Location Agreement" is an attempt by the Film and Television Office to alleviate those challenges and inconveniences as he believes everyone present today has more pressing matters, which require their attention. Mr. Feinberg reiterated that the Film and Television Office simply wishes to utilize the expertise of the officials and staff of all the various State-agencies. Mr. Feinberg assured the Committee that not one of those individuals is willing to risk their reputations to approve a request that they do not fully support. Mr. Woolley stated that he has reviewed the proposed Blanket Letter of Authorization and is satisfied that it protects the interest of the State of Rhode Island and the Department of Transportation and allows the Department to fully control whatever activities occur on its property regardless of its location. A motion was made to approve by Mr. Woolley and seconded by Chairman Flynn.

Under discussion, Mr. Kay expressed concern that the film industry

should not be allowed to assert control and be allowed to run loose whenever and wherever it wishes. Mr. Malkasian vehemently denied that any such behavior would ever be tolerated the Department or by the State of Rhode Island. Mr. Pagliarini stated that the State Properties Committee must maintain a level of control. Mr. Woolley stated that the various State-agencies also need to maintain a level of control over their property. Chairman Flynn stated that the agencies are in a far better position than the State Properties Committee is to make decisions regarding their property as the Committee does not have qualified individuals available to actually witness taking place. Mr. Pagliarini reiterated that the Committee's approval of the Blanket Letter of Authorization sets a precedent with which he is not comfortable. For the record, Mr. Pagliarini stated that he has nothing against the utilization of State property for filming; however, he is ill at ease with the precedent the approval of this Blanket Letter of Agreement will set. Chairman Flynn asked if there was a need for any further discussion. There being none, the Committee voted relative to the motion to approve and execute the Blanket Letter of Authorization by and between the Department of Transportation and Brotherhood Productions, Inc. The motion failed two votes "Aye" to two votes "Nay."

Two Votes "Aye"

Mr. Woolley

Chairman Flynn

Two Votes “Nay”

Mr. Pagliarini

Mr. Kay

Mr. Malkasian asked Chairman Flynn for guidance as Brotherhood Productions, Inc. is scheduled to commence filming tomorrow. Chairman Flynn indicated that as the motion to approve failed, Brotherhood Productions would not be allowed to film under the terms and conditions of the Blanket Letter of Authorization. A motion was made to reconsider based upon the hardship inflicted upon this production as well as any future productions. Mr. Woolley stated that at the very least, the Committee should grant approval for the filming scheduled to commence tomorrow. Mr. Woolley amended his motion to approve to allow Brotherhood Productions, Inc. to proceed with the filming scheduled to commence on Wednesday, July 30, 2008, and Thursday, July 31, 2008. The amended motion was seconded by Mr. Pagliarini; however, Mr. Pagliarini requested that the Committee determine the specific period of time encompassed by said approval. The Committee agreed to allow Brotherhood Productions, Inc. to film under the subject Letter of Authorization from Wednesday, July 30, 2008, through and including Tuesday, August 19, 2008. The amended motion passed unanimously.

Passed Unanimously

Under discussion, Mr. Feinberg asked if there is anything that the

Film and Television Office can do to make the State Properties Committee more comfortable in terms of approving future blanket film location agreements. Mr. Pagliarini indicated that there is nothing Mr. Feinberg could do to make him more comfortable because he is unwilling to approve any document, which abrogates the power and authority of the State Properties Committee. Mr. Pagliarini indicated that such a precedent would come back to haunt the Committee often and at some point become policy. Mr. Pagliarini indicated that he is adamantly opposed to setting such a precedent.

There being no further business to come before the State Properties Committee, the meeting was adjourned at 10:50 a.m. A motion was made to adjourn by Mr. Woolley and seconded by Mr. Kay.

Passed Unanimously

Holly H. Rhodes, Executive Secretary