

IN THE MATTER OF

OPIUM, 21 RUPERT STREET, LONDON W1D 7PJ

AND THE LICENSING ACT 2003

WITNESS STATEMENT OF COSMINA STAN

I, Cosmina Stan, Asset Manager at Criterion Capital Limited ("**Criterion**") whose registered office is at 16 Babmaes Street, London, England, SW1Y 6HD state as follows:

1. I make this statement in connection with the application for a premises licence made by London Trocadero (2015) LLP ("**the Landlord**") in relation to the premises known as "Opium, Basement, 21 Rupert Street, London W1D 7PJ ("**Opium/the Premises**").
2. Criterion is the Asset Management Company acting on behalf of the Landlord. I have been employed as an Asset Manager for Criterion Capital since 2009 and am best placed to comment on the Premises and the application.
3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

The Trocadero

4. The Premises is located at basement level in The Trocadero, with its entrance at 21 Rupert Street. The Trocadero is a 100,000 square foot listed building located on Leicester Square. The Premises itself, including back of house areas, is approximately 9,135 square feet.
5. London Trocadero Limited purchased the freehold of The Trocadero in 2005. At the time of purchase the Trocadero consisted of:
 - a. 3 nightclubs
 - b. 16 retail units
 - c. 2 cinemas
 - d. 2 cafes
 - e. 6 restaurants
 - f. 6 floors arcade
6. At the time of purchase, The Trocadero did not therefore have the greatest of reputations; it was often seen as the beacon for children skipping school to play in the extensive arcade, Sega Bowl, which had seven floors of gaming machines. Sega Bowl was shut down by the Landlord in 2011 as one of the first priorities forming part of a “clean up” operation which involved The Trocadero restyling and repositioning itself as an attractive venue to visit. This has resulted in the closure of several souvenir stores, a nightclub, Fun Land and arcades within The Trocadero.
7. The process of “cleaning up” has understandably been a slow one. This has been bolstered in August 2018 by the completion of a lease and grant of premises licence to Haidilao which will bring China’s famed and highly respected hot pot restaurant into the UK, with a flagship restaurant covering 10,000 sq ft at the base of The Trocadero.
8. The “cleaning up” will very much reach an important milestone early next year, when a 12-floor hotel currently in development on the upper floors of The Trocadero is scheduled to complete and open for business. This is a huge investment in the area, and the offerings emanating from The Trocadero.
9. The operation has also included the surrendering of premises licence for The Penthouse at 1 Leicester Square, which held a 3am licence and 770 capacity, for a new hotel.

10. Currently, The Trocadero is made up of:
- a. 7 restaurants;
 - b. 1 cinema;
 - c. 2 retail units;
 - d. 2 nightclubs;
 - e. Crystal Maze; &
 - f. 12 floors of hotel use (currently under development).

History of Ownership of the Premises

11. At the time The Trocadero was purchased by the Landlord (in its previous guise), the Premises operated as Rex Bar, part of the Planet Hollywood brand. This has been a licensed venue since at least 1998. The Rex Bar was located in the basement, as Opium is today, with Planet Hollywood operating on the ground and first floors above. The lease to Planet Hollywood came to the end of its term and, terms for a renewal unable to be agreed, Planet Hollywood and the Rex Bar vacated the Premises on 3 January 2009.
12. The Premises remained empty until 8 July 2011, when a new lease was entered into between London Trocadero Limited and KPIP UK Limited was signed ("**the Lease**"). Following a six-month fit out period the Premises began to operate as "DSTRKT". DSTRKT operated until around late February 2018, when the Lease was assigned to Opium London Limited ("**the Tenant**") by way of a transfer dated 27 February 2018. Whilst the transfer to the Tenant completed on 27 February 2018, the Tenant did not start operating from the Premises until in or around January 2019, as the fit-out process took approximately one year to complete.

Operation by DSTRKT

13. The Premises operated as DSTRKT for approximately six years, we had little, if any, legal right to resist the assignment which at least to start with commanded a high-end calibre of customers, with elite pricing to reflect the clientele sought. Events such as ITV's "The X-Factor" parties and a birthday party for Beyoncé are indicative of the clientele attracted to, and attended, the Premises.
14. The Premises seemingly operated well as DSTRKT, and certainly for the first three years of its operation. In or around trading year three or four we become aware of some bad press in respect of DSTRKT, however this transpired to be related to an individual who has been denied entry to the Premises on the basis of her

looks/dress. We didn't consider this to be a real issue, rather a disgruntled member of public and we were not made aware of any negative incidents at the Premises throughout DSTRKT's trading, either via the police, or otherwise.

15. DSTRKT ceased operation in or around late February 2018. My understanding is that KPIP UK Limited was the failing London arm of a Bulgarian company who simply wanted out of the business. As a result, the Lease was transferred to the Tenant.

Due Diligence on the Tenant

16. By December 2017 we had been made aware that DSTRKT wished to cease operation and assign the lease. We were thereafter presented with the Tenant as a potential replacement. As part of this proposal we were provided with a presentation of the As the Tenant was not a UK operator there came with that an extra challenge in our due diligence in getting a real understanding of the Tenant as a proposed operator and their credential, not only financial, but business too. The Landlord met Ramon Bordasestary of the Tenant ("**Ramon**") in February 2018 to discuss the proposed style of operation and the Landlord's expectations. The Tenant showed itself to be a family business of a Spanish operator, operating several venues in Spain, and with good credential. We also met with the proposed Designated Premises Supervisor, Eamon Mulholland, who had a plethora of experience in Westminster and was well thought of. We had no concerns about the Tenant operating the Premises arising from these meetings. Indeed, as this was an assignment by DSTRKT there was very little legally that we were able to do about it even if we had wanted to.

17. The selection of a tenant is an important one, especially given the hard work of the Landlord in curating a mix of operators that sit well with each other, whilst promoting The Trocadero brand that we are trying to achieve. The hotel element has been a long time in coming and therefore always a consideration in determining appropriate operators to sit, quite literally, on the shoulders of. The Landlord seeks to offer a "West End experience". This is a Premises in the heart of central London, with premises licence permitting a combination of restaurant and dancing.

18. From our due diligence we considered the Tenant to be an experienced and quality offering; this was key to us. We are approached once or twice each year by other potential operators, however if they did not sit with the image that we are seeking to achieve they will go no further with us. Throughout the Landlord's ownership we have always sought to proceed on a reputation rather than commercial basis. Whilst we may be able to obtain a higher rent from one operator as opposed to another, the strategic fit and likely impact

on the image the Landlord seeks to curate are more important factors for consideration than money alone.

19. The Premises duly opened under the Tenant in late January 2019 following an extensive fit out period; we understand that circa £700,00.00 was spent on the fit out. Despite this, it transpired that the Tenant has had a slow start and they have only traded sporadically since opening, often not opening at all. We received correspondence from the Tenant advising of its intention to close for the summer, being July, August and September 2019.
20. We were initially surprised by the Tenant's decision to suspend trading during the summer months, which we would have expected to have been a lucrative time of year for them. We put this down to the Ramon wanting to return to Spain for the summer. Subsequently we were advised by Ramon that there had been water egress into the Premises from the hotel building works above. We were told this several weeks after the alleged egress and advised the client that this was an insurance issue and they should contact their insurer.
21. We heard no further from the Tenant of this issue and thereafter on 7 August 2019 the Premises opened for a special event – "The Only Way Essex". We had not been aware that they would be open for this event, but there was no issue with this under the Lease and they were quite entitled to do so. No issues arose from the event, which we believe was a filming event for the television programme of the same name. No further mention of the water egress was made.
22. Following the application for the shadow licence and the end of the consultation period we were made aware of an incident at the premises. This has confirmed our resolve to obtain the shadow licence, so that we are able to assert an effective control over the premises and ensure the observance and promotion of the Licensing Objectives.
23. We understand that Eamonn Mulholland taking on a more active role in addition to reprising his role as Designated Premises Supervisor. In addition, we understand that there is an intention for Mr Bordasestary (senior), Ramon's father and senior member of the company, to take a greater interest in the Premises.
24. We have been advised by the Tenant that additional changes will take place inside the Premises. By way of example, the installation of a search arch/metal detectors at the entry point. The use of body cameras on security staff is another consideration we understand is being discussed.

25. The Lease contains appropriate Tenant covenants to require the Tenant to inform us about any matters applicable to the premises licence, these are as follows:

“Premises Licence

In relation to the Premises Licence the Tenant covenants with the Landlord:

- 3.19.1 That it will not without the previous written consent of the Landlord transfer surrender or attempt to transfer or surrender the Premises Licence or allow it to lapse;*
- 3.19.2 That it will not do or omit to do anything whereby the Premises Licence may be forfeited or revoked or subject to review or its transfer be refused or endangered or a closure order be made in respect of the Property;*
- 3.19.3 That it will not without the previous written consent of the Landlord give any undertaking relating to the Premises Licence;*
- 3.19.4 That it will not do or omit to do on the Property or elsewhere anything whereby it might render itself or any personal licence holder liable to conviction for any offence under the Licensing Act;*
- 3.19.5 That it will observe and perform any conditions on the Premises Licence and procure their observance and performance by the designated premises supervisor and any personal licence holder for the time being working at the Property;*
- 3.19.6 That it will obtain the prior consent of the licensing authority before carrying out any alterations to the Property to which the Landlord has given its consent and for which an application to vary the Premises Licence is necessary under the Licensing Act;*
- 3.19.7 That it will give immediate notice in writing to the Landlord of:*
 - 3.19.7.1 Any complaint or formal or informal warning given by any responsible authority or interested party under the Licensing Act in respect of the conduct of the business at the Property and of any summons issued against the Tenant or the Premises Licence holder or the designated premises supervisor or any personal licence holder for the time being engaged in the conduct of the business at the Property;*
 - 3.19.7.2 Any notice received by the Tenant or the Premises Licence holder of an intention to apply for a review of the Premises Licence in respect of the Property;*

- 3.19.7.3 *Any person having been convicted of any criminal offence committed upon the Property or having been arrested on the charge of committing any such offence or having been served with any summons in respect of any such offence or having been served with a fixed penalty notice;*
- 3.19.8 *That it will at its own expense and at all proper times promptly pay all fees required to maintain the Premises Licence for the benefit of the Property;*
- 3.19.9 *That on or before the termination of the Term it will procure the written consent of the Premises Licence holder to transfer the Premises Licence to the person nominated by the Landlord and for that purpose sign all documents and attend such hearings as shall be necessary provided that if the Tenant refuses or neglects to procure the written consent to transfer the Premises Licence as required by this clause it shall be lawful for the Landlord and the Landlord is hereby irrevocably appointed by the Tenant to do all things necessary to effect such consent and for such purposes to sign any document for and on behalf of and in the name of the Tenant and to appear before the licensing authority by its solicitors or agents and to consent as the agent of the Tenant to a transfer being made to the person seeking to be the new holder of the Premises Licence.*
- 3.19.10 *If called upon to do so to produce to the Landlord or the Landlord's surveyors all plans documents and other evidence as the Landlord may reasonably require in order to satisfy itself that the provisions of this Lease have been complied with."*

26. In order to more robustly protect the Premises and to promote the licensing objectives going forwards, the Landlord will try to add reference to further conditions in the Premises Licence to the Lease.

27. In addition, the Landlord is considering further security in The Trocadero, in anticipation of the new hotel opening on the 12 upper floors in February 2020. This will result in permanent changes to the CCTV and security provisions at The Trocadero, including in a full upgrade of CCTV system, an increase in the areas covered by the CCTV system, including the fire exits and external areas. Each corner of the Trocadero will have CCTV coverage across the street outside. This will also now include CCTV coverage of the front of the Premises. In respect of security operatives there will be an intensification of security monitoring and patrolling.

Impact of Shadow Licence

28. The holding of a shadow licence gives the Landlord leverage and control against the Tenant or future Tenant so they cannot manipulate us just because they hold the premises licence; it will convey that we can afford to lose the Tenant without losing the licence.
29. Our experience in talking with other Landlords is that they too are seeking to obtain shadow licences for their portfolios. Without this, a landlord is at peril and exposed. If a tenant fails, a landlord is exposed and powerless and at the whim of the Tenant. A shadow licence allows a landlord to exert an influence over the tenant that would not be possible without one being in place.
30. With a portfolio that includes a new hotel on the Trocadero site, and three hotels in the immediate vicinity, the last thing the Landlord wants is a disturbance arising from the Premises. The bad press and reputational damage arising would be highly damaging to the Landlord's portfolio.
31. It is important to understand that the Premises forms one part of a licensed premises portfolio held by the Landlord. The importance of having control over the Premises is of paramount importance to the Landlord.
32. Other commercial interests in the immediate vicinity include 3 hotels, together offering circa 300 bedrooms in Leicester Square:
 - a. Assembly Hotel;
 - b. Victory House Hotel, located on the north east corner of Leicester Square;
 - c. Hotel Indigo, located on the north west corner of Leicester Square
33. Nobody could be more interested than us as Landlord about controlling, enhancing and changing people's mindsets about the reputation of Leicester Square. We have considered a change of use for the Premises, however people expect a late night music and dancing venue.

Conclusion

34. The Landlord wishes to take an active role in overseeing the Premises by making its application for a shadow premises licence. Such an application is one further way that the police have suggested.

35. The grant of such a Licence means we are not held to ransom by a Tenant where they hold the only licence and the relevant parts of the Licensing Policy and expectations of the City Council as regards Landlords as Licence Holder gives us the appropriate ability and wish to promote the licensing objectives by our control over the Premises.

On behalf of: London Trocadero (2015) LLP
Name: Cosmina Stan
Exhibit: CS1
Date: 16 September 2019

IN THE MATTER OF
OPIUM, 21 RUPERT STREET, LONDON W1D 7PJ
AND THE LICENSING ACT 2003

WITNESS STATEMENT OF COSMINA STAN

Thomas & Thomas Partners LLP
38a Monmouth Street
London
WC2H 9EP
Ref: AT/LON.53.1

Solicitors for the Landlord