

Clause embodied in Report No. 12 of the Administration Committee, as adopted by the Council of the City of Toronto at its meeting held on October 1, 2 and 3, 2002.

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**Sale of City-Owned Property,
205 Yonge Street
(Ward 27 - Toronto Centre-Rosedale)**

(City Council on October 1, 2 and 3, 2002, amended this Clause by adding thereto the following:

“It is further recommended that the Commissioner of Corporate Services be requested to submit a report to the Administration Committee on the process used for the disposal of City property, such report to include recommendations for actions that could be taken to make this process a more transparent public process.”)

The Administration Committee recommends the adoption of the report (September 6, 2002) from the Commissioner of Corporate Services.

The Administration Committee reports, for the information of Council, having received the confidential report (September 9, 2002) from the Commissioner of Corporate Services providing information with respect to the communication (August 28, 2002) from Mr. Robert Rueter, President, Caimor Ltd.

The Administration Committee submits the following report (September 6, 2002) from the Commissioner of Corporate Services:

Purpose:

To authorize the sale of the property known municipally as 205 Yonge Street.

Financial Implications and Impact Statement:

Revenue in the amount of \$2,660,000.00, less closing costs and the usual adjustments is anticipated. Pursuant to Clause No. 26 of Report No. 10 of The Strategic Policies and Priorities Committee, adopted, as amended by City Council at its meeting held on July 8, 9 and 10, 1998, the net proceeds from the sale of 205 Yonge Street will be used to offset the net cost of the Yonge Dundas Redevelopment Project and should be deposited in the Yonge Dundas Capital Account.

Recommendations:

It is recommended that:

- (1) the Offer to Purchase from 3067485 Nova Scotia Limited to purchase the City-owned property known municipally as 205 Yonge Street in the amount of \$2,810,000.00 less an allowance of \$150,000.00, be accepted on the terms outlined in the body of this report, including the approval of the Easement Agreement, and that either one of the Commissioner of Corporate Services or the Director of Real Estate Services be authorized to accept the Offer on behalf of the City;
- (2) authority be granted to direct a portion of the proceeds on closing to fund the outstanding expenses related to this property as outlined in the body of this report;
- (3) the City Solicitor be authorized to complete the transaction on behalf of the City, including the payment of any necessary expenses and amending the closing date to such earlier or later date as she considers reasonable; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

The property at 205 Yonge Street was acquired from the Toronto Dominion Bank in 1989 and was renovated extensively in 1992 to accommodate the offices of the then Toronto Historical Board. As a result of amalgamation, staff of the former Toronto Historical Board were disbursed to the Economic Development, Culture and Tourism Department (EDCT) and the new Heritage Toronto. As part of the Master Accommodation Plan (MAP) both the staff of EDCT and Heritage Toronto were relocated in November of 2001.

City Council, by its adoption of Clause No. 13 of Report No. 2 of The Administration Committee, at its meeting held on February 13, 14 and 15, 2002 declared the property surplus to municipal requirements. The property was listed with J.J. Barnicke Limited on April 15, 2002, at an asking price of \$3,300,000.00 with an offer submission deadline date of May 14, 2002. One offer was received but was not recommendable and a new submission deadline date of June 4, 2002 was set. The following offers were received by the stipulated date:

<u>No.</u>	<u>Offeror</u>	<u>Purchase Price</u>	<u>Deposit</u>	<u>Terms</u>
(1)	3067485 Nova Scotia Limited	\$2,810,000.00	\$281,000.00	Amendments
(2)	Caimor Ltd.	\$1,505,000.00	\$150,500.00	Amendments

The Offer of \$2,810,000.00 submitted by 3067485 Nova Scotia Limited (“Nova Scotia”) contained three additional terms on Schedule “B” of the Offer that staff were not prepared to recommend. The first term related to objections to title, outstanding orders, deficiency notices or directives. The City’s standard offer allows for the City, in its sole and absolute discretion to

determine not to remove, remedy or satisfy valid objections to title and other matters. This term limited the City's right to where the City "is unwilling, acting reasonably, to remove, remedy or satisfy". The second term obligated the City to remove two barrels of PCBs, legally dispose of same and deliver a certificate confirming same on closing. The PCBs were to be removed as part of the sale process. The third term obligated the City to repair and remediate the interior damage to the north wall of the building which resulted from water penetration. Such repair and remediation shall, at minimum, meet the standards of the Ontario Heritage Foundation, including the standards required by the Heritage Easement Agreement and such repairs and remediation shall include the elimination of the cause and source of such water penetration. On closing, the City shall deliver a certificate confirming that the foregoing has been completed.

The Administration Committee, at its meeting held on June 25, 2002, recommended the adoption of the confidential report (June 13, 2002) from the Commissioner of Corporate Services whereby staff were directed to meet with Nova Scotia to resolve the terms contained in the Offer to Purchase as submitted and to report directly to Council at its next scheduled meeting.

The solicitor for Nova Scotia was contacted and he advised his client was prepared to waive the first two terms of Schedule "B". With respect to the issues raised by the last term, Nova Scotia advised it required a consultant to investigate the north wall before it would consider waiving this term. Nova Scotia retained the architectural engineering firm of Carson Dunlop Weldon to report and provide an assessment on the condition of the north wall and an estimate of the cost to repair, remediate and eliminate the cause and source of water penetration. However, at the time of City Council's meeting, held on July 30, 31 and August 1, 2002, the Carson report had not been finalized and staff were unable to evaluate and make recommendations to City Council. The solicitor for Nova Scotia advised his client was prepared to extend the irrevocable date as set out in Section 4.1 of the Offer to October 11, 2002, to accommodate the September 10, 2002, Administration Committee meeting and the City Council meeting on October 1, 2 and 3, 2002.

City Council, at its meeting held on July 30 and 31 and August 1, 2002, adopted a confidential report (July 29, 2002) from the Commissioner of Corporate Services authorizing her to continue to negotiate with Nova Scotia to resolve the issues related to the terms in the Offer to Purchase and report to the Administration Committee meeting scheduled on September 10, 2002, on the sale of the property.

Comments:

As directed by City Council, negotiations continued with Nova Scotia to resolve the terms contained in its Offer. As a result of these negotiations, the Offer to Purchase was amended by:

- (a) deleting the three additional terms on Schedule "B" of the Offer and inserting the following provision:

The City will undertake to use its reasonable best efforts (without the payment of consideration or the bringing of action) to have the Easement Agreement executed and delivered by the owners of 207 Yonge Street, substantially in the form attached and, if successful in so doing, to execute the Easement Agreement and to register it on the titles of 205 and 207 Yonge Street. If the City succeeds in having the Easement Agreement

executed and delivered by the owners of 207 Yonge Street, the Purchaser shall assume the City's obligations under the Easement Agreement on closing. If the City is unsuccessful in having the Easement Agreement signed by the owners of 207 Yonge Street on or before the date of closing, the City will be under no further obligation with respect to its undertaking; and

- (b) amending the Purchase Price to \$2,810,000.00 less an allowance of \$150,000.00 toward present and future repairs to the north wall of the building.

Facilities and Real Estate's Design Construction and Asset Preservation section has inspected the damage to the north wall and has reviewed reports outlining the cost to repair the north wall and advise the estimated cost of \$150,000.00 for this purpose is reasonable.

With respect to the Easement Agreement, the proposed easement would allow the owners of 205 and 207 Yonge Street the right to enter at all reasonable times on the other's roof for the purpose of maintaining and repairing their respective walls. Each party will indemnify and save the other harmless from and against any liability, claims, damages and expenses due in any way arising from or caused from using the others property. The Easement Agreement is considered beneficial to both parties. The owners of 207 Yonge Street have been contacted and they appear to be receptive to granting the easement.

The Offer of \$2,810,000.00, less an allowance of \$150,000.00, as submitted by 3067485 Nova Scotia Limited is recommended for acceptance:

Subject Property: 205 Yonge Street.

Legal Description: Part of Park Lot 8, Concession 1 from the Bay, also designated as PART 5 on Reference Plan 63R-4643.

Site Dimensions: Frontage: 11.38 metres (37.34 feet).
Depth: 37.22 metres (122.11 feet).

Approximate Area: 421.7 m² (4,539.29 sq. ft.).

Roll Number: 1904-06-6-070-01200.

Improvements: Four-storey historically designated commercial building.

Current Status: Vacant.

Zoning: Mixed Commercial Residential.

Official Plan: High Density Mixed Commercial Residential.

Encumbrances: Property subject to:

- (1) an existing Heritage Easement Agreement with the Ontario Heritage Foundation, in accordance with the Ontario Heritage Act, for the preservation of historical, architectural, aesthetic and scenic character and condition of the building;
- (2) an existing encroachment agreement with the owner of 207 Yonge Street for the installation of metal flashing on the north wall of 205 Yonge Street;
- (3) By-Law 505-75 of City of Toronto designating the building located at 205 Yonge Street of Architectural Value or Interest;
- (4) a notice of an unregistered lease in favour of The Toronto-Dominion Bank having a term of 99 years commencing July 4, 1989;
- (5) a notice of an unregistered agreement to lease in favour of The Toronto-Dominion Bank, the lease contemplated by the agreement having a term of 99 years from the commencement date of the lease as set out below. The lease provides among other things that:
 - (a) the City may construct a concourse under the Property, although the City is not in any way obligated to do so;
 - (b) the lease shall commence on the earlier of the date on which the tenant commences to carry on business, and, 90 days following completion of construction of the concourse, and July 4, 2088; and
 - (c) if the concourse has not been completed on or before July 4, 2088, the agreement to lease shall be of no further force or effect.
- (6) A Heritage Easement pursuant to the Ontario Heritage Act registered against Part 1, Reference Plan 64R-16412 and other lands; and
- (7) an easement over the part of Part 3, Plan 63R-4643, designated as Part 1 on Plan 64R-16412, for the purposes of access and for the purpose of construction and maintenance of an existing concrete accessibility ramp and an enclosed stairwell.

Purchaser: 3067485 Nova Scotia Limited.

Recommended Sale Price: \$2,810,000.00, less an allowance of \$150,000.00 toward the present and future repairs to the north wall of the building.

Deposit: \$281,000.00 certified cheque.

Irrevocable Date: October 11, 2002.

Closing Date: 60 days following the expiry of the due diligence period.

Terms: Cash on closing, plus GST (if applicable) subject to the usual adjustment.

Listing Broker: J. J. Barnicke Limited Oncor International.

Selling Broker: J. J. Barnicke Atlantic Limited.

Commission: 2.5 percent, plus GST (if applicable) payable on closing of the transaction.

A Cost Centre has been put in place to charge costs directly related to the sale of City-owned properties, and include such items as commissions, surveying and registration of any necessary documents. In addition, an amount of approximately \$35,000.00 has been charged to the MAP budget to cover the cost to relocate EDCT staff from 205 Yonge Street to Metro and City Halls in order to facilitate the sale. A recommendation is included in this report to direct a portion of the sale proceeds to fund the outstanding expenses related to this property.

Pursuant to Clause No. 26 of Report No. 10 of The Strategic Policies and Priorities Committee, adopted, as amended by City Council at its meeting held on July 8, 9 and 10, 1998, the net proceeds from the sale of 205 Yonge Street will be used to offset the net cost of the Yonge Dundas Redevelopment Project and should be deposited in the Yonge Dundas Capital Account.

Conclusions:

Completion of the transaction on the terms detailed herein is considered fair, reasonable and reflective of market value.

Contact:

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List of Attachments:

Site Maps.

(A copy of the Site Maps attached to the foregoing report was forwarded to all Members of Council with the September 10, 2002, agenda of the Administration Committee and a copy thereof is also on file in the office of the City Clerk, City Hall.)

The Administration Committee reports, for the information of Council, having also had before it the following confidential communication and report:

- (i) (August 28, 2002) from Mr. Robert Rueter, President, Caimor Ltd., expressing concern to the Administration Committee respecting the manner in which he was treated in connection with his offers to purchase 205 Yonge Street and non-compliance with the terms of the Sale Protocol established by the City pertaining thereto; outlining his objections to the manner in which this matter was conducted; setting out facts known to him and providing documents in regard thereto; and
- (ii) (September 9, 2002) from the Commissioner of Corporate Services addressing the concerns raised by Mr. Robert Rueter, President, Caimor Ltd., in his communication dated August 28, 2002, such report to be considered in-camera having regard that the subject matter may develop into a case for litigation.

Mr. Robert Rueter, President, Caimor Ltd., appeared before the Administration Committee in connection with the foregoing matter.

Councillor Kyle Rae, Toronto Centre-Rosedale, also appeared before the Administration Committee in connection with the foregoing matter.

(City Council on October 1, 2 and 3, 2002, had before it, during consideration of the foregoing Clause, a confidential report (September 9, 2002) from the Commissioner of Corporate Services, such report to remain confidential, in its entirety, in accordance with the provisions of the Municipal Act, having regard that it concerns matters which are subject to potential litigation.)