



## STAFF REPORT ACTION REQUIRED

### Sony Centre – Proposed Amendments to Umbrella Agreement

<b>Date:</b>	January 24, 2008
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager and Chief Financial Officer and Chief Executive Officer, Sony Centre for the Performing Arts
<b>Wards:</b>	28
<b>Reference Number:</b>	P:\2008\Internal Services\SP\ec08002SP (AFS#6702)

#### SUMMARY

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This report recommends amendments to the Umbrella Agreement reached between the City, the Board of Directors of the Sony Centre for the Performing Arts (“Board”) and Castlepoint Realty Partners Limited (“Castlepoint”) for the redevelopment of a corner of the Sony Centre (“SC”) site. These amendments have been proposed in order to realize the following objectives:

- An extension of the date by which the SC/City must notify Castlepoint whether the Citycentre cultural centre will be constructed as part of the redevelopment
- An increase in the funding available for the SC to carry out its Business Plan

In order to implement the proposed amendments, SC staff have proposed that the City provide the SC with a temporary loan of \$5 million. The proposed amendments to the Umbrella Agreement include extensive provisions for securing the repayment of this loan. Therefore, this loan will not result in any additional long-term funding requirement for the City.

#### RECOMMENDATIONS

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The Deputy City Manager and Chief Financial Officer and the Chief Executive Officer of the Sony Centre recommend that:

1. The terms of the Umbrella Agreement be amended in accordance with the Letter of Intent attached as Appendix A of this report to provide for:

- a. the sale to Castlepoint of the additional strata area on the seventh and eighth floors of the podium structure;
  - b. the extension of the date on which the SC/City must notify Castlepoint as to whether the CityCentre project will proceed;
  - c. the provision of up to \$10 million in initial funding by the SC/City towards the construction of the podium structure; and
  - d. the provision of a letter of credit by Castlepoint in the amended amount of \$12 million along with other collateral security to secure repayment of the SC/City's initial funding of the podium structure in the event the CityCentre project does not proceed;
2. A loan in the amount of \$5 million be extended by the City to the Board of the Sony Centre for the Performing Arts in order to temporarily fund the podium structure in which the proposed CityCentre cultural centre is to be located, such loan to be funded from the Capital Financing Reserve Fund;
  3. The City loan to the Board of the Sony Centre for the Performing Arts be repayable no later than Dec. 31, 2010, attract interest at the City's cost of capital, and contain such other terms as deemed appropriate by the Deputy City Manager and Chief Financial Officer; and
  4. The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

## **FINANCIAL IMPACT**

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The proposed amendments to the Umbrella Agreement are outlined in the Letter of Intent attached as Appendix 'A' and the transaction timelines resulting from these amendments are shown below in Table 1.

The proposed amendments include two principal financial components.

### **Sale of Additional Strata Area**

The first financial component is a provision to increase the funding available for the fit-out of the proposed Citycentre cultural facility, should the CityCentre project proceed. If sufficient funds are raised, this cultural facility is to be created within the eight-storey podium structure that will be built below the proposed residential condominium tower.

SC staff have determined that the banqueting facility originally proposed for the seventh and eighth floors of the podium structure will not result in a positive financial contribution to the CityCentre. SC staff have proposed the elimination of this facility and Castlepoint has agreed to purchase and add this space to its proposed residential condominium development. In addition to reducing the capital cost for the CityCentre structure, this provision also increases revenues to the City as Castlepoint has agreed to

purchase this additional strata area for a price, subject to a third party appraisal, of approximately \$2 million.

This provision will allow for additional funding available for the implementation of the CityCentre or, alternatively, should the CityCentre not proceed, the additional revenue will be placed in a reserve fund for the benefit of the SC.

### **Extension of the Notification Date for the CityCentre Project**

The second financial component is a provision to extend the date by which the City/SC is to inform Castlepoint of whether construction of the CityCentre cultural centre will proceed. In order to allow for an extension of this notification date to July 1, 2009, the proposed amendments to the Umbrella Agreement require that the SC/City provide the initial funding for the creation of the podium structure. This initial funding would be provided regardless of whether the decision is made on July 1, 2009 to proceed to create the CityCentre within this podium structure or to lease the strata area for this structure to Castlepoint for use as a commercial development (as per the fallback scenario under the original Umbrella Agreement). The SC/City's commitment for initial podium funding would be the lesser of the total amount expended on the construction of the podium structure as of Dec. 31, 2009 or \$10 million.

The maximum \$10 million commitment would be funded partially by \$5 million from the \$17 million payment received from Castlepoint upon closing of the transaction (\$15 million for the strata area used for the residential condominium tower as per the Umbrella Agreement plus approximately \$2 million for the additional strata area on the 7<sup>th</sup> and 8<sup>th</sup> floors of the podium structure). This \$5 million amount would be remaining after allocating \$12 million from Castlepoint's \$17 million payment towards the renovation of the existing theatre (as per the SC's Business Plan).

The Board has proposed that the remaining \$5 million required for the initial funding of the podium structure be made available through a loan of \$5 million from the City to the Board. If sufficient contributions are raised from outside parties, and the decision is made to proceed with the CityCentre, the City loan will be repaid using these contributions.

If, however, the decision is made not to proceed with the CityCentre, the amendments to the Umbrella Agreement require Castlepoint to repay the City for the initial funding for the podium construction along with interest. This repayment to be provided on the earlier of the date at which Castlepoint secures financing for the podium structure or Dec. 31, 2010. The City's loan would be repaid when Castlepoint repays the SC/City's initial funding of the podium construction.

The repayment of the City's expenditures on the podium structure will be secured through a \$12 million letter of credit provided by Castlepoint. Therefore, there is very little risk associated with the repayment of the proposed loan and the proposed amendments to the Umbrella Agreement will not result in any additional long-term funding requirement from the City.

<b>Table 1- Summary of Potential Transaction Paths for Sony Centre Redevelopment</b>		
<b>Expected Timelines</b>	<b>Path 'A' Resulting in CityCentre</b>	<b>Path 'B' Not Resulting in CityCentre</b>
Transaction Closing June, 2008	<ul style="list-style-type: none"> <li>• Castlepoint provides SC/City with \$15 million payment for strata portion of SC site to be used for condominium tower</li> <li>• Castlepoint also provides SC/City with \$2 million payment (approximate) for Additional Strata Area in 7<sup>th</sup> and 8<sup>th</sup> floors of podium structure below tower</li> <li>• In total, SC/City receive \$17 million from Castlepoint</li> </ul>	
Beginning of SC renovations July, 2008	<ul style="list-style-type: none"> <li>• SC begins renovation of existing theatre with forecast cost of \$12 million</li> <li>• Funding is achieved by utilizing \$12 million from the \$17 million payment from Castlepoint</li> </ul>	
Beginning of work on new structures July, 2008	<ul style="list-style-type: none"> <li>• Castlepoint begins demolition of corner of existing SC site where podium and tower to be built</li> <li>• After demolition, excavation carried out to create new foundation for podium and tower</li> <li>• After creation of the foundation, Castlepoint begins construction of new building sub-levels below podium</li> </ul>	
Beginning of Podium Construction Approx. July, 2009	<ul style="list-style-type: none"> <li>• Construction of 8-storey podium structure below proposed tower is initiated</li> <li>• This work is initially funded by SC/City using remaining \$5 million from \$17 million payment received from Castlepoint and a \$5 million loan from the City to the SC</li> </ul>	
Notification Date July 1, 2009	<ul style="list-style-type: none"> <li>• If SC has raised sufficient additional contributions (approximately \$58 million) to construct entire podium and fit-out CityCentre, SC/City inform Castlepoint that CityCentre will be constructed in podium structure</li> <li>• SC/City continue to fund construction of podium structure</li> <li>• SC repays \$5 million City loan using contributed funds</li> </ul>	<ul style="list-style-type: none"> <li>• If SC has not raised sufficient funds to create CityCentre, SC/City notify Castlepoint that CityCentre will not be created</li> <li>• Castlepoint begins search for commercial tenants for podium structure</li> <li>• SC/City continue to fund construction of podium structure until Dec. 31, 2009</li> </ul>
Jan. 1, 2010	<ul style="list-style-type: none"> <li>• SC/City continues to fund construction of floors 1-6 of the podium structure</li> </ul>	<ul style="list-style-type: none"> <li>• Castlepoint enters into Long-Term Lease for podium structure</li> <li>• Castlepoint makes additional \$3.5</li> </ul>

<b>Table 1- Summary of Potential Transaction Paths for Sony Centre Redevelopment</b>		
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	<ul style="list-style-type: none"> <li>• Castlepoint funds construction of floors 7 &amp; 8 of podium structure</li> </ul>	million payment to SC/City for floors 1-6 <ul style="list-style-type: none"> <li>• Castlepoint begins funding remaining construction of podium structure</li> <li>• If Castlepoint has secured commercial tenants and, therefore, secured financing for podium structure, Castlepoint repays City/SC for expenditures made on podium up to Dec. 31, along with interest – SC uses these funds to repay City loan</li> </ul>
Dec. 31, 2010		<ul style="list-style-type: none"> <li>• If Castlepoint has still not been able to secure financing for podium structure, Castlepoint must now repay the SC/City for its expenditures on the podium, together with interest – SC then uses these funds to repay City loan</li> </ul>

## **DECISION HISTORY**

At its meeting of September 28, 29 and 30, 2005, Council considered Clause No. 1 of Report No. 8 of the Policy and Finance Committee regarding the updated Business Plan for the SC and the detailed redevelopment proposal from Castlepoint Realty Partners.

Council directed that the City and the Board of Directors of the Sony Centre pursue the Board's preferred Business Plan option, which contemplated construction of CityCentre and the sale of a portion of the SC site for a proposed condominium tower, in order to help fund the cost of constructing CityCentre. Council further directed that the parties consider a default option wherein Castlepoint would build the CityCentre space and enter into a long-term lease with the City to use it for commercial purposes, if the Board is unable to raise funds necessary to build CityCentre by a predetermined date.

At its meeting of July, 25, 26 & 27, 2006, Council adopted Clause No. 59 of Report No. 6 of the Policy and Finance Committee, which outlined the terms reached on an Umbrella Agreement with Castlepoint. These terms were essentially the same as those originally set out in the Board's preferred Business Plan option.

At its meeting of January 16, 2008, the Board approved a number of proposed amendments to this Agreement intended to:

- extend the date at which the City would have to decide whether to proceed with the CityCentre project; and

- allow for the sale to Castlepoint of space on the 7<sup>th</sup> and 8<sup>th</sup> floors of the podium structure for use in a residential development

## **ISSUE BACKGROUND**

A core component of the Board's new Business Plan for the SC has been the creation of the CityCentre cultural project. This project is intended to generate new interest and attendance for the overall Sony Centre complex. Part of the necessary funding for this project was to be realized through revenues received from the sale of a strata portion of the SC site for a residential condominium tower to be built over a corner of the existing theatre. The CityCentre cultural project would be built in the podium structure at the base of the condominium tower.

However, if the remaining revenues necessary to construct this new project had not been secured six months prior to the required commencement of construction of the condominium, the Umbrella Agreement included a provision for a fallback scenario under which the podium structure would be built by Castlepoint and would instead be leased on a long-term basis to Castlepoint and developed for commercial use.

Under the terms of the Umbrella Agreement, the City was to notify Castlepoint by January 2, 2008 of whether it intended to proceed with the construction of the CityCentre or whether the fallback scenario would be implemented.

According to SC staff, considerable progress has been made in raising interest amongst prospective donors. In particular, SC staff have received very positive expressions of interest from representatives of the Federal and Provincial governments. However, although Castlepoint has agreed to extend the decision date for a few weeks, SC staff anticipate that significantly more time will be required to secure funding commitments.

SC staff have also raised concerns regarding the banqueting facility to be created on the seventh and eighth floors of the CityCentre complex. The proposals received from potential operators have indicated that this banqueting facility will not result in a positive financial contribution to the operations of the overall CityCentre complex.

## **COMMENTS**

SC staff have met with Castlepoint in an attempt to address the timing challenge as well as to discuss alternate uses for the seventh and eighth floors of the CityCentre complex.

### **The Sale of Additional Strata Area**

In order to address the issue regarding the seventh and eighth floors, Castlepoint has proposed that it purchase the strata area for these floors and add this space to its proposed residential condominium development. The purchase price will be equal to the floor area multiplied by the minimum of either \$50/sq. ft. or the value determined through an

independent appraisal. At the minimum value of \$50/sq. ft., the purchase price would be approximately \$2 million.

In addition to generating this additional revenue, the sale of the additional strata area will also reduce the cost for creating the CityCentre structure significantly.

In the event that the CityCentre project proceeds, the Board has recommended that the cost savings and the additional revenue be dedicated towards improvements in the fit-out of the CityCentre's interior and the exhibits to improve the visitor experience.

### **Extension of the Notification Date for the CityCentre Project**

The existing notification date in the Umbrella Agreement was established to allow Castlepoint sufficient time to implement the fallback scenario for the use of the podium structure if the SC/City chose not to proceed with the CityCentre. As discussed above, this fallback scenario would involve the creation of a commercial development within this space.

As work on the podium structure is scheduled to commence in July, 2009 (see Table 1), the original notification date established in the Umbrella Agreement provided Castlepoint with approximately eighteen months to arrange lease agreements with tenants and to secure construction financing. The tenant lease agreements are a necessary requirement for securing the construction financing.

According to Castlepoint, a further extension of the notification date will not allow for sufficient time to secure tenants and financing in the event that the City chooses not to proceed with the CityCentre.

SC staff and Castlepoint have, therefore, reached an agreement on an alternative approach towards the initial funding of the podium structure. In order to extend the notification date to July 1, 2009, the SC/City would provide the initial funding for the podium structure. This initial funding would be the lesser of the total amount expended on the construction of the podium structure as of Dec. 31, 2009 or \$10 million.

Through this arrangement, Castlepoint will be provided with a six month lead time to prepare to begin funding the construction of the podium, should the SC/City elect not to proceed with the creation of the CityCentre.

A \$5 million portion of the maximum \$10 million initial funding commitment would be available from the \$17 million received upon closing from Castlepoint (\$15 million for the strata area for the residential condominium tower and \$2 million for the additional strata area for the 7<sup>th</sup> and 8<sup>th</sup> floors in the podium). This \$5 million amount would be remaining after allocating \$12 million towards the renovation of the existing theatre (as per the SC's Business Plan).

SC staff have proposed that a further \$5 million portion of this initial funding for the podium structure be made available through a loan from the City to the SC.

In the event that sufficient contributions are raised from the Federal and Provincial governments and other contributors, and the decision is made to proceed with the CityCentre, the City's loan would be repaid using these contributions.

In the event that the decision is made on July 1, 2009 not to proceed with CityCentre, Castlepoint will make a further payment of \$3.5 million to the SC/City for the strata area that will be used for the commercial development within the podium (as established in the current Umbrella Agreement). It will also begin seeking commercial tenants for the podium structure space and on Jan. 1, 2010 it will begin funding the remaining construction of the podium structure.

If Castlepoint has secured tenants and construction financing by this date, it will repay the SC/City's initial funding together with interest calculated at the market rate. This repayment by Castlepoint will be used to repay the City's \$5 million loan to the SC.

If Castlepoint has not secured tenants and financing, Castlepoint will begin funding the podium structure with its own equity funds. In this event, Castlepoint will defer repayment of the SC/City's initial funding until the earlier of the date at which Castlepoint secures financing or Dec. 31, 2010. The SC will, however, provide a partial repayment of the City's loan on Jan. 1, 2010 using the \$3.5 million payment received from Castlepoint. The remaining \$1.5 million of the City loan will be repaid when repayment is received from Castlepoint for the City's initial funding of the podium structure (with an outside repayment date of Dec. 31, 2010).

The repayment of the City's expenditures on the podium structure will be secured through an extension of the letter of credit already required of Castlepoint under the Umbrella Agreement. This letter of credit was originally required to be set initially at a value of \$10 million. It was then to decline in value to \$2 million once construction had proceeded to the podium level (at which point the risk that a lender might vacate the project would decline as the project would have created positive value). Castlepoint has agreed to instead set the initial value of the letter of credit at \$12 million and maintain it at this value until the City's expenditures on the podium structure have been repaid. In addition, Castlepoint has agreed to further secure the repayment obligation by assigning the net proceeds of the condominium sales to the City.



Therefore, there is very little risk associated with the repayment of the proposed loan and the proposed amendments to the Umbrella Agreement will not result in any additional long-term funding requirement from the City.

## **CONTACT**

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## **SIGNATURE**

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Daniel D. Brambilla  
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Sony Centre for the Performing Arts

## **ATTACHMENTS**

Appendix 'A' – Letter of Intent