

ACTION REQUIRED

Sony Centre - Update on Real Estate Transaction

(Executive Committee EX 33.46 – Bridge Loan Increase/Extension, June 2, 2009)

Date:	August 5- 6, 2009
To:	City Council
From:	Chief Executive Officer of the Sony Centre for the Performing Arts
Wards:	28
Reference Number:	P:\2009\Internal Services\SP\CC09004SP (AFS# 9529)

SUMMARY

The purpose of this report is to present to City Council an update on the status of the real estate transaction as requested by the Executive Committee at its June 2, 2009 meeting pursuant to EX. 33.46.

RECOMMENDATIONS

1. That City Council approve the revised terms of the proposed real estate transaction with Ferncastle;
2. that City Council authorize the Chief Executive Officer of the Sony Centre for the Performing Arts, in consultation with the Chief Corporate Officer and the Deputy City Manager and Chief Financial Officer, to approve any further amendments to the Umbrella Agreement consistent with the principles established in the attached Term Sheet of Material Changes.

FINANCIAL IMPACT

There is no financial impact if the real estate transaction proceeds. The financial impact if the real estate transaction does not proceed is discussed in the accompanying confidential report by the Board of Directors and Chief Executive Officer of the Sony Centre for the Performing Arts and by the Finance Department.

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 Sony Centre and the detailed redevelopment proposal from Castlepoint.

Council directed that the City and the Board of Directors of the Sony Centre pursue the Board's preferred Business Plan option, which contemplated the sale of a portion of the Sony Centre site for a proposed condominium tower.

In order to facilitate the closing of the transaction, the Board of the Sony Centre for the Performing Arts adopted at its meeting of February 12, 2009 amendments to the Umbrella Agreement recommended by Sony Centre staff, which amendments were approved by Council at its meeting on February 23, 24 and 25, 2009.

In order to further facilitate the closing of the transaction the Board of the Sony Centre for the Performing Arts adopted at its meetings of May 21, 2009 and July 23, 2009 amendments to the Umbrella Agreement recommended by Sony Centre staff, which consolidated amendments are now being presented to Council for its approval.

ISSUE BACKGROUND

Staff of the Sony Centre have been working with Castlepoint Realty Partners Ltd. and City Planning staff to address the remaining conditions which need to be satisfied in order for the development transaction to proceed.

A key remaining requirement is that Castlepoint has indicated that its lender requires that a number of further amendments be made to the project Agreements, which amendments are reflected in the attached hereto, entitled Term Sheet of Material Changes.

COMMENTS

The Board of Directors has approved the substance of these amendments at its meetings on May 21, 2009 and July 23, 2009 and both the Board and Chief Executive Officer of the Sony Centre recommend that Council approve the attached terms so that the real estate transaction can be consummated and the Sony Centre can repay the bridge loan from the City and commence its renovations so the theatre can reopen in the spring of 2010.

CONTACT

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SIGNATURE

Daniel D. Brambilla
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Sony Centre for the Performing Arts

July 23, 2009

TERM SHEET OF MATERIAL CHANGES

The following are material changes proposed to the Umbrella Agreement from those previously approved in various Council Resolutions.

1. The Closing Date shall be unconditional and shall occur not later than August 14, 2009, provided that Council approval shall have been obtained at least 5 Business Days prior to the Closing Date.
2. A transfer of title will be delivered on Closing, whether or not Construction Financing has been obtained or an advance made under Construction Financing.
3. If the transfer of title cannot be provided on Closing as a result of the strata reference plan not having been registered, Closing shall nevertheless occur on the Closing Date and the transfer of title delivered by the City following Closing, upon the registration of the strata reference plan. In the discretion of the City, Closing may occur in escrow pending registration of the strata reference plan.
4. Transfer of title will be subject to certain Restrictive Covenants, as well as an agreement restricting transfer of title to enforce the Restrictive Covenants. The Restrictive Covenants deal with certain restrictions contained in the Umbrella Agreement, such as building in accordance with plans and specifications having been approved.
5. Amounts payable on Closing shall include:
 - (a) The balance of the purchase price;
 - (b) \$1,000,000 on account of the Sony Centre Necessary Renovations Contributions;
 - (c) \$7,500,000 (\$5,000,000 Initial East Side Payment + \$2,500,000 balance of East Side Payment) on account of improvements to be made by Sony Centre to the east of the theatre and referred to in the Umbrella Agreement as “the East Side Solution”;
 - (d) \$1,000,000 on account of the Public Plaza Payment should the city elect to receive the public plaza payment as set out below in paragraph 6;
 - (e) Such other amounts representing mutual reimbursement of certain expenses as set forth in the Umbrella Agreement.
6. In addition, on Closing, performance security in the amount of \$2,000,000 shall be delivered by way of a letter of credit in favour of the City or a certified cheque in favour of Borden Ladner Gervais LLP, in trust (the “Performance Security”). The Performance Security is security for the Substantial Completion of the Private Component.

At the option of the City, the Performance Security may be reduced to \$1,000,000, should the remaining \$1 million be paid to the City in accordance with the Public Plaza Payment referred to above:

In addition, Castlepoint Realty Partners will make payments totalling \$1,000,000 to the Sony Centre commencing in January 2010 to even Sony Centre's lost revenues due to the delay in the reopening of the Centre, which sum may be recovered if the Sony Centre operates above break-even over a three year period.

7. There shall be no obligation on Ferncastle to commence construction within any specified time period following Closing, although, if construction does not commence in the calendar year 2009 there is a requirement of one year's advance notice to start construction in 2011 or a later year in the periods of July to September of any such year. In addition, there shall be no right of Sony Centre to acquire parking rights within a future development at 5 – 7 The Esplanade being developed by Ferncastle.
8. As a condition to the Commencement of Construction, Ferncastle must provide security and/or payments to the City to secure the completion of obligations with respect to the Project Related Renovations and structure within the Private Component as is necessary to complete the PRR, so that if Ferncastle defaults, the City may step in to complete the Project Related Renovations. The security shall be put in place for the completion of the PRR in a form and amount acceptable to the City, acting reasonably and shall include, without limitation, a fixed price construction contract between Ferncastle and the construction contractor to Ferncastle ("Dominus") which contract will by its terms be assignable to the City in the event of a Ferncastle default and shall also include a joint and several completion guarantee from the three individual principals of Ferncastle to the City.
9.
 - (a) As a prerequisite to Commencement of Construction, an agreement will be entered into between the City and Ferncastle (the "**Step-In Agreement**") dealing primarily with the inter-relationship of the rights of the City under the Umbrella Agreement and the rights of the lender under its security in the event of a default by Ferncastle, including the first right of the lender to "step-in" and cure the defaults of Ferncastle.
 - (b) The Project Lender will have the first right to Step-In in the event of a default by Ferncastle. In that event, it will not be obligated to assume the obligation to construct the Project Related Renovations and the Private Component, but will instead have an election as to whether it will construct these elements;
 - (c) In the event that the Project Lender does not Step-In or elects not to construct, the City will have the right to construct the Project Related Renovations as set out in paragraph 8 above.
 - (d) The Restrictive Covenants shall be released and discharged from the title to the private lands on the closing of the construction financing and registration of Project Lender's security against title to the Private Lands. Should the Project

Lender not proceed bona fide with the construction financing and the restrictive covenants removed from the title to the property, Ferncastle shall consent to the re-registration of the restrictive covenants;

10. On Closing, the parties will enter into a Mutual Easements and Shared Facilities Agreement which will provide, amongst other matters, for the allocation of expenses relating to Shared Facilities between the parties in proportion to the gross floor area of the Private Component to the gross floor area of the Project Related Renovations.
11. On Closing, the parties will enter into a Construction Procedures Agreement providing for licences from each party to the other with respect to the construction requirements of each of the parties.

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