

---

## BRIEFING NOTE

---

### **Sony Centre for the Performing Arts**

#### **Summary of Changes to Redevelopment Transaction**

---

##### Purpose:

As requested by the Government Management Committee at its meeting held on September 17, 2009, to summarize the changes to the Sony Centre redevelopment transaction which have been approved by City Council.

##### Background

- On September 28, 29 & 30, 2005, Council adopted PFC 8(1) regarding the updated Business Plan for the Sony Centre and the redevelopment proposal from Castlepoint Realty Partners Limited (“Castlepoint”), and directed that the City and the Board of Directors of the Sony Centre pursue the Board’s preferred Business Plan option, for the sale of a part of the site for a proposed condominium tower.
- On July 25, 26 & 27, 2006, Council adopted PFC 6 (59) which authorized the City to enter into an Umbrella Agreement with Castlepoint, now Ferncastle (Front Street) Inc. (“Ferncastle”).
- The Umbrella Agreement provided for the sale of part of the site for at least \$15 million plus \$35.00 per square foot of gross floor area, if the completed condominium exceeds 428,571 square feet. If Sony Centre could raise approximately \$57 million by a certain date, then the CityCentre cultural project would be built at the base of the proposed condominium, failing which the City would enter into an 89 year lease with Castlepoint for commercial/retail space for a one time rental payment of \$3.5 million. During the 89 year term, the City would have two opportunities to terminate the lease early, if Sony Centre were able to reach its fundraising goals to proceed with CityCentre. In addition, Castlepoint agreed to pay \$500,000.00 to the City, to be used for the purposes of the Capital and Revolving Fund for Affordable Housing.

##### Amendments to Umbrella Agreement

- On July 16, 17 and 18, 2007, Council adopted EX 10.5 to amend the Umbrella Agreement to revise the City’s early termination rights for the commercial component lease, so that effective from the termination date, the use of the commercial space would be limited for a period of 3 years to any public use that is cultural or charitable in nature that Council shall then determine.
- On March 3, 4 & 5, 2008, Council adopted EX 17.6 to amend the Umbrella Agreement to provide for the sale of an additional strata area on the 7<sup>th</sup> and 8<sup>th</sup> floors of the condominium podium structure, and to change the date by which the Sony Centre must notify Ferncastle

of its intention to proceed with CityCentre, to July 1, 2009.

- As Sony Centre was unable to raise sufficient funds for the CityCentre project, the Board of Directors proposed that a public plaza be constructed on the westerly side of the existing theatre instead of the commercial space, and that the potential increased density available be included in the sale to Ferncastle.
- On July 15, 16 and 17, 2008, Council adopted EX 22.36 to amend the Umbrella Agreement to provide for a change to the Board's Business Plan, to consider the public plaza development.
- On October 29 and 30, 2008, Council adopted EX 24.4 to amend the Umbrella Agreement to provide for development of the public plaza and the sale of additional gross floor area of at least 60,000 square feet, at a minimum of \$50.00 per square foot.
- On February 23, 24 and 25, 2009, Council adopted MM31.2 to amend the Umbrella Agreement to adjust the timing of payments and financial securities by Ferncastle, and the timing for delivering the Transfer/Deed for the condominium lands. Instead of delivering the Transfer/Deed when the condominium tower is substantially completed, it would be delivered when Ferncastle's lender advances the first \$2.5 million.
- On August 5 & 6, 2009, Council adopted EX 33.46 to provide for further amendments, as follows:
  - The Transfer/Deed for the condominium lands would be delivered on closing, instead of when Ferncastle's lender advances \$2.5 million.
  - To protect the City, the transfer of lands will be subject to restrictions on the exterior design of the condominium, the timing of construction, and restricts the sale, transfer or assignment of the lands to a third party, unless certain conditions are met.
  - To enforce the restrictions, an agreement restricting transfer will be registered on title to the condominium lands.
  - On closing, Ferncastle shall pay:
    - \$15 million for the condominium lands;
    - \$3,962,122.50 for additional gross floor area (75,496 square feet at the appraised value of \$52.50 per square foot);
    - \$1 million towards Sony Centre's renovation costs; and
    - \$5 million of \$7.5 million to offset Sony Centre's cost to relocate mechanical and electrical systems from the west side of the theatre (where the condominium will be located) to the east side (the "East Side Solution").
  - The remaining \$2.5 million for the East Side Solution shall be paid when Sony Centre substantially completes such work.
  - Ferncastle shall also contribute \$1 million towards the public plaza construction costs.
  - Instead of commencing construction within 10 years of closing, Ferncastle shall have no obligation to commence construction within any specified time period.

- If construction does not start in 2009, one year's advance notice is required to start construction in 2011 or a later year in the periods of July to September.
- Prior to commencement of construction, Ferncastle shall provide the following security:
  - Letter of Credit for \$4.5 million, to secure the \$2.5 million East Side Solution payment, \$1 million to secure the public plaza contribution, and \$1 million to secure substantial completion of the condominium tower (the "Security LC").
  - Since the south-west corner of the theatre has to be demolished, security in the amounts as determined by the quantity surveyor for completion of project related renovations and structure within the condominium tower (the "Project Related Renovations Completion Guarantee").
- Prior to constructing the above-grade portion of the condominium tower, a step-in agreement will be entered into dealing with the rights of the City and the rights of a lender in the event of default by Ferncastle.
- If the lender is a CMHC insured institutional first mortgagee, the restrictive covenants shall be released from the condominium lands on the closing of the construction financing.
- If the CMHC insured lender does not proceed bona fide with the construction financing, Ferncastle shall consent to re-registration of the restrictive covenants.
- Ferncastle has requested a further amendment, that a deposit surety company which provides construction financing, be treated in the same manner as a CMHC insured lender. The deposit surety would provide security in accordance with the Condominium Act of Ontario to permit the release of deposits from purchasers of condominium units in the proposed tower. The deposits would be used by Ferncastle to fund hard and soft construction costs for the condominium tower. This means that on the closing of the deposit surety financing, the restrictive covenants which impose restrictions on the exterior design of the condominium tower, the timing of construction, and restricts the sale, transfer or assignment of the project and/or the condo lands to a third party, would be released. In addition, if Ferncastle defaults in the loans with the CMHC insured lender or the deposit surety, these lenders would not be responsible for Ferncastle's obligations to the Board and City under the Umbrella Agreement and the ancillary agreements. The City would only have recourse to Ferncastle, a single purpose company, and to the Security LC and the Project Related Renovations Completion Guarantee to ensure completion of Sony Centre's replacement space at the south-west corner of the theatre. While this is not a preferred position for the City, the developer advises that it cannot secure construction financing, without this further amendment.

Prepared by: Soo Kim Lee, Solicitor, Real Estate Law, Legal Services (416) 392-1246  
 Eric Arm, Senior Financial Analyst, Finance (416) 397-4479

Date: October 1, 2009