

**Canada Malting Complex
Metronome Canada Incorporated
Agreement to Lease Terms (Downtown)**

(City Council at its regular meeting held on October 3, 4 and 5, 2000, and its Special Meetings held on October 6, 2000, October 10 and 11, 2000, and October 12, 2000, adopted this Clause, without amendment.)

The Economic Development and Parks Committee recommends the adoption of the following report (August 27, 2000) from the Commissioner of Corporate Services, subject to adding the following:

“that February 2001 be the final date to hear proposals from Metronome Canada Inc. (MCI) with regard to the Master Agreement (as amended) between the City and MCI or the proposed deal be cancelled.”:

Purpose:

To clarify the terms of the Agreement to Lease relative to the financial obligation of Metronome Canada Incorporated as it relates to in-kind contribution.

Financial Implications:

There are no financial impacts associated with this report.

Recommendations:

It is recommended that:

- (1) the Commissioner of Corporate Services be directed to enter into an appropriate agreement with Metronome Canada Incorporated (MCI), setting out the type of sources of funding and percentages thereof, as set out herein, that may be used to satisfy the requirements of the Master Agreement (as amended) between the City and MCI relative to providing evidence of having secured capital funding to February, 2001;
- (2) authority be granted to extend the milestone dates contained in the Master Agreement (as amended) by a time equal to the extension granted for the submission of evidence of having acquired capital funding in the amount of \$10,000,000.00;
- (3) the City Solicitor be authorized and directed to prepare and execute the appropriate agreements in order to give effect to the above; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

City Council, at its meeting held on June 7, 8 and 9, 2000, adopted, with amendments, Clause No. 8 of Report No. 13 of The Administration Committee, thereby directing that:

- (1) Metronome Canada Incorporated (MCI) be granted a time extension to February 2001, to satisfy a condition of the Agreement to Lease relative to the acquisition of \$10,000,000.00 in capital funding, such extension to be the final extension granted by City Council, and further, that MCI be requested to submit its business plan and fundraising strategy to the Economic Development and Parks Committee for consideration;
- (2) the Commissioner of Corporate Services, in consultation with officials of Metronome Canada Incorporated, be requested to submit a report to the Economic Development and Parks Committee, clarifying the terms of the Agreement to Lease concerning MCI's financial obligation, specifically as it relates to in-kind contributions; and
- (3) the Ireland Commemorative Park be incorporated into the site plan for the project, and the Commissioner of Corporate Services be requested to submit a report to the Toronto Community Council in this regard.

Comments:

With respect to Recommendation No. (1), City staff met with MCI on July 6, 2000, to discuss MCI's business plan and fundraising strategy. The Commissioner of Economic Development, Culture and Tourism will be reporting on this matter to the Economic Development and Parks Committee at its meeting scheduled to be held on September 18, 2000.

It should also be noted that the time extension to February 2001, as outlined in Recommendation No. (1) refers only to one milestone date and there are a number of milestone dates which follow. These dates are all relative and, as such, given the extension granted by City Council for MCI to provide evidence of having acquired capital funding in the amount of \$10,000,000.00, all other milestone dates which follow should be extended by the same amount of time. These milestone dates are set out on Attachment 1 to this report, together with the original date set out in the Master Agreement, the extended date set out in the Amending Agreement and the most recently extended date.

With respect to Recommendation No. (2), MCI's financial obligation, as it relates to the construction of Phase 1 of the project and as set out in the Agreement to Lease is as follows:

“3.2(c) the City Treasurer of the Landlord being satisfied, in his sole and absolute discretion, on or before each of the dates set out below that the Tenant has obtained adequate financing commitments of the amounts set out below for the purpose of constructing Phase 1 of the Project described in paragraph 4.1.1 in accordance with the timing provided for in this Agreement:

- (i) on or before August 31, 1999 (was extended to February 29, 2000 by amending agreement dated August 26, 1999): commitments from lenders, donors, sponsors and/or other participants totalling not less than \$10 million;
- (ii) on or before the date of City Council's consideration of the Required Rezoning report or reports; commitments from lenders, donors, sponsors and/or other participants in the aggregate amount of not less than \$45 million.

The Tenant will use its reasonable best efforts to obtain such commitments on or before the said dates.

3.2(d) The Required Rezoning being in force on or before September 1, 2000 (was extended to March 1, 2001 by amending agreement dated August 26, 1999)."

A subsequent meeting with City staff and MCI was held on July 19, 2000, to discuss the various sources of funding and acceptable in-kind contributions. Notwithstanding the fact that the Master Agreement did not entertain the notion of in-kind contributions of construction materials and/or professional services as being a possible source of capital funding, staff recommend that MCI be permitted to satisfy its obligations under Clause 3.2(c)(i) of the Master Agreement by providing evidence, in terms satisfactory to the Commissioner of Corporate Services, in her sole and unfettered discretion, and in a form satisfactory to the City Solicitor, the following:

- (1) at least \$7,500,000.00 cash in hand, or commitments for cash donations/sponsorships, or commitments for financing from Schedule 1 banks or other recognized institutional lenders, with a minimum verifiable value in the case of those commitments of \$7,500,000.00 of the \$10,000,000.00 total requirement (75 percent of the total requirement); and
- (2) commitments for donated construction materials directly related to the construction of Phase One with a maximum verifiable value of \$1,250,000.00 of the total \$10,000,000.00 requirement (12.5 percent of the total requirement); and
- (3) commitments for donated professional services directly related to the construction of Phase One with a maximum verifiable value of \$1,250,000.00 of the total \$10,000,000.00 requirement (12.5 percent of the total requirement).

All commitments for cash donations, sponsorships, financing, donated construction materials and donated professional services must be irrevocable and in writing, from third parties acting in good faith.

Based on the above, should MCI elect to include commitments of donated construction materials and/or donated professional services, the maximum amount that will be acceptable is 12.5 percent for each of these two types of donations, or \$1,250,000.00 each for a total maximum of 25 percent or \$2,500,000.00. The balance must be comprised of cash or commitments of cash/donations/sponsorships/financing as set out above. Further, MCI must

demonstrate to the City that these categories of donations relate directly to the cost of construction of Phase I of the project.

With respect to Recommendation No. (3), City Council, at its meeting of July 4, 5 and 6, 2000, adopted Clause No. 64 contained in Report No. 11 of The Toronto Community Council, thereby approving the acceptance of the official gift of commemorative sculptures, the final location of the waterfront park area, the proposed name of the park area and the detailed design and implementation schedule, including the results of the historical and heritage significance of the Irish Famine Victims who relocated to Toronto. Council further authorized staff to negotiate a suitable operating agreement with the Committee for Ireland Park in a form acceptable to the Commissioner of Economic Development, Culture and Tourism and the City Solicitor. City staff has met with representatives of the Ireland Commemorative Park and MCI and work is currently underway to resolve issues associated with the development of the park as it may relate to the MCI proposal.

Conclusions:

To clarify the terms of the Master Agreement, an agreement should be executed setting out the acceptable sources of funding that may be used to satisfy the requirements of the Agreement to Lease. Given that City Council approved the extension of the milestone date relative to MCI providing evidence of having secured capital funding in the amount of \$10,000,000.00, and the fact that a number of following milestone dates are relative, approval should also be given to extend these following milestone dates for the same period of time as previously approved for the capital funding milestone date.

Contact Name:

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Attachment No. 1

Section Number in Agreement to Lease	Original Date in Agreement to Lease	Extended Date Established by Lease Amending Agreement	Latest Date Extension
3.2(c)(i) Evidence of \$10Million	August 31, 1999	February 29, 2000	February 28, 2001
3.2(c)(ii) Evidence of \$45Million	On or before City Council considers re-zoning reports		
3.2(d) Rezoning In Force	September 1, 2000	March 1, 2001	March 1 2002
4.2.5	December 31, 1999	June 30, 2000	June 30, 2001
9.1 City to decide re: pool	June 1, 2000	December 1, 2000	December 1, 2001
9.1 Agreement to be negotiated re: pool	September 1, 2000	March 1, 2001	March 1, 2002

14.1 Outside Date for Closing	November 1, 2000	May 1, 2001	May 1, 2002
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Map 1
Location Map

The Economic Development and Parks Committee also had before it, during consideration of the foregoing matter, a communication (September 14, 2000) from Mr. John Harris, President, Metronome Canada Inc., in support of the various sources of funding of the \$10 million in commitments for the February 28, 2001 deadline and forwarding a copy of a letter sent to Mr. Doug Stewart outlining their suggested formula, and a copy thereof is on file in the office of the City Clerk.

Mr. John Harris, President, Metronome Canada Inc., appeared before the Economic Development and Parks Committee in connection with the foregoing matter.