STAFF REPORT
ACTION REQUIRED

City Consent to a First Mortgage by Toronto Artscape Inc. against the Community Performance Space at 21 – 31 Widmer Street

Date: July 31, 2014
To: Executive Committee
From: General Manager Economic Development and Culture
Wards: All
Reference Number: 

SUMMARY

The purpose of this report is to recommend that the City consent to the request by Toronto Artscape Inc. ("Artscape") to register an $800,000.00 first mortgage in priority to the City’s interest in order to finance the fit-up at a community performance space of approximately 420 square meters located at 21 – 31 Widmer Street (the "Property"). This consent is conditional on Artscape executing an Option Agreement in favour of the City to be registered on title to the Property immediately behind the first mortgage, which Option Agreement provides for the City to acquire and repurpose the performance space in the event of default by Artscape under the proposed mortgage.

RECOMMENDATIONS

The General Manager of Economic Development and Culture recommends that:

1. City Council provide its consent to Artscape registering a first mortgage on the Property in the principal amount of $800,000.00 to be registered in priority to any City interest, which consent would be conditional upon the terms and conditions set out in Appendix "A" hereto and on such other terms and conditions acceptable to the General Manager, Economic Development and Culture and the Deputy City Manager and Chief Financial Officer; and

2. City Council grant authority for any agreements as may, in the opinion of the City Solicitor, be required to give effect thereto, all in a form acceptable to her.
Financial Impact

Artscape has secured a lender who is willing to provide an $800,000.00 mortgage to fit-out the space to be conveyed to Artscape as a Section 37 benefit. The mortgage will only require regular interest payments, and as part of previous Council approvals, the principal is proposed to be repaid through future Section 37 contributions, of which $500,000.00 has already been allocated. Provided that Artscape maintains the mortgage in good standing and repays the mortgage in full, there will be no financial impact to the City. Programming and operating costs of the community performance space will be the responsibility of Artscape.

In the event of default by Artscape under its mortgage, its lender may exercise its rights under the mortgage and sell the Property to a third party thereby depriving the City of the Property and the community benefit for which it was intended.

However, upon default by Artscape, the City would get notice of such default as the City's Option Agreement would be registered on title subsequent to the mortgage. Default by Artscape under the mortgage would constitute default of the Option Agreement enabling the City to exercise its remedies under the Option Agreement. In addition to its remedies under the Option Agreement, the City would be entitled in law to make payment to the Lender to bring the mortgage into good standing thereby preventing the lender from exercising its rights under its mortgage.

The end result of a default by Artscape under its mortgage would be that City Council would need to authorize payment of outstanding mortgage arrears to the lender to avoid losing the Property to a third party. Thereafter, the City could take over the Property from Artscape and repurpose the performance space and/or sell the property.

Toronto Artscape Inc. receives annual grant funding through the City of Toronto Operating Budget. In 2014, the organization received $346,690.00. Pursuant to the terms of the Option Agreement, should Artscape default under the mortgage, the City would have the right to rescind their annual funding to Artscape until such time as the amounts paid by the City to bring the mortgage into good standing has been recouped.

Staff from Economic Development and Culture, Planning and Finance have reviewed Artscape's business plan as well as the term sheet from the Artscape's lender and are satisfied that the risk to the City over the term of the capital loan is minimal.

Accordingly, staff from Economic Development & Culture, Planning and Finance recommend that the City grant its consent to the first mortgage by Artscape to its lender, such consent to be in effect for a period of five years (which will allow for a renewal of the committed three year mortgage term) and which first mortgage will be secured against title to the Property in priority to the City's Option Agreement.
The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

**DECISION HISTORY**

In June 2009, City Council authorized a rezoning application to allow for a 43-storey mixed use building at 21 – 31 Widmer Street which included community performance space. The community performance space was to be conveyed to the City as a freehold land as part of an exchange for the value from the sale of parts of a City-owned 3.048 metre wide public laneway that runs north-south through the site, with any residual monies from the applicant's purchase of the lane to be used to fund the operating and maintenance of the space.


Community performance space was defined as a community centre having as its cultural mandate theatre, music and arts education, training, rehearsal and performance for either amateurs or professionals and also includes uses such as community meetings, events and gatherings.

In April 2010, a supplementary staff report was prepared respecting the real estate and cultural perspective of the sale of a public lane within the Toronto International Film Festival redevelopment block.


In July 2011, City Council subsequently amended the Zoning By-law No. 617-2010. The entirety of the market value of the laneway ($2,170,000) was to be paid into the city's Land Acquisition Reserve Fund. Also the 2011 Section 37 Amending Agreement provided that Daniels was to give, in exchange for the height and density received from the City, $1,100,000 - broken down between the community performance space having a value of at least $1,000,000 and will be conveyed to Artscape for nominal consideration and another $100,000 in other Section 37 benefits.


On September 27, 2013, Daniels HR Corporation advised that the value of the 420 square metres stratified ground floor parcel to be used as community performance space, as secured through a Section 37 Agreement, was estimated to be at least $1,000,000.00.

In November 2013, City Council authorized a rezoning application for 388 King Street West and 82 Peter Street that secured, as part of the Section 37 benefits, a $500,000.00 contribution towards capital improvements to non-profit arts and cultural facilities in Ward 20, including but not limited to the Artscape facility at 21 Widmer Street.

http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2013.TE27.1
Construction of the 420 square meter space is now complete but it is unfinished space. Daniels HR Corporation is still the owner of the space pending resolution of the financing issue now before Council for consideration.

ISSUE BACKGROUND

Pursuant to By-Law No. 617-2010, the Property was to be conveyed to the City as a freehold conveyance as part of an exchange for the value from the sale of parts of a City-owned 3.048 metre wide public laneway that runs north-south through the site, with any residual monies from the applicant's purchase of the lane to be used to fund the operating and maintenance cost of the community performance space.

Additionally, Zoning By-law 617-2010 and the related Section 37 Agreement were subsequently amended setting out that the community performance space was to be conveyed to Artscape directly for nominal consideration rather than to the City, with an option being granted to the City to acquire the space, free and clear of all encumbrances for nominal consideration, should Artscape cease to use the Property pursuant to the terms and conditions to be set out in the Option Agreement be entered into with the City.

Pursuant to the Section 37 Amending Agreement, the Option Agreement in favour of the City was to be registered on title to the Property immediately following the transfer of the Property by Daniels HR Corporation to Artscape.

The Section 37 Agreement and the Section 37 Amending Agreement have been registered on title to the Property. The Option Agreement with the City has yet to be executed by Artscape and has not been registered on title to the Property.

Artscape's lender has indicated that it will not proceed with the loan for the required fit-up costs if the Option Agreement in favour of the City is registered in priority to its first mortgage. This report recommends consent be granted to Artscape's request for registration of a first mortgage of the Property, but conditional on certain terms and conditions to protect the City's interest in ensuring the Property is used for or reverts back to public benefits.

COMMENTS

From a cultural perspective, the community performance space will be very useful for creative purposes and is strategically located in an area of downtown which has the highest concentration of cultural workers in the City of Toronto according to research prepared by City staff in consultation with the Martin Prosperity Institute. The community performance space is located in an area of the City where individual artists, arts organizations and creative industries struggle to obtain affordable and sustainable space.
More specifically, as pointed out in the *Making Space for Culture – Community Consultation Summaries*, prepared by Lord Cultural Resources in association with R.E. Millward + Associates in April 2014, there is a lack of affordable studio and rehearsal space within Ward 20. Community performing arts and musical groups are challenged to find performance space within the Ward with existing theatre spaces and auditoria frequently booked by festivals and higher-profile organizations. The study also points out that Ward 20 is divided in terms of income level and language and more consideration must be given to obtain the perspectives of these various communities in terms of their cultural space needs.

In order to complete the construction of the community performance space on the Property located within the TIFF redevelopment block, Artscape has secured a $800,000.00 mortgage commitment, the terms of which provide that the mortgage is to have priority over the Option Agreement (to be entered into between the City and Artscape).

The term of the loan is three years and requires only regular interest payments, with principle repayments occurring as future Section 37 funds and fundraising monies are received. In anticipation of a possible loan renewal term beyond three years, City staff is prepared to recommend up to five years (i.e. an additional two years) for the repayment of the mortgage. Further recommended conditions for the City's consent are set out in Appendix A to this report, including the condition that the Option Agreement be registered immediately following the registration of the mortgage.

In order for Artscape to proceed with the proposed transaction it must obtain the City's consent. Council should be aware that in granting such consent, any default of the mortgage will put the continued use of the property as a community performance space at risk.

Toronto Artscape Inc. receives annual grant funding through the Economic Development and Culture Division's Operating Budget. In 2014, the organization received $346,690.00. The proposed Option Agreement will provide that in the event of default by Artscape under the mortgage such default would also constitute a default by Artscape of the terms and conditions of the Option Agreement thereby allowing the City to exercise its rights and acquire the space.

City staff from Economic Development & Culture, Planning and Finance have reviewed the Artscape's business plan for the community performance space within the TIFF redevelopment block, as well as Artscape's overall financial viability and are satisfied that in this particular circumstance City Council should consent to Toronto Artscape Inc. registering a first mortgage on the community performance space to be located at the Property subject to the terms and conditions as set out in Appendix A.
CONTACT

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SIGNATURE

Michael H. Williams, General Manager
Economic Development and Culture

ATTACHMENT

Appendix A - Terms & Conditions of the City's Option Agreement
Appendix A

Terms and Conditions of the City's Consent to the first mortgage by Artscape to its lender on the Property located at 21-31 Widmer Street (the "Property"): 

The City's consent to permit a first mortgage by Toronto Artscape Inc. of the Property which is designated Section 37 Planning Act Community Performance Space will be subject to the following terms and conditions:

(1) Principal indebtedness not to exceed $800,000.00;
(2) Repayment term not to exceed five (5) years;
(3) The Option Agreement in favour of the City is to be executed and registered immediately after the registration of the transfer of the land to Artscape and the registration of the first mortgage in favour of the Artscape lender.
(4) Artscape to provide documentation in form and content satisfactory to the City solicitor, that Artscape's lender will directly provide the City with notice of any default within fifteen (15) calendar days of such default and will not seek to enforce its rights under the mortgage prior to one hundred and twenty (120) calendar days following such notice, in order that Council may have sufficient time to consider and approve the funding and repayment of any arrears owed by Artscape or cure any non-monetary default by Artscape under the mortgage;
(5) Confirmation, satisfactory to the General Manager, Economic Development and Culture and the Chief Corporate Officer, that the amount being borrowed is being used for the appropriate fixturing and other fit-up of the Property for the intended purposes and for no other purpose;
(6) Property appraisal to be provided by Artscape at its cost, satisfactory to the Chief Corporate Officer;
(7) The Option Agreement shall provided that in the event of default by Artscape under the mortgage and the consequent expenditure of City monies to re-secure the Property, the City would have the right to deduct all outstanding amounts owed together with interest, as stipulated and defined in the Option Agreement, from any and all contributions and grants of any kind the City may make to
Artscapes until such time as the debt is satisfied in full or the non-monetary default has been cured, together with the right to exercise all other remedies available;

(8) The Option Agreement shall further provide that default by Artscapes under the mortgage would constitute default of the Option Agreement enabling the City to exercise such remedies set out therein including the acquisition of the Property by the City;

(9) Such other terms and conditions stipulated by the General Manager, Economic Development and Culture, Director of Corporate Finance, and Chief Corporate Office; and

(10) Such other documents and agreements as may be necessary in the sole discretion of the City Solicitor in order to secure the City's interest in the Property.