

### **City Consent to First Mortgage Financing by Toronto Artscape Inc. against the Community Performance Space at 301 Adelaide Street West**

**Date:** June 29, 2018

**To:** Executive Committee

**From:** General Manager, Economic Development and Culture

**Wards:** All

#### **SUMMARY**

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The purpose of this report is to recommend that the City consent to a request by Toronto Artscape Inc. ("Artscape") to register first mortgage financing not to exceed \$1,000,000.00 in priority to the City's interest against the Artscape-owned community performance space located at 301 Adelaide Street West (formerly 21 – 31 Widmer Street [the "Property"], operating as the Artscape Sandbox), subject to the terms and conditions set out in Appendix "A" of this report. Council's consent is required as Artscape received the Property as a result of a Section 37 *Planning Act* conveyance subject to agreements in favour of the City under which such consent is required.

Artscape is proposing to take out a \$1,000,000 non-revolving, floating rate demand-loan that is to be repaid within 18 months. It is projected that upon maturity in 18 months, this credit facility will be converted to a fixed-term mortgage with a 10-year amortization. The loan will be used to pay out an existing \$800,000 line of credit and to assist with equipment upgrades and transitional operating costs arising from a new initiative to transform the Sandbox into a music venue in partnership with non-profit music organizations. This project will result in considerable benefit to the city and the cultural sector at a time when many music venues are facing pressures arising from new development activity, particularly those located in the downtown core.

Given the likelihood that Artscape will be seeking City consent to again refinance within the term of repayment, this report also requests that Council delegate authority to the General Manager, Economic Development and Culture, to approve such a request received within the next seven (7) years, covering the initial floating rate demand-loan and the first five (5) year term of the expected mortgage, subject to the terms and conditions set out in Appendix "A" and to the satisfaction of the Chief Financial Officer and City Solicitor.

Staff from Corporate Finance, Economic Development and Culture, Financial Planning and Legal Services have reviewed Artscape's business plan for the community

performance space, the terms of the loan, and Artscape's overall financial viability, and are satisfied that the loan presents minimal risks to the City.

## **RECOMMENDATIONS**

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The General Manager, Economic Development and Culture, recommends that:

1. City Council authorize the General Manger, Economic Development and Culture to provide consent to Toronto Artscape Inc. obtaining and registering first mortgage financing on 301 Adelaide Street West in a principal amount not to exceed \$1,000,000.00, to be registered in priority to the City interest in 301 Adelaide Street West, 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, the City Solicitor and the Interim Chief Financial Officer.
2. City Council grant such authority to the General Manager, Economic Development and Culture as set out in Recommendation 1 for the period commencing with the approval set out herein and ending on December 31, 2024.
3. City Council grant authority for the City to enter into any agreements and amending agreements, together with such ancillary documentation as may be required to give effect to Recommendation 1, in a form acceptable to the City Solicitor.

## **FINANCIAL IMPACT**

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In 2014, prior to receiving a conveyance of the Section 37 community benefit Property, Artscape initially secured a lender who provided financing in the amount of an \$800,000 line of credit to fit-out the space. Council authorized that the financing would stand as a first charge against the Property with the City's Option Agreement in subordinate position. Artscape now proposes to refinance the property with another lender, pay out the original debt, and obtain additional financing to pay for equipment upgrades and transitional operating costs associated with converting the Sandbox into a music venue.

It is intended and was approved by Council that future Section 37 contributions in the amount of \$500,000.00 from 82 Peter Street and 388 King Street West would be used to pay down the Artscape debt. As of the date of this report, applications for those building permits have not been submitted. At such time as the Section 37 contributions have been made, Artscape will pay down its debt by that amount. Such repayment is anticipated by Artscape's lender.

Provided that Artscape maintains the financing in good standing and repays the debt in full, there will be no financial impact to the City. Programming and operating costs of the community performance space will continue to be the responsibility of Artscape, in compliance with the terms of the various agreements in favour of the City.

In the event of default by Artscape, under its financing, its lender may exercise its rights 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, further to this approval, in the event of default by Artscape, the City would get notice of such default and would be provided more time than is the norm in order to bring the issue before Council for consideration. Further default by Artscape would constitute default of the Option to Purchase Agreement enabling the City to exercise its remedies under the Option to Purchase Agreement. In addition to its remedies under that agreement, the City would be entitled at law to make payment to the lender to bring the financing into good standing thereby preventing the lender from exercising its rights.

The end result of a default by Artscape on the mortgage would be that City Council would need to authorize payment of outstanding 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.

Artscape receives annual grant funding through the Major Cultural Organizations Grant Program. In 2018, the organization received a grant of \$415,000.00. Pursuant to the terms of the Option Agreement, should Artscape default under the mortgage, the City would also have the right to rescind or reduce their annual funding to Artscape until such time as the amounts paid by the City to bring the mortgage into good standing have been recouped.

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

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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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 with a cultural mandate that could include theatre, music and arts education, training, and rehearsal and performance space for either amateurs or professionals. It also includes uses such as community meetings, events and gatherings.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.TE27.14>

In July 2011, City Council amended the Zoning By-law No. 617-2010 to, in part, stipulate that the community performance space was to be conveyed to Toronto Artscape Inc. directly for nominal consideration rather than to the City, with an option to be granted to the City to acquire the Property, free and clear of all encumbrances for nominal consideration if the community performance space ceased to be used by Artscape as contemplated under the City Option Agreement or if Artscape obtained financing to be secured by way of mortgage.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.TE8.3>

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 21-31 Widmer Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE27.1>

In August 2014, City Council approved a request by Artscape to register an \$800,000 first mortgage in priority to the City's interest in order to finance the fit-up of the community performance space at 21-31 Widmer Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX44.15>

## COMMENTS

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The community performance space at 301 Adelaide Street West (formerly 21-31 Widmer Street) was created as a result of an agreement under Section 37 of the *Planning Act*. It consists of a 6,000 square-foot space located at the base of a 43-storey condominium tower, situated along the John Street Cultural Corridor in Toronto's Entertainment District. The community performance space was transferred by the City to Toronto Artscape Inc., which has operated it as the Artscape Sandbox since 2015.

The need for community performance space in the area has been identified in a number of recent planning studies. *Making Space for Culture*, a 2014 report by Lord Cultural Resources based on extensive community consultations, concluded that there is a lack of affordable, accessible studio and rehearsal space in Ward 20. Lord observed that community-based performing arts and musical groups were challenged to find performance space within the Ward, with existing theatre spaces frequently booked by festivals and other large organizations. In addition, a 2017 study by R.E. Millward + Associates, conducted as part of TOCore, argued that the City should play a leadership role in creating new cultural spaces for the growing downtown population in the King-Spadina corridor. Millward's report also encourages the use of flexible designs that can be adapted to various types of cultural activity in non-residential developments, and urges action to address barriers to access for smaller organizations.

Recently, Artscape has indicated its intention to transform the Sandbox into a new music performance venue in collaboration with non-profit programming partners. This proposal will help to support Toronto's music community at a time when many live music venues, particularly those in the downtown core, are facing pressures arising from new

development activity. Details related to this proposal will be announced by Artscape in the coming months.

In order to finance transitional operating costs and repurpose the space as a music venue, Artscape has made a request to the City to consent to registering first mortgage financing of no more than \$1,000,000.00 in priority to the City's interest. In order for Artscape to proceed with the proposed transaction, it must obtain Council's consent.

Artscape is proposing to take out a \$1,000,000 non-revolving, floating rate demand-loan that is to be repaid within 18-months. The loan will be used to payout an existing \$800,000 line of credit and to assist with the aforementioned costs associated with converting the Sandbox into a music venue. It is projected that upon maturity in 18 months, this credit facility will be converted to a fixed-term mortgage with a 10-year amortization.

The term for repayment of the loan is effectively twelve years and requires only regular interest payments during the initial 18 month period, with principal and interest repayments occurring thereafter on two proposed consecutive five year terms. Future Section 37 funds from developments at 388 King Street West and 82 Peter Street will be applied to reduce the principal balance as they are received by the City and directed to Artscape's lender. Recommended conditions for the City's consent are set out in Appendix A to this report.

Given the likelihood that Artscape will be seeking consent to refinance in the future and under the circumstances that Artscape has (a) demonstrated its long-standing viability; (b) is the owner of the Property; and (c) is subject to annual, if not more frequent, financial review by the City, staff are of the view that it is appropriate to delegate the approval of such consent for a period of seven years to the General Manager of Economic Development and Culture. This consent would be subject to satisfaction with the terms and conditions set out in Appendix "A" of this report.

City staff from Corporate Finance, Economic Development and Culture and Legal Services have reviewed Artscape's business plan for the community performance space, the terms of the loan from Artscape's lender, and Artscape's overall financial viability.

The business plan anticipates performance event revenues that are sufficient to cover operating and debt servicing costs. While the uncertain timing of future Section 37 payments could result in higher carrying costs for Artscape over a longer period of time than anticipated, the business plan projects sufficient capacity to service the full debt load. Upon application of the \$500,000 Section 37 funds to the project debt, the risks of a potential loan default are further reduced.

Staff are satisfied that the risks to the City over the term of the capital loan are minimal and accordingly recommend that Council grant its consent to Artscape to register the mortgage subject to the terms and conditions set out in Appendix A. Further, City staff from the aforementioned Divisions have considered the matter of delegating consent to the General Manager of Economic Development and Culture for possible future

requests to refinance and are satisfied that, under the circumstances, this is appropriate.

## **CONTACT**

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## **SIGNATURE**

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Mike Williams  
General Manager, Economic Development and Culture

## **ATTACHMENTS**

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Appendix "A": Terms and Conditions of the City's Consent to first mortgage financing by Artscape on the Property located at 301 Adelaide Street West

## Appendix A

### **Terms and Conditions of the City's Consent to first mortgage financing by Artscape on the Property located at 301 Adelaide Street West**

The City's consent to permit first mortgage financing 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, at any given time, not to exceed \$1,000,000.00 and to be reduced by Section 37 Planning Act contribution monies designated for the purpose from pending developments at 388 King Street West and 82 Peter Street, Toronto;
- (2) Repayment of any prior mortgage debt;
- (3) Repayment term not to exceed twelve (12) years;
- (4) The Option Agreement in favour of the City is to be postponed to the first mortgage in favour of the Artscape lender;
- (5) 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;
- (6) Confirmation, satisfactory to the General Manager, Economic Development and Culture and the Deputy City Manager, Internal Corporate Services, that the amount being borrowed is being used for improvements to the Property or for operating costs related to the Property;
- (7) Property appraisal to be provided by Artscape, at its cost, satisfactory to the Deputy City Manager, Internal Corporate Services;
- (8) Business plan, to be provided by Artscape, evidencing, to the satisfaction of the Chief Financial Officer, Artscape's ability to service and retire the debt;
- (9) The Option Agreement shall continue to provide that in the event of default by Artscape under any financing 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 to Purchase Agreement, from any and all contributions and grants of any kind the City may make to Artscape 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;
- (10) The Option to Purchase Agreement shall further continue to provide that default by Artscape under any 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;

(11) Such other terms and conditions stipulated by the General Manager, Economic Development and Culture, Chief Financial Officer, and Deputy City Manager, Internal Corporate Services; and

(12) Such other documents and agreements, including amending existing agreements, as may be necessary as determined necessary in the sole discretion of the City Solicitor in order to secure the City's interest in the Property and effect the intent of the recommendations of Council and protect the community benefit.