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## COUNCIL (In Camera) - JUNE 26, 2007

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CITY OF VANCOUVER

IN CAMERA

ADMINISTRATIVE REPORT

Report Date: June 22, 2007  
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Meeting Date: June 26, 2007

TO: Vancouver City Council

FROM: The City Manager, in consultation with the Director of Finance and the Project Manager for Southeast False Creek & Area 2A.

SUBJECT: Project Financing for the Development of Millennium Southeast False Creek Ltd.'s Buildings within Southeast False Creek Area 2A

### *IN CAMERA RATIONALE*

This report is recommended for consideration by Council in the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*:

- (k) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the city if they were held in public.

### *RECOMMENDATION*

- A. THAT the City Manager be authorized to enter into legal agreements with Millennium Southeast False Creek Properties Ltd. ("Millennium") and Fortress Credit Corp. ("Fortress") to facilitate project financing estimated at \$683 Million (the "Loan") for the development of Millennium's buildings (the "Project") within Southeast False Creek ("SEFC") Area 2A, by the City, including the following provisions:
  - 1. granting of a guarantee by the City to Fortress to complete the Project if Millennium is unable to do so;

2. subordinating the balance of the purchase price to be paid by Millennium for the City's lands within SEFC Area 2A that contain Millennium's buildings to a position behind the Fortress Loan;
3. granting of a guarantee by the City to Fortress for the repayment of the Loan beyond the balance of the purchase price, up to a maximum amount of \$200 Million, if the total amount of revenue from the sale of the Project is insufficient to repay the entire Loan; and
4. securing by the City of an option from Fortress to assume the Loan to allow completion of the Project in the case of a material default by Millennium;

AND THAT the negotiations leading to this agreement and the agreement itself give consideration to:

1. the security being provided by Millennium and its principals as part of the agreement with Fortress;
  2. the value of the guarantee being offered by the City on behalf of Millennium; and
  3. an appropriate indemnity from Millennium to reimburse the City for any verifiable costs incurred by the City related to the granting of this guarantee.
- B. THAT the Director of Legal Services be authorized to execute and deliver on behalf of the City all legal documents required to implement this agreement;
- C. THAT all such legal documents be on terms and conditions satisfactory to the City Manager and Director of Legal Service;
- D. THAT no legal rights or obligations be created or arise by Council's adoption of this Recommendation unless and until such legal documents are executed and delivered by the Director of Legal Services.

### *CITY MANAGER'S COMMENTS*

The City Manager believes that the financing arrangement outlined in this report for the development of sub area 2A should be supported by the City. The Vancouver Athletes' Village Agreement with VANOC establishes commitment by the City that the buildings for the Olympic Village will be completed on time for the 2010 Olympic and Paralympic Winter Games. In signing that agreement, the City has accepted a considerable amount of construction, market and financial risk. Although some of that risk has been delegated to Millennium under the Lease, the City cannot meet its commitment to VANOC unless Millennium is able to finance the Project. Project lenders will only accept these types of risks to a specific level, above which, they require additional security from both Millennium (including its principals) and the City. The prospective Lender - Fortress - and Quest before them, have indicated that the terms of the PLPA do not provide the level of security that will be necessary to finance the Project and that the City will have to provide additional guarantees.

The risks to the City of acting on the recommendation in this report must be considered relative to the fact that the City will bear all of the risk of completing and marketing the Project if it is forced to finish the Project due to Millennium's lack of Project financing. While

the City could likely find Millennium in "anticipatory default" of the Development and Lease agreements, this is unlikely to be constructive to our important relationship and to completion of the Village. If not exercised now, these options remain available to the City in circumstances where the City is forced to act. The guarantees recommended are less than the construction financing being provided by Fortress and would only come into play if there was a dramatic downturn in the Vancouver real estate market that jeopardized the marketing strategy of Millennium. While these risks should not be discounted, the City should continue to support Millennium because the option of forcing a default increases the City's risk rather than diminishing it.

With approval of Recommendation A and the execution of the Loan agreement, Millennium will be able to concentrate on completion and sale of the Project knowing that it is fully financed. Fortress will have assurance from the owner of the land - the City that the Project will be completed and that it has the means to recover its financing. And in the event the City is forced to terminate the Lease with Millennium, these agreements will provide an option for the City to assume the Loan and use all the balance of the financing to complete the Village by November 2009, thereby reducing time delay and mitigating the City's risk.

The City Manager RECOMMENDS approval of the foregoing.

### ***COUNCIL POLICY***

Council approval is required for financial commitments by the City.

### ***PURPOSE***

The purpose of this report is to seek authority for the City Manager to enter into legal agreements with Millennium and Fortress to assist Millennium in securing Project financing estimated to be \$683 Million for the development of the its buildings in sub area 2A in SEFC.

### ***BACKGROUND***

Under terms of the Vancouver Athletes Village Agreement between the City and VANOC, the City has accepted the responsibility to complete and deliver the buildings in Sub Area 2A for use as the Olympic Village by November 1, 2009. Under this agreement, the City has accepted the construction, market and financial risks associated with delivering the Village on time.

The City does not have the capacity and expertise to complete the project on time and has entered into a Development Agreement with Millennium Southeast False Creek Properties Ltd. to design, finance and construct all of the housing required during the games as well to design and construct the other buildings required by the City. In return, Millennium has paid the City a significant price for the development sites and shares the Project risks with the City.

Millennium secured initial financing to begin the development that has now been fully committed. Under normal circumstances, the developer would have arranged interim financing until such time as the full project design was completed and pre-sales targets had been met. This interim financing would then be replaced with construction financing which

would remain in place until transfer of the units to their ultimate purchasers. In both cases, these financing vehicles would have been secured by a mortgage against the development sites, buildings under construction and pre-sales contracts.

Due to the unique situation around the delivery of the Olympic Village, Millennium has entered into a Lease with the City, so that if it was not able to complete the Project, the Lease could be terminated and the City could step in and complete the Project. This leasehold situation leaves Millennium with no assets to secure the required interim or construction financing, estimated to be in the range of \$700 million.

As the City and Millennium have an interest in seeing the Project completed under the Lease, the City included a "Project Lender Protection Agreement" ("PLPA") as a schedule to the Lease. The purpose of the PLPA, amongst other objectives, was to allocate risk and to establish priorities and timing for repayment of funds, and as such was designed to facilitate Project financing. Basically, in the event of a material default by Millennium, the City would recognize all the benefits to the City's lands, subject to real estate market risks. The lender would then have to wait until after the 2010 Games to recover its funds. The PLPA is not a conventional instrument in the common practice of construction financing.

With the initial financing arranged by Millennium fully committed, the developer sought to secure interim financing from Quest Capital Corp ("Quest"), whose loan would allow for another four or five months of construction activities on the Project until the next level of financing could be secured. After considering the PLPA, Quest was not prepared to advance the funds without the City guaranteeing the full value of its loan in the unlikely event of an unresolved material default by Millennium.

On May 17, 2007, Council (In Camera) considered a report from the City Manager recommending that the City enter into an agreement with Millennium and Quest to provide a financial guarantee for an amount up to \$100 Million during the interim period. The City Manager noted that the business arrangement with Millennium had relied on the assurances provided in the PLPA and did not contemplate guarantees by the City. Council was advised that although the City was likely in a position where Millennium could be considered to be in "anticipatory default" of the agreements, the City's interests in seeing the Project completed were best served by acknowledging the deficiencies in the PLPA arrangement and providing the guarantee. The City Manager also noted that it was likely a similar situation would arise with respect to the construction financing that would be put in place following the interim period covered by the Quest loan and that the City would be requested to amend the terms of the PLPA for that financing as well.

Council approved the following recommendation of the City Manager:

- A. *THAT, the City Manager be authorized to enter into a legal agreement with Millennium Southeast False Creek Properties Ltd. ("Millennium") and Quest Capital Corp. ("Quest") to facilitate interim financing for up to \$100 Million for the development of Millennium's buildings within Southeast False Creek ("SEFC") Area 2A, by guaranteeing to take over Millennium's obligations under the Loan in the event of an unresolved material default by Millennium;*
- B. *THAT the Director of Legal Services be authorized to execute and deliver on behalf of the City all legal documents required to implement Recommendation A; and*

- C. *THAT no legal rights or obligations will be created or arise by Council's adoption of Recommendations A, and B above unless and until such legal documents are executed and delivered by the Director of Legal Services.*
- D. *(As Amended) THAT the City Manager in consultation with the Director of Finance be given authority to negotiate any changes necessary to the Property Lender Protection Agreement (PLPA) such that the maximum exposure of the City is limited to the City's assets in sub area 2A and that the Director of Legal Services be authorized to document such changes and to execute and deliver on behalf of the City all legal documents required to implement this agreement.*

With Council's authorization, staff negotiated with both Millennium and Quest to reach agreement on the commitment terms, the guarantee on the interim loan, and the process of evaluating the draws on such loan to ensure that they benefited the Project. However, before this interim financing could be completed, Millennium reached a tentative agreement with Fortress for financing that would take the project to completion, thus eliminating the requirement for Quest to be involved.

### **DISCUSSION**

Fortress has agreed to provide Millennium with financing of \$683 Million which is expected to satisfy the financing requirements through completion of the Project. As the anticipation is that this financing facility can be in place within 30 days there is no longer the need for interim financing, including the need for the guarantee approved by Council last month for the interim loan by Quest. Moreover, as the Project is not at the stage where traditional construction financing is appropriate, Fortress has agreed that this Loan will not be subject to completion of design and construction estimates or meeting pre-sales targets, increasing the risk being assumed by Fortress. In addition, as the financing is sufficient to complete the project, the securing of this Loan by Millennium is a significant step forward in reducing the completion risk for the Project.

In some respects the Loan itself is a unique response by Fortress to the unconventional situation presented by the Project with respect to: (a) land tenure, (b) the short construction schedule, and (c) delayed timing for final sales completion due to use of the Project for the Olympic Village.

To facilitate this unique Project, Fortress has put forward a proposal which addresses Millennium's requirements for financing through completion of the Project and the City's needs as the ultimate guarantor of the Olympic Village completion. Fortress has represented to the City that its advances on the Loan to Millennium will be made in coordination with the City to ensure that all funds advanced to Millennium are being used to benefit the Lands. In addition because of the City's guarantee that the buildings will be completed in time for the 2010 Games, irrespective of the success of unit pre-sales, the Loan will not be subject to these targets. However, Fortress has asked the City to agree to the following:

1. **Completion Guarantee.** In the unlikely event that Millennium was unable to complete the Project, Fortress wants a guarantee from the City that the Project would be completed, units sold and the loan paid out. As the City has committed to complete the buildings by November, 2009 and has therefore assumed the risks that the market

will absorb the units within an acceptable business model, this guarantee is not creating additional obligations which the City has not already assumed.

2. **Subordination of the Balance of the Project Land Purchase Price.** Fortress is requiring that their loan be ranked above the balance of the Project land purchase price owed to the City by Millennium. This subordination represents approximately \$173 million owed to the City by Millennium; however, unless Millennium successfully completes this Project, the amount is not guaranteed to the City. Even if the City took over the Project from Millennium, its return would be subject to successful marketing of the units in the Project is contingent on the real estate market in Vancouver.
3. **Additional Loan Guarantee by the City of \$200 Million.** Fortress has committed to finance \$683 million of Project costs. They will have a guarantee that the Project will be completed and their financing will rank above the balance of the purchase price due to the City. That will leave approximately \$510 million of essentially unsecured debt in the project. In order to limit this exposure, Fortress has requested that the City provide a further guarantee of \$200 million in the event that the Project is not financially successful. To the extent that the balance of this debt remains unsecured, the risks are accepted by Fortress.

If all goes well there will be sufficient income from unit sales to pay out Fortress, pay the City the balance of the purchase price for the Project lands, and deliver Millennium's anticipated profit. However, if revenue from the sales of the Project was not sufficient to achieve the above:

- the first loss would be to Millennium's profit;
- the second recourse would be to the balance owed by Millennium to the City for the purchase price of the Project lands - the \$173 million;
- the City would be required to pay Fortress under this guarantee for repayment of the Loan up to a maximum amount of \$200 Million.

While this arrangement does represent a risk to the City, it is limited to about half of the overall Project financing. If the City was the developer of this Project, instead of Millennium, the City's exposure would likely be much higher than this \$373 million.

In exchange for these assurances, Fortress is not only prepared to advance the funds to Millennium, but is also prepared to offer the City two options in the event of a material default by Millennium:

- the City may elect to pay off the amount owing under the Loan at that time in full, in accordance with its terms: or
- the City may elect to assume the Loan to complete the Project and to pay a reduced interest rate closer to the City's normal cost of borrowing.

The City's ability to assume the rights and obligations under the Loan is a significant benefit for both the City and the Project, especially since the City will know, through its coordination of the advances under the Loan, that all previously expended funds were used to benefit the City's land. Assuming the Loan will also allow for a relatively seamless transition, without the need to secure additional construction financing. In addition, Fortress would offer the City a rate that is closer to the best rate that the City could secure if it were to arrange alternative

financing. Despite the above, this "step in" provision is only an option; the City could always pay the amount owing under the Loan and proceed to complete the Project with any other lender that Council may want to choose.

Providing the Guarantee recommended in this report was not contemplated in the agreements with Millennium. As such there is value and potential costs, associated with the City becoming the guarantor. In undertaking the negotiations with Millennium, in particular, and with Fortress, the City Manager will be giving consideration to the following issues:

1. the level of security being provided by Millennium and its principals as part of the agreement with Fortress and how that security can work to the benefit of the City;
2. the value of the guarantee being offered by the City on behalf of Millennium and the ability of the City to derive some benefit for that guarantee; and
3. an appropriate indemnity from Millennium to reimburse the City for any verifiable costs incurred by the City related to the granting of this guarantee.

### ***FINANCIAL IMPLICATIONS***

The Director of Finance believes that providing the Guarantee to Fortress for the Loan will have no additional financial impacts on the City. The City has already committed to VANOC that the Project will be completed, and has assumed financial, market and construction risks in doing so. An unresolved material default by Millennium under the Lease would have more significant financial implications for the City than the Guarantee recommended in this report in that the City would have to step and assume responsibility for completing the Project, including the responsibility for project financing and all other associated risks. The Director of Finance has entered into discussions with the City's credit rating agencies to clarify any impacts that might arise.

Staff have reviewed the revenue projections included in Millennium's business plan and the expertise being brought to the sales program and believe that there is a strong possibility that the revenue projections can be met. It is estimated that a decline in the market of more than 25% would be required before the City's position in the project would be jeopardized. In terms of the City's exposure, it is well to remember that this is a project specific, relatively short term arrangement that is backed not only by the development sites in sub area 2A but also by the balance of the PEF assets and properties in Southeast False Creek. While the risks should not be minimized, it is likely that there are remedies to any financial exposure that would not impact on the City's civic-use assets.

Provision of this guarantee is also in the best interest of the City because it solves a significant financing hurdle of our Millennium, reduces the completion risk for the Project and provides the best opportunity for the City to realize on the sale of the development sites. Moreover, in circumstances where the City is required to assume control of the project as a result of a material default, the Fortress loan would provide the financing needed to complete without having to identify an alternative financing source.

### ***CONCLUSION***

Financing for the Project needs to be put in place by Millennium fairly quickly in order to ensure that the Project is completed in time for the 2010 Games. Due to the structure of the land tenure under which the Project is being completed, Millennium cannot obtain sufficient

financing without additional security being provided by the City. Staff have looked at this issue, and on balance, believe that the strategy put forward is the appropriate course of action. The most significant risk to the City, at this time, is any complication which would impact Millennium's ability to complete this Project on schedule for the 2010 Games.

\* \* \* \* \*

CONFIDENTIAL

**5. Project Financing for the Development of Millennium Southeast False Creek Ltd.'s Buildings within Southeast False Creek Area 2A**

(Councillor Anton arrived at this point in the proceedings)

MOVED by Councillor Louie

A. THAT the City Manager be authorized to enter into legal agreements with Millennium Southeast False Creek Properties Ltd. ("Millennium") and Fortress Credit Corp. ("Fortress") to facilitate project financing estimated at \$683 Million (the "Loan") for the development of Millennium's buildings (the "Project") within Southeast False Creek ("SEFC") Area 2A, by the City, including the following provisions:

1. granting of a guarantee by the City to Fortress to complete the Project if Millennium is unable to do so;
2. subordinating the balance of the purchase price to be paid by Millennium for the City's lands within SEFC Area 2A that contain Millennium's buildings to a position behind the Fortress Loan;
3. granting of a guarantee by the City to Fortress for the repayment of the Loan beyond the balance of the purchase price, up to a maximum amount of \$50 Million, if the total amount of revenue from the sale of the Project is insufficient to repay the entire Loan; and
4. securing by the City of an option from Fortress to assume the Loan to allow completion of the Project in the case of a material default by Millennium;

AND THAT the negotiations leading to this agreement and the agreement itself give consideration to:

1. the security being provided by Millennium and its principals as part of the agreement with Fortress;
2. the value of the guarantee being offered by the City on behalf of Millennium; and
3. an appropriate indemnity from Millennium to reimburse the City for any verifiable costs incurred by the City related to the granting of this guarantee.

B. THAT the Director of Legal Services be authorized to execute and deliver on behalf of the City all legal documents required to implement this agreement;

C. THAT all such legal documents be on terms and conditions satisfactory to the City Manager and Director of Legal Service;

- D. THAT no legal rights or obligations be created or arise by Council's adoption of this Recommendation unless and until such legal documents are executed and delivered by the Director of Legal Services.

Amended

AMENDMENT MOVED by Councillor Capri

THAT motion A (3) be amended to read as follows:

3. granting of a guarantee by the City to Fortress for the repayment of the Loan beyond the balance of the purchase price, up to a maximum amount of *\$200 Million*, if the total amount of revenue from the sale of the Project is insufficient to repay the entire Loan;  
*(Italics denote amendment)*

CARRIED

(Councillors Cadman, Deal, Louie and Stevenson opposed)

The amendment having carried, the motion as amended, was put and CARRIED with Councillors Cadman, Deal, Louie and Stevenson opposed.

FINAL MOTION AS AMENDED AND ADOPTED

- A. THAT the City Manager be authorized to enter into legal agreements with Millennium Southeast False Creek Properties Ltd. ("Millennium") and Fortress Credit Corp. ("Fortress") to facilitate project financing estimated at \$683 Million (the "Loan") for the development of Millennium's buildings (the "Project") within Southeast False Creek ("SEFC") Area 2A, by the City, including the following provisions:
1. granting of a guarantee by the City to Fortress to complete the Project if Millennium is unable to do so;
  2. subordinating the balance of the purchase price to be paid by Millennium for the City's lands within SEFC Area 2A that contain Millennium's buildings to a position behind the Fortress Loan;
  3. granting of a guarantee by the City to Fortress for the repayment of the Loan beyond the balance of the purchase price, up to a maximum amount of \$200 Million, if the total amount of revenue from the sale of the Project is insufficient to repay the entire Loan; and
  4. securing by the City of an option from Fortress to assume the Loan to allow completion of the Project in the case of a material default by Millennium;

AND THAT the negotiations leading to this agreement and the agreement itself give consideration to:

1. the security being provided by Millennium and its principals as part of the agreement with Fortress;
  2. the value of the guarantee being offered by the City on behalf of Millennium; and
  3. an appropriate indemnity from Millennium to reimburse the City for any verifiable costs incurred by the City related to the granting of this guarantee.
- B. THAT the Director of Legal Services be authorized to execute and deliver on behalf of the City all legal documents required to implement this agreement;
- C. THAT all such legal documents be on terms and conditions satisfactory to the City Manager and Director of Legal Service;
- D. THAT no legal rights or obligations be created or arise by Council's adoption of this Recommendation unless and until such legal documents are executed and delivered by the Director of Legal Services.

(Councillor Deal left the meeting at this point in the proceedings)