| TO: | Chair and Members  
Audit and Administration Committee |
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<td>WARD(S) AFFECTED:</td>
<td>CITY WIDE</td>
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<td>COMMITTEE DATE:</td>
<td>May 19, 2010</td>
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<tr>
<td>SUBJECT/REPORT NO:</td>
<td>Hamilton Artists Inc. (HAI) request to sell 161 James St. N. (FCS10044) (City Wide)</td>
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| SUBMITTED BY: | Roberto Rossini, General Manager  
Finance & Corporate Services |
| PREPARED BY: | Charlie Elliott (905) 546-2424 ext. 2162 |
| SIGNATURE: | |

**RECOMMENDATION:**

(a) That a letter to Hamilton Artists Inc. (HAI) (refer to Appendix A of report FCS10044) respecting HAI’s request to sell 161 James St. N. be sent to HAI advising that the City is withholding consent to sell the property until approximately $200,000 in improvements to the adjoining properties at 155 – 157 James St. N. have been completed;

(b) That HAI provide documentation to the City, including copies of paid invoices as confirmation, that over $200,000 has been invested in construction improvements to 155 – 157 James Street North; and

(c) That the General Manager, Finance & Corporate Services, be authorized to issue a "Letter of Consent" to HAI authorizing HAI to sell 161 James St. N. once HAI has submitted documentation confirming approximately $200,000 in improvements to 155 – 157 James St. N. have been completed and a property appraisal report received.
EXECUTIVE SUMMARY

In June 2009, the City of Hamilton paid $722,500 to Hamilton Artists Inc. (HAI) for the purchase / renovation of 155 – 161 James St. N. In order to protect the City’s investment in the property, the payment was in the form of a non-repayable loan secured by a first mortgage. A Loan Agreement was executed between the City and HAI containing a number of provisions including several “Events of Default”, one of which is the following event that constitutes a default under the Agreement:

“a disposal, including a lease, by the Borrower of any part of the HAI property, without the prior written consent of the City which may be arbitrarily withheld by the City.”

The property purchased by HAI consisted of three (3) properties including 155, 157 & 161 James St. N. HAI’s original intent was to develop/renovate all 3 properties. However HAI have since revised their plans on developing the properties from what was initially envisioned, and have requested the City’s consent to sell 161 James St. N. A copy of HAI’s request is attached as Appendix B to report FCS10044.

To help ensure the properties retain an adequate value against the mortgaged loan amount ($722,500) should Hamilton Artists Inc. dissolve, become insolvent, etc., it is recommended the City’s consent be withheld until HAI spends approximately $200,000 on property improvements. Once the City is satisfied $200,000 in improvements have been completed, the City will then consent to the sale of 161 James St. N.

Alternatives for Consideration – See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: The recommendations in this report are meant to protect the City’s financial investment in the properties. There are no additional financial commitments resulting from the recommendations in report FCS10044.

Staffing: N/A.

Legal: N/A.
SUBJECT: Hamilton Artists Inc. request to sell 161 James St. N. (FCS10044) (City Wide) - Page 3 of 5

HISTORICAL BACKGROUND (Chronology of events)

On September 27, 2006, with approval of Committee of the Whole report 06-019 (Item 6.1), Council approved a grant from the Hamilton Future Fund in the amount of $750,000 to Hamilton Artists Inc. (HAI) for a building purchase / renovation project subject to the following conditions:

i. Confirmation that other funds have been secured for this project (i.e., Provincial/Federal funding);

ii. That if, for whatever reason, Hamilton Artists Inc. dissolves, the building purchased be returned to the City of Hamilton;

iii. That the Future Fund Board of Governors be provided regular updates on the progress of this initiative; and

iv. That an appraisal be undertaken for the building to the satisfaction of the City of Hamilton.

The amount of $27,500 to fund a Feasibility Study was advanced to HAI in 2007 as approved by Council March 28, 2007, with approval of March 26, 2007, COW Report 07-011 (Item 4.), leaving a grant balance of $722,500.

On July 4, 2009, Information Report FCS07034(b) “Grant Payment to Hamilton Artists Inc. (HAI)” was submitted to Committee of the Whole providing information on how the grant conditions had been met. Staff subsequently remitted the remaining grant amount of $722,500 to HAI’s solicitor, in trust, for the execution of the property purchase at 155 – 161 James St. N.

In order to protect the City’s investment, the City executed a Loan Agreement in the amount of $722,500 with HAI that was secured by a first mortgage on the property purchased by HAI. This ensures the City has first rights to the property should Hamilton Artists Inc. dissolve.

The property purchased by HAI consisted of three (3) properties including 155, 157 & 161 James St. N. HAI’s original intent was to develop/renovate all 3 properties and buildings. However HAI have since revised their plans on developing the properties from what was initially envisioned, and have requested the City’s consent to sell 161 James St. N. A copy of HAI’s request is attached as Appendix B to report FCS10044.

POLICY IMPLICATIONS

N/A.
RELEVANT CONSULTATION

City Manager’s Office - Legal Services Division
Planning & Economic Development – Real Estate Division
Hamilton Artist Inc.

Staff have developed the recommendations to Report FCS10044 in consultation with Hamilton Artist Inc. These recommendations were developed in an effort to secure the City’s financial commitment, while not creating further financial challenges for HAI. HAI confirmed to staff that these recommendations will not create further financial challenges nor will these recommendations delay the progress of the redevelopment. The construction phase is expected to last 5 months, allowing HAI the opportunity to fulfill the first requirement of exhibiting and verifying approximately $200,000 in improvements to the adjoining properties at 155 – 157 James St. N., prior to the need to sell 161 James St. N.. HAI does not expect these recommendations will lead to cash flow problems, assuming the City issues a Letter of Consent to HAI authorizing HAI to sell 161 James St. N. once HAI has met the requirements as described under “Recommendation B” or FCS10044.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The $722,500 advanced to HAI as a loan and secured by a mortgage on the properties was for the purchase and renovation of all three (3) properties. Should HAI sell one of the properties (161 James St. N.) the value of the remaining two (2) properties (155 & 157 James St. N.) would not be adequate to cover the amount of the mortgage.

To help ensure the properties retain an adequate value against the mortgage, it is recommended HAI spend approximately $200,000 on renovations/improvements to 155 & 157 James St. N. to increase the value of the two (2) properties, prior to the City providing consent to HAI for the sale of 161 James St. N.

The original design was to construct a glass corridor connecting 155 and 161 James. The new design calls for constructing a new building at 157 James which will provide gallery space that originally would have been in 161 James. The consolidation of HAI’s operations into 2 buildings rather than 3 will enable long-term operational efficiencies including reduced operating, maintenance and staffing costs.

The revised project budget for the new design is $85,000 greater than the previous budget for the original design. As well, the current project financing plan assumes $141,000 less funding from the Province of Ontario and the Federal Government, total funding commitment of $75,000 each, respectively, compared to the previous financing plan. Therefore, the proceeds from the sale of 161 James St. N. will be required to complete the construction / renovation of 155 – 157 James St. N.
The City could consent to HAI selling 161 James St. N. immediately, without the requirement to spend approximately $200,000 on property improvements. However, the remaining properties at 155 – 157 James St. N. may not have the value to cover the mortgaged loan amount ($722,500) should Hamilton Artists Inc. dissolve, become insolvent, etc.

Withholding consent for the long-term may result in a lack of financial resources available to HAI to complete the renovation of 155 – 157 James St. N. This alternative would not support the City objectives supporting a vibrant downtown.

CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Financial Sustainability
• Generate assessment growth/non-tax revenues

Growing Our Economy
• A visitor and convention destination

Healthy Community
• An engaged Citizenry

APPENDICES / SCHEDULES

Appendix “A” – letter dated _XXXX  to Hamilton Artists Inc.

Ms. Donna Lee Macdonald  
Administrative Director  
Hamilton Artists Inc.  
P.O. Box 37047  
Hamilton ON  
L8R 3P1

Dear Ms. Macdonald:

This letter is to confirm my previous correspondence to you on April 1, 2010, in which I identified that the City of Hamilton is withholding consent to the sale of 161 James Street North as per the conditions in the Loan Agreement between the City of Hamilton and Hamilton Artists Inc., dated June 2, 2009.

The justification for withholding consent to the sale of 161 James Street North relates to the aforementioned Loan Agreement which specifies that "a disposal, including a lease, by the Borrower of any part of the HAI property, without the prior written consent of the City which may be arbitrarily withheld by the City" and constitutes an “Event of Default”. In an effort to protect the City’s financial interests in the re-development of 155-161 James Street North and ensure that the properties retain an adequate value against the mortgaged loan amount of $722,500, the City’s intent is to withhold consent to the sale of 161 James Street North until such time as the following conditions have been met:

1. HAI to provide documentation to the City including copies of paid invoices as confirmation that over $200,000 has been invested in construction improvements to 155-157 James Street North; and  
2. HAI to reimburse the City for the cost of the property appraisal for 161 James St. N. in the amount of $1,489.00.

The City of Hamilton continues to be supportive of the objectives of HAI through the re-development of 155-157 James Street North. The City is amenable to continued open dialogue to ensure the process of the City providing consent meets the overall objective of HAI.

Yours truly,

Roberto Rossini  
General Manager, Finance & Corporate Services