

RECOMMENDATIONS:

That the Land and Asset Strategy Committee recommend that Council:

- (1) Authorize the proposed land exchange subject to the following fundamental terms and conditions:

- (a) PROPERTY:

Owner Exchange Lands

PORTION OF:

PLAN A1
BLOCK 111
LOTS 36 TO 40 INCLUSIVE

EXCEPTING OUT OF LOTS 36-39 ALL
MINES AND MINERALS

Comprising of 908.14 sq. m. (9,775.09 sq. ft.), more or less, as shown on
the site map

Municipally known as 936 16 AV SW

City Exchange Lands

PLAN A1
BLOCK 111
LOTS 33, 34 AND 35
EXCEPTING THEREOUT ALL MINES AND MINERALS

Comprising of 908.14 sq. m. (9,775.09 sq. ft.), more or less, as shown on
the site map

Municipally known as 928 16 AV SW

- (b) PARTIES:

The City: THE CITY OF CALGARY
Owner: FIRST CAPITAL HOLDINGS (ALB) CORPORATION

(c) CONSIDERATION:

The City Exchange Lands: \$2,443,772.50 plus G.S.T. payable on the Closing Date

Owner Exchange Lands: \$2,443,772.50 plus G.S.T. payable on the Closing Date

Net Difference payable on the Closing Date : \$0.00

(d) CLOSING DATE/POSSESSION/ADJUSTMENT DATE:

2014 October 31, or such earlier date that the Parties may agree upon

(e) CONDITIONS PRECEDENT:

- (i) The Owner to obtain, at its sole cost and expense, and forward to The City, together with a reliance letter, a Phase II Environmental Site Assessment for each of the City Exchange Lands and Owner Exchange Lands which has been prepared in accordance with The City's current standard Phase II Environmental Site Assessment Terms Of Reference. The City and the Owner shall both be satisfied, in their sole discretion, with the environmental condition of both the City Exchange Lands and the Owner Exchange Lands ninety (90) days prior to the Closing Date.
- (ii) The Owner to obtain tentative subdivision approval for the Owner Exchange Lands with conditions acceptable to both The City and the Owner, each acting reasonably, no later than sixty (60) days prior to the Closing Date. The Owner shall be responsible to satisfy all conditions contained in the tentative subdivision approval at its sole cost and expense.
- (iii) The Owner to obtain final subdivision approval with conditions acceptable to both The City and the Owner, each acting reasonably, and registration of the subdivision plan for the Owner Exchange Lands no later than thirty (30) days prior to the Closing Date.
- (iv) The Owner to obtain tentative approval for a development permit on the proposed mixed use development on the subject lands (other than the Owner Exchange Lands), on terms and conditions acceptable to the Owner, no later than thirty (30) days prior to the Closing Date.

- (v) The Owner to obtain a land use designation of S-CS for the Owner Exchange Lands and a land use designation of DC (as provided in LOC2012-0082) for the remainder of the lands, which shall permit the use of the City Exchange Lands as a park, which shall be acceptable to both The City and the Owner, each acting reasonably, no later than thirty (30) days prior to the Closing Date.

(f) SPECIAL TERMS AND CONDITIONS:

- (i) Permitted Encumbrances:

Owner Exchange Lands:

No encumbrances on the Owner Exchange Lands

City Exchange Lands:

928 16 AV SW:

<u>Instrument No</u>	<u>Date</u>	<u>Description</u>
761 006 385	19/01/1976	Utility Right of Way

Any Utility Right of Way as required by the subdivision and development approving authority.

- (ii) The Owner to pay The City the additional sum of \$250,000.00 on the Closing Date as compensation for landscaping and building site improvements on the Owner Exchange Lands and the costs of community engagement and public forums.
- (iii) Area of the Owner Exchange Lands and City Exchange Lands to be confirmed by survey. The area of the Owner Exchange Lands shall be greater than or equal to the area of the City Exchange Lands.
- (iv) The Owner to pay The City the additional sum of \$70,000.00 on the Closing Date as compensation for transactional fees, which include legal fees, (inclusive of disbursements and G.S.T.) and real estate costs in connection with the finalization, execution and completion of the transaction.
- (v) The City provides no representation or warranty in regards to the presence or absence of any environmental contamination or hazardous substances on or in the City Exchange Lands. The City Exchange Lands are sold on an "as is" basis and the Owner is purchasing the City Exchange Lands at its own risk and shall assume all responsibility and liability connected with any

environmental matters existing as of the Closing Date. The Owner shall release The City from all claims incurred by the Owner with respect to any environmental contamination or hazardous substances on or in the City Exchange Lands. The Owner shall indemnify and save harmless The City from all claims incurred by The City with respect to any environmental contamination or hazardous substances on or in the City Exchange Lands.

- (vi) The Owner represents and warrants that the Owner Exchange Lands do not contain any hazardous waste, asbestos, PCB's, hydrocarbons, underground storage tanks or any other hazardous substances, other than in compliance with all environmental laws and guidelines applicable to land used for park purposes, and that the Owner has complied with all applicable environmental laws and guidelines applicable to land used for park purposes in respect of its ownership, operation and management of the Owner Exchange Lands.
- (vii) The Owner agrees that it shall be fully responsible for any and all environmental liabilities relating to the Owner Exchange Lands and shall indemnify and save The City harmless against any and all claims arising in any manner whatsoever out of any and all such environmental liabilities relating to the Owner Exchange Lands and any breach by the Owner of this paragraph or any noncompliance with any environmental laws. Any obligation of the Owner to indemnify The City hereunder shall survive the closing of this transaction.
- (viii) The Owner, at their sole cost and expense, to coordinate with utility owners on the Owner Exchange Lands and the City Exchange Lands to ensure that existing utilities are protected by the registration of utility rights of way to the satisfaction of the utility owners on or before the Closing Date.

(2) Authorize the proposed license subject to the following fundamental terms and conditions:

(a) PROPERTY:

PLAN 141_____
BLOCK 111
LOT 42

EXCEPTING THEREOUT ALL MINES AND MINERALS

(Formally known as the Owner Exchange Lands)

(b) PARTIES:

Licensor: THE CITY OF CALGARY

Licensee: FIRST CAPITAL HOLDINGS (ALB) CORPORATION

(c) CONSIDERATION:

\$96,000.00 plus G.S.T., per year payable in advance in equal monthly instalments of \$8,000.00 plus G.S.T., beginning on the Commencement Date.

(d) TERM AND COMMENCEMENT DATE:

Five (5) year term commencing on the Closing Date as specified in paragraph (1)(d), provided that the Licensee shall have the right to terminate the License at any time by providing ninety (90) days prior written notice to the Licensor and provided further that if the Licensee has not complied with all of its obligations as contained in the License, including the obligations in subparagraphs 2 (f)(ii) and 2(f)(vi) upon the expiration or termination of the License, the License shall continue on a month to month basis on the terms and conditions herein, save and except that the license fee shall be equal to \$16,000.00 plus G.S.T. per month until the Licensee has complied with all of its obligations as contained in the License.

(e) PERMITTED USES:

For all uses associated with the construction, development, parking and marketing of a residential and commercial building on the adjacent property. No shoring or tiebacks shall be permitted on the Owner Exchange Lands during the Term of the License without further agreement between the Licensor and the Licensee.

(f) SPECIAL TERMS AND CONDITIONS:

- (i) The Licensee shall not carry on or permit any person to carry on upon any part of the License Lands any business or any activity which may be deemed a nuisance by the Licensor or that may constitute an annoyance or disturbance to the owners or occupiers of adjacent lands and it will strictly and carefully observe and comply with all bylaws and regulations of the applicable Government Authority. If the Licensee commits a nuisance or a breach of any of the said bylaws and regulations on the License Lands and fails within forty eight (48) hours of being notified by the Licensor to abate the nuisance or comply with such bylaws and regulations, then the Licensor shall have the right to do all that is

necessary to abate such nuisance or to effect compliance with the said bylaws and regulations and shall have the right to charge the Licensee for all of the Licensor's cost and expenses for the same, plus an additional management and administration charge of fifteen (15%) percent.

- (ii) Upon expiration or termination of the License, the Licensee to restore the License Lands to the same condition as they were in as of the Commencement Date, save and except that the License Lands shall be free of any paving, asphalt, concrete, concrete dividers, debris or refuse and shall be graded and levelled. Upon expiration or termination of the License the Licensee shall provide to the Licensor, at its sole cost and expense, together with a reliance letter, a Phase II ESA for the License Lands which has been prepared in accordance with The City's current standard Phase II ESA Terms of Reference to confirm that the obligations of the Licensee as contained in subparagraphs 2.(f)(ii) and 2.(f)(vi) have been satisfied.
- (iii) The Licensee shall indemnify the Licensor and save it harmless from and against all losses of life, personal injury, damage to property, or any other loss, damage or injury, arising from any occurrence upon the License Lands or from its occupancy or use of the License Lands. This indemnity shall survive the expiration or termination of the License.
- (iv) The Licensee shall, at its sole cost and expense, maintain a comprehensive general liability insurance policy for bodily injury (including death) and property damage in an amount not less than \$5,000,000.00 inclusive limit for any one occurrence which shall include the Licensor as an additional insured with respect to the License Lands. Proof of the required coverage must be received in the office of the Licensor prior to use of the License Lands.
- (v) The Licensor shall not be responsible for any damage or injury that may happen to the Licensee or the Licensee's officers, agents, employees, contractors, invitees or property from any cause whatever prior, during or subsequent to the continuance of this Agreement unless the damage or injury is caused by the gross negligence or wilful misconduct of the Licensor, its officers, employees or agents. The Licensee hereby expressly releases the Licensor from and agrees to indemnify it against any and all such claims for such loss, damage or injury.
- (vi) The Licensee shall not emit, discharge, deposit or cause or permit to be emitted, discharged or deposited upon the License Lands,

any hazardous, toxic, deleterious, polluting or contaminating substance, product, material or waste (the "Contamination") which alone or in combination are defined, listed, prohibited, controlled or otherwise regulated by any Government Authority. If any such Contamination is released on or into the License Lands, the Licensee shall, as soon as it becomes aware of such release, remediate such Contamination at its sole cost and expense, in accordance and in compliance with all environmental laws as set out by the applicable Government Authority.

- (vii) The Licensee shall be liable for, and shall indemnify, defend and save harmless the Licensor from any and all liabilities, damages, costs, claims, suits or actions caused by or resulting from the existence of any Contamination on, in or near the License Lands which was caused by or resulted from the activities of the Licensee. Any obligation of the Licensee to indemnify the Licensor hereunder shall survive the expiration or termination of the license agreement.
- (viii) Provided that the Licensor has first provided its consent, not to be unreasonably withheld, the Licensee shall have the right to assign this License to Embassy Bosa Inc.
- (ix) The Licensee shall have the right to use and occupy the License Lands throughout the Term.