



**City of Kingston  
Report to Council  
Report Number 25-114**

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**To:** Mayor and Members of Council  
**From:** Paige Agnew, Commissioner, Growth & Development Services  
**Resource Staff:** Tim Park, Director, Planning Services  
**Date of Meeting:** April 1, 2025  
**Subject:** Noise Agreement for 223 Princess Street

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**Council Strategic Plan Alignment:**

Theme: 1. Support Housing Affordability

Goal: 1.1 Promote increased supply and affordability of housing.

**Executive Summary:**

The developers of 223 Princess Street are required to completed noise mitigation on the Corus Building at 170 Queen that abuts their property. Recent developments with Corus Entertainment have caused operations at the Corus building to cease.

Based on this, the noise mitigation at 170 Queen may no longer be required. An agreement has been drafted to extend the developers obligation until there is more certainty around the adjacent property.

**Recommendation:**

**That** Council authorize the Mayor and Clerk to execute the Noise Agreement for 223 Princess Street, attached as Exhibit A to Report Number 25-114.

April 1, 2024

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**Authorizing Signatures:**

**p.p.**

ORIGINAL SIGNED BY COMMISSIONER

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**Paige Agnew, Commissioner,  
Growth & Development Services**

ORIGINAL SIGNED BY CHIEF

ADMINISTRATIVE OFFICER

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**Lanie Hurdle, Chief  
Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate & Emergency Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Ian Semple, Acting Commissioner, Transportation & Infrastructure Services	Not required

**Discussion:**

**Background**

The development at 223 Princess Street underwent site plan approval in January of 2023. As part of this process a noise study was conducted by JJ Acoustics which indicated difficulties mitigating noise to a class 1 level described in the NPC-300. Due to this a Class 4 designation was proposed for the property along with at source mitigation including the replacement and relocation of rooftop HVAC units and the installation of noise dampening blankets. This Class 4 designation was approved by Council and a noise agreement was executed between the developers of 223 Princess Street and Corus Entertainment to allow access to replace the units.

Recent developments with Corus Entertainment have caused the closure of their 170 Queen Street property, this has come with the cease of operation of the HVAC units with uncertainty of their future use. As such the developer of 223 Princess Street has requested that they be released of their obligation for mitigating for noise, after discussions with the developer an agreement to extend the timeline for their mitigation was proposed instead that would extend their timeline to complete the mitigation to allow the situation at 170 Queen to solidify.

A noise agreement, attached as Exhibit A, was developed in conjunction with legal services provided by Cunningham Swan Lawyers.

**Analysis**

The noise mitigation that is proposed at 170 Queen Street is a significant expense on the developers of 223 Princess Street, with the uncertainty around the future form of 170 Queen Street there is the possibility that the mitigation would be installed, and either be replaced or no longer required in a future configuration. The agreement was drafted to allow the developer an initial two-year term, with three one-year extensions for a possible maximum of up to five years, in which a "Change Event" may occur. A Change Event is described as a development of the property that would require the replacement of the HVAC units or the demolition of the existing building. If a change event occurs the developer would no longer be required to mitigate against 170 Queen and would be released of their obligations for noise mitigation.

If, within the terms of the agreement, the building is used in a configuration that would not require the replacement or relocation of the HVAC units or the term of the agreement is to end without a Change Event occurring the developer will be required to complete the mitigation on the property as described in the noise agreement completed by JJ Acoustics. In order to ensure the completion of the work a security will be required in the form of cash, letter of credit, or surety bond for the total cost of the work as described in an engineers cost estimate provided by the developers engineer. If an extension of the agreement were to occur the security would be updated to current costs at that time.

The execution of this agreement will not release the developer of their obligations for noise mitigation unless certain conditions are met and will not supersede the previously executed noise mitigation agreement.

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**Contacts:**

Garret Hoegi, Manager, Development Engineering Planning Services, 613-546-4291 extension 3294

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

Exhibit A – Noise Agreement

## Agreement

**This Agreement** made in **Duplicate** on the \_\_\_\_ day of \_\_\_\_\_,  
2025.

**Between:**

**IN8 (The Capitol) Developments Inc.**

Hereinafter referred to as the "**Owner**"

**Of The First Part**

- and -

**The Corporation of The City of Kingston**

Hereinafter referred to as the "**City**"

**Of The Second Part**

**Whereas** the Owner is the registered owner of the property known municipally as 223 Princess Street, Kingston, Ontario as legally described in Schedule "A" of this Agreement (the "**Property**");

**And Whereas** the Property is adjacent to the property municipally known as 170 Queen Street, Kingston, Ontario, and legally described on Schedule "B" of this Agreement (the "**Corus Property**");

**And Whereas** the registered owner of the Corus Property is 591987 B.C. LTD ("**Corus**");

**And Whereas** the Owner has made an application to the City for permission to develop the Property and the Council of The Corporation of the City of Kingston has approved plans for development of the Property, subject to the Owner entering into a Site Plan Control Agreement with the City;

**And Whereas** the Owner retained JJ Acoustic Engineering Ltd. to conduct a Stationary Noise Impact Study; **(the “Noise Study”)**, in order to ensure that the development will comply with the Ministry of the Environment, Conservation and Parks Noise Guideline – Stationary and Transportation Sources – Approval and Planning **(“NPC-300”)**;

**And Whereas** 223 Princess St. is designated a Class 4 Area by the City of Kingston, pursuant to NPC-300;

**And Whereas** stationary noise sources affecting the Property include eight Heating, Ventilation and Air Conditioning (“HVAC”) units located on the roof of the building on the Corus Property.;

**And Whereas** the Owner has entered into a Site Plan Control Agreement with the City (the **“Site Plan Control Agreement”**);

**And Whereas** as a condition of the Site Plan Control Agreement, the Owner entered into an agreement with Corus regarding noise mitigation measures to be installed on the Corus Property, which agreement was executed September 1, 2022 (the **“Noise Mitigation Agreement”**) and is attached hereto as Schedule “C” and incorporated by reference;

**And Whereas** per the Noise Mitigation Agreement, Corus has agreed to permit the Owner to replace, at the Owner’s sole expense, the existing eight (8) HVAC units on the Corus Property with new HVAC units, in order to ensure that the Owner’s proposed development will comply with the applicable Class 4 requirements of NPC-300;

**And Whereas** the City deems it necessary to further clarify the obligations of the Owner with respect to the installation of noise mitigation measures on the Corus Property;

**Now Therefore This Agreement Witnesseth** that in consideration of the mutual covenants herein contained and other good and valuable consideration,

the sufficiency of which is acknowledged, the parties agree with each other as follows:

### **Owner's Obligations**

- 1) The Owner covenants and agrees with the City that if the building on the Corus Property has not been demolished within two (2) years of the date of execution of this Agreement, then the Owner shall remove and replace the eight (8) HVAC units located on the roof of the building on the Corus Property at the Owner's sole expense, in accordance with the Noise Mitigation Agreement. The Owner acknowledges it is responsible for the full cost of the removal and replacement, regardless of whether the cost exceeds the value of the financial security held by the City under this Agreement.
- 2) If the Corus Property is demolished within two (2) years of the date of execution of this agreement, or if the use is modified and the extent of the modification requires Corus to install new HVAC systems on the Corus Property as a condition of the redevelopment, (either of these events a "**Change Event**") the Owner shall not have any obligations with respect to the Corus Property and the City will not require the Owner to install HVAC units on the Corus Property. Any security held by the City under this Agreement will be returned to the Owner, without interest, upon the occurrence of a Change Event.
- 3) As financial security for the performance of the Owner's obligations under this Agreement, the Owner shall, upon execution of this Agreement, deposit with the Treasurer of the City cash, certified cheque, irrevocable letter of credit, or surety bond for the full cost of the new HVAC system as determined by the Owners engineer in a form satisfactory to the City in accordance with this Agreement; provided that the City shall not draw down on the financial security unless the Owner is in default in the performance of an obligation, term, covenant or condition under this Agreement and such default continues for more than seven (7) days after the City delivers written notice to the Owner requiring the Owner to remedy the default.
- 4) If at the expiration of the term of two (2) years following the execution of this agreement, the Corus Property has not undergone a Change Event

and the Owner has not installed an HVAC system in accordance with the Noise Study, the Owner shall be in default of this Agreement. The Owner acknowledges and agrees that in the event of default under this Agreement, the City shall retain the full amount of the security, and without further notice to the Owner, shall remove and replace the eight (8) HVAC units located on the roof of the building on the Corus Property in accordance with the Noise Mitigation Agreement. The City shall charge the Owner an additional 20% of the amount spent by the City to replace the HVAC units in the event of a default under this Agreement. The Owner acknowledges and agrees that the costs to replace the HVAC units may exceed the value of the security held by the City and agrees that its liability to reimburse the City for its costs is not limited to the amount of security held by the City.

- 5) The City may, in its sole and absolute discretion, agree to extend the two-year term in paragraph four (4) above, by a period of one (1) year, upon receiving a request in writing by the Owner delivered no less than 30 days before the expiry of the term. This extension may be granted by the City a maximum of three (3) times. If the City agrees to extend the term, the Owner shall be obligated to, within 30 days, provide the City an updated estimate of costs of the works certified by a Professional Engineer. If the updated estimated cost exceeds the value of securities provided under paragraph three (3) above, the Owner shall forthwith deposit with the Treasurer of the City cash, certified cheque or an irrevocable letter of credit in the amount of the additional estimated cost in consideration for extending the term.
- 6) A charge made by the City to the Owner under paragraph four (4) above shall be paid within thirty (30) days of the City's invoice or demand for payment to the Owner, failing which the Owner shall be in default under this agreement and shall continue in default until payment plus all accrued interest is made in full.
- 7) Interest shall be paid by the Owner on all overdue amounts at the same rate per annum and calculated in the same manner as the City charges on overdue municipal taxes and any payments received shall be applied first on account of accumulated interest and then on the outstanding amount.



- 8) Upon completion of all works and facilities and prior to the release of any securities, the Owner shall deliver to the City the certificate of a consulting engineer licensed under the *Professional Engineers Act* (Ontario) confirming that all works and facilities have been installed in accordance with this Agreement.
- 9) The Owner hereby grants to the City, its servants and contractors, a licence to enter the Owner's Lands during normal operating hours for the purpose of inspecting the works and facilities and to perform any work arising from or the result of any default by the Owner under this Agreement.

### **General Terms**

- 10) Any dispute between the parties with respect to this Agreement shall, at the request of a party, be submitted to arbitration pursuant to the Ontario *Arbitrations Act 1991* and the decision of the arbitrator or, if more than one, the decision of a majority shall be final and binding on the parties.
- 11) Each party shall pay its own costs of the arbitration and shall share equally the costs of the arbitrator(s).
- 12) The Owner agrees that if any section, clause or provision of this Agreement, is for any reason declared by a Court of competent jurisdiction to be invalid the same shall not affect the validity of the Agreement as a whole or any part thereof, other than the section, clause, or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of this Agreement shall remain in full force and effect, notwithstanding that one or more provisions thereof shall be declared to be invalid.
- 13) This Agreement shall enure to and be binding upon the parties hereto, and their respective successors and assigns.

In Witness Whereof the parties hereto have by the hands and seals executed this agreement as of the first date set out above.

Signed, Sealed and Delivered:

**IN8 (The Capitol) Developments Inc.**

per \_\_\_\_\_ DATE

per \_\_\_\_\_ DATE

(we have authority to bind the corporation)

**The Corporation of the City of Kingston**

per \_\_\_\_\_ DATE

Mayor

per \_\_\_\_\_ DATE

City Clerk