

## **Terms of a New Lease – 4804-4812 Yonge Street**

<b>Date:</b>	June 11, 2009
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer
<b>Wards:</b>	23 – Willowdale
<b>Reference Number:</b>	P:\2009\Internal Services\F&re \Gm09057F&re – AFS-10239

### **SUMMARY**

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On July 25, 26, and 27 2006, City Council approved a lease (the Lease) of the City-owned property at the northwest corner of Sheppard Avenue West and Yonge Street (the Land) in favour of 4804/12 HRDOV Yonge Realty Limited (the Tenant) for purposes of permitting the Tenant to build and operate a retail development on the Land (the Project). The Lease was signed with a commencement date of March 15, 2007.

The financial terms of the Lease were based on the Tenant's assumption that the Project would be completed and tenanted by the beginning of 2008. Notwithstanding the Tenant's continuing efforts, to secure the approvals required to permit the construction of the Project, over two years have passed since the term of the Lease began. The Tenant has advised that \$500,000 has been spent on design, engineering, consulting and legal fees in connection with appearances before the Committee of Adjustment and the OMB and in respect of site planning matters, but the Tenant has not yet been able to secure a building permit. Economic conditions have deteriorated badly since the terms of the Lease were negotiated and the financial projections on which the Lease was based are no longer realistic. The Project remains a desirable interim use of the Land, and the Tenant is in the final stages of obtaining a building permit for the Project. It is appropriate to terminate the Lease, forgive the accrued arrears of rent, and enter into a new lease (New Lease) in favour of the Tenant on the terms recommended in this report.

## **RECOMMENDATIONS**

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### **The Chief Corporate Officer recommends that:**

1. City Council authorize a New Lease of the land at 4804-4812 Yonge Street to 4804/12 HRDOV Yonge Realty Limited, substantially on the terms and conditions set out in Attachment 1 and in a form acceptable to the City Solicitor;
2. City Council authorize the termination of the existing Lease subject to the Tenant executing the New Lease;
3. City Council authorize the cancellation of accrued rental arrears, in the amount of \$434,641.65, due to the City under the terms of the existing Lease; and
4. City Council authorize the Chief Corporate Officer to administer and manage the New Lease, including the provision of any consents, approvals, notices and notices of termination provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction..

### **Financial Impact**

The Tenant has paid the deposit and the first instalment of rent payable under the Lease, totalling \$105,000.00 (the Initial Payment). No further rental payments have been received under the Lease, and the Tenant is in arrears under the Lease in the amount of \$434,641.65. The Tenant has petitioned on a number of occasions for relief from some of the requirements of the Lease including deferral of rent payments until permissions to proceed with construction are in place.

If the New Lease is entered into, the Initial Payment will be credited to the security deposit and rent requirements, and the City will become entitled to receive rental income of \$125,000.00 per year, together with rental increments of 12%, 14% and 15.6% respectively at the beginning of each 5 year period.

The approval of recommendations in this report will result in a budget shortfall of \$83,960 for 2009. The 2010 and 2011 revenues will be reduced by \$110,632 and \$95,000 respectively. Facilities and Real Estate will accommodate these pressures by attempting to increase revenues and/or reduce costs through negotiations of leases with other external tenants.

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

## **DECISION HISTORY**

On July 25, 26 and 27, 2006, City Council adopted Clause No. 22 of Report No. 5 of the Administration Committee and authorized the Lease.

[www.toronto.ca/legdocs/2006/agendas/council/cc060725/adm5rpt/cl022.pdf](http://www.toronto.ca/legdocs/2006/agendas/council/cc060725/adm5rpt/cl022.pdf)

On April 23 and 24, 2007, City Council adopted Item GM3.22 and authorized amendments to the Lease that extended the date of the Tenant's Right to Terminate (to provide for the conclusion of an Ontario Municipal Board hearing in respect of planning matters related to the Project) and incorporated a small additional area into the leased premises.

[www.toronto.ca/legdocs/mmis/2007/gm/reports/2007-04-12-gm03-cr.pdf](http://www.toronto.ca/legdocs/mmis/2007/gm/reports/2007-04-12-gm03-cr.pdf)

## **ISSUE BACKGROUND**

After the TTC released the Land from its operational requirements in 2000, the Development of Transit Sites (DOTS) working group determined that the City should seek an interim commercial use for this vacant site in order to preserve the future potential of developing it in conjunction with the Sheppard bus terminal.

The Tenant was, and remains, the recommended proponent for the interim development of the Land and the construction of the Project. The length of the planning and TTC approval processes, the cost of compliance with the design standards and deteriorating economic conditions mean that the Project is no longer economically viable under the terms of the Lease. The Project remains a desirable interim use of the site, but if it is to be completed by the Tenant a New Lease, on terms different than those provided for in the current Lease, will be required.

## **COMMENTS**

The Land is constrained by TTC infrastructure which limits the area in which below-grade work may occur and requires extensive involvement of the TTC in the approval process and provision for on-going monitoring to protect TTC facilities. The Land is located at a prominent intersection in the North York centre and City Planning has applied high standards of finish and landscaping similar to a long-term (35 – 50 lease year term) development, while the term of the Lease could be as short as 15 years and 11 months, as the City has reserved a right to terminate the Lease if a more desirable long-term proposal for the development of the City holding becomes available.

The Tenant conducted due diligence investigations and steadily pursued the approvals required to build the Project. This process has entailed:

- an application to the Committee of Adjustment for zoning variances
- an Ontario Municipal Board hearing and decision approving the variances
- site plan approval process
- total redesign of the development concept in response to concerns of City Planning;
- TTC technical review
- issues related to landscaping and its loading on TTC underground structures
- revisions to servicing due to adoption of new City storm water management standards
- building permit application.

The Tenant's proposed development is approximately 10,000 sq ft of retail uses at grade, with one second storey unit. As the project is small in size, the Tenant has advised that the costs of approvals and construction on a square footage basis have become higher than industry norms.

The costs that the Tenant has incurred in pursuing permissions to build the Project and secure retail tenants, and the erosion of the already short term of the Lease by the approval process, means that the now very high costs of the Project cannot be recovered on the basis of the retail rents that it is realistic for the Tenant to achieve in the current economic climate. The term of the retail revenue stream from the project is critical to payback the Tenant's costs and two years of the current Lease term will have eroded before occupancy can begin. The Tenant's original business plan, on which the rent of \$220,000.00 per year payable under the Lease was based, has been invalidated by the changes in the design concept to standard street retail required by Planning staff, which lowers the rental revenues that can be achieved from the Project. At an annual rent of \$125,000.00 per year with the predetermined incremental increases under the New Lease, the Project would be buildable in the current economic climate under the approved design requirements.

As the Tenant is in arrears under the Lease, the City has the ability to exercise its right to terminate the Lease, but would face the uncertainty of litigation for costs and damages incurred by the Tenant in its pursuit of permissions to build the Project, and risk the loss of the rental income that would be available under the New Lease, as well as the loss of a desirable interim use of the Land and the tax and other ancillary economic benefits that would flow from the construction and operation of the Project by the Tenant.

Given that the approval process is now at the building permit stage and the Project could be under construction this year, staff recommend that the City enter into the New Lease, as set out in Attachment 1. F&RE staff consider the terms of the New Lease to provide a fair and reasonable market return for this interim use.

## **CONTACT**

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## **SIGNATURE**

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Bruce Bowes, P. Eng.,  
Chief Corporate Officer

## **ATTACHMENTS**

Attachment 1 – Terms of the New Lease for 4804-4812 Yonge Street  
Attachment 2 - Sketch PS-2005-064

## **ATTACHEMENT 1**

### **TERMS OF A NEW LEASE FOR 4804-4812 YONGE STREET**

**Shown as Parts 1, 2, 3, and 5, on Sketch PS-2005-064**

1) **Leased Land**

Stratified portions of Parts 1, 2, 3 and 5 on Sketch PS-2005-064 (the “Sketch”), as follows:

Part 1 - the only unstratified portion of the Leased Land, in which the Tenant would enjoy full surface and below-surface rights to construct buildings, park vehicles, landscape, etc.

Part 2 - this strata part of the Leased Land extends only above-grade, permitting vehicular and pedestrian access, parking, and landscaping, subject to load restrictions due to the proximity of below-grade TTC structures, and subject to rights in the TTC to enter, remove, repair, replace etc. TTC structures; and

Part 3 - this strata part of the Leased Land extends only above grade, permitting landscaping and pedestrian access, subject to rights in the TTC to enter, remove, repair, replace etc. TTC structures.

Part 5 - this strata part extends only above grade, permitting vehicular and pedestrian access and landscaping and would be subject to rights in the TTC to enter, remove, repair, replace etc. TTC structures and to the right of Bell to enter, remove, repair, replace, etc. its utilities, as well as rights in common with others for access.

2) **Legal Description**

Parts of Units 2 & 3, Plan D-90, Part of Lots 1, 112 and Lane (Closed by by-law 30652, Instrument No. C680148), Registered Plan M-389, Part of Lot 16, Concession 1, West of Yonge Street, Township of York, City of Toronto, shown as Parts 1, 2, 3, 4, 5, 6, and 7 of Plan 66R-22982.

3) **Commencement Date**

Not more than 60 days from the date the Tenant is notified of Council approval of the business terms.

4) **Term**

Twenty (20) years and eleven (11) months; in no event will the term exceed twenty-one (21) years in aggregate.

- 5) Early Termination  
The City has the right to give notice of early termination effective at the end of the fifteenth (15<sup>th</sup>) year and 11 months of the term.
- 6) Overholding Period  
No overholding will be allowed.
- 7) Annual Base Rent
- Years 1-5: One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) per annum;
- Years 6-10: One Hundred and Forty Thousand Dollars (\$140,000.00) per annum;
- Years 11-15: One Hundred and Sixty Thousand Dollars (\$160,000.00) per annum;
- Years 16-end of term:  
One Hundred and Eighty-Five Thousand Dollars (\$185,000.00) per annum.
- Rent shall be payable quarterly in advance, on the first day of each quarter during the term, except for the initial 11 months in which rent shall be payable monthly in advance.
- 8) Rent Abatement  
Annual Base Rent will abate by 50%, for the first 8 months of the term. Subject only to this abatement, annual base rent will be paid from the beginning of the term.
- 9) Additional Rent  
The Lease will be fully net to the City. From the commencement date, the Tenant will pay additional rent, including:
- (i) Taxes
  - (ii) Operating Costs
  - (iii) Insurance
- 12) Use and Conduct of Business  
The Tenant will be required to continuously, actively and diligently carry on business as a multi-tenant retail and service development, and will not use or permit the use of the Leased Land or any part thereof for a commercial parking lot or facility, any automotive-related use, any “adult” entertainment use, or sale of merchandise that lowers the character of the City as the landlord.

13) Tenant's Work  
The Tenant will accept the Leased Land in an "as is" condition and must satisfy itself, at its own expense, that its intended use complies with the existing Zoning By-Law, Building Code, Ontario Fire Code, and all other applicable rules and regulations. All work required to render the Leased Land suitable for its use and will be performed at the Tenant's sole cost and expense.

14) Security Deposit  
\$50,000.00 (the "Initial Payment of Rent") has been submitted by the Tenant. The Initial Payment of Rent will be applied against annual base rent due in the first year of the term. The City will not be required to pay interest on the Initial Payment of Rent.

The first quarterly instalment of Annual Base Rent has been submitted to the City and the equivalent of one month's rent will be retained as a security deposit that may be applied to any costs or expenses incurred as a result of default of the Tenant, and the remainder will be credited to the rent abatement period.

15) Environmental Remediation  
The Tenant will cause to be conducted a Phase II Environmental Assessment by a third party environmental consultant approved by the City and will conduct the remediation of the Leased Land and obtain a Record of Site Condition, if required.

The costs of the Environmental Assessment and the subsequent remediation of the Leased Land will be paid by the Tenant in the first instance and the City will reimburse the Tenant for 50% of these costs.

16) Additional Terms  
Such other terms and conditions as are acceptable to the Chief Corporate Officer, in form satisfactory to the City Solicitor.