



STAFF REPORT ACTION REQUIRED

Acquisition of a portion of 15 Mallow Road for Parkland

Date:	May 9, 2014
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer Deputy City Manager, Cluster "A"
Wards:	Ward 34 – Don Valley East
Reference Number:	P:\2014\Internal Services\RE\Ec14010re

SUMMARY

The purpose of this report is to obtain authority to acquire a 0.501 hectares (1.238 acre) portion of the surplus school site at 15 Mallow Road (the "School Site") from the Toronto District School Board ("TDSB") for parkland purposes. The lands proposed to be acquired by the City are shown on Appendix "B1" attached hereto (the "Property").

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer and Deputy City Manager, Cluster "A" recommend that:

1. City Council grant authority to enter into an Offer to Sell agreement with the Toronto District School Board ("TDSB") for the Property at a purchase price of \$2,720,000, plus applicable taxes, registration fees and environmental assessments and related work, estimated at \$380,000 substantially on the terms outlined in Appendix "A" to this report, for a total cost of \$3,100,000 net of HST recoveries, and on such other terms and conditions as may be acceptable to the Chief Corporate Officer and the Director of Real Estate Services and in a form satisfactory to the City Solicitor.

2. City Council amend the 2014 Capital Budget of Parks, Forestry and Recreation by the addition of a project "15 Mallow Road - Parkland Acquisition" for \$3,100,000 with funding provided from Parkland Acquisition - North York Local (XR2041) until depleted, with the rest coming from the Parkland Acquisition – North District Local Parkland Reserve Fund (XR2206).
3. City Council authorize severally each of the Chief Corporate Officer and the Director of Real Estate Services to execute the Offer to Sell agreement (the "Agreement") and associated agreements and documents under the Agreement on behalf of the City.
4. City Council authorize the City Solicitor to complete the transaction contemplated in the Agreement and associated agreements and documents under the Agreement on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable.
5. City Council authorize the appropriate City officials be directed to take the necessary action to give effect thereto.

Financial Impact

This report seeks Council approval to amend the approved 2014 Capital Budget of Parks Forestry and Recreation by the addition of a project "15 Mallow Road" for \$3,100,000 with funding provided from Parkland Acquisition - North York Local (XR2041) until depleted, with the rest coming from the Parkland Acquisition – North District Local Parkland Reserve Fund (XR2206). The two reserve funds currently have uncommitted balances of \$469,514 in the Parkland Acquisition - North York Local (XR2041) and \$4,297,945 in the Parkland Acquisition – North District Local Parkland Reserve Fund (XR2206).

The operating and maintenance costs of the Property are estimated at \$40,000 per year, starting in 2016. If this property is approved for acquisition, the transaction is expected to close on August 14, 2014, but maintenance of the site will not commence until the existing lease for the School Site, including the Property, expires on June 30th, 2015 and the building on the Property has been demolished and the Property has been prepared for parkland use. The Property will be unavailable for public use until the Property has been prepared for parkland use. The ongoing maintenance cost for the remainder of 2015 will be included within the 2015 Parks, Forestry and Recreation Operating Budget submission. The operating impact for this Property would be added to the 2016 Operating Budget submission when full maintenance services for the Property is expected to start.

On the closing date of the City's acquisition of the Property, the City will be the owner of the Property and the TDSB will be the owner of the remainder of the School Site. The TDSB intends on selling the remainder of the School Site to a third party purchaser. It is expected that the remainder of the School Site is to be developed for residential uses.

There is currently a lease in place with La Citadelle International Academy of Arts and Science Inc. (the "Tenant") with respect to the School Site, including the Property, for a term expiring on June 30th, 2015. City Staff are recommending that the owner of the remainder of the School Site be entitled to receive all of the net rent payable under the lease with the Tenant from the closing date of the City's acquisition of the Property until the expiry of the lease with the Tenant on June 30th, 2015 on the basis that the owner of the remainder of the School Site, whether it is the TDSB or the purchaser of the remainder lands of the School Site, will be responsible to fulfill all of the landlord's obligations such as property and building maintenance under the lease with the Tenant during such period. The monthly net rent payable under the lease by Tenant for the remainder of the term of the lease until June 30th, 2015 is \$16,588.33 gross. As the City will be the owner of the Property, which forms a part of the leased premises under the lease with the Tenant, after the City's closing date, City Staff have negotiated an adjustment in the amount of \$80,000 to the initial purchase price of \$2,800,000. The reduction of \$80,000 represents half of the net rent revenue accruing to the landlord under the lease with the Tenant from the City's acquisition of the Property on August 14th, 2014 until the expiry of the lease on June 30th, 2015.

Also, under the lease with the Tenant, the Tenant is entitled to a reimbursement of the unamortized portion of the costs paid by the Tenant for work done on the School Site, which is to be paid to the Tenant by the landlord under the lease on the expiry of the lease on June 30th, 2015 in the amount of \$47,917.07. The TDSB is providing an undertaking in the lease assignment and assumption agreement attached as a schedule to the Agreement (the "Lease Assignment and Assumption Agreement") to pay this amount to the Tenant upon expiry of the lease with the Tenant on June 30th, 2015.

The owner of the remainder lands is required to complete the preparation of the Property for the City's intended municipal use of the Property as a park to the City's standards and specifications. These include those standards provided as Schedule "SCP" to the Agreement. Such work is to be completed on or before June 30th, 2016, after the expiry of the lease with the Tenant for the School Site on June 30th, 2015, subject to and in accordance with a property preparation work agreement attached as a schedule to the Agreement (the "Property Preparation Work Agreement"). As security for the completion of such work, City Staff are recommending that the City hold back from the purchase price the sum of \$300,000 to be held and administered by the City as escrow agent in accordance with a holdback agreement attached as a schedule to the Agreement (the "Holdback Agreement").

DECISION HISTORY

The subject property is owned by the TDSB and was declared surplus to their needs, pursuant to the provisions of *Ontario Regulation 444/98* made under the *Education Act, R.S.O. 1990* at its meeting of June 19th, 2013. Pursuant to *Ontario Regulation 444/98* any offers to purchase the above noted property needed to be received by the TDSB by December 4th, 2013. The Toronto Land Corporation (TLC), which is the real estate arm of the TDSB, was advised in writing on December 2nd, 2013 that the City has interest in the Property. City Staff and TLC have agreed to the form and content of the Agreement.

ISSUE BACKGROUND

15 Mallow Road is a former TDSB school site situated near the corner of Mallow Road and The Donway East. The site has two frontages on each of those two streets. The total land area of this former school site is 1.752 hectares (4.330 acres) and is irregularly shaped. The school hasn't been used as a school by the TDSB for 30 years. There is currently a lease in place with the Tenant with respect to the School Site, including the Property, for a term expiring on June 30th, 2015.

The site is zoned 01 (Open Space Zone) under the former North York zoning By-law, and designated neighbourhoods in the Official Plan. The zoning permits school and park uses, but not residential uses. Schools, parks and low density residential uses are permitted by the Official Plan designation.

COMMENTS

A. Desirability of the use of the Property as a park.

Acquisition of the Property is desirable for park purposes, as the surrounding community has a lower level of parkland provision. The existing school yard on the School Site acts as the major open space component for this quadrant of Central Don Mills. By retaining a portion of the School Site, the impact of the loss of the School Site as open space is lessened.

This quadrant of Don Mills currently has the second lowest of the five provision levels of local parkland accessible to the community. Due to limited funding, Parks, Forestry and Recreation must focus its acquisition efforts on sites located within areas which have the lowest parkland levels. Only when there are funds available in the parkland reserve account to acquire the parkland does the City acquire land in areas with lower levels of parkland provision.

Since 1996 the population in this portion of Central Don Mills has changed from 1,484 to 1,520 in 2011. (Source Statistics Canada) The local parkland provision has dropped slightly but remains in the same quintile. The population in the area is characterised as stable and low growth.

The Property has sizable frontage on Mallow Road. A number of mature trees are featured in this space and will be preserved where possible. This new park space will be available for use by the public upon completion of the demolition and restoration with sod of the portion of open space occupied by the current school building. This park space will be of sufficient size to accommodate a range of park activities, but is not large enough for formal sports field provision. The focus, the nature, and the detailed design of the park space should be developed with the local community after the space has been created. A public process to development the park block will commence in 2015.

B. Lease

The lease with the Tenant is to expiry on June 30th, 2015. In order to seek as much security as possible prior to the City's acquisition of the Property, City Staff are recommending that the TDSB deliver a tenant estoppel certificate from the Tenant to confirm that the Tenant acknowledges that the lease is to expire on June 30th, 2015 and that the Tenant will deliver vacant possession of the School Site, including the Property, on the expiry of the lease on June 30th, 2015. The Lease Assignment and Assumption Agreement requires the owner of the remainder of the School Site to deliver vacant possession of the Property to the City as soon as reasonably possible after the expiry of the lease with the Tenant on June 30th, 2015. The owner of the remainder lands of the School Site is solely responsible for any and all costs, including legal fees, for vacating the Tenant from the School Site, including the Property, and for delivering vacant possession of the Property to the City after the expiry of the lease with the Tenant on June 30th, 2015.

C. Environmental Due Diligence

As part of the City's due diligence in the acquisition of the Property, City Staff are conducting environmental assessment review and additional environmental assessments to confirm that the Property meets the Ministry of the Environment standards or other requirements for the City's intended municipal use of the Property as a park.

D. Agreement

Major terms of the Agreement are provided in Appendix "A" attached hereto. City Staff considers the Agreement to the City to be fair and reasonable and therefore, recommends the approval of this transaction.

SUMMARY

This proposed acquisition is to protect and guarantee access by the community to a parcel of parkland that is already a valued community open space, in a lower parkland provision area, and is acquired for fair market value.

CONTACTS

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SIGNATURE

Robert Rossini
Deputy City Manager, Chief Financial Officer

Brenda Patterson
Deputy City Manager, Cluster "A"

ATTACHMENTS

Appendix "A" – Terms and Conditions
Appendix "B" – Location Map
Appendix "B1" – Plan of Property

Appendix "A" – Terms and Conditions

Owner:	Toronto District School Board
Location:	Part of 15 Mallow Road, Toronto, Ontario, Toronto
Legal Description of Property:	Being those lands irregularly shaped and having an area of approximately 1.238 acres (0.501 hectares) shown on Appendix B1 and part of those lands legally described as Block C on Plan 4544 North York; subject to Instrument No. NY171498, save and except the Bell easement therein; Toronto (North York), being part of PIN: 10116-0040(LT) in the Land Registry Office of Toronto (No. 66).
Purchase Price:	\$2,720,000.00
Irrevocable period:	Shall be the period of time ending at 11:59 pm. On June 18 th , 2014
Due Diligence period	Shall be the period of time ending at 11:59 pm. On June 18 th , 2014
Requisition period	Shall be the period of time ending at 11:59 pm. On June 18 th , 2014
Closing Date:	August 14 th , 2014
Lease:	The School Site, including the Property, is under occupation by La Citadelle Academy of Arts and Science Inc. (the "Tenant") for a term expiring on June 30 th , 2015. The Tenant occupies the School Site, including the Property and a building which straddles both the Property and the remainder lands of the School Site.
Chattels & Fixtures:	All chattels and fixtures not owned by the Tenant are included in the Purchase Price under the Agreement.
Lease Assignment and Assumption Agreement:	The owner of the remainder lands of the School Site, whether it is the TDSB or the purchaser of the remainder lands of the School Site, is entitled to receive all of the net rent payable under the lease with the Tenant from the closing date of the City's acquisition of the Property until the expiry of the lease with the Tenant on June 30 th , 2015, on the basis that the owner of the remainder lands of the

School Site, whether it is the TDSB or the purchaser of the owner of the remainder lands of the School Site, will be responsible to fulfill all of the landlord's obligations under the lease with the Tenant such as property and building maintenance under the lease with the Tenant during such period, subject to and in accordance with the Lease Assignment and Assumption Agreement to be entered into between the City, the TDSB and the purchaser of the remainder lands of the School Site on the Closing Date. As the City of Toronto will be the owner of the Property, which forms a part of the leased premises under the lease with the Tenant, after the Closing Date, City Staff have negotiated an adjustment in the amount of \$80,000 to the initial purchase price of \$2,800,000.00. The \$80,000 represents half of the net revenue accruing to the landlord under the lease with the Tenant from City's acquisition of the Property on August 14th, 2014 until the expiry of the lease on June 30th, 2015. Under the lease with the Tenant, the Tenant is entitled to a reimbursement of the unamortized portion of the costs paid by the Tenant to TDSB for work done on the School Site in 2010, which is to be paid to the Tenant by the landlord under the lease with the Tenant on the expiry of the lease in the amount of \$47,917.07. The TDSB is providing an undertaking in the Lease Assignment and Assumption Agreement to pay this amount to the Tenant upon expiry of the lease with the Tenant on June 30th, 2015. The Lease Assignment and Assumption Agreement requires the owner of the remainder of the School Site to deliver vacant possession of the Property to the City as soon as reasonably possible after the expiry of the Lease on June 30th, 2015. The owner of the remainder lands of the School Site is solely responsible for any and all costs, including legal fees, for vacating the Tenant from the School Site and for delivering vacant possession of the Property to the City after the expiry of the lease with the Tenant on June 30th, 2015. During any potential overholding period, the owner of the remainder lands of the School Site will be responsible to fulfill all of the landlord's obligations such as property and building maintenance under the lease with the Tenant. Any overholding rent payable under the lease with the Tenant during such overholding period, net of any operating expenses actually incurred by the owner of the remainder lands of the School Site during such overholding period, shall be shared equally between the City and the owner of the remainder lands of the School Site.

**Property Preparation
Work Agreement:**

The owner of the remainder lands of the School Site, whether it is the TDSB or the purchaser of the remainder lands of the School Site, is required to complete the preparation of the Property for the City's intended municipal use of the Property as a park to the City's standards and specifications, including those specifications provided in Schedule "SCP" to the Agreement, on or before June 30th, 2016, after the expiry of the lease with the Tenant for the School Site on June 30th 2015, subject to and in accordance with the Property Preparation Work Agreement.

Holdback Agreement:

As security for the completion of the property preparation work under the Property Preparation Work Agreement by the owner of the remainder lands of the School Site, whether it is the TDSB or the purchaser of the remainder lands of the School Site, the City will hold back from the Purchase Price under the Agreement \$300,000.00 (the "Holdback Amount") to be held and administered in accordance with the Holdback Agreement. The City is acting as escrow agent under the terms of the Holdback Agreement. The Holdback Agreement provides that the Holdback Amount can be released upon subject to and in accordance with the terms set out in the Holdback Agreement, including (a) the failure of the owner of the adjacent lands of the School Site to complete the property preparation work on or before June 30th, 2016, and/or (b) default in the obligations of the owner of the remainder lands of the School Site under the Property Preparation Work Agreement. The Holdback Amount is to be released to the owner of the remainder lands of the School Site upon the earlier of: (a) the completion of the property preparation work as determined by the City in its sole, unfettered and unreviewable discretion or the receipt of an irrevocable revolving credit in the amount of the Holdback Amount in form and content acceptable to the City.

Payment to Vendor:
Purchase Price: \$2,720,000.00

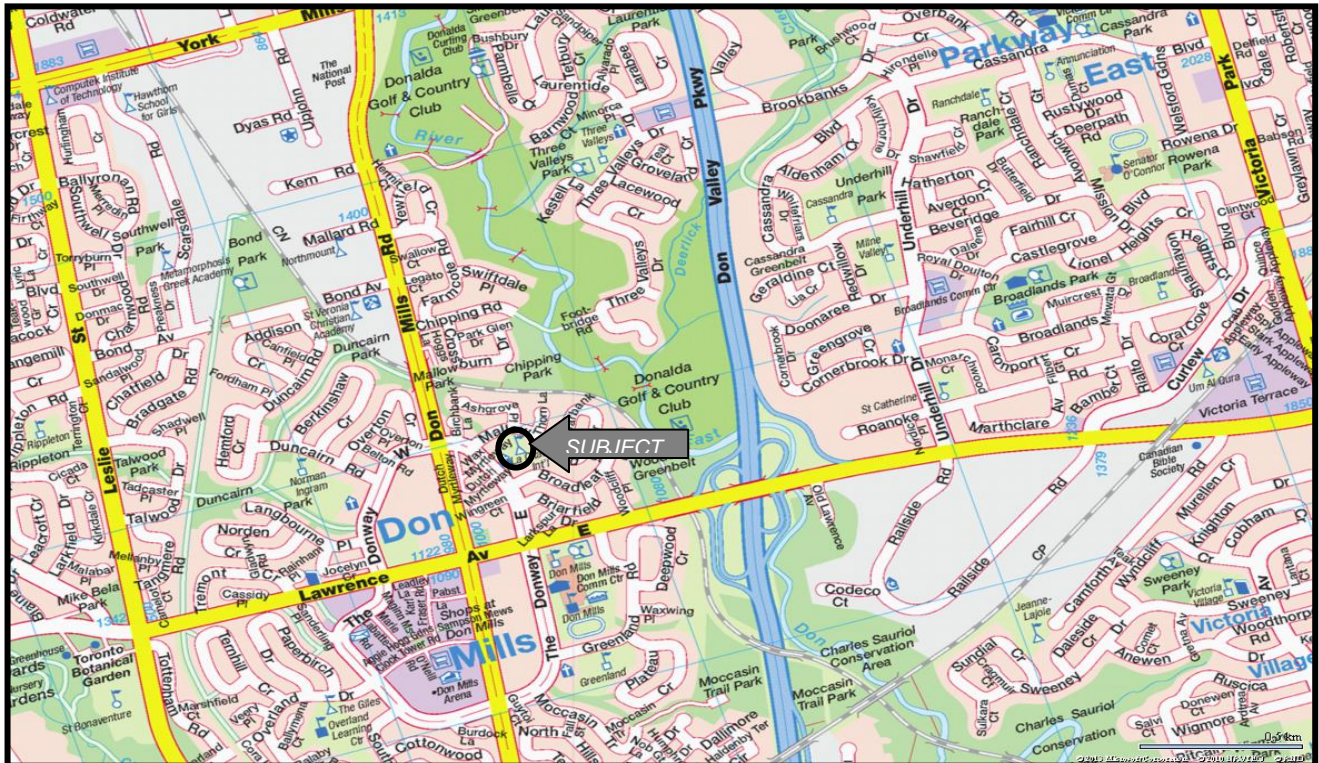
City's Costs

(Approximately) HST (non-refundable): \$47,872.00
Land Transfer Tax \$39,275.00
Registration Costs: \$200.00
Phase I ESA,
Phase II ESA,
Site Preparation /Remediation:
\$292,653.00

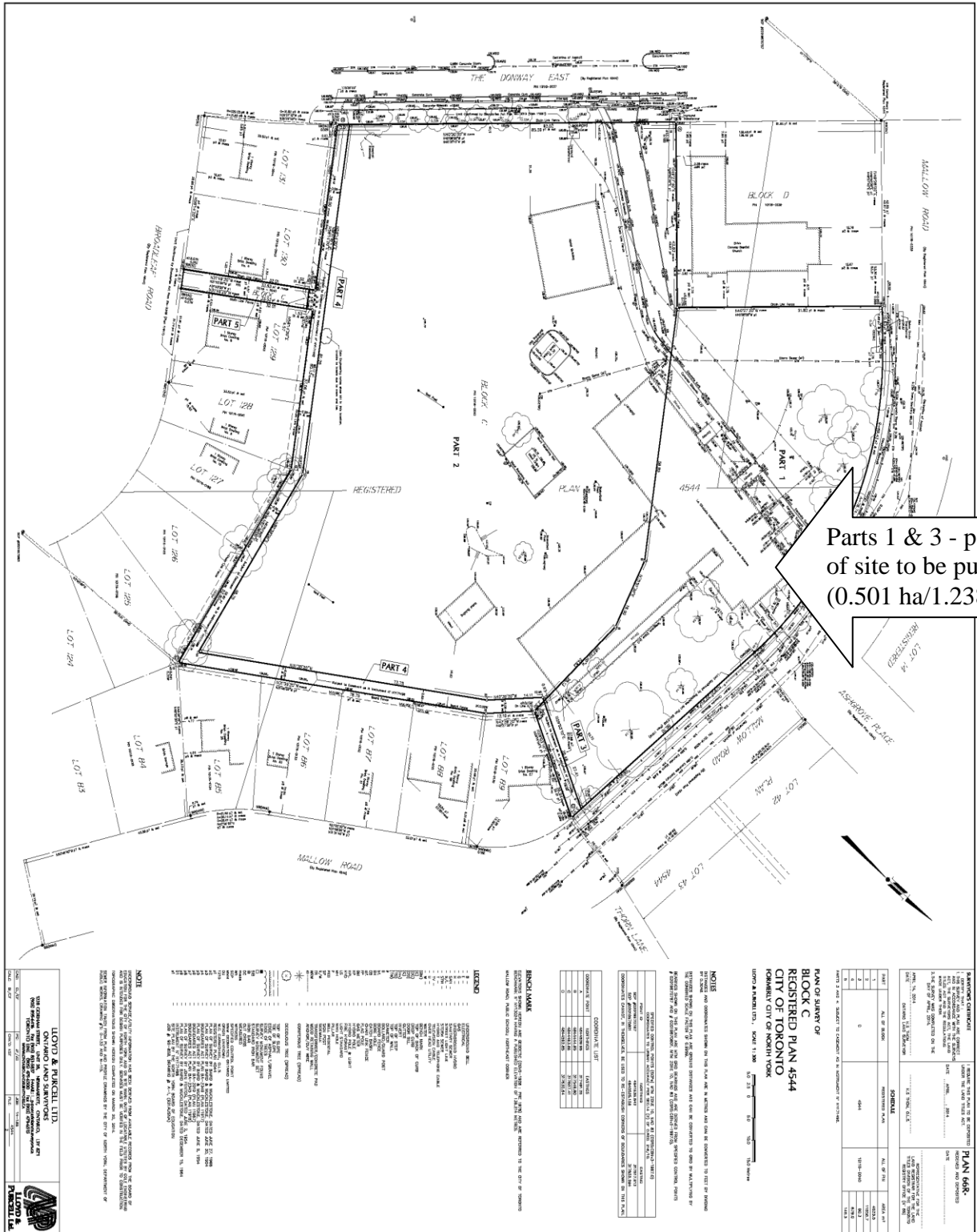
Total Purchase and Closing Costs: **\$3,100,000.00**

"Hold Back Amount" \$300,000.00

Appendix "B" – Location Map



Appendix "B1" – Plan of Property



Parts 1 & 3 - portions of site to be purchased (0.501 ha/1.238 acres/)

LOVY & PARKER LTD.
 1000 SHEPPARD AVENUE EAST, SUITE 1000
 SCARBOROUGH, ONTARIO M1S 1T6
 (416) 291-1100
 www.lovyandparker.com

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REGISTERED PLAN
 REGISTERED PLAN 4544
 BLOCK C
 PLAN OF SALVEY OF
 CITY OF TORONTO
 HONORABLE CITY OF NORTH YORK
 LOVY & PARKER LTD., SOLE 1:1000

NOTES
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