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**File No. 039280/000001**

February 1, 2024

**Delivered by Email**

Attention: Sylwia Przewdziecki – Secretariat, City Council

Mayor and Members of Council  
Toronto City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

Email: councilmeeting@toronto.ca

**Re: City Council Meeting, February 6-8, 2024**

**GG9.9 - Expropriation of Property Interests at 2 Bloor Street East and 90 Bloor Street East for the Bloor Yonge Capacity Improvement Project - Stage 2 (Ward 11)**

On February 7, 2024, Council will consider recommendations to expropriate certain lands and interests from 6524443 Canada Inc. (a Brookfield Properties subsidiary, “Brookfield”) at the northeast corner of Yonge and Bloor, for the purposes of reconstructing and expanding the capacity of the Bloor/Yonge subway station (known as the Bloor-Yonge Capacity Improvement or “BYCI Project”).

Brookfield is very concerned that the City appears to be proceeding to Council for approval to expropriate all of Brookfield’s Freehold Lands at the corner of Yonge and Bloor when lesser lands and interests would fully address TTC’s requirements and construction timetable. In doing so, the City will be exceeding its jurisdiction, spending millions of taxpayers’ dollars beyond what is needed, and incurring risk of owning an active site with significant operational responsibility. A full taking of Brookfield’s Freehold Lands will also present material adverse financial and operational consequences for Brookfield and others, and cause irreparable damage to Brookfield’s asset at this key transit node.

We are respectfully requesting that the City not proceed with a full taking of Brookfield’s Freehold Lands, but that it approve more limited takings within the said freehold lands of those fee simple interests that it requires for its platform and exit stairs, and a temporary easement to address the construction of the new chiller plant and other facilities to replace those that are being demolished in Brookfield’s Leasehold Lands in order to make way for the BYCI Project.

## **Background**

By way of background, Brookfield is the operator of retail, commercial and office premises at the property municipally known as 2 Bloor Street East, Toronto and located at the corner of Yonge Street and Bloor Street (“2 Bloor Street”). Brookfield owns Brookfield’s Freehold Lands on the westerly portion of 2 Bloor Street, and also is the Tenant pursuant to a long-term land lease with the City over the easterly portion of 2 Bloor Street designated as PIN 21110-0043 (LT) (“Brookfield’s Leasehold Lands”).

The proposed expropriations include the full taking of Brookfield’s fee simple interests in the westerly portion of 2 Bloor Street East, designated at PIN 21110-0266 (LT) (hereinafter “Brookfield’s Freehold Lands”). Brookfield’s Freehold Lands and Brookfield’s Leasehold Lands are operated and financed as a singular asset, altogether hereinafter described as the “Complex” .

On May 11 and 12, 2022, City staff sought and received approval from City Council for applications for approval to expropriate portions of Brookfield’s Freehold Lands and portions of Brookfield’s Leasehold Lands needed for the BYCI Project (the “Partial Land Requirements”). The interests initially sought by way of application for approval to expropriate were limited to:

- (a) a very small area at the northwest corner of Brookfield’s Freehold Lands for the new subway platform;
- (b) a small portion of Brookfield’s Freehold Lands needed for an emergency stairwell exit and retaining wall in the southeast corner of Brookfield’s Freehold Lands; and,
- (c) portions of Brookfield’s Leasehold Lands for access, and to be incorporated into the BYCI Project for new platforms and other project related features.

Unexpectedly, in July, 2022, City staff sought and received a further approval from Council for an application for approval to expropriate the entirety of Brookfield’s Freehold Lands, and not only the small areas of Brookfield’s Freehold Lands needed for the platform and stairwell. This, despite the fact that the City’s and TTC’s actual requirements for lands and interests from Brookfield’s Freehold Lands are much more limited in nature.

The expropriation of the entirety of Brookfield’s Freehold Lands is not only unnecessary for the completion of the BYCI Project, but the expropriation of that parcel will have immediate, material adverse financial and operational impacts for Brookfield of an order of magnitude that likely far exceeds anything that is contemplated or budgeted by the City. These impacts could include, but are not limited to:

- (a) implications to the existing financing for the Complex given the fact that the financing is registered against and based on the value of both Brookfield’s Freehold Lands and Brookfield’s Leasehold Lands as a singular security;
- (b) frustration of the Reciprocal Easement and Operating Agreement (the “REOA”), which governs the operation and maintenance of the Complex and ensures cooperation among various ownership interests all depending upon granting continuing rights over common facilities within each ownership group’s lands. For example, Brookfield achieves the benefit of an easement over a loading dock and parking facilities that are not on its

lands and grants easement rights in the existing chiller plant on Brookfield's Leasehold Lands to other benefitting owners;

- (c) frustration of Brookfield's tenant's interests which may result in claims for business losses not only from Brookfield, but also from the various tenant interests directly and indirectly resulting from the expropriation of the full freehold parcel. These losses will be amplified by the fact that the leases impacted within Brookfield's Freehold Lands are partially located within Brookfield's Leasehold Lands;
- (d) interference with Brookfield's ability to maintain the current chiller plant within Brookfield's Leasehold Lands, for the purposes of ensuring the continued and uninterrupted operation of the Complex. This problem is accentuated by the fact that the cooling towers, which are an integral part of the existing chiller system, are located on the roof of 2 Bloor Street East in an area over which the City has made no application for approval to expropriate. The City's plan to take possession of the existing Chiller Plant ignores the fact that the maintenance of that facility requires access to areas the City has no rights to traverse;
- (e) the loss of ownership and control of one of Brookfield's premier assets in Canada, being the northeast corner of Yonge and Bloor, as well as the competitive advantages to Brookfield that go along with having this high-profile site in its portfolio; and,
- (f) the likelihood of Brookfield having to defend itself from claims for damages and/or third-party claims resulting from the City's decision to move the chiller plant to lands Brookfield will no longer own if the expropriation as proposed.

Brookfield sought a hearing of necessity in connection with all the City's proposed expropriations. This hearing was held before Douglas Colbourne, a member of the Ontario Land Tribunal, on July 6 and 7, 2023. The City's witnesses reiterated the City's position that only portions of Brookfield's Freehold Lands were required for the BYCI Project. Member Colbourne found that the proposed expropriation of the entirety of Brookfield's Freehold Lands would create "significant operational problems for Brookfield, its tenants and others" and that the expropriation of the entirety of Brookfield's Freehold Lands "was not entirely supported" by the evidence put to the Tribunal. Member Colbourne ultimately recommended that the proposed expropriation of the entirety of Brookfield's Freehold Lands proceed as proposed solely for purposes of expediency and because "to deny some or all of the takings as not fully supported may not afford the Parties sufficient time to cover all ground for... [the] commencement of construction."

Since July, 2022, Brookfield has consistently objected to the proposed expropriation of the entirety of Brookfield's Freehold Lands on the basis that the City has no jurisdiction to proceed with that expropriation as, the City has no physical requirement to use the entirety of Brookfield's Freehold Lands for the BYCI Project. Brookfield asserts that the *City of Toronto Act, 2006* does not permit the City to expropriate more lands or interests than those which are required for the BYCI Project. City staff may point to Member Colbourne's decision as support for the proposed expropriation of Brookfield's Freehold Lands. However, Tribunal members conducting hearings of necessity have no power to decide jurisdictional questions. The arbiter of such questions is the Superior Court of Justice.

Brookfield's request is that City Council not approve a full taking of Brookfield's Freehold Lands, and that it instead approve "lesser" takings within the freehold lands for the limited purposes of constructing the new TTC platform (fee simple required by City), and exit stairs (fee simple required by City), while approving the expropriation of only a temporary easement over Brookfield's Freehold Lands to permit construction of the new chiller plant.

The expropriation of the entirety of Brookfield's Freehold Lands will have dramatic and far-reaching impacts not only on Brookfield's continued operation of the Complex, but also its tenants, adjoining land-owners who depend on the current building services and infrastructure, and the tens of thousands of City residents who frequent the Complex or use the facilities within it. Put simply, the uncertainty resulting from the expropriation of the entirety of Brookfield's Freehold Lands will cause irreparable harm to one of Brookfield's flagship assets in Canada.

Brookfield remains steadfast in its willingness to resolve the disputes described herein on an amicable basis.

However, should Council adopt the recommendations of staff and approve the expropriation of the entirety of Brookfield's Freehold Lands, Brookfield will have no choice but to pursue all remedies available to it to protect its asset(s) against the irreparable harm caused by this overreaching expropriation, including commencing proceedings in the Superior Court of Justice.

This matter is of paramount importance to all parties and the taxpayers of the City of Toronto.

We thank you for your attention to this matter and hope that City Council sees the merits in directing a cooperative and commercially sensible land acquisition approach.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**



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