

**DELEGATED APPROVAL FORM
CHIEF CORPORATE OFFICER
DIRECTOR OF REAL ESTATE SERVICES**

TRACKING NO.: 2016-148

Approved pursuant to the Delegated Authority contained in Executive Committee Item EX43.7 entitled "**Delegation of Authority in Certain Real Estate Matters**" adopted by City Council on May 11 and 12, 2010 (Confirmatory By-law No. 532-2010, enacted on May 12, 2010), as amended by GM24.9 entitled "**Minor Amendments to Delegation of Authority in Certain Real Estate Matters**" adopted by City Council on October 8, 9, 10 and 11, 2013 (Confirmatory By-Law No. 1234-2013, enacted October 11, 2013), as amended by DAF 2013-307 and DAF 2014-087; and further amended by EX44.22 entitled "Strategic Property Acquisitions" adopted by City Council on August 25, 26, 27 and 28, 2014 (Confirmatory By-law No.1074-2014, enacted on August 28, 2014).

Approved pursuant to the Delegated Authority contained in Executive Committee Item EX33.44 entitled "**Union Station Revitalization Implementation and Head Lessee Selection**" adopted by City Council on August 5 and 6, 2009. City Council confirmatory By-law No. 749-2009, enacted on August 6, 2009.

Prepared By:	Nick Simos	Division:	Real Estate Services
Date Prepared:	June 27, 2016	Phone No.:	416-392-7120

Purpose	To obtain authority to enter into (i) a lease agreement (the "Lease") and a lease extension agreement (the "Extension Agreement") with 2029990 Ontario Inc. c.o.b. as Buster's Sea Cove (the "Tenant") for Store No. 33 (the "Leased Premises"), located on the ground level of the South St. Lawrence Market (the "Market"); (ii) an assignment and consent agreement (the "Assignment") with the Tenant and 1936727 Ontario Inc. c.o.b. as Buster's Sea Cove (the "Assignee") regarding the Leased Premises; and (iii) an indemnity agreement (the "Indemnity Agreement") with Somani Bashirali in favour of the City.
Property	South St. Lawrence Market – Store No. 33 92-95 Front Street East, Toronto, ON M5E 1C3 (location as shown on Schedules "A" and "B" attached hereto)
Actions	<ol style="list-style-type: none"> 1. Authority is granted to enter into: <ol style="list-style-type: none"> a. the Lease with the Tenant, for a term from January 1, 2010 to December 31, 2014; b. the Extension Agreement with the Tenant, for a term from January 1, 2015 to December 31, 2019; c. the Assignment with the Tenant and the Assignee, effective July 4, 2016; and d. the Indemnity Agreement with Somani Bashirali; <p>all substantially on the terms and conditions set out herein and on any other or amended terms and conditions as the Chief Corporate Officer may deem appropriate, all in a form acceptable to the City Solicitor.</p> 2. The Chief Corporate Officer, or her successor or designate, shall administer and manage the Lease including the provision of any consents, certificates, approvals, waivers, notices and notices of termination, provided that the Chief Corporate Officer may, at any time, refer consideration of such matters to City Council for its determination and direction. 3. The appropriate City Officials are authorized and directed to take the necessary action to give effect thereto.
Financial Impact	<p>For the period from January 1, 2010 to December 31, 2014, pursuant to the Lease, the City received semi-gross rent from the Tenant totalling \$144,483.84.</p> <p>For the period from January 1, 2015 to December 31, 2015, pursuant to the Extension Agreement, the City received semi-gross rent from the Tenant of \$60.55 per square foot totalling \$31,770.00.</p> <p>For the period from January 1, 2016 to July 3, 2016, pursuant to the Extension Agreement, the City will receive semi-gross rent from the Tenant of \$63.58 per square foot totalling \$19,459.86.</p> <p>For the period from July 4, 2016 to December 31, 2016, pursuant to the Assignment, the City will receive semi-gross rent from the Assignee of \$63.58 per square foot, which rate shall increase by 5% on January 1 of every subsequent year of the term of the Extension Agreement, totaling approximately \$124,331.46.</p> <p>The Deputy City Manager & Chief Financial Officer has reviewed this DAF and agrees with the financial impact information.</p>

Comments	The Market has been operated by the City of Toronto as a food market since 1903. Currently, 67 different tenants occupy approximately 47,000 square feet of rentable space in the Market.
	The Tenant has operated its business, Buster's Sea Cove, in the Market for almost 10 years, since 2006. The Tenant's President is planning to retire and would like to sell the business.
	Somani Bashirali, in trust for the Assignee, has entered into an agreement to purchase the business from the Tenant (the "Purchase Agreement"). The Assignee proposes to run the business under the same name (Buster's Sea Cove), and has committed to maintain the quality and popularity of the business which are acceptable to St. Lawrence Market Management.
	In order to satisfy the terms of the Purchase Agreement, the City has been requested to enter into the Lease and Extension Agreement with the Tenant, and the Assignment with the Tenant and the Assignee, incorporating current market terms and conditions. With the protection of the Indemnity Agreement, Real Estate Services staff are amenable to this request.
Terms	See page 5 for main terms and conditions.

Property Details	Ward:	28 – Toronto Centre-Rosedale
	Assessment Roll No.:	
	Approximate Size:	
	Approximate Area:	524.69 square feet
	Other Information:	

Revised: April 11, 2014

A.	Director of Real Estate Services has approval authority for:	Chief Corporate Officer has approval authority for:
1. Acquisitions:	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
2. Expropriations:	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 Million.
3. Issuance of RFPs/REOIs:	Delegated to a more senior position.	<input type="checkbox"/> Issuance of RFPs/REOIs.
4. Permanent Highway Closures:	Delegated to a more senior position.	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.
5. Transfer of Operational Management to ABCDs:	Delegated to a more senior position.	<input type="checkbox"/> Transfer of Operational Management to ABCDs.
6. Limiting Distance Agreements:	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
7. Disposals (including Leases of 21 years or more):	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:	Delegated to a more senior position.	<input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.
9. Leases/Licences (City as Landlord/Licensor):	<input checked="" type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million; <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding three (3) months, including licences for environmental assessments and/or testing, etc.	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$3 Million; <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding six (6) months, including licences for environmental assessments and/or testing, etc.
10. Leases/Licences (City as Tenant/Licensee):	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$3 Million.
11. Easements (City as Grantor):	<input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million. <input type="checkbox"/> (b) When closing road, easements to pre-existing utilities for nominal consideration.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million. Delegated to a less senior position.
12. Easements (City as Grantee):	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.	<input type="checkbox"/> Where total compensation does not exceed \$3 Million.
13. Revisions to Council Decisions in Real Estate Matters:	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$500,000).	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$1 Million).
14. Miscellaneous:	<input checked="" type="checkbox"/> (a) Approvals, Consents, Notices and	<input type="checkbox"/> (a) Approvals, Consents, Notices and

<input type="checkbox"/>	(b) Assignments under all Leases/Licences: Releases/Discharges;	<input type="checkbox"/>	(b) Assignments under all Leases/Licences: Releases/Discharges;
<input type="checkbox"/>	(c) Surrenders/Abandonments;	<input type="checkbox"/>	(c) Surrenders/Abandonments;
<input type="checkbox"/>	(d) Enforcements/Terminations;	<input type="checkbox"/>	(d) Enforcements/Terminations;
<input type="checkbox"/>	(e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates;	<input type="checkbox"/>	(e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates;
<input type="checkbox"/>	(f) Objections/Waivers/Cautions;	<input type="checkbox"/>	(f) Objections/Waivers/Cautions;
<input type="checkbox"/>	(g) Notices of Lease and Sublease;	<input type="checkbox"/>	(g) Notices of Lease and Sublease;
<input type="checkbox"/>	(h) Consent to regulatory applications by City, as owner;	<input type="checkbox"/>	(h) Consent to regulatory applications by City, as owner;
<input type="checkbox"/>	(i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title;	<input type="checkbox"/>	(i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title;
<input type="checkbox"/>	(j) Documentation relating to Land Titles applications;	<input type="checkbox"/>	(j) Documentation relating to Land Titles applications;
<input type="checkbox"/>	(k) Correcting/Quit Claim Transfer/Deeds.	<input type="checkbox"/>	(k) Correcting/Quit Claim Transfer/Deeds.

B. Chief Corporate Officer and Director of Real Estate Services each has signing authority on behalf of the City for:

- 1. Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- 2. Expropriation Applications and Notices following Council approval of expropriation.
- 3. Documents required to implement the delegated approval exercised by him.

Chief Corporate Officer also has approval authority for:

Leases/licences/permits at Union Station during the Revitalization Period, if the rent/fee is at market value.

Consultation with Councillor(s)

Councillor:	Pam McConnell	Councillor:	
Contact Name:	Tom Davidson	Contact Name:	
Contacted by:	X Phone <input type="checkbox"/> E-Mail <input type="checkbox"/> Memo <input type="checkbox"/> Other <input type="checkbox"/>	Contacted by:	Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Memo <input type="checkbox"/> Other <input type="checkbox"/>
Comments:	Concurs	Comments:	

Consultation with ABCDs

Division:	Financial Planning	Division:	
Contact Name:	Filisha Mohammed	Contact Name:	
Comments:	Reviewed and there are no changes.	Comments:	

Legal Division Contact

Contact Name:	Nicole See-Too
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DAF Tracking No.: 2016-148	Date	Signature
Recommended by: Nick Simos, Manager	June/27/2016	Sgd.\ Nick Simos
<input type="checkbox"/> Recommended by: Director of Real Estate Services <input checked="" type="checkbox"/> Approved by: Joe Casali	July/4/2016	Sgd.\ Joe Casali
<input type="checkbox"/> Approved by: Chief Corporate Officer Josie Scioli		

General Conditions (“GC”)

- (a) The local Councillor (or local Councillors if the subject property is located on a ward boundary or if the transaction involves an exchange of properties in more than one ward), will be consulted prior to the exercise of delegated Approving Authority by staff for all Acquisitions, Disposals, Land Exchanges and Leases.
- (b) Where approving power has been delegated to staff, the Chief Corporate Officer, in consultation with the applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the relevant Committee and Council for consideration and determination.
- (c) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (d) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget [or funding is available from alternative sources].
- (e) Property interests are to be based on appraised value, and no interest shall be granted at less than market value unless otherwise specifically authorized.
- (f) Authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions.
- (g) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, potential arbitration awards, loss claims, etc, but exclusive of any applicable taxes and registration costs.
- (h) Authority to acquire property is conditional upon provision being made to bring the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose.
- (i) Authority to initiate the permanent road closure process in **A.4** is conditional upon confirmation by the GM of Transportation Services that it is feasible to permanently close the highway.
- (j) Disposal authorities in **A.7** are subject to the property having been declared surplus, and the disposal policy complied with.
- (k) Land exchanges, except for those in **A.8**, may be authorized based on the delegated Approving Authority for Disposals in **A.7**.
- (l) Approving Authority with respect to land located in the Designated Waterfront Area is conditional upon the approval of the Director, Waterfront Secretariat.
- (m) Authority to approve an exchange of land in **A.8** is conditional upon confirmation by the Chief Planner and Executive Director, and the GM of Parks, Forestry & Recreation, that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior green space utility.
- (n) Approving Authority in **A.9** Leases (City as Landlord) but not Licences (City as Licensor) is limited to periods (including options/renewals) of less than twenty-one (21) years.
- (o) Total compensation in leasing matters where the City is landlord (**A.9**) includes the value of tenant improvements if factored into tenant’s rental payments.
- (p) Total compensation in leasing matters where the City is the tenant (**A.10**) includes the value of any tenant improvements to be paid by the City.
- (q) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (r) Total compensation in leasing matters where the City is landlord (**A.9**) or tenant (**A.10**) is to be calculated from the date of approval pursuant to this delegation (ie. first allowing for the expiry of any prior approvals, whether by Council or a delegated authority).
- (s) Approving Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated Approving Authority.
- (t) Approving Authority includes authority for amendments within the parameters of the delegated Approving Authority, the cumulative total of which may not exceed the delegated financial limit.
- (u) Where proposed additional amounts in **A.13** exceed 10 per cent of the original decision, even if otherwise in compliance with all other conditions, then approving authority is transferred upwards to the next more senior level of approving authority having the relevant overall financial limit.
- (v) Approving Authority includes authority for all documents necessary to implement the authority, on terms and conditions satisfactory to the Approving Authority, in consultation with the relevant operating Division(s).
- (w) Staff positions referred to in this delegation include successors from time to time.
- (x) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).
- (y) Delegated signing authorities in **B** are conditional upon the documents having received the City Solicitor’s prior “Approval as to Form”.
- (z) This delegation does not affect sales, acquisitions and leases over which the Affordable Housing Committee has responsibility.
- (aa) Authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional upon Council enacting a by-law designating such use.
- (bb) All residential leasing documents shall adhere to the *Residential Tenancies Act* and any successor legislation.
- (cc) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years.

Main Terms and Conditions

The Lease with the Tenant provides for the following main terms and conditions:

1. Tenant: 2029990 Ontario Inc. c.o.b. as Buster's Sea Cove
2. Leased Premises: Approximately 524.69 square feet (including store area and temporary area)
3. Term: January 1, 2010 to December 31, 2014
4. Semi-gross rent:
 - a. \$51.60 per square foot per annum for the period from January 1, 2010 to December 31, 2010;
 - b. \$52.25 per square foot per annum for the period from January 1, 2011 to December 31, 2011, plus CPI increase; and
 - c. \$52.90 per square foot per annum for the period from January 1, 2012 to December 31, 2014, plus CPI increase, compounded to include the 2011 CPI increase, based on the rate of \$52.90
5. Use: The Tenant shall use the Leased Premises for the sale at retail of:
 - Beverages: pop, milk, tea, iced tea, coffee, cappuccino, juice, mineral water
 - Breakfast: quiche (seafood), seafood pie, omelettes, pecan pancakes, kippers
 - Cold salad: seafood mousse, herring salad, shrimp salad, smoked trout salad, smoked salmon
 - Specials: shrimp portion, shrimp portion with fries and slaw, shrimp dinner with potato salad or salted potatoes and slaw, scallop portion, scallop with fries and slaw, scallop dinner with potato salad or salted potatoes and slaw, mussels steamed in white wine, crab cakes, crab or lobster roll
 - Seasonal and daily specials: broiled swordfish, seashore dinner, sea bass, sole, tuna, salmon – grilled, baked, or broiled, bouillabaisse
 - Accompaniments with specials: hot cornbread, muffins, salad on plate, fresh or grilled vegetables, choice of potatoes, oriental noodles, rice, seafood kabob
 - Sauces for fish: tartar sauce, hollandaise sauce, dill sauce, wine sauce, basil sauce, ketchup, seafood sauce, mustard, vinegar, salt and pepper
 - Daily menu: fish sandwich, fish dinner with fries and slaw, fish dinner with potato salad or salted potatoes and slaw, chowder/gumbo, salt potatoes, fries, onion rings, calamari, coleslaw, baked beans, zucchini sticks, mozzarella sticks
 - Desserts: apple cobbler, peach cobbler, blueberry cobbler, mixed fruit cobbler
 - To complement the daily fish menu, the Tenant is allowed to sell hamburgers, and to have one additional meat dish per day, provided that such dish shall be of a unique nature and not already available in the Market.
 - The Tenant may also sell Buster's Sea Cove souvenir items, provided no more than two (2) such items are on sale at any one time and provided further that both the Tenant's trade name and the St. Lawrence Market name are displayed on such products.

The Tenant shall not use the Leased Premises for any other purposes whatsoever.

6. Insurance: The Tenant shall throughout the Term, at its sole cost and expense, take out and keep in full force and effect, with the Landlord as an additional insured, all risks property insurance, business interruption insurance, crime insurance, and commercial general liability insurance including products liability, personal injury, employer's/and contingent employer's liability, tenant's legal liability, blanket contractual liability and provisions for cross liability and severability of interests and non owned automobile liability with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence.
7. Indemnity: The Tenant shall indemnify and save harmless the Landlord from any and all liabilities, damages, costs and expenses, claims, suits, or actions incurred by it as a result of: any breach, violation or non-performance of any covenants, condition or agreement set forth and contained in the Lease; any damage to property occasioned by the

Tenant's use and occupation of the Leased Premises; and any injury to persons, including death, occurring at any time in or about the Leased Premises and/or on the sidewalks, laneways or streets adjacent to same, unless the same is directly caused by the negligence of the Landlord.

The Extension Agreement with the Tenant amends the Lease as follows:

1. Term: January 1, 2015 to December 31, 2019 with no option to extend
2. Semi-gross rent: \$60.55 per square foot per annum commencing on January 1, 2015, subject to a 5% increase on January 1 of every subsequent calendar year during the Term of the Extension Agreement

The Assignment with the Tenant and the Assignee provides for the following main terms and conditions:

1. Assignor: 2029990 Ontario Inc. c.o.b. as Buster's Sea Cove
2. Assignee: 1936727 Ontario Inc. c.o.b. as Buster's Sea Cove
3. Date of closing: July 4, 2016
4. The City consents to the assignment of the Lease from the Assignor to the Assignee on the terms and conditions of the Assignment.

The Indemnity Agreement with Somani Bashirali (the "Indemnifier") provides that:

1. The Indemnifier shall pay all rent, charges, and any other amounts payable by the Tenant under the Lease.
2. The Indemnifier shall promptly perform and complete all of the terms, covenants, and conditions to be kept, observed, and performed by the Tenant under the Lease.
3. The Indemnifier shall indemnify and save harmless the City from any loss, costs, or damages resulting from any default by the Tenant under the Lease.

Schedule "A"

Map of South St. Lawrence Market 91 Front St. E., Toronto, ON

Street View



Aerial View



Schedule "B"

Floor Plan

