

**DELEGATED APPROVAL FORM**  
**DIRECTOR, REAL ESTATE SERVICES**  
**MANAGER, REAL ESTATE SERVICES**

**TRACKING NO.: 2018-351**

Approved pursuant to the Delegated Authority contained in Item EX27.12, as adopted by City Council on October 2, 3 & 4, 2017, as amended by Item GM27.12, adopted by City Council on May 22, 23 & 24, 2018 or, where applicable, in Item EX28.8, as adopted by City Council on November 7, 8 & 9, 2017.

<b>Prepared By:</b>	Patricia Palmieri	<b>Division:</b>	Real Estate Services
<b>Date Prepared:</b>	October 26, 2018	<b>Phone No.:</b>	416-392-4829

**Purpose**  
 To obtain authority to acquire a below-grade portion of the property located at 743 Warden Avenue from Zahavish Downtown Developments Ltd.(the "Developer"), and to enter into a negative support easement agreement and an access easement agreement (collectively the "Easements") with the Developer to allow City and Toronto Transit Commission staff to provide for the support of and safe operation of the Bloor-Danforth Subway line and for pedestrian and vehicular access along a portion of 743 Warden Avenue.

**Property**  
 See Appendix "A"

**Actions**  
 It is recommended that:

1. The City to accept the offer from the Developer to obtain the Property and to enter into the Easements and any ancillary agreements with the Developer, substantially on the terms and conditions outlined in Appendix "A" and on such other or amended terms and conditions as may be acceptable to the Deputy City Manager – Internal Corporate Services and in a form satisfactory to the City Solicitor.
2. The Deputy City Manager – Internal Corporate Services, or her successor or designate, shall administer and manage the Easements, including the provision of any ancillary agreements, amendments, consents, certificates, approvals, waivers, notices, and notices of termination, provided that the Deputy City manager – Internal Corporate Services may, at any time, refer consideration of such matters to City Council for its determination and direction.
3. The City Solicitor be authorized to complete the transaction 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.
4. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

**Financial Impact**  
 There is no financial impact from the rights granted under the Easements. The consideration for such rights is for nominal consideration.  
 The Chief Financial Officer has reviewed this DAF and agrees with the financial impact information.

**Comments**  
 The Developer is the registered owner of the Property and Easement Lands municipally known as 743 Warden Avenue, in the City of Toronto. The Developer proposes to construct a development on the Property and Easement Lands and has entered into a Site Plan Agreement dated July 18, 2018 with the City. Pursuant to the Site Plan Agreement, the Developer has agreed to convert the City's real estate interest in the Property through which the TTC has constructed, installed and operated from time to time a transit system and /or other municipal system(s) and/or services(s) (the "Subsurface System") to a fee simple interest in lands. The TTC has been operating the Subsurface System through the property since the inception of this portion of the Bloor Danforth Subway line.

As well pursuant to the Site Plan Agreement, the Developer has agreed to grant to the City, for the benefit of the City, an easement in, on, over and through the portion of the Negative Support Easement Lands, for the support for, and for the safe operation of, the Subsurface System and the Developer has agreed to grant a pedestrian and vehicular access easement in, on, over and through the portion of the Access Easement Lands.

**Terms**  
 See Appendix "B"

<b>Property Details</b>	<b>Ward:</b>	Ward 35 – Scarborough Southwest
	<b>Approximate Area:</b>	Irregular

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
1. Acquisitions:	<input checked="" type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
2. Expropriations:	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.
3. Issuance of RFPs/REOs:	<b>Delegated to a more senior position.</b>	<input type="checkbox"/> Issuance of RFPs/REOs.
4. Permanent Highway Closures:	<b>Delegated to a more senior position.</b>	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.
5. Transfer of Operational Management to Divisions and Agencies:	<b>Delegated to a more senior position.</b>	<b>Delegated to a more senior position.</b>
6. Limiting Distance Agreements:	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
7. Disposals (including Leases of 21 years or more):	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:	<b>Delegated to a more senior position.</b>	<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 type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$50,000.	<input 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"/> (b) Where compensation is less than market value, for periods not exceeding six (6) months, including licences for environmental assessments and/or testing, etc.
	<b>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</b>	<b>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</b>
10. Leases/Licences (City as Tenant/Licensee):	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.
11. Easements (City as Grantor):	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.
	<b>Delegated to a more senior position.</b>	<input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.
12. Easements (City as Grantee):	<input checked="" type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
13. Revisions to Council Decisions in Real Estate Matters:	<b>Delegated to a more senior position.</b>	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (u)).
14. Miscellaneous:	<b>Delegated to a more senior position.</b>	<input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences
		<input type="checkbox"/> (b) Releases/Discharges
		<input type="checkbox"/> (c) Surrenders/Abandonments
		<input type="checkbox"/> (d) Enforcements/Terminations
		<input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates
		<input type="checkbox"/> (f) Objections/Waivers/Caution
		<input type="checkbox"/> (g) Notices of Lease and Sublease
		<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"/> (j) Documentation relating to Land Titles applications
		<input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds

**B. Director, Real Estate Services and Manager, Real Estate Services each has signing authority on behalf of the City for:**

- Documents required to implement matters for which he or she also has delegated approval authority.
- Expropriation Applications and Notices following Council approval of expropriation (Manager, Acquisitions & Expropriations is only Manager with such signing authority).

**Director, Real Estate Services also has signing authority on behalf of the City for:**

- Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- Community Space Tenancy Leases approved by delegated authority by Deputy City Manager, Internal Corporal Services and any related documents.

Consultation with Councillor(s)															
Councillor:	Councillor Michelle Holland					Councillor:									
Contact Name:	Michael Giles					Contact Name:									
Contacted by:	Phone	X	E-Mail		Memo		Other	Contacted by:	Phone		E-mail		Memo		Other
Comments:	Concurs					Comments:									
Consultation with Divisions and/or Agencies															
Division:	TTC					Division:	Financial Planning								
Contact Name:	Pamela Kraft					Contact Name:	Patricia Libardo								
Comments:	Concurs					Comments:	Concurs								
Legal Division Contact															
Contact Name:	Dale Mellor														

DAF Tracking No.: 2018-351	Date	Signature
Concurred with by: Manager, Real Estate Services	Oct. 26, 2018	Signed by Nick Simos
<input type="checkbox"/> Recommended by: Manager, Real Estate Services <input checked="" type="checkbox"/> Approved by: Tim Park	Oct. 26, 2018	Signed by Tim Park
<input type="checkbox"/> Approved by: Director, Real Estate Services David Jollimore		X

#### 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. In the event of a vacancy in the Ward in which the subject property is located, the Mayor's office shall be consulted in the alternative.
- (b) Where approving power has been delegated to staff, the Deputy City Manager, Internal Corporate Services, in consultation with any other 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 being available from third party sources, except for "Strategic Property Acquisitions" as set out in EX44.22 adopted by Council August 25, 26, 27 and 28, 2014, which identifies alternative funding mechanisms subject to additional approval requirements.
- (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, except for property acquisitions of 50M<sup>2</sup> or less for transit shelter purposes.
- (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 as defined in the *Toronto Waterfront Revitalization Corporation Act, 2002* 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 of City Planning, 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, as leases of 21 years or more may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (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, including ancillary agreements, 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) 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.
- (aa) All residential leasing documents shall adhere to the *Residential Tenancies Act, 2006* and any successor legislation.
- (bb) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years and total compensation in residential leasing matters where the City is landlord is to be calculated based on an assumed term of ten years unless the lease term expressly identified therein is longer.
- (cc) Where Approving Authority has been delegated to the Manager level, such authority shall be conditional upon the Manager first having secured the written concurrence of a second Manager within the Real Estate Services Division.
- (dd) Where the City is transacting with a public agency, and such agency requires that an unqualified environmental indemnity be granted by the City, the authority to acquire property includes authority to grant such an indemnity, provided that the Phase I and Phase II environmental site assessments undertaken on behalf of the City have identified no significant environmental impacts or human health threats, with no, or minor action required ("Low Risk").

## Appendix "A"

### Property Legal Description

The lands subject to the transfer is a stratified portion of 743 Warden Avenue, shown as Parts 3, 5, 13, 15, 17 and 20 on Reference Plan 66R-30316, being part of those lands legally described in PIN 06450-0444 (LT) and PIN 06450-0450 (LT), known as (the "**Property**");

The lands subject to the negative support easement is a portion of 743 Warden Avenue, shown as Parts 1, 2, 4, 12, 14, 16, 18 and 19 on Reference Plan 66R-30316, being part of those lands legally described in PIN 06450-0444 (LT) and PIN 06450-0450 (LT), known as (the "**Negative Support Easement Lands**");

The lands subject to the access easement is a portion of 743 Warden Avenue, shown as Parts 5 and 6 on Reference Plan 66R-30168, being part of those lands legally described in PIN 06450-0444 (LT) and PIN 06450-0450 (LT), known as (the "**Access Easement Lands**"); and

The Negative Support Easement Lands and Access Easement Lands shall collectively be referred to as the "**Easement Lands**".

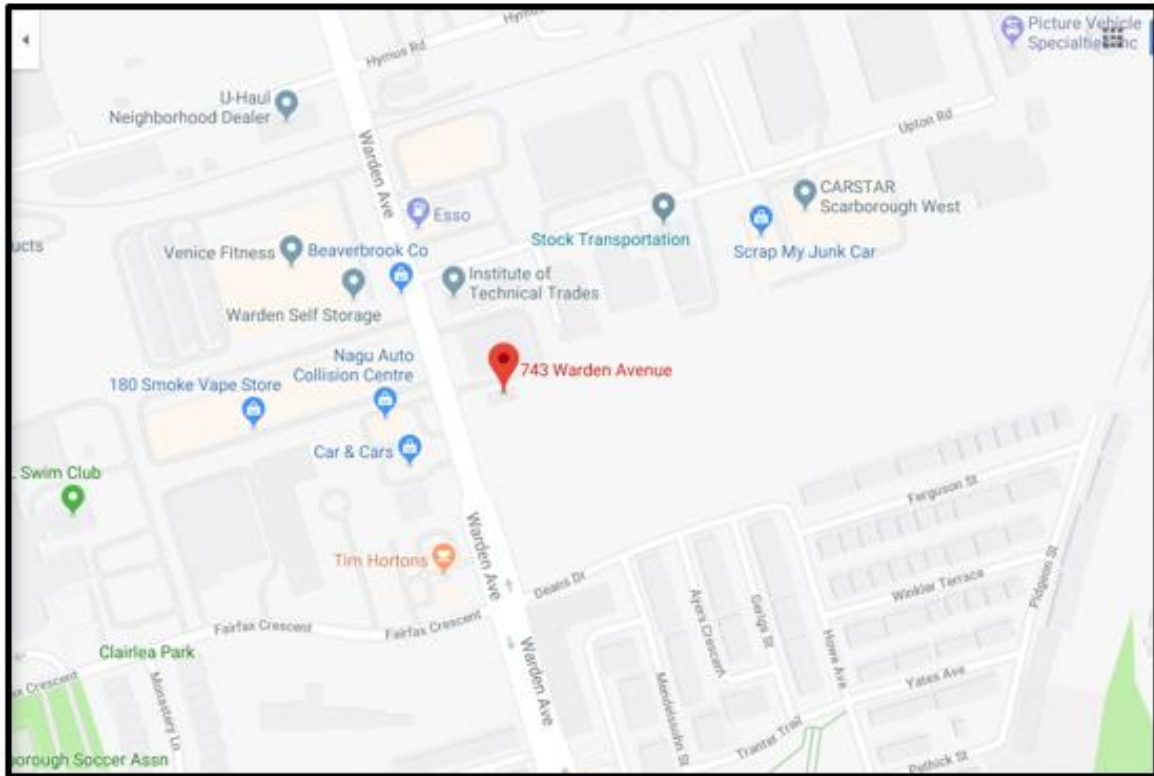
**Appendix "B"**

**TERMS & CONDITIONS**

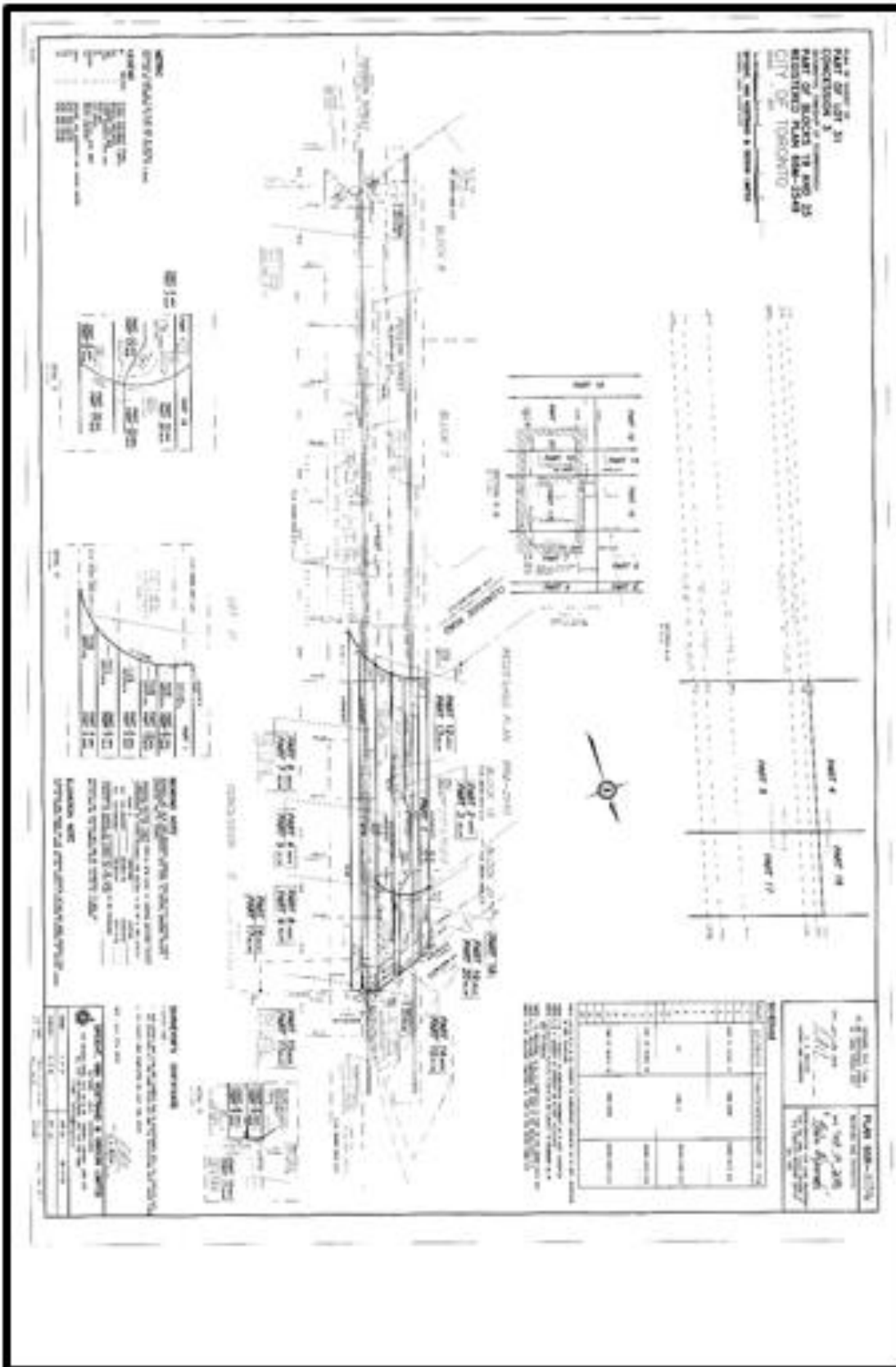
<b>Negative Support Easement Agreement</b>	
Consideration:	Nominal
<b>Terms and Conditions of the Negative Support Easement:</b>	<p>The Developer shall not commence work of any type whatsoever, including excavation, construction, grading, drilling, digging, demolition, deconstruction or other material alteration of the Negative Support Easement Lands or improvements in, on, over or through the Negative Support Easement Lands or effect any change in use of the Negative Support Easement Lands which may affect the load on and/or safety of the Subsurface System or permit any of the foregoing to occur, without first having received the prior written consent of the City or the Toronto Transit Commission.</p>
<b>Access Easement Agreement</b>	
Consideration:	Nominal
<b>Terms and Conditions of the Access Easement Agreement:</b>	<p>The Developer hereby transfers, a non-exclusive easement to the City in, over, along, upon and through the Access Easement Lands for the purposes of ingress and egress to and from the public right of way known as Pidgeon Street to the City's Lands required for purposes ancillary to the City and/or TTC constructing, installing, erecting, operating, using, maintaining, inspecting, altering, removing, replacing, reconstructing, repairing, enlarging, expanding and reconstructing below grade subsurface transit and/or other municipal system(s) structures and facilities within the City's Lands and other land owned by the City, for the City and/or the TTC, and their respective agents, consultants, contractors, employees, invitees, servants and customers with vehicles, equipment, machinery and supplies from time to time</p> <p>At no time shall the Access Easement be used for the purpose of parking vehicles. It is expressly acknowledged by the City that the Transferor and its tenants and their customers and invitees shall have the right to fully use and enjoy the Access Easement Lands.</p>

# Appendix "C"

## Location Map



Reference Plan 66R-30316



**Reference Plan 66R-30168**

