

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

TRACKING NO.: 2020-049

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, as adopted by City Council on May 22, 23 & 24, 2018 and Item GL9.14, as adopted by City Council on November 26 & 27, 2019 or, where applicable, contained in Item EX28.8, as adopted by City Council on November 7, 8 & 9, 2017.

Prepared By:	Rafael Gutierrez	Division:	Corporate Real Estate Management
Date Prepared:	February 10, 2020	Phone No.:	416-338-2995

Purpose	To obtain authority to: (i) consent to an assignment from Miller Tavern Inc. (the " Existing Tenant ") to 2389807 Ontario Inc. (the " Assignee ") of a lease agreement dated July 1, 2002, as amended and assigned from time to time (the "Lease") between the City of Toronto (the " City "), as landlord, and Pegasus Group Inc. (the " Tenant "); and (ii) amend the necessary terms and conditions associated with the calculation and payment of Basic Rent within the Lease.
Property	3885 Yonge Street, Toronto, ON (the " Leased Premises "), as shown on Schedule "A".
Actions	<p>Authority is granted to execute a landlord consent (the "Assignment of Lease and Landlord's Consent") between the City, the Existing Tenant, and the Assignee.</p> <ol style="list-style-type: none"> 1. Authority is granted to enter into a Lease Amending Agreement, based on the terms and conditions set out in the "Terms" section below, and on such other or amended terms as may be deemed appropriate by the staff member with delegated authority and in a form acceptable to the City Solicitor. 2. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.
Financial Impact	<p>There is no financial impact resulting from this approval.</p> <p>The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial impact information.</p>
Comments	<p>On March 3, 1997, the City of North York entered into an agreement to purchase the Jolly Miller lands at 3885 Yonge Street for the initial cost of \$2.1 million plus 20% of any net lease revenues the City earned in 20 years following the purchase (to a cumulative maximum total of \$400,000). The agreement of purchase and sale closed on November 4, 1997, and was financed through the North York land acquisition reserve fund.</p> <p>The principal objective of this purchase was to retain the Jolly Miller building as one of the City's heritage features and to prevent future development of the balance of the lands.</p> <p>On September 24, 2001, Facilities and Real Estate staff, in consultation with the Economic Development Culture and Tourism Department, issued a Request for Proposals for the lease of the Jolly Miller Tavern building with approx. 14,390 square feet. Pegasus Group Inc. was chosen as the preferred proponent by City Council at its meeting of December 4, 5, and 6, 2001. Pegasus Group has since entered into a twenty-year lease with the City in 2002 and began renovations of the building and commenced operations of a restaurant on the premises in 2004. The Commencement Date of the Lease is November 11, 2003 and will expire on November 30, 2023.</p> <p>The tenant pays to the City each year, the greater of: (a) Percentage Rent comprising 8% of gross sales, or (b) basic rent of \$155,125.00 during year 1 to 5 (January 1, 2004 to December 31, 2008). The basic rent is subject to CPI adjustment every 5 years, starting from the 6th year.</p> <p>By an Assignment of Lease and Landlord's Consent dated December 31, 2008, Pegasus Group Inc. (as assignor), assigned the Lease to Miller Tavern Inc. (as assignee), with the consent of the City of Toronto (as landlord).</p>
Terms	<p>The lease requires the tenant to pay Basic Rent monthly, and estimated Percentage Rent monthly. For efficiency purposes, the Tenant will pay Basic Rent monthly, and estimated Percentage Rent quarterly, to be reconciled at the end of each calendar year, instead of each lease year, commencing January 1, 2019.</p> <p>(Continued on Page 4).</p>

Property Details	Ward:	15 – Don Valley West
	Assessment Roll No.:	1908-08-1-490-00100
	Approximate Size:	N/A
	Approximate Area:	14,390 square feet
	Other Information:	N/A

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
1. Acquisitions:	<input 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/REOIs:	Delegated to more senior positions.	<input type="checkbox"/> Issuance of RFPs/REOIs.
4. Permanent Highway Closures:	Delegated to more senior positions.	<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:	Delegated to more senior positions.	Delegated to more senior positions.
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:	Delegated to more senior positions.	<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.
	Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.	Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.
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.
	Delegated to more senior positions.	<input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.
12. Easements (City as Grantee):	<input 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:	Delegated to more senior positions.	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (u)).
14. Miscellaneous:	Delegated to more senior positions.	<input checked="" 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, Transaction Services 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 the Deputy City Manager, Corporate Services and any related documents.

Consultation with Councillor(s)															
Councillor:	Jaye Robinson					Councillor:									
Contact Name:	Alysha Archibald					Contact Name:									
Contacted by:	Phone	<input checked="" type="checkbox"/>	E-Mail		Memo		Other	Contacted by:	Phone		E-mail		Memo		Other
Comments:	Concurs (February 10, 2020)					Comments:									
Consultation with Divisions and/or Agencies															
Division:						Division:	Financial Planning								
Contact Name:						Contact Name:	Filisha Jenkins								
Comments:						Comments:	Concurs (February 3, 2020)								
Legal Division Contact															
Contact Name:	Soo Kim Lee (reviewed and concurred on January 31, 2020)														

DAF Tracking No.: 2020-049	Date	Signature
Concurred with by: Manager, Real Estate Services		X
<input checked="" type="checkbox"/> Recommended by: Manager, Real Estate Services Alex Schuler	Feb. 12, 2020	Signed by Alex Schuler
<input type="checkbox"/> Approved by:		
<input checked="" type="checkbox"/> Approved by: Acting Director, Real Estate Services Nick Simos	Feb. 14, 2020	Signed by Nick Simos

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, 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 market value and no interest shall be granted for an amount less than the appraised market value, nor additional compensation paid, unless specifically authorized by City Council.
- (f) Authority to approve any transaction 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 50M² 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").

- Terms**
- (a) Effective Date of Lease Amendments: January 1, 2019
- (b) Section 3.3 - Renewal Rent:
- (i) All references to "lease year" in Section **3.3** shall be changed to "calendar year", for the purposes of calculating annual rent.
- (ii) A new Section **3.3 (c)** is added to the Lease, as follows:
- For greater certainty, in each calendar year the Tenant shall pay monthly payments in advance to the Landlord of Basic Rent as set out in Section **3.3**, plus quarterly payments of estimated percentage rent based on the percentage rent payable in the preceding calendar year, and to be adjusted at the end of the calendar year when actual Gross Sales and percentage rent are confirmed, in accordance with Sections **7.5** and **7.6**.
- (c) Section 7.2 Basic Rent
- (i) All references to "lease year" in Section **7.2** shall be changed to "calendar year", for the purposes of calculating annual rent.
- (ii) A new Section **7.2 (c)** is added to the Lease, as follows:
- For greater certainty, in each calendar year the Tenant shall pay monthly payments in advance to the Landlord of Basic Rent as set out in Section **7.2**, plus quarterly payments of estimated percentage rent based on the percentage rent payable in the preceding calendar year, and to be adjusted at the end of the calendar year when actual Gross Sales and percentage rent are confirmed, in accordance with Sections **7.5** and **7.6**.
- (d) Section 7.5 Reporting Gross Revenue
- Section 7.5 is deleted, and the following substituted:
- (i) Within 30 days after each calendar year, Tenant shall deliver to the Landlord's DCM, a statement in writing certified by Tenant and accurately setting forth Gross Revenue for such calendar year. Within 90 days after the last day of each calendar year, Tenant shall deliver to the Landlord's DCM a statement in writing, certified by Tenant and audited by an independent chartered professional accountant who is acceptable to Landlord, accurately setting forth and with reasonable detail and particulars, Gross Revenue for such calendar year. The statement shall include a certification by such accountant that Gross Revenue has been calculated in accordance with the definition of that term in the Lease.
- (ii) For the purpose of confirming the Gross Revenue, Tenant shall prepare and keep at Tenant's head office in Canada for a period of not less than 24 months following each calendar year, adequate records for such calendar year which shall show inventories and receipts of merchandise at the Property and daily receipts from all sales and other transactions, the proceeds of which are to be included in Gross Revenue. Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a computerized or electronic cash register or in cash registers having a cumulative total which shall be sealed in a manner approved by the Landlord, and having such other features as shall be approved by the Landlord. Such records shall include such sales and inventory records which would normally be examined by a licensed independent public accountant pursuant to generally accepted auditing standards in performing an audit of the entire business affairs and sales by any person at, in, upon, through or from the Property.

Schedule "A" Location Map – 3885 Yonge Street

