

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

TRACKING NO.: 2020-166

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:	Kathie Capizzano	Division:	Corporate Real Estate Management
Date Prepared:	June 18, 2020	Phone No.:	392-4825

Purpose	To obtain authority for the City to: (1) enter into a ground lease amending agreement with T3 Bayside I Property Inc. as Nominee for and on behalf of T3 Bayside I GP Inc., in its capacity as general partner of T3 Bayside I Limited Partnership (collectively, the "Tenant") in regards to the existing ground lease (the "C2 Lease") for the purpose of including additional lands within the C1 Lands (the "Plaza Lands") in the C2 Lease (the "Ground Lease Amending Agreement"); (2) to enter into a Non-Disturbance Agreement(s) with the Tenant's lender; and (3) enter into all ancillary agreements/documentation pertaining thereto.
Property	PIN 21384-0178 (LT), Block 2, Plan 66M-2514, City of Toronto (C1 Lands); PIN 21384-0218 (LT), Block 1, Plan 66M-2542, City of Toronto (C2 Lands)
Actions	<ol style="list-style-type: none"> 1. Authority be granted for the City to enter into a Ground Lease Amending Agreement with the Tenant substantially on the major terms and conditions set out in Appendix "A", and including such other terms as deemed appropriate by the approving authority herein, and in a form satisfactory to the City Solicitor. 2. Authority be granted for the City to enter into a Non-Disturbance Agreement with the Tenant's lender substantially on the major terms and conditions set out in Appendix "B", and any amending agreement as may be necessary to include the Plaza Lands, and including such other terms as deemed appropriate by the approving authority herein, and in a form satisfactory to the City Solicitor. 3. Authority be granted for the City to enter into any ancillary agreements and documents relating to the transactions described herein, including any amending agreements and documents, on terms and conditions as deemed appropriate by the approving authority herein, and in a form satisfactory to the City Solicitor
Financial Impact	There is no financial impact to adding the Plaza Lands to the C2 Lands through a Ground Lease Amending Agreement. There is no financial impact to entering into Non-Disturbance Agreement(s) with the Tenant's lender. The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial impact information.
Comments	<p>By adoption of report EX46.33, on August 25, 2010 Council approved the sale and lease of certain City-owned lands known as Bayside within the East Bayfront precinct (the "Bayside Lands") to Hines Canada Management Company ULC (Hines). Council granted authority for the City, as owner of the Bayside Lands to enter into a Land Development Agreement with Hines that included the disposition of the Bayside Lands through agreements of purchase and sale, ground leases, rights of first offer, rights of first refusal and any ancillary agreements such as a licenses, encroachments and easements. The uses contemplated included residential and commercial development, affordable housing, a child care and a municipal recreation centre. Toronto Waterfront Revitalization Corporation ("Waterfront Toronto") is the City's designated revitalization lead in East Bayfront.</p> <p>The Bayside Lands were subsequently divided through two Plans of Subdivision (66M-2514 of which the C1 Lands form a part and 66M-2542 of which the C2 Lands form a part). The Bayside project was planned to include two commercial blocks, known as C1 and C2. Under the applicable subdivision agreement, a plaza between the two commercial development blocks was to be situated on the C1 Lands in anticipation that C1 would be developed before C2 (see attached Site Sketch). However, Hines decided, with the approval of Waterfront Toronto and City Planning, to proceed with C2 in advance of C1, and to include an interim landscape treatment for the Plaza Lands on C1. In addition, as part of the negotiations between City Planning and Hines, a decision was made to locate the parking supply below grade, which spans the underground area below C2 and the Plaza Lands currently situated on C1. This precipitated a severance application to Committee of Adjustment to add that portion of C1 containing the Plaza Lands to the C2 Lands.</p>

Under the approval authority contained in DAF Tracking No 2019-357 the City, as owner of the C1 Lands and C2 Lands, consented to the filing of the Tenant's severance application (the tenant being Hines' designated site developer for C2) and undertook to the Tenant to include the Plaza Lands in the C2 Lease if the severance was granted. The application to Committee of Adjustment was filed early in 2020. The delegated consent was slated for decision at the March 25, 2020 Committee of Adjustment meeting. A hearing notice was issued. No letters of opposition from stakeholders who received notice of the consent application were received, or reports from City staff, related to the delegated consent. One letter of support was received. However, that hearing was cancelled as part of the City's response to the COVID-19 pandemic emergency. The Committee of Adjustment resumed hearings digitally in June, but delegated consents were not immediately able to be considered.

Hines is urgently concerned about possible further delays to its start of construction of the C2 project if it continues with the Committee of Adjustment severance. As an alternative means to accomplish the same result, Hines, with the approval of Waterfront Toronto, has requested that the City simply enter into a Ground Lease Amending Agreement to lease the Plaza Lands to the Tenant (without a formal severance) which is effectively employing the City's municipal exemption under the subdivision control provisions of the Planning Act to facilitate the addition of the Plaza Lands to C2, given all the lands in question are City-owned. Hines reason for the request is that any additional delay, will negatively impact the ability of the C2 project to meet construction timeframes and will materially affect the development's financial viability.

City Planning staff have provided their support for the use of the City's municipal exemption to enable the lot addition. Given City Planning support for the lot addition and the delay precipitated by the pandemic, staff believe it is prudent to enable the lot addition using the City's municipal exemption under the circumstances.

This report also seeks approval for the City as landlord to enter into Non-Disturbance Agreement(s) with the Tenant's lender. Under the C2 Lease the City has agreed to enter into Non-Disturbance Agreement(s) with the Tenant's lender in a form substantially set out in the C2 Lease. The Non-Disturbance Agreement(s) with the Tenant's lender would be in respect of the C2 Lands and the Plaza Lands. Terms of which are shown on Appendix "B:"

Various ancillary agreements (including agreements with the Tenant's operating subtenant) and documentation (notices, directions, consents) will be required or necessary as a result of the transactions described in this report and will be executed following DAF approval.

The Director of the Waterfront Secretariat concurs with the recommendations in this report.

Terms

See Schedules A and B

Property Details

Ward:	10 – Spadina-Fort York
Assessment Roll No.:	
Approximate Size:	
Approximate Area:	
Other Information:	

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"/> (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 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 six (6) months, including licences for environmental assessments and/or testing, etc.
10. Leases/Licences (City as Tenant/Licensee):	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.
11. Easements (City as Grantor):	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000. <input type="checkbox"/> Where total compensation does not exceed \$50,000. Delegated to more senior positions.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million. <input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million. <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 checked="" 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:	Councillor Joe Cressy				Councillor:					
Contact Name:	Tom Davidson				Contact Name:					
Contacted by:	Phone	x	E-Mail	Memo	Other	Contacted by:	Phone	E-mail	Memo	Other
Comments:	No objections – June 18, 2020				Comments:					
Division:	Waterfront Secretariat / City Planning				Division:	Financial Planning				
Contact Name:	David Stonehouse/ Jayne Naiman/ Carly Bowman				Contact Name:	Filisha Jenkins				
Comments:	Comments incorporated – June 18, 2020				Comments:	Concurs – June 18, 2020				
Legal Division Contact										
Contact Name:	Kathleen Kennedy – June 19, 2020									

DAF Tracking No.: 2020-166	Date	Signature
<input checked="" type="checkbox"/> Recommended by: Melanie Hale-Carter, Acting Manager, Real Estate Services	June 19, 2020	Signed by Melanie Hale-Carter
<input type="checkbox"/> Approved by:		
<input checked="" type="checkbox"/> Approved by: Alison Folosea, Director, Transaction Services,	June 19, 2020	Signed by Alison Folosea

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").

Appendix "A"

Major Terms of Lease Amendment Agreement

Parties to the Agreement: Landlord: City of Toronto

Tenant: T3 Bayside I Property Inc. in its capacity as nominee for and on behalf of
T3 Bayside I GP Inc., as general partner of
T3 Bayside I Limited Partnership
(hereinafter collectively called the "Tenant")

Property: PIN: 21384-0218 (LT), Block 1, Plan 66M-2542; together with an Easement over Part Block 3, Plan 66M-2514, Parts 30 & 31, 66R-30712 as in AT5219295; together with an easement over Part 2, 19 and 21, 66R-30712 as in AT5319096; City of Toronto (the "Main Parcel")

And

Part of PIN 21384-0178(LT), Part of Block 2, Plan 66M-2514, City of Toronto, Part of Block 2, Plan 66M-2514, Designated as Part 2 on a Draft Plan prepared by J.D. Barnes Limited, dated October 3, 2019; Together with an easement over Part of Block 1, 66M-2514, Designated as Part 1 on Plan 66R-29745 as in AT4776425; together with an easement over Part Block 3, Plan 66M-2514, Parts 30 & 31, 66R-30712 as in AT5219295; Together with an easement over Parts 2, 19 and 21, 66R-30712 as in AT5319096; City of Toronto (the "Plaza Lands").

Ground Lease: The ground lease dated December 20, 2019 made between the Landlord and Tenant is for the Main Parcel.

1. The Landlord demises and leases the Plaza Lands to the Tenant on the same terms as contained in the Ground Lease for the Main Parcel and for the same Term as provided in the Ground Lease such that the ground lease for the Main Parcel and the Plaza Lands shall be one and the same ground lease.
2. The Ground Lease is amended by adding the definition of "Lands" in the Ground Lease, to include the Plaza Lands.
3. The Parties will make such other changes as are necessary to the Ground Lease to incorporate the Plaza Lands and the parties may establish the "Commencement Date" under the Ground Lease, to be a specified date if the preconditions to the Commencement Date have been satisfied or waived by the parties, in accordance with the Ground Lease provisions.
4. In all other respects, the covenants, terms and conditions of the Ground Lease remain unchanged, unmodified and in full force and effect, except as amended by the Ground Lease Amending Agreement.
5. The Ground Lease Amending Agreement shall be registered in the LRO on title to the Main Parcel and the Plaza Lands, all at the Tenant's expense.

APPENDIX "B"

Major Terms of Non-Disturbance Agreement for Leasehold Chargee

Parties to the Agreement: City of Toronto ("City") and Leasehold Chargee

Property: PIN: 21384-0218 (LT), Block 1, Plan 66M-2542; together with an Easement over Part Block 3, Plan 66M-2514, Parts 30 & 31, 66R-30712 as in AT5219295; together with an easement over Part 2, 19 and 21, 66R-30712 as in AT5319096; City of Toronto (the "Main Parcel")

And

Part of PIN 21384-0178(LT), Part of Block 2, Plan 66M-2514, City of Toronto, Part of Block 2, Plan 66M-2514, Designated as Part 2 on a Draft Plan prepared by J.D. Barnes Limited, dated October 3, 2019; Together with an easement over Part of Block 1, 66M-2514, Designated as Part 1 on Plan 66R-29745 as in AT4776425; together with an easement over Part Block 3, Plan 66M-2514, Parts 30 & 31, 66R-30712 as in AT5219295; Together with an easement over Parts 2, 19 and 21, 66R-30712 as in AT5319096; City of Toronto (the "Plaza Lands").

Terms:

1. The City will not, without the prior written consent of the Leasehold Chargee:
 - a. accept the surrender of, or agree to accept the surrender of, the Ground Lease in any respect;
 - b. amend or modify, or agree to amend or modify, the Ground Lease in any respect; or
 - c. terminate, or agree to terminate, the Ground Lease, except in accordance with the provisions in the Agreement..
2. The City must give notice to the Leasehold Chargee before it exercises its rights or remedies against the Tenant for any Tenant Event of Default under the Ground Lease.
3. The Leasehold Chargee will have a period of time within which to cure the Tenant's default.
4. If the Leasehold Chargee fails to cure any default or Tenant Event of Default specified in a Default Notice within the period of time, the City may exercise any of its remedies under the Ground Lease without further Notice to the Leasehold Chargee.
5. If the Ground Lease is terminated on account of a bankruptcy or insolvency proceeding affecting the Tenant, and if the Leasehold Chargee pays any amounts owing under the Ground Lease, and if requested by the Leasehold Chargee, the City will enter into a new Lease with the Leasehold Chargee on the same terms and conditions, save and except for certain provisions of the Ground Lease..
6. The Agreement shall terminate upon payment in full of all moneys secured by the Leasehold Charge. The Leasehold Chargee shall give the Landlord notice of the Termination of the Agreement.

SITE SKETCH

