

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

**TRACKING NO.: 2020-335**

Approved pursuant to the Delegated Authority contained in Article 2 of City of Toronto Municipal Code Chapter 213, Real Property

Prepared By:	Avery Carr	Division:	Corporate Real Estate Management
Date Prepared:	December 21, 2020	Phone No.:	(647) 458-1934

<b>Purpose</b>	To obtain authority for the City of Toronto to enter into an amending agreement (the "Agreement") with respect to an agreement of purchase and sale between 69 Hayden Street Limited (the "Owner") and the City signed by the City on July 6, 2020 (the "Agreement of Purchase and Sale") with respect to the transfer to the City of property municipally known as 69 Hayden Street, Toronto Ontario.		
<b>Property</b>	The property municipally known as 69 Hayden Street and legally described as PT LT 13 S/S HAYDEN ST PL 163 TORONTO AS IN EP65545; LT 14 S/S HAYDEN ST PL 163 TORONTO; CITY OF TORONTO; TOGETHER WITH AN EASEMENT OVER PARTS OF THE COMMON ELEMENTS OF TORONTO STANDARD CONDOMINIUM PLAN NO. 2662, DESIGNATED AS PARTS 18, 21, 22, 23, 24, 28, 30, 33, 36, 48, 58, 62, 63 AND 77 ON PLAN 66R29697 AS IN AT4910674, being all of PIN: 21108-0147 in the Land Registry Office of Toronto (No. 66) in Land Titles Division.		
<b>Actions</b>	<ol style="list-style-type: none"> <li>Authority be granted to enter into the Agreement with the Owner to amend the terms and conditions relating to the acquisition of the Property under the Agreement of Purchase and Sale, substantially on the major terms and conditions set out herein, and including such other terms and conditions as may be deemed appropriate by the Director, Transaction Services ("Director") and in a form acceptable to the City Solicitor.</li> <li>The City Solicitor is authorized to complete the transactions on behalf of the City under the Agreement of Purchase and Sale as amended by the Agreement, including paying any incidental administrative expenses and fees, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as the City Solicitor considers reasonable.</li> </ol>		
<b>Financial Impact</b>	<p>The Property will be nominally conveyed to the City to satisfy the parkland dedication requirements for the developments at 480 Yonge Street (the "Halo Development") and 537 Yonge Street (the "Clover Development") Provided that the transaction is completed in accordance with the terms of the Agreement of Purchase and Sale as amended by the Agreement, the owners of the Halo Development and Clover Development shall be entitled to a credit in the amount of \$8,580,000 against its required parkland dedication payment pursuant to Section 42 of the Planning Act for the Halo Development and the Clover Development and this entitlement shall be completed by way of return of funds drawn down from the letters of credit provided by the owners of the Halo Development and Clover Development under conditional building permit agreements for each development, which has already been entered into between the parties and the City. There will be no additional costs directly borne by the City as a result of the adoption of the recommendations set out herein. .</p> <p>The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial implications as identified in the Financial Impact section.</p>		
<b>Comments</b>	<p>The City and the Owner are parties to the Agreement of Purchase and Sale. The authority for the Agreement of Purchase and Sale was obtained through City Council by its adoption of Item CC3.1 on February 26, 2019: <a href="http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC3.1">http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC3.1</a>.</p> <p>The Agreement of Purchase and Sale provides for the transfer of the Property to the City and further provides that, provided the transaction contemplated by the Agreement of Purchase and Sale is completed in accordance with the terms of the Agreement of Purchase and Sale, the Halo Development and Clover Development shall be entitled to a credit in the amount of \$8,580,000.00 collectively against their required parkland dedication payment pursuant to Section 42 of the <i>Planning Act</i>.</p> <p><i>Continued on Appendix "A"</i></p>		
<b>Terms</b>	Corporate Real Estate Management staff consider the major terms and conditions of the Agreement set out in Appendix "B" to be fair and reasonable.		

<b>Property Details</b>	<b>Ward:</b>	11 – University-Rosedale
	<b>Assessment Roll No.:</b>	190406853001700
	<b>Approximate Size:</b>	22.9 m x 25.6 m ± (75 ft x 84 ft ±)
	<b>Approximate Area:</b>	567 m <sup>2</sup> ± (6,098 ft <sup>2</sup> ±)
	<b>Other Information:</b>	

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
<p>1. Acquisitions:</p> <p>2A. Expropriations Where City is Expropriating Authority:</p> <p>2B. Expropriations For Transit-Related Purposes Where City is Property Owner or Has Interest in Property Being Expropriated:</p> <p>3. Issuance of RFPs/REOIs:</p> <p>4. Permanent Highway Closures:</p> <p>5. Transfer of Operational Management to Divisions, Agencies and Corporations:</p> <p>6. Limiting Distance Agreements:</p> <p>7. Disposals (including Leases of 21 years or more):</p> <p>8. Exchange of land in Green Space System &amp; Parks &amp; Open Space Areas of Official Plan:</p> <p>9. Leases/Licences (City as Landlord/Licensors):</p> <p>10. Leases/Licences (City as Tenant/Licensee):</p> <p>11. Easements (City as Grantor):</p> <p>12. Easements (City as Grantee):</p> <p>13. Revisions to Council Decisions in Real Estate Matters:</p> <p>14. Miscellaneous:</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p><input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p><input type="checkbox"/> (b) Request Hearings of Necessity.</p> <p><input type="checkbox"/> (c) Waive Hearings of Necessity.</p> <p><b>Delegated to more senior positions.</b></p> <p><b>Delegated to more senior positions.</b></p> <p><b>Delegated to more senior positions.</b></p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><b>Delegated to more senior positions.</b></p> <p><input type="checkbox"/> (a) Where total compensation (including options/ renewals) does not exceed \$50,000.</p> <p><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.</p> <p><b>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation (including options/ renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><b>Delegated to more senior positions.</b></p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><b>Delegated to more senior positions.</b></p> <p><b>Delegated to more senior positions.</b></p>	<p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> (b) Request Hearings of Necessity.</p> <p><input type="checkbox"/> (c) Waive Hearings of Necessity.</p> <p><input type="checkbox"/> Issuance of RFPs/REOIs.</p> <p><input type="checkbox"/> Initiate process &amp; authorize GM, Transportation Services to give notice of proposed by-law.</p> <p><b>Delegated to more senior positions.</b></p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/ renewals) does not exceed \$1 Million.</p> <p><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.</p> <p><b>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</b></p> <p><input type="checkbox"/> Where total compensation (including options/ renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input checked="" type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/ Acknowledgements/Estoppel Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Cautions</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p>

**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 each position 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.

**Pre-Condition to Approval**

Complies with General Conditions in Appendix B of City of Toronto Municipal Code Chapter 213, Real Property

**Consultation with Councillor(s)**

Councillor:	Mike Layton	Councillor:	
Contact Name:	Aviva Coopersmith	Contact Name:	
Contacted by:	Phone <input type="checkbox"/> X <input checked="" 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:	No concerns (Dec 15, 2020)	Comments:	

**Consultation with Divisions and/or Agencies**

Division:	Parks, Forestry and Recreation	Division:	Financial Planning
Contact Name:	Diana Chang	Contact Name:	Patricia Libardo
Comments:	No comments (Dec 8, 2020)	Comments:	No comments (Dec 15, 2020)

**Legal Services Division Contact**

Contact Name:	Luxmen Aloysius (Dec 4, 2020)
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DAF Tracking No.: 2020-335	Date	Signature
Concurred with by: <b>Manager, Real Estate Services Melanie Hale-Carter</b>		X
<input checked="" type="checkbox"/> <b>Recommended by: Manager, Real Estate Services Daran Somas</b>	<b>Dec. 21, 2020</b>	Signed by Daran Somas
<input type="checkbox"/> <b>Approved by:</b>		
<input checked="" type="checkbox"/> <b>Approved by: Director, Real Estate Services Alison Folosea</b>	<b>Dec. 24, 2020</b>	Signed by Alison Folosea

## Appendix "A" Comments Continued

The owner of the Clover Development is The Clover on Yonge Inc. (the "Clover Owner") and the owner of the Halo Development is 480 Yonge Street Inc. On March 27, 2020, pursuant to an order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc., LIT ("PwC") was appointed receiver and manager of all of the assets, undertakings and property of 480 Yonge Street Inc.

The Clover Owner as owner of the Clover Development entered into a Conditional Permit Agreement with the City dated June 30, 2020 (the "Clover CP Agreement") pursuant to which the Clover Owner has delivered to the City a letter of credit in the face amount of \$4,625,448.88 to secure the transaction contemplated in the Agreement of Purchase and Sale (the "Clover 69 Hayden LC"). Pursuant to the Clover CP Agreement, in the event that the transaction contemplated under the Agreement of Purchase and Sale is completed, the Clover Owner is entitled to the return of the Clover 69 Hayden LC following conveyance of the Property. If the transaction is not completed, the City is entitled to call down and keep the funds secured under the Clover 69 Hayden LC in lieu of the conveyance of the Property to the City.

PwC (not in its personal capacity but in its capacity as the receiver of 480 Yonge Street Inc.) entered into a Conditional Permit Agreement with the City dated June 29, 2020 (the "Halo CP Agreement") pursuant to which PwC in its capacity as the receiver of the assets and undertakings of 480 Yonge Street Inc. has delivered to the City a letter of credit in the face amount of \$3,954,551.12 (the "PwC Halo 69 Hayden LC") to secure the transaction contemplated in the Agreement of Purchase and Sale. In the event that the transaction contemplated under the Agreement of Purchase and Sale is completed, PwC was entitled to the return of the PwC Halo 69 Hayden LC following conveyance of the Property. If the transaction is not completed, the City is entitled to call down and keep the funds secured under the PwC Halo 69 Hayden LC in lieu of the conveyance of the Property to the City.

By Approval and Vesting Order dated September 15, 2020, the Ontario Superior Court of Justice approved the sale of the Halo Development by PwC, in its capacity as the receiver of 480 Yonge Street Inc., to 494 Yonge Street Inc. (hereinafter referred to as the "Halo Owner"), and said sale was completed on October 9, 2020. Following the sale of the Halo Development to the Halo Owner, the Halo Owner delivered to the City a letter of credit in the face amount of \$3,954,551.12 (the "Halo 69 Hayden LC") to replace the PwC Halo 69 Hayden LC held by the City, and the City returned the PwC Halo 69 Hayden LC to PwC.

The Property is subject to a mortgage in favour of KingSett Mortgage Corporation (the "Mortgagee") in the principal amount of \$5,250,000.00 registered as Instrument No.AT3927082 and related title registrations (collectively the "KS Mortgage"), which KS Mortgage must be paid in full and discharged on the closing of the transaction as required under the Agreement of Purchase and Sale. The Owner has been unable to make financial arrangements for the discharge of the KS Mortgage through its own financing/funds as a result of the recent insolvency proceedings of its affiliated corporations and change of ownership of the Clover Development and Halo Development, and has requested that the City call down on the Clover 69 Hayden LC and the Halo 69 Hayden LC (which would have been returned to the Clover Owner and the Halo Owner pursuant to the Clover CP Agreement and the Halo CP Agreement upon completion of the transaction contemplated under the Agreement of Purchase and Sale) and use the funds to discharge the KS Mortgage. As more particularly set out herein and the Agreement, CREM Staff in consultation with Planning, Building Division and Parks Forestry and Recreation Staff are agreeable to the same subject to the terms and conditions set out herein.

## Appendix "B" Major Terms and Conditions

Term	Summary
Draw Down on Letters of Credit	<p>The Agreement requires irrevocable directions from the Clover Owner and Halo Owner to the City to draw down in whole the Halo 69 Hayden LC and the Clover 69 Hayden LC and to reserve, apply and/or pay the proceeds as follows:</p> <p>(a) To pay to the Owner's solicitor Dale &amp; Lessmann LLP in trust, on or before the closing of the transaction contemplated by the Agreement of Purchase and Sale, the Clover Owner and Halo Owner's respective share of the sum required to fully discharge the KS Mortgage, including without limitation all amounts for principal, interest, discharge fees and other fees and charges of the Mortgagee, on the express condition that said sum will be held in trust by Dale &amp; Lessmann LLP until closing and, on closing, shall be paid to the Mortgagee in payment of the KS Mortgage;</p> <p>(b) To reserve by the City and pay the Clover Owner and Halo Owner's respective share of all land transfer tax payable pursuant to the <i>Land Transfer Tax Act</i> in respect of the conveyance of the Property to the City; and</p> <p>(c) Following Closing, to pay the balance of said proceeds to the Owner or as the Owner may in writing direct.</p>

Amended Closing Date	The Closing Date is amended to being the business day next following seven (7) days after receipt by the Owner's solicitors of portions of the proceeds required to be delivered by the City to Owner's solicitors in accordance with the directions from the Clover Owner and the Halo Owner.
Consideration and Land Transfer Tax	The amount required to discharge the KS Mortgage shall be the value of consideration for the conveyance of the Property from the Owner to the City. As set out above, pursuant to the directions from the Clover Owner and the Halo Owner, a portion of the proceeds of the Halo 69 Hayden LC and Clover 69 Hayden LC will be held and reserved by the City to pay all land transfer tax payable pursuant to the <i>Land Transfer Tax Act</i> in respect of the conveyance of the Property to the City pursuant to the Agreement of Purchase and Sale. Accordingly, upon closing and in accordance with the directions from the Halo Owner and the Clover Owner, the City shall remit the land transfer tax payable pursuant to the <i>Land Transfer Tax Act</i> calculated on the amount of the mortgage discharge amount of the KS Mortgage.
Closing Mechanisms and Protections	<p>The payment of portions of the proceeds of the letters of credit pursuant to the directions of the Halo Owner and Clover Owner will be governed by the Document Registration Agreement as a closing delivery. In the event that the transaction is terminated or is not completed for any reason on the Closing Date, then the Owner irrevocably authorizes and directs the Vendor's solicitors to immediately, without delay, return the proceeds of the letters of credit sent to them to the City without deduction or set off.</p> <p>In the event where the Agreement of Purchase and Sale is terminated or is not completed for any reason by the Closing Date, then the City may at its election either: (1) exercise its rights and remedies under the Agreement of Purchase and Sale, at law or in equity for the termination or non-completion of the Agreement of Purchase and Sale notwithstanding that the City holds the proceeds from the letters of credit as security for the completion of the transaction contemplated under the Agreement of Purchase and Sale and the City's rights and remedies under the Agreement of Purchase and Sale, at law or in equity are not prejudiced or limited by the City holding the LC Proceeds; or (2) retain the full amount of the proceeds of the letter of credit and the Halo Net Parkland Dedication Amount and Clover Net Parkland Dedication Amount as full satisfaction of the Halo Parkland Dedication Payment Amount and the Clover Parkland Dedication Amount (as those terms are respectively defined in the Halo CP Agreement and the Clover CP Agreement).</p>
Indemnities and Releases	We have obtained indemnities and releases from each of the Owner, Halo Owner and Clover Owner with respect to the matters subject to the Amending Agreement.
Park Improvement LC	The owner has provided a park improvement letter of credit to secure the performance and construction of base parkland work/improvements on the Property. In the event that the transaction contemplated under the Agreement of Purchase and Sale closes, then within Sixty (60) days of the Closing Date, the park improvement letter of credit shall be reduced by 80% with the remaining amount to be held as security to guarantee quality of work and materials for a period of two years from the Closing Date. The City shall be entitled to use the park improvement letter of credit to take such action as the City deems necessary to remove or vacate any lien on the Property relating to the base parkland work performed by the Owner on the Property prior to the Closing Date.

### Appendix "C" Location Map

