

DELEGATED APPROVAL FORM

CITY MANAGER

TRACKING NO.: 2024-018

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

Prepared By:	Myron Menezes	Division:	Corporate Real Estate Management										
Date Prepared:	March 8, 2024	Phone No.:	(416) 338-3586										
Purpose	To obtain authority to extend and amend the lease ("Lease") entered into between the City, as landlord, and Stackt Properties Inc. in its capacity as General Partner of Stackt Properties LP (the "Tenant") for the lease of a portion of the property known municipally as 28 Bathurst Street, Toronto.												
Property	Portion of City-owned property municipally known as 28 Bathurst Street, described as Parts 2, 3, and 4 on Plan 64R-16673 having an approximate area of 102,773 square feet, as shown on the Location and Parcel Maps in Appendix "B" (the "Leased Area").												
Actions	1. Authority be granted to enter into the Lease Extension and 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.												
Financial Impact	<p>The City will receive a total revenue of \$3,086,824.44 (plus HST) or \$3,488,111.62 (HST inclusive) over the ten (10) years extension term. If the option to extend for a further ten (10) years is exercised, the City will receive a total revenue of \$6,600,125.35 (plus HST) or \$7,458,141.64 (HST inclusive). All revenue will be directed to cost center FA3073.</p> <p>The Chief Financial Officer & Treasurer has reviewed this DAF and agrees with the financial impact information.</p>												
Comments	<p>The City and Tenant entered into the Lease dated December 27, 2017, which Lease was extended by a lease amending agreement dated April 30, 2018 and a lease extending and amending agreement dated July 13, 2020. The Lease expired on March 31, 2023 and has been in overhold. The Tenant is using the Leased Area for a temporary outdoor shipping container market.</p> <p>The proposed rent and other major terms and conditions of the Lease Agreement are considered to be fair, reasonable and reflective of market rates.</p>												
Terms	See Appendix A.												
Property Details	<table border="1"> <tr> <td>Ward:</td><td>10 – Spadina-Fort York</td></tr> <tr> <td>Assessment Roll No.:</td><td>Part of 1904-06-2-160-02406</td></tr> <tr> <td>Approximate Size:</td><td></td></tr> <tr> <td>Approximate Area:</td><td>9,549 m² ± (102,773 ft²)</td></tr> <tr> <td>Other Information:</td><td></td></tr> </table>			Ward:	10 – Spadina-Fort York	Assessment Roll No.:	Part of 1904-06-2-160-02406	Approximate Size:		Approximate Area:	9,549 m ² ± (102,773 ft ²)	Other Information:	
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Other Information:													

A.	City Manager has approval authority for:
1. Acquisitions: 2A. Expropriations Where City is Expropriating Authority: 2B. Expropriations For Transit-Related Purposes Where City is Property Owner or Has Interest in Property Being Expropriated: 3. Issuance of RFPs/REOIs: 4. Permanent Highway Closures: 5. Transfer of Operational Management to Divisions, Agencies and Corporations: 6. Limiting Distance Agreements: 7. Disposals (including Leases of 21 years or more): 8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan: 9. Leases/Licences (City as Landlord/Licensor): 10. Leases/Licences (City as Tenant/Licensee): 11. Easements (City as Grantor): 12. Easements (City as Grantee): 13. Revisions to Council Decisions in Real Estate Matters: 14. Miscellaneous:	<input type="checkbox"/> Where total compensation does not exceed \$10 Million. <input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$10 Million. <input type="checkbox"/> (a) Acceptance of statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$10 Million. Request/waive hearings of necessity delegated to less senior positions. Delegated to less senior positions. Delegated to less senior positions. Delegated to less senior positions. <input type="checkbox"/> Where total compensation does not exceed \$10 Million. <input type="checkbox"/> Where total compensation does not exceed \$10 Million. Delegated to less senior positions. <input checked="" type="checkbox"/> Where total compensation (including options/ renewals) does not exceed \$10 Million. Leases/licences for periods up to 12 months at less than market value delegated to less senior positions. Leases pursuant to the Community Space Tenancy Policy delegated to a less senior position. <input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$10 Million. <input type="checkbox"/> Where total compensation does not exceed \$10 Million. Nominal sum easements to pre-existing utilities when closing roads delegated to less senior positions. <input type="checkbox"/> Where total compensation does not exceed \$10 Million. <input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (U)). Delegated to less senior positions.
B. City Manager has signing authority on behalf of the City for:	
<ul style="list-style-type: none"> Documents required to implement matters for which this position also has delegated approval authority. 	

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:	Ausma Malik	Councillor:	
Contact Name:	Tom Davidson	Contact Name:	
Contacted by:	<input type="checkbox"/> Phone <input checked="" type="checkbox"/> E-Mail <input type="checkbox"/> Memo <input type="checkbox"/> Other	Contacted by:	<input type="checkbox"/> Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Memo <input type="checkbox"/> Other
Comments:	Consulted	Comments:	

Consultation with Divisions and/or Agencies

Division:	Parks Forestry & Recreation	Division:	Financial Planning
Contact Name:	Paul Farish	Contact Name:	Ciro Tarantino
Comments:	Comments incorporated	Comments:	Comments incorporated

Legal Services Division Contact

Contact Name: Jacqueline Kiggundu – comments incorporated

DAF Tracking No.: 2024-018	Date	Signature
Recommended by: Manager, Real Estate Services	March 11, 2024	Signed by Niall Robertson
Recommended by: Director, Real Estate Services	March 11, 2024	Signed by Alison Folosea
<input checked="" type="checkbox"/> Recommended by: Executive Director, Corporate Real Estate Management Patrick Matozzo	March 24, 2024	Signed by Patrick Matozzo
<input checked="" type="checkbox"/> Recommended by: Deputy City Manager, Corporate Services David Jollimore	March 25, 2024	Signed by David Jollimore
<input checked="" type="checkbox"/> Approved by: City Manager Paul Johnson	March 25, 2024	Signed by Paul Johnson

Appendix "A": Major Terms and Conditions

Existing Terms:	All terms and conditions for the ten (10) year extension remain the same as in the Lease, save and except for the below terms.
Indemnifier:	First Capital Realty Inc. will serve as Indemnifier for the Tenant during the Term or any extension thereof and agrees with the City that it shall be jointly and severally liable with the Tenant for all of the Tenant's obligations under the Lease provided that the liability of the Indemnifier shall be limited to and capped at the maximum amount of \$100,000.00 in the aggregate for any and all claims of or made by the City pursuant to this Indemnity.
Letter of Credit:	A \$100,000.00 letter of credit held by the City under the Lease is to be released by the City.
Term:	Ten (10) years, commencing April 1, 2023 and ending March 31, 2033.
Option to Extend:	One option of ten (10) years at fair market value conditional on the Tenant providing a minimum of 12 months prior written notice in addition to providing 5 years of prior financial statements.
Financial Statements:	Tenant to provide yearly financial statements for the period of April 1 to March 31 of each year. If gross revenues exceed \$10,000,000, the Tenant will provide audited statements for that year and the previous one.

Annual Base Rent:

Fiscal Year	Term / Period	Total Revenue (net of HST)	Total Revenue (inclusive of HST)
2023	April 2023 - Dec 2023	201,948.95	228,202.31
2024	Jan 2024 - Dec 2024	275,323.73	311,115.81
2025	Jan 2025 - Dec 2025	283,583.44	320,449.29
2026	Jan 2026 - Dec 2026	292,090.94	330,062.77
2027	Jan 2027 - Dec 2027	300,853.67	339,964.65
2028	Jan 2028 - Dec 2028	309,879.28	350,163.59
2029	Jan 2029 - Dec 2029	319,175.66	360,668.50
2030	Jan 2030 - Dec 2030	328,750.93	371,488.55
2031	Jan 2031 - Dec 2031	338,613.46	382,633.21
2032	Jan 2032 - Dec 2032	348,771.86	394,112.20
2033	Jan 2033 - March 2033	87,832.52	99,250.75
Total	April 1, 2023 to March 31st, 2033	\$ 3,086,824.44	\$ 3,488,111.62

Annual Base Rent does not include real property taxes, which real property taxes shall also be paid by the Tenant during the Term and any extension of it, notwithstanding anything in the Lease to the contrary.

Arrears:	As at March 31, 2023, the Tenant is in arrears of the payment of Annual Base Rent in the amount of \$365,597.02 and in arrears of the payment of real property taxes in the amount of \$529,173.11, for a total of \$894,770.13 owing to the City, which shall be repaid in twenty-four (24) equal monthly instalments commencing April 1, 2023.
Early Termination:	Provided that the Term is further extended, at any time after April 1, 2033, the City shall be entitled, with 24 months' prior written notice, to terminate the Lease.
Environmental Testing:	The City is entitled to conduct environmental testing, including the drilling of boreholes, installation of flush mounted monitoring wells and the sampling of soil and groundwater, excluding those areas occupied by existing modular containers on one (1) week's prior written notice to the Tenant. All new wells installed shall be maintained by the City. The City shall indemnify the Tenant during the environmental testing work period, excepting any negligence, omissions or wilful misconduct by the Tenant and loss of revenue by subtenants or occupants.
Option to Release Interest in Leased Property:	The City has the option to construct a public trail (see Appendix B, Public Trail Rendering), for use as a bike/pedestrian path and an emergency fire/ambulance vehicle access route, on a portion of the property (approximately 10,513 ft ² , or 976.7 m ²). With 18 months' prior notice from the City any time after April 1, 2027, the Tenant shall release its interest in that portion of the Leased Area and the City shall reduce the annual base rent in same proportion as the property area reduction. The City will be responsible for all reasonable costs and expenses of the Tenant incurred by reason of the need to adjust or relocate the Tenant's existing improvements to those surrendered property portions. The City shall inform the Tenant of the public trail design specifications and provide reasonable notice of its construction start date. Either party may construct fencing to delineate the public trail from the remainder of leased property.

[illegible]

Public Trail Rendering

