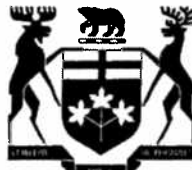


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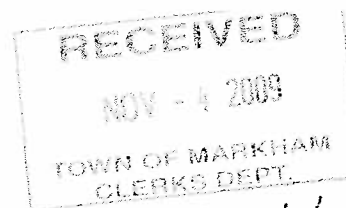
Nov. 2, 2009



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario



PL080019

Copy: Lucy
Ron Blake
legal
Jim Baird
Val Shuttlesworth

1691126 Ontario Inc. (Liberty Development Corporation) has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands composed of Part of Lot 18, Registrar's Compiled Plan 10327, municipally known as 7161 and 7171 Yonge Street, in the Town of Markham

OMB File No. PL090309

APPEARANCES:

Parties

Counsel

1691126 Ontario Inc. (Liberty Development Corporation)

M. Flowers

Town of Markham

C. Lyons

Regional Municipality of York

R. Miller

MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON OCTOBER 13, 2009

1691126 Ontario Inc., known as Liberty Development Corporation (Applicant), is proposing a mixed-use development on the four-hectare parcel of land situated at 7161 and 7171 Yonge Street, in the Town of Markham. The proposal consists of high-density residential towers, a hotel/office tower, apartment buildings and a retail space. The site, which is to be serviced by three privately owned roads, is proposed to contain two park areas: 50 surface and 2,500 underground parking spaces.

On June 8, 2009, the Board issued its decision on the Official Plan Amendment and Zoning By-law Amendment for this proposal. At today's appearance, the Board was advised that the Parties had reached an agreement and the proposed site plan and conditions now come before the Board on consent.

Mr. Steven Kirshenblatt, a professional architect, has been involved with this project for over a year. He provided the Board with an overview of the project and related drawings and an outline of the two site plan scenarios; one scenario (SP-02A) is applicable if the proposal to extend the subway into this area proceeds and the second scenario (SP-02) would apply if the subway is not developed. The buildings identified as B1 and B2 are not part of the subject site plans, but rather have been included for reference purposes only.

Mr. Kirshenblatt told the Board that the proposed site plan(s) has been subjected to several modifications and a rigorous review by planning staff, Council and the public. It was his opinion that the proposal represents an appropriate site plan and architectural design, and conforms to the relevant Official Plan Amendment.

Given the consent of the Parties, and on the evidence of Mr. Kirshenblatt, the Board finds that the proposed site plan(s) and conditions conform to the site-specific Official Plan Amendment and Zoning By-law Amendment previously approved by the Board in this matter.

THE BOARD ORDERS the appeal is allowed. The site plan(s), subject to the attached Conditions of Approval (Exhibit 1), is approved. The Board's Order is withheld pending written notification from all Parties that the conditions of site plan approval have been satisfied.

If difficulties arise, the Board may be spoken to further. This panel of the Board remains seized.

"M. A. Sills"

M. A. SILLS
MEMBER

**Site Plan Approval Application No. SC 08 106782
1691126 Ontario Inc. (Liberty Development Corporation)
7161 and 7171 Yonge Street, Town of Markham**

THIS APPROVAL APPLIES TO THE FOLLOWING PLANS AND DRAWINGS:

1. Site Statistics, Drawing SP-01, prepared by Kirkor Architects & Planners, Plot Date: September 4, 2009;
2. Site Plan With Yonge BRT Design, Drawing No. SP-02, prepared by Kirkor Architects & Planners, Plot Date: September 4, 2009;
3. Site Plan With Existing Road Conditions, Drawing No. SP-02A, prepared by Kirkor Architects & Planners, Plot Date: September 4, 2009;
4. Building A West Elevation, Drawing No. SP-16, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
5. Building A East Elevation, Drawing No. SP-17, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
6. Building A1 North Elevation / Building A2 South Elevation, Drawing No. SP-18, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
7. Building B South Elevation, Drawing No. SP-19, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
8. Building B North Elevation, Drawing No. SP-20, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
9. Building B West Elevation, Drawing No. SP-21, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
10. Building B East Elevation, Drawing No. SP-22, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
11. Building B3 North & South Elevations, Drawing No. SP-23, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
12. Building C East & West Elevation, Drawing No. SP-24, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
13. Building C North & South Elevation, Drawing No. SP-25, prepared by Kirkor Architects & Planners, Plot Date: October 8, 2009;
14. Meadowview Road Elevation, Drawing No. SP-26, prepared by Kirkor Architects & Planners, Plot Date: September 4, 2009; and
15. Yonge Street Elevation, Drawing No. SP-27, prepared by Kirkor Architects & Planners, Plot Date: October 7, 2009.

CONDITIONS OF APPROVAL**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUANCE OF THE OMB ORDER:****Town of Markham**

1. Site plan approval shall lapse after a period of three years commencing October 13, 2009, in the event that a site plan agreement is not executed within that period.
2. The site plan shall comply with the requirements of By-law 2009-118, as amended.
3. The Owner shall submit a Level 1A Technical Review to the TTC (in compliance with the TTC's Developers Guide) for the TTC's review and approval.
4. The Owner shall:
 - a) Complete the following studies and plans, to the satisfaction of the Town of Markham, in consultation with the Region of York:
 - Municipal Servicing Study;
 - Transportation Study;
 - Site Servicing Plan;
 - Grading plan;
 - Erosion and Sediment Control Plan;
 - Phase 2 Environmental Site Assessment Study;
 - Wind Study;
 - Travel Demand Management Plan;
 - Stormwater Management Report.
 - b) Enter into one or more Development Agreement(s) with the Town of Markham, to the satisfaction of the Director of Engineering, addressing the following:
 - the construction and financing of external servicing infrastructure as identified in the Servicing Study and satisfying the requirements, if any, of the Municipal Class EA. Prior to the execution of this agreement, the Town of Markham shall be satisfied that appropriate arrangements can be made with the City of Toronto to ensure construction access for sanitary sewer connections or other infrastructure within the Steeles Avenue East right of way. The Owner is required to front-end the cost of designing and constructing the off-site infrastructure to service the site and the recovery

of the cost shall be in accordance with the Development Charges By-law and the *Development Charges Act*;

- provide to the satisfaction of the Town of Markham and the Region of York for the installation of traffic signals at the intersections of Yonge Street and 'Street A' and modified traffic signals at the intersection of Yonge Street and Meadowview Avenue; and provide to the satisfaction of the Town of Markham for the installation of traffic signals at Meadowview Avenue and 'Street B';
 - provide for widening and road improvements to Meadowview Avenue.
- c) Submit a Landscape Plan and associated cost estimates, prepared by a Landscape Architect having O.A.L.A. membership, to the satisfaction and approval of the Director of Planning and Urban Design.
 - d) Submit an appraisal report for the subject lands for the purposes of calculating cash-in-lieu of parkland.
 - e) Provide the Town of Markham with a sample board showing proposed materials and colours for the proposed buildings, in accordance with the approved site plans for Buildings B3, C, A1 and A2.

5. The Owner shall:

- a) Enter into a Section 37 Agreement with the Town regarding a financial or in-kind contribution equivalent to \$2 million for the provision of community services in Ward 1 or the Thornhill Community, to be paid at the time of issuance of the first residential building permit, to the satisfaction of the Town;
- b) Dedicate, or secure the dedication of, land for the widenings of Yonge Street and Meadowview Avenue, to the satisfaction of the Town of Markham and the Region of York;
- c) Dedicate, or secure the dedication of public right of way easements over all internal private roadways and private open space areas, where required, to the satisfaction of the Town of Markham;
- d) Provide written confirmation from CNR that their conditions have been satisfied;
- e) Secure a variance for reduced building setbacks as per the approved site plan from the Meadowview Avenue and Yonge Street rights of way as set out in the approved site plan, if required, as previously supported by Town Staff.

6. The Owner shall enter into a Site Plan Agreement that shall:

- a) Provide for payment by the Owner of all applicable fees, recoveries and development charges;

- b) Contain provisions for satisfying Town Departments including all requirements of the Director of Engineering, the Fire Department, Waste Management and Roads;
- c) Contain a clause whereby the Owner agrees to attain LEED silver certification for the proposed development;
- d) Contain a clause requiring a minimum of 8,000 m² of gross floor area for business offices and/or medical offices in Building C, as shown on the approved site plan, with such clause requiring the issuance of a building permit for Building C prior to or concurrent with issuance of any building permit for a building designed for residential occupancy;
- e) Contain a clause requiring that Street 'A' and Street 'B' be completed throughout the site and are connected to Yonge Street and Meadowview Avenue;
- f) Contain a clause whereby the Owner agrees not to finish or occupy any residential units in the portion of Buildings B1 and B2 to be constructed as part of the site plan approval (i.e. the portion of this building located below 205 metres geodetic elevation) until servicing allocation for these residential units has been granted;
- g) Contain the following clauses, as set out in the letter from the Toronto Transit Commission dated March 9, 2009, whereby the Owner acknowledges and agrees that:
 - i) the proximity of the proposed development of the lands municipally known as 7161/7171 Yonge Street to the TTC subway right of way may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matter, transmissions (collectively referred to as "Interferences") to the Development;
 - ii) the City of Toronto and the Toronto Transit Commission (the "Commission") will not accept responsibility for such effects on any of the Development and/or its occupants;
 - iii) it had been advised by the Commission to apply reasonable attenuation/mitigation measures with respect to the level of the Interferences on and in the development; and
 - iv) a TTC Interferences warning clause, as provided below and satisfactory to the TTC, has been or shall be inserted into all offers of purchase and sale or lease and condominium declaration(s) for each unit:

"The Purchaser and/or Lessee specifically acknowledges and agrees that the proximity of the development of the lands municipally known as 7161/7171 Yonge Street to TTC transit operations may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matter, transmissions (collectively referred to as Interferences) to the Development and despite the inclusion of control features within the

Development, Interferences from transit operations may continue to be of concern, occasionally interfering with some activities of the occupants in the Development. Notwithstanding the above, the Purchaser and/or Lessee agrees to release and save harmless the City of Toronto and the Toronto Transit Commission from all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore the Purchaser and/or Lessee acknowledges and agrees that an electromagnetic, stray current and noise-warning clause similar to the one contained herein shall be inserted into any succeeding lease, sublease or sales agreement, and that this requirement shall be binding not only on the parties hereto but also their respective successors and assigns and shall not die with the closing of the transaction."

- h) Contain clauses whereby the Owner agrees to implement recommended measures identified in the approved Travel Demand Management Study into the design of this development;
- i) Contain a clause whereby the Owner agrees to implement bird-friendly design measures, in consultation with the Town of Markham;
- j) Contain a clause requiring the Owner to pay for off-site works and infrastructure within the Yonge-Steeles growth area that benefit or will benefit the Owner's lands;
- k) Contain a clause requiring the Owner to carry out an Environmental Site Assessment in accordance with the *Environmental Protection Act* and its regulations, to provide the cost of the peer review of all environmental reports, and to provide a Record of Site Condition for all lands to be conveyed to the Town;
- l) Contain a clause whereby the Owner agrees to maintain the future Yonge Street streetscape along the entire Yonge Street frontage of the site for a warranty period of two years. The Owner agrees to collaborate with the Town of Markham and Region of York to facilitate a maintenance program for the Yonge Street frontage of the site;
- m) Contain a clause whereby the Owner agrees to maintain the Meadowview Avenue streetscape for a warranty period of two years;
- n) Contain a clause whereby the Owner agrees to enter into a Park Development and Delivery Agreement with the Town for parkland development including matters such as: conveyance of parkland in Phase 2; public easements; financial arrangements including application of development charges and credits and/or cash-in-lieu as applicable; maintenance obligations; preparation and approval of plans for park improvements; and timing and process for park delivery;
- o) Contain a clause whereby the Owner agrees to enter into a Maintenance, Easement and Continuing Indemnity Agreement with the Town for lands in Phase 2 that will be owned by the Town as a strata land conveyance to include matters such as: conveyance of parklands; public easements; park

improvements; performance and audit reports and reserve fund studies; other owner obligations related to the development, use maintenance, repair, restoration or reconstruction of any part of the parking garage or structure below the parklands; obligation to maintain insurance and any other obligations to indemnify and defend the Town;

- p) Contain a clause whereby the Owner agrees to secure for and convey land for the widening of Yonge Street and Meadowview Avenue to the satisfaction of the Town of Markham and the Region of York.
- q) Contain a clause whereby the Owner agrees to secure for and convey public right of way easements over all internal private roadways and private open spaces, where required, to the satisfaction of the Town of Markham.
- r) Incorporate, to the satisfaction of the Region, Conditions 27 to 57 of these conditions of approval.

Region of York

This approval anticipates construction of the VIVA – Yonge Street Bus Rapid Transitway (the “BRT”) in the Yonge Street corridor adjacent to the proposed development (**the “BRT Scenario”**).

The BRT may be constructed prior to, concurrent with, or following construction of the proposed development. Any works completed within the Yonge Street right-of-way prior to the completion of the BRT may be temporary in nature and any throw away costs will be the sole responsibility of the Owner.

This approval includes provisions and conditions which shall apply in the event that capital funding for the construction of the subway on Yonge Street between Finch Avenue and Highway 7 is confirmed and the Region decides that the VIVA – Yonge Street Bus Rapid Transitway will not be constructed (**the “Existing Road Scenario”**).

The BRT may be constructed even if the subway is built. However, if capital funding for the construction of the subway is confirmed, Rapidco (VIVA) will report to Regional Council within six months of such confirmation to seek Council's direction regarding the disposition of the BRT lands.

- 7. The Owner shall provide confirmation in writing, to the satisfaction of the Region, that adequate water and wastewater servicing capacity is available and allocated by the Town of Markham for the development proposed within this site plan approval.
- 8. The Owner shall provide confirmation, in writing, to the satisfaction of the Region, that the Owner has made a complete application for a Level 1A Technical Review to the TTC (in compliance with the TTC's Development Guide) and that the TTC has approved said application.

9. The Owner shall submit the following reports, to the satisfaction of the Region, including:
 - a. Noise Report;
 - b. Stormwater Management Report;
 - c. Site Servicing Plan and Drawings; and
 - d. Grading Drawings.
10. The Owner shall arrange, to the satisfaction of the Region, for the preparation, review and deposit on-title of a Reference Plan describing the lands to be conveyed to the Region. The lands to be conveyed to the Region include a road widening along the Yonge Street frontage of the site, and daylight triangles at the intersection of Yonge Street and Street A and at the intersection of Yonge Street and Meadowview Avenue. The Reference Plan shall identify which parcels are not required by the Region in the event the Region decides that the BRT will not be constructed.
11. The Owner shall convey to the Region, or secure such conveyance to the satisfaction of the Region, the lands required for the BRT Scenario. These lands shall be conveyed free of all costs and encumbrances, to the satisfaction of the Regional Solicitor. In the event that the Region decides the BRT will not be built, those lands which are not required by the Region shall be conveyed back to the Owner for nominal consideration, in accordance with the Region's policy governing the sale and disposition of surplus land.
12. The Owner shall provide a solicitor's certificate of title in a form satisfactory to the Regional Solicitor, at no cost to the Region, with respect to the conveyance of the above noted lands to the Region.
13. The Owner shall submit to the Region, for their review and approval, **preliminary engineering drawings** and a **cost estimate** for all works:
 - a. related to the proposed sanitary connection to the YDSS at Steeles Avenue; and
 - b. related to development triggered improvements within the Yonge Street right-of-way under the BRT Scenario, including but not limited to:
 - i. works related to the intersection at Yonge Street and Meadowview Avenue, and works related to the new signalized intersection at Yonge Street and Street A;
 - ii. works required to accommodate a fourth leg at the intersection of Yonge Street and Street A in the future;
 - iii. works related to the relocation and/or removal of any interim improvements at the two intersections if the development proceeds prior to construction of the BRT; and

iv. works required to the Yonge Street bridge structure north of the subject property.

14. Upon approval of the cost estimate, the Owner shall deposit to the Regional Transportation Services Department, Development Approvals Section, payable to The Regional Municipality of York, security in the form of a **Certified Cheque or Letter of Credit** to the satisfaction of the Regional Commissioner of Finance in the amount sufficient to cover the costs of the required works (including those related to the proposed sanitary connection to the YDSS at Steeles Avenue and related to development triggered improvements within the Yonge Street right-of-way under the BRT Scenario), to secure the transfer of land and the execution of all required encroachment agreements, to ensure the provision of transit related features on private property, and as a guarantee of good workmanship on the Regional right-of-way, to ensure timely progress and completion of construction, to rectify any construction damages, to satisfy liens, claims, fees and to ensure that the road surface and ditches are kept clear of dust, mud and refuse.
- a. The security shall specify York Region File Number **SP-M-044-06**, the location of the site and the name and address of the Owner.
 - b. Reductions in securities held, to a minimum of 15 percent, may be authorized after an inspection has been carried out **and after any land requirements have been conveyed to the Region, and the submission to the Region of the solicitor's certificate of title for the required conveyances and the execution of all required encroachment agreements.** The reduced balance will then be retained for a period of two years for maintenance and lien claim purposes. Prior to releasing any securities, the Region will require the Owner to provide a statutory declaration of payment of all outstanding invoices, and where noise wall, window and/or oversized forced air mechanical systems are required, these features shall be certified by a professional engineer to have been installed as specified by the approved Noise Study and in conformance with the Ministry of Environment guidelines). Also, prior to releasing any securities, the Region shall conduct a final inspection. If the Region issues to the Owner a deficiency list after the final inspection, then the Owner shall rectify the deficiencies within a maximum period of ninety (90) days of non-inclement weather. A day of inclement weather occurs when, in the Region's sole opinion, the Owner and/or the Owner's contractor is prevented by inclement weather, for a period of at least six (6) hours in a working day, from proceeding with at least sixty percent (60%) of normal labour on any component of deficiencies which, if delayed, will delay the completion of the deficiencies. If the Owner fails to rectify the deficiencies within this period, then the Region may draw upon any or all of the remaining securities, once this period has passed.
 - c. The Owner acknowledges that the Region will carry out any work deemed necessary at the Owner's expense if such requirements are not carried out within 24 hours of notice being given to the Owner or the Owner's Consulting Engineer or without any notice if, in the opinion of the Regional Commissioner of Transportation Services, it is required immediately. **In the**

event that the Region must rectify any deficiencies, make any remedies or must carry out the cleanup of roads from mud, dust, refuse or debris, the Owner acknowledges that the Region shall charge the Owner, for each occurrence, a minimum of \$1,000.00 or twice the actual cost to perform the work, whichever is greater.

- d. Owners who elect to submit a Letter of Credit as their guarantee shall advise their lending institution that **the Region's STANDARD DOCUMENTATION FOR LETTERS OF CREDIT** shall be used.
 - e. **If capital funding for the construction of the subway on Yonge Street between Finch Avenue and Highway 7 is confirmed prior to construction of the BRT and the Region decides that the BRT will not be constructed, then any securities no longer required by the Region will be returned to the Owner.**
15. The Owner shall forward a **certified cheque** to the Regional Transportation Services Department, Development Approvals Section, payable to "The Regional Municipality of York", representing the applicable development fees pursuant to the Region's By-law No. A-0380-2006-049, as amended. *The fee for site plan applications is \$1,200 minimum or 7% of the estimated cost of works on the York Region right-of-way, whichever is greater.*
 16. The Owner shall submit to the Region, in accordance with the requirements of the *Environmental Protection Act* and O. Reg. 153/04 *Records of Site Condition Part XV.1 of the Act* (as amended), a Phase I environmental site assessment, prepared and signed by a qualified professional, of the Owner's lands and more specifically of the lands to be conveyed to the Region (the "Assessment"). Based on the findings and results of the Assessment, the Region may require further study, investigation, assessment and delineation to determine whether any remedial or other action is required. The Assessment and any subsequent environmental reports or other documentation prepared with respect to the environmental condition of the lands to be conveyed shall be addressed to the Region and contain wording to the effect that the Region shall be entitled to rely on such reports or documentation in their entirety, and such reports or documentation shall be satisfactory to the Region.

The Owner shall also certify, in wording satisfactory to the Regional Transportation Services Department, that no contaminant, pollutant, waste of any nature, hazardous substance, toxic substance, dangerous goods, or other substance or material defined or regulated under applicable environmental laws is present at, on, in or under all lands to be conveyed to the Region (including soils, substrata, surface water and groundwater, as applicable): (i) at a level or concentration that exceeds the *Environmental Protection Act* O. Reg. 153/04 full depth generic site condition standards applicable to the intended use that such lands will be put by the Region at the time of conveyance or any other remediation standards published or administered by governmental authorities applicable to the intended land use; and (ii) in such a manner, condition or emanating from such lands in such a way, that would result in liability under applicable environmental laws. The Assessment, any subsequent environmental reports or other documentation

and the Owner's certification shall be done at no cost to the Region.

17. The Owner shall submit to the Regional Transportation Services Department, Development Approvals Section, a certificate of insurance on the Region's form, completed to the satisfaction of the Region's Manager of Insurance and Risk, naming The Regional Municipality of York as an additional insured with respect to the Commercial General Liability policy. The Owner shall maintain the insurance in effect until all site works have been completed and accepted by the Region. The certificate of insurance shall specify: for a liability insurance amount of not less than \$5,000,000 per occurrence, and Non-Owned Automobile Liability and Owned Automobile Liability Insurance for limits of not less than \$2,000,000 per occurrence for each. In addition, the Region requires confirmation of WSIB coverage. In the event that participation in Workers Compensation is not required or has been opted out of, the Region requires confirmation of Employer's Liability in an amount not less than \$2,000,000 per occurrence.

This certificate of insurance shall specify the Region's File Number **SP-M-044-06**, the location of the site and the name and address of the Owner. The name, address and telephone number of the issuing company and/or agent must be shown on the certificate. In addition, a clause shall be added such that this policy shall be automatically extended in one year increments, until all site works have been completed and accepted by the Region, and that 30 days written notification be given to the Region by registered mail if this policy is to be cancelled or if coverage is reduced.

Further, the Owner shall indemnify the Region against and hold the Region, its elected and appointed officials, employees, contractors and agents harmless from any and all liability for damages on account of injury to persons or damage to property resulting from or arising out of or in any way connected with the presence of the Owner, its servants, agents or employees, and persons duly authorized by the Owner, on the site or rights-of-way and shall reimburse the Region for all costs, expenses and any loss incurred by it in consequence of any claims, demands and causes of action which may be brought against it arising out of the presence of the Owner, its servants, agents or employees, and persons duly authorized by the Owner, on the site or the Regional right-of-way.

18. The Owner shall submit applicable Construction Hoarding/Fencing plans to the Region, if Hoarding/Fencing within the Regional right-of-way will be needed. The approved Construction Hoarding/Fencing within the Regional right-of-way may require a separate encroachment agreement between the Region and the Owner. However, if the Hoarding/Fencing plans are submitted early to the Region, the encroachment conditions may become part of the site plan agreement, instead of being in a separate encroachment agreement.
19. The Owner shall submit, to the satisfaction of the Region in consultation with the TTC, Shoring Anchor/Tie Back System plans, certified by a qualified professional engineer, to the Region. The approved Construction Shoring Anchor/Tie Back Systems within the Regional right-of-way will require the execution of an encroachment agreement between the Region and the Owner.

20. The Owner shall submit, to the satisfaction of the Region, detailed engineering and/or electrical drawings for works to be undertaken in the Regional right-of-way and works related to the YDSS connection.
21. The Owner shall submit drawings depicting the following to the satisfaction of the Region:
 - i) Landscape drawings.
 - ii) All existing woody vegetation within the Regional right-of-way.
 - iii) Tree protection measures to be implemented on and off the Regional right-of-way to protect right-of-way vegetation to be preserved.
 - iv) Any woody vegetation within the Regional right-of-way that is proposed to be removed or relocated. However, it is to be noted that tree removal within Regional rights-of-way shall be avoided to the extent possible/practical. Financial or other compensation may be sought based on the value of trees proposed for removal.
 - v) A planting plan for all new and relocated vegetation to be planted within the Regional right-of-way, based on the following general guideline:

Tree planting shall be undertaken in accordance with the Regional standards as articulated in Streetscaping Policy and using species from the Regional Street Tree Planting List. These documents may be obtained from the Forestry Section. If any landscaping or features other than tree planting (e.g. flower beds, shrubs) are proposed, they will require to be supported by a maintenance agreement, to be executed between the Owner and the Region for the Owner's maintenance of these features. In addition, the agreement should indicate that where the Owner does not maintain the feature to the Region's satisfaction, the Owner will be responsible for the cost of maintenance or removal undertaken by the Region.
22. The Owner shall deliver to the Legal Services Branch of the Region a certified cheque in the sum of \$700.00, made payable to The Regional Municipality of York, towards the legal and administrative expenses of the Region in the preparation and processing of this Agreement.
23. The Owner shall submit plans and satisfy the Region that sidewalks will be provided, including illumination in accordance with the local municipality's or the Region's design standards, as applicable. The sidewalks shall meet the local municipality's standards, and be provided by the Owner along the subject lands' frontage onto roadways that have transit services.

Existing YRT/Viva transit services operate on the following roadways in the vicinity of the subject lands:

- Yonge Street

- Meadowview Avenue

24. The Owner shall submit plans and satisfy the Region that hard surface pedestrian access connections from the building entrances to the sidewalk and/or bus stop will be provided, as follows:
- From buildings “C” / “A1” / “A2”/ 10 storey podium to the sidewalks and bus stops located on Yonge Street and Meadowview Ave.

The hard surface pedestrian access connections shall be privately owned and maintained by the Owner.

25. The Owner shall submit plans and satisfy the Region that the passenger standing areas/shelter pads identified below shall be installed to the satisfaction of York Region Transit. The Owner shall also submit drawings showing, as applicable, the sidewalk locations, hard surface pedestrian access, passenger standing areas and shelter pads to the satisfaction of the Region.

Subject to approval by YRT, passenger standing areas and shelter pads shall be provided at the following locations:

ON Street	AT Street	Location	Standard
Yonge Street	Street “A”	SE corner	YRT-1.03
Meadowview Ave.	Street “A”	NE corner	YRT-1.03 or YRT-1.02

Landscaping should not interfere with the bus stops, passenger standing areas, shelters or corner sightlines. Bus stops located in front of the employment areas shall be incorporated into the landscape design.

The bus stop locations determined during the design phase are subject to change. Prior to construction of the passenger standing areas/shelter pads, the Owner/consultant shall confirm with YRT the final bus stop locations/requirements. The Owner/consultant is to contact YRT Facilities Supervisor (tel. 905-762-2111) to confirm final details.

26. The Owner shall provide a Letter of Credit in the amount of \$189,000.00 to secure improvements to the Yonge Street streetscape along the frontage of the site.
- a. The security shall specify York Region File Number **SP-M-044-06**, the location of the site and the name and address of the Owner.

- b. The Region's STANDARD DOCUMENTATION FOR LETTERS OF CREDIT shall be used.
- c. The Owner acknowledges that **the streetscape improvement works may be constructed by the Region on behalf of the Owner** and that the Region will draw down the securities to do so.
- d. **If the construction of the BRT is confirmed by the Region**, the securities provided for the Yonge Street streetscape which are no longer required by the Region will be returned to the Owner.

CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT OF CONSTRUCTION:

Region of York

- 27. Prior to the commencement of any construction, the Owner agrees to provide the Region with satisfactory evidence that all of the requirements of the Municipal Class Environmental Assessment have been satisfied with respect to the proposed sanitary connection and related works.
- 28. Prior to the commencement of any construction, the Owner agrees to submit to the Region a certificate from the Owner's qualified consultant, identifying the source of any fill material that will be used on and/or adjacent to the Region's existing and proposed right-of-way, including a soil testing certificate of analysis indicating that the fill material is free of any contamination and in accordance with all applicable Ontario standards, guidelines and regulations. If during the course of construction the source of fill is to be changed, then the Owner hereby agrees to ensure that the above certification is submitted to the Region for any new source of fill.
- 29. Prior to the commencement of any construction, a detailed Traffic Management Plan shall be prepared by the Owner and submitted to the Roads Branch for review and approval. If traffic conditions are severe, the Traffic Management Plan and the requirements below may need to be revised to mitigate the impact. Please note the following requirements of working within the Regional right-of-way:
 - i) no lane closures are permitted on weekdays between the hours of 7:00-9:30 A.M. and 3:30-6:00 P.M.;
 - ii) any lane closures or lane encroachments that occur must be signed in accordance with the Ontario Traffic Manual (OTM) Book 7 "Temporary Conditions";
 - iii) safe pedestrian access must be maintained at all times by the Owner, including pedestrians with disabilities (blind, hearing impaired, on wheelchairs, etc.);

- iv) a 24-hour contact shall be available throughout the duration of the project;
 - v) the characteristic and placement of all signs and traffic control or management shall conform to the standards of the Ontario Traffic Manual (OTM) Book 7 "Temporary Conditions" and as per the *Occupational Health and Safety Act*; and
 - vi) the manufacture and the erection of all signs for the Traffic Management Plan shall be the responsibility of the Owner.
30. The Owner shall notify the Roads Branch of the Regional Transportation Services Department **48 hours in advance of any work commencing** on the site or right-of-way and shall provide, in writing, 24 hour emergency telephone numbers for the Owner and any contractors or consulting engineers retained by the Owner.

Any notice to be delivered to the Region shall be delivered to the following address:

Office of the Commissioner of Transportation Services
The Regional Municipality of York
17250 Yonge Street, Box 147
Newmarket, ON L3Y 6Z1

Attention: **Glen Cross**
Development Construction Co-ordinator

31. The Owner shall obtain a Road Occupancy Permit from the Regional Transportation Services Department **prior to commencing any work on the Regional right-of-way**. The Road Occupancy Permit will be issued once the Owner has supplied proof that the Regional Finance Department is in receipt of securities and the certificate of insurance required herein. The completed Road Occupancy Permit is to be returned to the Roads Operations Group of the Regional Transportation Services Department. Please contact Darlene Robertson-Bootsma at (905) 895-1231 extension 5207 in this regard.
32. The Owner shall contact **Frank Badinski**, Construction Coordinator at (905) 830-4444 extension 3047 and ensure the Construction Coordinator or his delegate is on site during the connection of the proposed sanitary connection to the YDSS on Steeles Avenue. **Under no circumstances shall any construction related to this sanitary connection take place prior to the notification of and co-ordination with Frank Baldinski or his delegate.**

GENERAL CONDITIONS:

Region of York

33. The Owner shall be responsible for the cost and construction of all works related to the proposed sanitary connection to the YDSS at Steeles Avenue, and all

development related works within the Yonge Street right-of-way.

34. The Owner acknowledges that any works completed within the Yonge Street right-of-way prior to the completion of the BRT may be temporary in nature and any throw away costs will be the sole responsibility of the Owner.
35. The Owner acknowledges and agrees that no portion of the sanitary sewer system or connection(s) servicing this development will pass through, be contained, or have connection within the Yonge Street right-of-way.
36. In the event the construction of the BRT precedes the works associated with the proposed development, both parties may agree to have the development related works within the Yonge Street corridor constructed by the Region on behalf of the Owner. The actual costs of these works, based on the Region's contract prices, will be invoiced to the Owner. The Owner will be responsible to pay for the actual costs plus an administration fee as agreed by the parties.
37. The Owner acknowledges and agrees that the access permitted from Yonge Street to the site will be situated north of Meadowview Avenue, as shown on the approved plan. The existing access on Yonge Street shall be removed, and the boulevard shall be restored to its original condition. The Owner also agrees that it shall not initiate any action, suit, or any other proceeding against the Region before any court or tribunal as a result of these restrictions of access to and from the site; including, but not limited to, any action for injurious affection.
38. The Owner agrees to provide temporary construction access to the site from Meadowview Avenue, at the location of the existing access. No construction access to the site directly from Yonge Street shall be permitted.
39. The Owner shall make provision for continuous flow-through circulation for YRT's Mobility Plus specialized vehicles within the property. Since the subject site will likely become a destination for residents/visitors with disabilities, servicing provision for passenger boarding and disembarking shall be provided at/near the primary entrance of the facility. Internal driveways and designated pick-up areas should be identified and shall be designed to facilitate movement and circulation of Mobility Plus smaller buses/vehicles. Due to safety concerns, Mobility Plus fleet will not manoeuvre in reverse direction.
40. The Owner shall be responsible for decommissioning any existing wells on the Owner's lands in accordance with all applicable provincial legislation and guidelines and to the satisfaction of the Town of Markham.
41. For all new buildings, the Owner shall install large illuminated street number signs that are easily and clearly visible, at wide angles, to approaching vehicles. Advertising pylons shall have the street number displayed at the top and shall be illuminated.
42. The Owner agrees that no portion of the building structure above or below ground or associated footings and construction shoring system shall encroach within the Regional right-of-way, unless authorized by an encroachment agreement. Any

unauthorized encroachment of the building structure above or below ground or associated footings and construction shoring system shall be removed at the Owner's expense.

43. All exterior walls of building(s) shall be set back a minimum of 2 metres from the ultimate Regional right-of-way in order to avoid steps, retaining walls or doorways that may encroach onto the Regional right-of-way.
44. The Owner agrees that all works within the Regional right-of-way shall comply with the Region's *Standard Development Construction Practices for Work on Regional Roads*.
45. The Owner agrees that all curb and gutter within the Regional right-of-way shall be constructed to O.P.S.D. 600.04 with provision for dropped curbs at the locations of all pedestrian crossings. Concrete curb O.P.S.D. 600.11 shall be used in private entrances.
46. The Owner agrees that all boulevards disturbed during construction shall be restored to their original or better condition with minimum 100-mm of topsoil and sod. If the boulevard is not restored to its original or better condition, the Region may draw down on the Owner's security posted pursuant to this agreement to carry out the work required to so restore the boulevard.
47. The Owner agrees that the Yonge Street right-of-way shall be free of all visibility obstructions of any sort including earth berms, landscaping and utility structures, construction equipment, vehicles and materials not immediately required for the construction of site works.
48. If this site requires any service installation, connection or relocation, including hydro, telecommunications, gas, cable, water, sewers, etc. within the Regional right-of-way, the Owner must inform the affected utility company of the requirement to obtain approval from the Regional Transportation Services Department. The Owner shall also contact Steve Murphy at (905) 803-4444 extension 5784.
49. The Owner shall be responsible for determining the location of all utility plants within the Regional right-of-way and for the cost of relocating, replacing, repairing and restoring any appurtenances damaged during construction of the proposed site works. The Owner shall review, or ensure that any consultants retained by the Owner review, at an early stage, the applicable authority's minimum vertical clearances for aerial cable systems and their minimum spacing and cover requirements. The Owner shall be entirely responsible for making any adjustments or relocations, if necessary, prior to the commencement of any construction.
50. The Owner agrees that the work(s) authorized by the Region within the Regional right-of-way pursuant to this site plan approval shall be carried out in accordance with the approved drawings, terms and conditions as set out by the Regional Commissioner of Transportation Services. The Owner also agrees that it shall be solely responsible for all aspects of such work(s), including without limitation,

responsibility for obtaining and complying with all permits, approvals and licences required from applicable governmental agencies (e.g., ministries, conservation authorities, the Region and the Town of Markham) with respect to the construction of such work(s).

51. The Owner agrees to indemnify and hold harmless the Region, its elected and appointed officials, employees, contractors and agents against any and all actions, causes of action, suits, orders, proceedings, claims, demands and damages whatsoever which may arise either directly or indirectly by reason of any of the work undertaken by or on behalf of the Owner with respect to this development proposal, including without limitation, any work undertaken within the Regional right-of-way.
52. The Owner shall be responsible for compliance with all applicable statutes and regulations, including without limitation, the *Construction Lien Act*, the *Occupational Health and Safety Act*, the *Fisheries Act* (Canada), the *Environmental Protection Act*, and the *Ontario Water Resources Act*. The Owner, for the purposes of the *Occupational Health and Safety Act*, shall be designated as a Constructor and shall assume all of the responsibilities of the Constructor, as set out in that Act and its regulations. The Owner shall carry out or cause to be carried out all construction work in accordance with the requirements of the Act and regulations for construction projects. **In the event of a construction safety violation the Region shall charge the Owner, for each occurrence, a construction safety inspection violation fee of \$1,000.00.**
53. The Owner agrees that the approved access onto the Regional right-of-way shall not be opened up to public traffic until all works are fully completed to the satisfaction of the Region including, but not limited to, any final restoration works. The Owner acknowledges and agrees that if the approved access is opened up to public traffic prior to the full completion of all works to the satisfaction of the Region, the Region may close the access at the Owner's expense, until the full completion of the works to the satisfaction of the Region.
54. Before the financial security deposit is released, "As-Built" digital files, "As-Built" drawings and a certification letter shall be provided by the Owner's Professional Engineer. The certification letter shall specifically confirm that the works authorized pursuant to this site plan approval, including works within the Regional right-of-way, have been constructed in accordance with the final approved drawings and the terms and conditions of all permits, approvals and licences required for the works.
55. The Region, in connection with this approval, has reviewed the technical submission, including but not limited to the engineering drawings submitted therewith. **The Region makes no guarantees, warranties or representations as to the completeness and/or accuracy of the submission, and specifically does not certify the completeness or accuracy of any aspect or component of the submission.** The professional engineer who stamped, signed and dated the submission is responsible for all aspects of its quality, completeness and accuracy.

56. The Owner agrees to satisfy all other conditions and requirements of the Regional Transportation Services Department, pertaining to property, works within or adjacent to the Regional right-of-way and financial matters, prior to the Region releasing securities.
57. These conditions of approval are applicable for a **maximum period of thirty six months from the date of issuance of the OMB Order**. Any extension to this approval period requires the consent of the Region and shall be requested in writing by the Owner. Furthermore, all construction activities, on the Regional right-of-way, including but not limited to, final restoration works, shall be completed within a **maximum period of three months from the date of commencement of construction**. Any requests for extension of this timeline, requires the consent of the Region and must be requested in writing by the Owner.