



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**939 Lawrence Avenue East, 1090 Don Mills Road, 49 and
75 The Donway West – Settlement Offer**

Date:	September 29, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 25- Don Valley West
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege. This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	

SUMMARY

At its meeting of September 15, 2009, North York Community Council directed the City Manager, in consultation with the City Solicitor, the General Manager of Parks, Forestry and Recreation, and the Chief Planner, to report to the September 30 and October 1, 2009 Council meeting respecting the Settlement Offer dated September 10, 2009 from Davies Howe Partners (the "Settlement Offer"), attached hereto as Attachment "2".

This matter has been appealed to the Ontario Municipal Board. A pre-hearing is scheduled for October 16, 2009, and seven weeks have been set aside for a full hearing, scheduled to commence the first week in April 2010. The Settlement Offer must be accepted prior to October 7, 2009, or it will be rescinded and deemed null and void. As such, this matter is time sensitive and requires Council's immediate attention.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council provide instructions to City staff based on the confidential recommendations contained in Attachment 1.
2. Council authorize the public release, at the end of this Council meeting, of the confidential instructions.

FINANCIAL IMPACT

The financial impact is dependant on Council's decision and how that decision is implemented.

DECISION HISTORY

At its meeting of September 15, 2009, North York Community Council referred Item NY27.54 directly to Council without recommendation and directed the City Manager, in consultation with the City Solicitor, the General Manager of Parks, Forestry and Recreation, and the Chief Planner, to report to the September 30 and October 1, 2009 Council meeting respecting the Settlement Offer dated September 10, 2009 from Davies Howe Partners (the "Settlement Offer"). Given that this matter is the subject of pending litigation, the City Manager requested that the City Solicitor author this report. See the Staff Report from the Director, Community Planning, North York District, dated June 9, 2009 (the "Staff Report"), for more detailed Decision History, at the following link: <http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-22203.pdf>

ISSUE BACKGROUND

Davies Howe Partners, on behalf of its client, C/F Realty Holdings Limited ("Cadillac Fairview"), provided the Settlement Offer to the members of North York Community Council ("NYCC") for consideration at the NYCC meeting of September 15, 2009. Given the short period between the date that the Settlement Offer was provided and the date of the NYCC meeting, staff was unable to report on the Settlement Offer. This report provides an overview of the Settlement Offer.

COMMENTS

The Settlement Offer is generally premised on Council supporting an Official Plan Amendment and Zoning By-law Amendment reflective of the site plan depicted in Schedule "A" of the September 10, 2009 Davies Howe letter. The Settlement Offer contemplates various potential scenarios ensuing following acceptance. In all but one scenario, the Settlement Offer provides for the development of a \$17 million community centre on the Don Mills Centre site (the "DMC Site"), to be constructed either by Cadillac Fairview or the City. In each scenario, the Settlement Offer provides, notionally, for parkland dedication at the alternative rate as set out in City of Toronto By-law 812-2008, to be satisfied either entirely as a land conveyance or alternatively by the

conveyance of land plus enhancements to the community centre equal to the value of the shortfall in land conveyance.

The Settlement Offer specifically states that if it is not accepted by October 7, 2009, it will be withdrawn, in which case Cadillac Fairview would contest at the OMB hearing any requirement for it to (1) provide community benefits, (2) parkland dedication at the alternative parkland dedication rate, and (3) parking for patrons of the City owned arena on the DMC Site. If the Settlement Offer is not accepted, Cadillac Fairview states that it will amend its plans and drawings to revise the amount of parkland dedication and delete the proposed community centre and associated parking.

The following explains details of the Settlement Offer:

SCENARIO 1: Construction of or payment in lieu of \$17 million Community Centre

If the existing Civitan Arena ceases operation within eight (8) years of the first building permit having been issued for any of buildings A1, A2, B1 or 75 The Donway West, or such later date as mutually agreed to between Cadillac Fairview and the City, (for simplicity, collectively the “Eight Year Period”) then either Cadillac Fairview will construct a community centre with a minimum value of \$17 million and 48,570 square feet on the lands containing the “existing arena” as labelled on Schedule “A” to the Settlement Offer (“Civitan Arena Lands”) or elsewhere on the DMC Site, or Cadillac Fairview will provide \$17 million to the City for the purpose of building a publicly accessible community centre specifically on the Civitan Arena Lands.

SCENARIO 1A: Cadillac Fairview constructs Community Centre

The Settlement Offer expresses a preference for Cadillac Fairview to construct the community centre. However, Cadillac Fairview will only construct the community centre, either on the Civitan Arena Lands or on another portion of the DMC Site, if the City and Cadillac Fairview are able to come to an agreement respecting a land transfer as between the parties prior to the expiry of the Eight Year Period. Diligent and good faith efforts are to be made by both Cadillac Fairview and the City in carrying out their negotiations. If Cadillac Fairview is to construct the community centre, the Settlement Offer requires that either construction of the community centre commence or requisite security be posted with the City to secure construction at a later date, prior to a building permit issuing for any of Buildings B2, D, E, or F and prior to cessation of the Eight Year Period. The construction of Buildings A1, A2, B1 and 75 The Donway West would commence earlier.

SCENARIO 1A(i): Cadillac Fairview constructs Community Centre on the DMC Site, but not on the Civitan Arena Lands

The Settlement Offer expresses as its first preference, a scenario wherein Cadillac Fairview constructs the community centre on a portion of the DMC Site other than the Civitan Arena Lands. This scenario is contingent on the arena ceasing operation within the Eight Year Period, and the City exchanging the Civitan Arena Lands for other lands within the DMC Site, upon which the community centre would be constructed. This would require a Council resolution, prior to the cessation of the Eight Year Period, to dispose of the Civitan Arena Lands, and would also require Council to adopt Official Plan Amendments (a) allowing disposal of parkland, given that the land exchange would likely result in a net loss in parkland, and (b) redesignating the Civitan Arena Lands from Parks to Mixed Use in order to allow Cadillac Fairview to redeploy density from the land on which the community centre would be situated. The Settlement Offer proposes that any net loss in parkland would be compensated for by way of community centre enhancements equal to the value of any shortfall resulting from the land exchange.

If Cadillac Fairview does construct the community centre, the Settlement Offer contemplates that the City would obtain strata title to at least the community centre, and Cadillac Fairview would retain strata title to the remainder of the land. The extent of Cadillac Fairview's interest would be determined through good faith negotiations, and be subject to (and limited to) Council's future approval in respect of the (extent of) the land exchange which would dictate the ability for Cadillac Fairview to develop the Civitan Arena Lands.

In this Scenario, because the City will have exchanged the Civitan Arena Lands for other lands within the DMC site, Cadillac Fairview would convey the Local Park, as shown on Schedule "A" to the Settlement Offer, to the City, but not the Supplementary Parkland. The value of the Supplementary Parkland is proposed to be made up for by community centre enhancements above and beyond the base value of the \$17 million community centre.

In this Scenario, the City and Cadillac Fairview would come to an agreement as to the physical components of the community centre. The City would own the community centre, subject to a long-term lease to a non-profit operator (such as the YMCA) who would operate the community centre with universal and affordable public access, and at no expense to the City.

Cadillac Fairview would ensure sufficient parking be provided for community centre staff and patrons on a shared basis. Cadillac Fairview would also commit to ensuring sufficient parking for Civitan Arena patrons, pending the cessation of its operations.

SCENARIO 1A(ii): Cadillac Fairview constructs Community Centre on the Civitan Arena Lands

The Settlement Offer expresses, as its second preference, a scenario wherein Cadillac Fairview constructs the community centre on the Civitan Arena Lands and Supplementary Parkland to be conveyed to the City, with the City retaining strata title to the portion of the Civitan Arena Lands and Supplementary Parkland containing the community centre. This scenario is also contingent on the arena ceasing operation within the Eight Year Period, and the City conveying the remaining strata title to Cadillac Fairview. To facilitate this, Council would have to adopt Official Plan Amendments (a) authorizing the disposal of parkland and (b) redesignating the Civitan Arena Lands from Parks to Mixed Use in order to allow Cadillac Fairview to incorporate other uses besides a community centre within the building containing the community centre. Any net loss in land value would be made up by way of enhancements to the community centre equal to the value of the shortfall resulting from the conveyance.

In this Scenario, Cadillac Fairview would convey the Local Parkland and Supplementary Parkland to the City in accordance with the alternative parkland dedication rate set out in By-law 812-2008.

Details of community centre's physical components ownership, leasing, and parking arrangements would mirror those set out above in Scenario 1A(i).

SCENARIO 1B: City constructs Community Centre on the Civitan Arena Lands

If despite good faith efforts, prior to the cessation of the Eight Year Period, the arena ceases operation, but the City and Cadillac Fairview are unable to come to an agreement respecting the conveyance of the Civitan Arena Lands (either in whole or in part) as described under Scenarios 1A(i) or 1A(ii), above, and/or Council does not resolve to dispose of the necessary interest in the Civitan Arena Lands and/or pass any necessary Official Plan Amendment respecting the disposal of parkland, then the City will retain the Civitan Arena Lands and Cadillac Fairview will provide the City with a cash contribution in the amount of \$17 million for the sole purpose of the City constructing a community centre on the Civitan Arena Lands and the Supplementary Parkland. Davies Howe's letter of September 25, 2009, attached hereto as Attachment "3", confirms that the \$17 million will be indexed in accordance with an inflationary index, to be mutually agreed upon between Cadillac Fairview and the City, to compensate for any change in construction costs over time.

In this Scenario, the City would have sole control of the physical components and operation of the community centre.

Cadillac Fairview would ensure sufficient parking be provided for community centre staff and patrons on a shared basis. Cadillac Fairview would also commit to ensuring sufficient parking for Civitan Arena patrons, pending the cessation of its operations.

In this Scenario, Cadillac Fairview would convey the Local Parkland and Supplementary Parkland to the City in accordance with the alternative parkland dedication rate set out in By-law 812-2008.

SCENARIO 2: No Community Centre is provided

If the current Civitan Arena is still in operation at the cessation of the Eight Year Period, then Cadillac Fairview will not construct a community centre, nor will it provide the City with the funds to do so itself. There would be no payment of the \$17 million to the City.

Cadillac Fairview would still convey both the Local Parkland and Supplementary Parkland to the City in accordance with the alternative parkland dedication rate set out in By-law 812-2008.

However, Cadillac Fairview would not legitimize the current informal parking arrangement wherein Civitan Arena patrons park in the Metro grocery store parking lot following cessation of the Eight Year Period.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

1. Attachment 1 – Confidential Information
2. Attachment 2 – Settlement Offer
3. Attachment 3- Davies Howe Letter, dated September 25, 2009

Attachment “2”



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September 10, 2009

By E-mail to fadamo@toronto.ca

Members of the North York Community Council
City of Toronto
Clerk's Office
North York Civic Centre
5100 Yonge Street
Toronto, Ontario
M2N 5V7

Attention: Francine Adamo

Dear Madam:

**Re: Item NY27.54b – Request for Direction Report
Official Plan Amendment and Rezoning Applications
File No. 01 036318 NMI 25 OZ
939 Lawrence Avenue East, 1090 Don Mills Road,
49 and 75 The Donway West
C/F Realty Holdings Limited – Don Mills Centre
(Ward 25 – Don Valley West)**

We are counsel to C/F Realty Holdings Limited ("Cadillac Fairview") owner of the Don Mills Centre at the southwest corner of Lawrence Avenue and Don Mills Road, in the former City of North York.

The purpose of this letter is to provide North York Community Council with a response to the Request for Direction Report dated June 5, 2009 to be considered by Community Council on September 15, 2009 and to propose a settlement that, if accepted, would address key staff concerns raised in the report as well as secure a community centre to be located within the Don Mills Centre, which has been the subject of much discussion.

The proposed redevelopment of the Don Mills Centre is a challenging and exciting development, not only for Cadillac Fairview but for the City as a whole and in particular for the residents and businesses in the vicinity. It isn't surprising that the opening of the Shops at Don Mills earlier this year has attracted so much positive



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attention, especially given the exceptional care taken with its design and the extensive amount of public input that went into its formulation. The retail revitalization of the site is the first step in the development of a major mixed use project that can only come to full fruition if common ground can be found that leads to the approval of the applications that are before Community Council. The settlement proposal contained herein has been formulated accordingly.

The following schedules are appended to, and form an integral part of, this letter:

1. Schedule "A" – Amended conceptual site plan for the Don Mills Centre, depicting the proposed development.
2. Schedule "B" – Proposed terms of settlement.
3. Schedule "C" – Response to issues raised in the Request for Direction Report.

Cadillac Fairview is prepared to settle its outstanding OMB appeals in accordance with the provisions of this letter, the conceptual site plan appended as Schedule "A", the summary of settlement terms appended as Schedule "B" and the issues response appended as Schedule "C". The settlement terms provide for:

- a. application of the City of Toronto's alternative parkland dedication by-law in accordance with the parkland conveyance calculation specified in Schedule "B" hereto; and
- b. delivery of a publicly accessible community centre at no cost to the City.

The contents of this offer are being transmitted on a without prejudice basis for consideration by North York Community Council at its meeting on September 15th, 2009 and by Toronto City Council at its meeting commencing on September 30th, 2009. Cadillac Fairview invites the North York Community Council and Toronto City Council to endorse the proposed development subject to the terms of this offer, and requests that City Staff be directed to take such steps as are required to give effect to this settlement and that the City Solicitor be directed to appear before the Ontario Municipal Board in support of the settlement.

Should this settlement offer not be accepted by the City prior to October 7th, 2009, it shall be null and void and deemed to have been withdrawn, and the community centre shown on the plans, drawings, statistics and related application materials previously submitted to the City shall be deemed to have been removed therefrom,



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Page 3

replaced with the Local Park shown on the conceptual site plan contained in Schedule "A".

On behalf of Cadillac Fairview, we thank Community Council and City Council for their consideration of this settlement offer.

Yours sincerely,

DAVIES HOWE PARTNERS

Jeffrey L. Davies

JLD:klb

[illegible]

SCHEDULE "B"
Proposed Terms of Settlement

Key Elements of the Settlement Proposal

1. Parkland. Cadillac Fairview will fully satisfy the alternative parkland dedication requirements contained in City of Toronto By-Law No. 812-2008, as specified below under "Calculation of the Parkland Conveyance Obligation", by conveyance of land within its development site.
2. Community Centre. Subject to the Existing Arena facility ceasing operation within eight (8) years following the date of issuance of the first building permit for any of Buildings A1, A2, B1 or 75 The Donway West (the "Start Date") depicted on the Site Plan contained in Schedule "A", Cadillac Fairview will provide for construction of a publicly accessible community centre within the lands bounded by Don Mills Road, the Donway West and Lawrence Avenue East (the "DMC") that has a minimum value of \$17 million (in 2010 dollars) based on a benchmark of \$350.00 per square foot and floorspace of at least 48,570 square feet. This benchmark is nominal and not necessarily equal to the actual cost of providing the facility, which may be higher or lower.
3. Objective. The primary objective of this Settlement Proposal is that an appropriately designed community centre be constructed within the DMC by Cadillac Fairview in collaboration with the City, pursuant to provisions stated below under "Implementation of the Settlement Proposal", and that this facility be then operated at no cost to the City by a reliable not-for-profit organization so as to provide for universal and affordable public access. However, if this objective cannot be achieved following diligent, good faith efforts by both Cadillac Fairview and the City, then the settlement provides for receipt by the City of \$17 million (in 2010 dollars) for a community centre on the Existing Arena site and Supplementary Parkland shown on the Site Plan (collectively, the "Arena Lands") to be constructed and operated by the City.

Implementation of the Settlement Proposal

4. Escrow Agreement. The deeds to the parkland to be conveyed by Cadillac Fairview to the City, both the Local Park and the Supplementary Parkland depicted on the Site Plan, will be held in escrow, in accordance with the provisions of a Phase Two escrow agreement that will replace the current Phase One escrow arrangement. The terms "Phase One" and "Phase Two", as used herein, refer to the entire DMC site – Phase One in its current commercial state, containing the recently completed "Shops at

Don Mills" together with pre-existing commercial buildings located in the southern part of the site (to be replaced in Phase Two) and Phase Two, which will contain both the recently completed "Shops at Don Mills" (entirely commercial) and the proposed "Residences at Don Mills" (residential towers with commercial at the base).

5. Buildings A1, A2, B1, 75 The Donway West. Buildings A1, A2, B1 and 75 The Donway West will be allowed to proceed in accordance with the Site Plan at Cadillac Fairview's discretion, following finalization and registration of the Phase Two escrow agreement, subject to the necessary approvals and subject to Minutes of Settlement that ensure the future provision of the community centre, as contemplated herein, by the issuance of orders by the Ontario Municipal Board on a phased or incremental basis, and/or such other means as are satisfactory to the City Solicitor, prior to any of the remaining residential buildings proceeding.
6. Buildings B2, D, E and F. The remaining residential buildings shown on the Site Plan will be allowed to proceed, subject to the necessary approvals, only upon commencement of construction of the community centre contemplated herein and/or provision of security for its timely construction by the City in a form satisfactory to the City Solicitor, unless Cadillac Fairview's obligations regarding the community centre are rendered null and void under paragraph 14.a in which case the remaining buildings will be allowed to proceed regardless.
7. Location of Community Centre. The community centre will be situated on the Arena Lands or, preferably, in another location within the DMC to be mutually agreed upon and selected by the City and Cadillac Fairview, in consultation with representatives of the local community. Provision of the community centre will entail a change in the built form, height, and density of some of the buildings from that entailed by the Site Plan, which will be amended accordingly, and may require an Official Plan Amendment concerning the Existing Arena site and the City's parkland policies. These approvals are understood to be subject to Council's discretion. Nothing herein is to be construed as attempting to fetter that discretion.
- 8.a Transfer of Supplementary Parkland. If the community centre is situated on the Arena Lands, it preferably will be constructed by Cadillac Fairview pursuant to agreements to be entered into between Cadillac Fairview and the City or, alternatively, by the City utilizing Cadillac Fairview's cash contribution pursuant to the provisions of paragraph 14.b. In either case, the deed to the Supplementary Parkland, held in escrow,

will, subject to paragraph 9, be transferred to the City once operation of the Existing Arena facility ceases but in no event sooner than eight (8) years unless this limitation is expressly waived by Cadillac Fairview. In the meantime, the current shared parking practice for the Existing Arena will be contractually recognized for this period of time.

- .b Same. The deed to the Supplementary Parkland, held in escrow, will also be transferred to the City on receipt of a request made by the City at any time after eight (8) years in the event that Cadillac Fairview's obligations regarding the community centre are deemed null and void pursuant to the provisions of paragraph 14.a. Until then, the current shared parking practice for the Existing Arena will be contractually recognized.
- 9. Release of Supplementary Parkland. If the community centre is situated anywhere else within the DMC other than on the Arena Lands, then it will be constructed by Cadillac Fairview pursuant to agreements to be entered into between Cadillac Fairview and the City. In this case, the deed to the Supplementary Parkland, held in escrow, will not be transferred to the City but instead will be returned to Cadillac Fairview provided that any resultant deficiency in the amount of parkland conveyed by Cadillac Fairview is made up by enhancements to the community centre equivalent to the monetary value of the land deficiency.
- 10. Transfer of Local Park. In all cases, after demolition of the existing building at 49 The Donway West and completion of Buildings B2 and D but, unless otherwise mutually agreed upon, before occupancy of Buildings E and F and not later than ten (10) years from the Start Date, the deed to the Local Park, held in escrow, will be transferred to the City, upon its request, and the land brought to a state consistent with the City's standard conditions for parkland conveyance or in such better condition as may be mutually agreed upon. Until the transfer takes place, the land for the Local Park may be used by Cadillac Fairview, without fee, for existing commercial uses and/or for construction staging.
- 11. Land Exchange. If the community centre is situated anywhere else within the DMC other than on the Arena Lands, the land required for the community centre will be conveyed to the City by Cadillac Fairview in exchange for the Existing Arena site, which will likewise be conveyed to Cadillac Fairview. Any resultant deficiency in the amount of the land conveyed by Cadillac Fairview in exchange for the land conveyed by the City will be made up by enhancements to the community centre equivalent to the monetary value of the land deficiency.

- 12.a Community Centre Constructed by City. If the community centre is constructed by the City on the Arena Lands, then both the land and the facility will be owned by the City.
- .b Community Centre Constructed by Cadillac Fairview. If the community centre is constructed by Cadillac Fairview, either on the Arena Lands or elsewhere within the DMC, then, unless otherwise mutually agreed upon, City ownership will consist of a strata title to the community centre subject to a long term lease for nominal rent in favour of Cadillac Fairview or a community centre operator selected by Cadillac Fairview that is acceptable to the City (the "Tenant"). The community centre will form part of a mixed use building that includes a community centre component, retail and service commercial uses and, potentially, residential uses as well as an underground parking garage and loading facilities.
- .c Same. For purposes of determining the deficiencies referred to in paragraphs 9 and 11, and any like deficiencies entailed by paragraphs 12.b and 12.e, the area of the land parcel containing the community centre multiplied by the ratio of the gross floor area of the community centre component divided by the gross floor area of the entire building containing the community centre will be used as a proxy for the fee simple land area to be conveyed by Cadillac Fairview. The term "gross floor area" as used herein will have the same meaning as in the governing zoning by-law.
- .d Same. The long term lease will contain covenants in favour of the City by the Tenant requiring the community centre to be continually operated during the term of the lease at no cost to the City. Should the Tenant default under the lease, the City will be entitled to terminate the lease and make such other arrangements for operation of the community centre as it deems appropriate.
- .e Same. If the community centre is constructed by Cadillac Fairview on the Arena Lands, then title to the remainder of the Arena Lands, other than the portion containing the community centre, will be transferred by the City to Cadillac Fairview in exchange for enhancements to the community centre equivalent to the monetary value of the lands transferred.
13. Community Centre Parking. In either case (12.a or 12.b), Cadillac Fairview will allow community centre staff and patrons to park in selected areas of commercial parking lots contained within the DMC on a shared space basis.

- 14.a Existing Arena Continues to Operate. If the Existing Arena facility is still in operation on the Existing Arena site eight (8) years following the Start Date and/or the City has by then, or by such later date as may be mutually agreed upon, not completed arrangements for provision of a community centre either on the Arena Lands or elsewhere within the DMC, then Cadillac Fairview's obligations regarding the community centre contemplated herein, including the shared parking obligations specified in paragraphs 8.a, 8.b and 13, but not conveyance of the Supplementary Parkland, will at that time be deemed null and void.
 - .b Existing Arena Ceases Operation. Otherwise, subject to agreement by the City, Cadillac Fairview will commence construction of the community centre, in a configuration and location that has been mutually agreed upon, and provide adequate security for its timely completion, within eight (8) years of the Start Date or as soon thereafter as may be mutually agreed upon, failing which Cadillac Fairview will be responsible for remitting \$17 million to the City in 2010 dollars for timely construction by the City of a community centre on the Arena Lands but for no other purpose. In the latter eventuality, upon remitting the funds, Cadillac Fairview's obligations regarding provision of the community centre contemplated herein, other than the shared parking obligation specified in paragraph 13, will be deemed to have been discharged.
- 15.a Community Centre Functional Components. If the community centre is constructed by the City on the Arena Lands, then the community centre will incorporate such functional components as the City considers advisable.
 - .b Same. If the community centre is constructed by Cadillac Fairview, either on the Arena Lands or elsewhere within the DMC, then, unless otherwise mutually agreed upon, the community centre will include among its principal functional components a swimming pool, fitness area, running/walking track, meeting rooms, gymnasium and auditorium (which may be combined with the gymnasium).
- 16.a Community Centre Operation. If the community centre is constructed by the City on the Arena Lands, then the community centre will be operated in such manner as the City considers advisable.
 - .b Same. If the community centre is constructed by Cadillac Fairview, either on the Arena Lands or elsewhere within the DMC, then, unless otherwise mutually agreed upon, a not-for-profit organization (the "Operator") such as the YMCA, or other organization selected by Cadillac Fairview and

acceptable to the City, will operate the community centre so as to provide for universal public access at affordable fees, and appropriate community input and participation in its programming, in accordance with the provisions of a Municipal Capital Facilities Agreement or other like agreement.

17. Community Consultation. Representatives of the local community, as well as the Operator, will be consulted regarding the design, configuration and programming of any community centre building that Cadillac Fairview constructs.
18. Co-operation. Both the City and Cadillac Fairview will co-operate to achieve the intent of this settlement in timely fashion, including release of the restrictive covenants regarding use of the arena lands at the appropriate time. Any unresolved issues in the interpretation and/or implementation of the terms of settlement may be brought to the attention of the City Manager or North York Community Council, in addition to any dispute resolution mechanism specified in the Minutes of Settlement and the Planning Act.

Calculation of the Parkland Conveyance Obligation

19. Calculation of Required Parkland. The following parameter values (taken from Schedule "A" and the current draft site survey) are used to calculate the maximum possible parkland conveyance obligation under City By-law No. 812-2008:

SITE AREA

155,810.6 m² (121,223.9 m² commercial + 34,586.7 m² mixed use)

COMMERCIAL LAND AREA subject to parkland conveyance (Shops at Don Mills)

101,744.9 m² (121,223.9 m² total – 19,479.0 m² unredeveloped)

in which unredeveloped consists of 4,497.0 m² existing 1090 Don Mills Rd office building and 14,982.0 existing Metro food store

MIXED USE LAND AREA subject to parkland conveyance (Residences at Don Mills)

34,581.6 m² (34,586.7 m² total – 5.1 m² corner rounding r.o.w. land conveyance)

The following abbreviations are employed:

DED – Parkland Dedication Obligation

SDM – Shops at Don Mills

RDM – Residences at Don Mills

The parkland conveyance obligation calculation is as follows:

$$\begin{aligned} \text{DED} &= \text{SDM PARKLAND OBLIGATION} + \text{RDM PARKLAND OBLIGATION} \\ &= 0.02 \times \text{COMMERCIAL LAND AREA} + 0.15 \times \text{MIXED USE LAND AREA} \\ &= 0.02 \times 101,744.9 \text{ m}^2 + 0.15 \times 34,581.6 \text{ m}^2 \\ &= 2,034.9 \text{ m}^2 + 5,187.2 \text{ m}^2 = 7,222.1 \text{ m}^2 \end{aligned}$$

Satisfaction of the Parkland Conveyance Obligation

20. Provision of Required Parkland. The parkland conveyance obligation calculated in paragraph 19 will be fully satisfied through conveyance of 7,222 square metres of land, consisting of 5,463 square metres depicted as Local Park on the Site Plan plus 1,759 square metres of additional land depicted thereon as Supplementary Parkland, located immediately to the east of the Existing Arena site. The Supplementary Parkland will be conveyed to the City if the community centre is located on the Arena Lands rather than elsewhere within the DMC or if the provisions specified in paragraph 14.a are triggered, but not otherwise. In the event that the Supplementary Parkland is not conveyed to the City, then the community centre (located elsewhere within the DMC) will instead be enhanced in accordance with the provisions of paragraphs 9 and 11.

SCHEDULE "C"

Response to Selected Issues Raised in Direction Report

The Direction Report dated June 9, 2009, is deficient in a number of respects, a few of which have been included among the issues summarized below. In Cadillac Fairview's respectful submission, it is unlikely that a position based thereon would be sustainable either before the Ontario Municipal Board or a Court of Law.

Commercial Floorspace – pages 6 and 7

The Direction Report incorrectly states that 6,274 square metres of additional unallocated commercial floorspace is being sought by Cadillac Fairview on the DMC site, failing to recognize that Cadillac Fairview's development application proposes to effectively down zone the commercial portion of the site, by reducing the commercial gross floor area from 121,335 square metres presently permitted on the commercial lands by current zoning (1.00 FSI) to 85,604 square metres (0.71 FSI) proposed, consisting of 62,479 square metres anticipated (all but 829 square metres of which currently exists) plus 23,125 square metres reserved for potential future expansion of the recently constructed Shops at Don Mills. Consequently, the amount of commercial floorspace proposed on the commercial portion of the DMC site is actually being reduced by 35,731 square metres over that currently permitted. (The amount of commercial floorspace proposed on the mixed use portion of the DMC site is 7,527 square metres compared to 34,575 square metres currently permitted.) All figures reflect the September 2008 submission, subject of the staff report.

Escrow Arrangement – pages 9 and 30

It is Cadillac Fairview's position that the Direction Report inaccurately reflects the intent, content and effect of the escrow provisions contained in the Phase One site plan agreement. Their intent is to secure Phase One parkland adjacent to the existing arena in the event that Phase Two does not proceed. Their content specifies that, in the event that Phase Two does proceed, the location of all the parkland (for the entire DMC site) is to be determined on its merits, without regard for the location of the escrow lands, by the City or other approval authority. Their effect, in the event of an appeal to the Ontario Municipal Board, is that the OMB effectively determines the location of the park as part of the final disposition of an appeal filed pursuant to the Planning Act. In this regard, Cadillac Fairview believes that its proposed parkland location is appropriate.

Garden City Concept – pages 19 and 20

The Direction Report invokes a strained interpretation of the "garden city concept" as a basis for disputing certain aspects of the proposed built form of the DMC development, particularly as related to one or more of building orientation, location, height, spatial separation and coverage (which would otherwise be unremarkable). In reality, the garden city concept – a new town design advanced by Ebenezer Howard late in the 19th century – is at best of marginal relevance to the redevelopment of mixed use lands in central Don Mills in the 21st century: only passing reference is made to the garden city concept in the Central Don Mills Secondary Plan; the concept is not anywhere articulated in that plan, let alone in the manner in which it has been interpreted in the Direction Report; and none of the policies contained in the Secondary Plan directly addresses built form in relation to the garden city concept. This is unsurprising since the garden city concept was not intended to be an architectural or design concept *per se* but rather a means to avoid deplorable big city living conditions in the 1800's arising from the industrial revolution. Cadillac Fairview believes that the built form it has proposed appropriately addresses the garden city concept to the limited extent that the concept may still be relevant for assessing the merits of a mixed use development such as that proposed for the Don Mills Centre.

Building Height – pages 20 - 22

Cadillac Fairview's position is that the rigid height controls contained in the Central Dons Mills Secondary Plan are obsolete insofar as they pertain to the DMC site. The height limitations proposed in the Direction Report, which are rooted in the garden city concept, are overly restrictive, impractical, inconsistent with limitations imposed by the City on other high rise development projects adjacent to residential neighbourhoods and, if they were arbitrarily applied to the DMC site nonetheless, would effectively preclude viable mixed use redevelopment of the property.

Density – page 23

Cadillac Fairview believes that the density proposed on the three mixed use land parcels is modest in relation to that approved elsewhere in comparable circumstances, is appropriate in the context of the entire site, and should be so recognized.

Housing – page 24

The Direction Report fails to recognize that the DMC development application seeks a site specific amendment to the housing policies of the North York Official Plan, as stated in the clarification letter from Urban Strategies dated February 28, 2005. It is Cadillac Fairview's position that the housing proposed for the DMC site is appropriate and should be recognized as such, particularly in view of its significant seniors' component.

Traffic Impact – page 25

The traffic addendum letter requested by Transportation Services will be provided in the next application submission following Council's disposition of this settlement proposal.

Driveway Access – page 26

In response to the concerns expressed by Transportation Services, the driveway access proposed between 75 The Donway West and Building B1 to the north has been reconfigured on the site plan contained in Schedule "A" so as to increase the distance between the access and the traffic control signals at Overland Drive and line it up with the driveway access on the opposite side of the street.

Parking – page 27

The supplementary information requested by Transportation Services will be provided in the next application submission following Council's disposition of this settlement proposal.

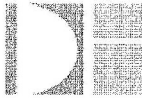
Streetscape – page 29

The request by Technical Services for a 5.5 metre wide boulevard will be accommodated to the extent feasible but additional land, beyond that specified in the Official Plan, will not be conveyed to the City as part of the development approvals process since the City lacks jurisdiction to compel conveyance of the land demanded in the Direction Report without compensating the landowner.

Parkland – pages 30 and 31

It is Cadillac Fairview's position that the amount and location of its proposed parkland is appropriate and defensible, having regard to the timing of its development application relative to that of the City's APD By-law as well as the formulation of that by-law. In this regard, attention is drawn to the following two sentences extracted from the Direction Report: "It is the applicant's position that the Alternative Parkland Dedication (APD) By-law do[es] not apply to their [sic] proposal as the application was filed years before the enactment of the APD By-law. They state that the application should rely on the policy structure in effect on the date of the application (prior to the introductions of the APD)." Should Council nonetheless seek to impose APD on the DMC site, in the absence of settlement, then Cadillac Fairview's forthcoming site specific Official Plan Amendment will include appropriate provisions that reflect its position and protect its interest.

Attachment “3”



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September 25, 2009

By E-Mail Only to bhaley@toronto.ca

Mr. Brian Haley
Legal Department
City of Toronto
Metro Hall, 26th Floor
55 John Street
Toronto, Ontario
M5V 3C6

Dear Mr. Haley:

**Re: C/F Realty Holdings Inc. ("Cadillac Fairview")
Don Mills Centre – Clarification of Settlement Offer
Official Plan Amendment and Rezoning Applications
File No. 01 036318 NMI 25 OZ**

As requested, I am writing to provide clarification regarding certain aspects of Cadillac Fairview's settlement offer in the above-captioned matter. Your queries relate to Schedule "B" of Mr. Davies' letter of September 10, 2009 addressed to Members of the North York Community Council.

The clarifications requested, and the responding information, follow:

1. Paragraph 2. What is meant by the reference to the community centre having a minimum value of \$17 million in 2010 dollars?

The \$17 million number will be subject to an inflationary index, the selection of which is to be mutually agreed upon, intended to compensate for change in construction costs. For example, if construction costs as measured by the index were, say, 25% higher in 2015 relative to 2010, then the \$17 million number would also increase by 25%; ie, it would become $1.25 \times \$17 \text{ million} = \21.25 million (in 2015 dollars).



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Page 2

2. Paragraph 7. *For what purpose(s) would an Official Plan Amendment be required for the Existing Arena site, whether the community centre is built at this location or elsewhere following a land exchange?*

An Official Plan Amendment would be required for any development other than a community centre on the Existing Arena site, since it is presently designated as parkland. In addition, an Official Plan Amendment would be required to implement the land exchange provisions in the settlement offer that pertain to parkland.

3. Paragraph 12.e. *What are the contemplated enhancements to the community centre, in the event the strata title equivalent of the land required for the community centre is less than the area of the Arena Lands?*

Any enhancement to the community centre would be made up in physical capital that would include an expansion of the community centre's size from Cadillac Fairview's minimum commitment to build a 48,570 square foot facility or an improvement to the facilities available within the community centre.

Sincerely,

DAVIES HOWE PARTNERS

Kim Beckman

KLB:klb

cc. Client
George Belza, Analogica