

## **CC46.2 - 939 Lawrence Avenue East, 1090 Don Mills Road, 49 and 75 The Donway West – Settlement Offer**

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### **Confidential Instructions adopted by City Council at its meeting held on February 22 and 23, 2010. These instructions were made public on February 24, 2010.**

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1. City Council adopt the Minutes of Settlement, attached as Appendix 1 to the report (February 22, 2010) from the City Solicitor.
2. City Council authorize the public release of the Financial Impact, the Minutes of Settlement and the Commentary by the Urban Design Panel Members, dated February 11, 2010, attached as Appendix 2 (the "Design Panel Commentary") to the report (February 22, 2010) from the City Solicitor.
3. City Council direct the City Solicitor to attend the Ontario Municipal Board hearing in support of an Official Plan Amendment and Zoning By-law Amendment so as to implement the Minutes of Settlement.
4. City Council authorize each of the City Solicitor and her designate, severally, to execute the Minutes of Settlement on behalf of the City.
5. City Council authorize the following real estate transactions:
  - a. the acquisition of the Community Centre Lands and the acquisition of the Park Top-up Lands (respectively such lands being firstly, Block F and secondly, those portions of the Local Park, not attributable to the parkland dedication requirement pursuant to section 42 of the *Planning Act*, both as shown on Schedule A to the Minutes of Settlement), on terms conforming with the Minutes of Settlement.
  - b. the grant of an option in favour of the applicant to purchase the Arena Lands as shown on Schedule A to the Minutes of Settlement, and the sale thereof to the applicant on exercise of the option, on terms conforming with the Minutes of Settlement.
  - c. the acquisition of an easement for right of way, providing public ingress/ egress between the Community Centre and the Local Park as those terms are defined in the Minutes of Settlement, on terms conforming with the Minutes of Settlement.
  - d. a 49 year lease from the City to the applicant for those portions of the Community Centre Lands to be developed with a community centre, such lease to be on terms conforming with the Minutes of Settlement.

- e. a 49 year lease from the City to the applicant of those portions of the Community Centre Lands that may be developed with retail-commercial uses, including medical offices, such lease to be on terms conforming with the Minutes of Settlement.
  - f. a lease from the City to the applicant of any underground parking area below grade within the Community Centre Lands, such lease to be on terms conforming with the Minutes of Settlement.
  - g. a lease from the applicant to the City of the Arena Lands, such lease expiring not later than October 31, 2020, on terms conforming with the Minutes of Settlement.
  - h. a lease from the applicant to the City of the Hydro Lands as described in the Minutes of Settlement, such lease to have a term expiring not later than October 31, 2020 and to be on terms conforming with the Minutes of Settlement.
  - i. any further conveyancing or leasing as may in the determination of the General Manager, Parks, Forestry and Recreation or the Chief Corporate Officer (the "CCO"), in consultation with the Director of Real Estate Services, be necessary or incidental to achieving the purposes of the foregoing real estate transactions or the intent of the Minutes of Settlement.
6. City Council authorize that the terms of the foregoing real estate transactions:
- a. include such further terms as may be acceptable to the General Manager, Parks, Forestry and Recreation and the CCO, in consultation with the Director of Real Estate Services and in a form acceptable to the City Solicitor; and
  - b. be subject to the proviso that in each transaction comprising a "Sale" as defined in Chapter 213 of the *Municipal Code*, the requirements of the said Chapter 213 governing the sale of land, be first satisfied.
7. City Council authorize the CCO to administer and manage the above noted lease agreements, including the provision of any consents, approvals, notices and notices of termination, provided that the CCO may at any time, refer consideration of such matters (including their content) to City Council for its determination and discretion.
8. City Council direct that all proceeds net of expenses arising from the lease of retail-commercial space on the Community Centre Lands be allocated into a budget for Parks, Forestry and Recreation uses as directed by the General Manager, Parks, Forestry and Recreation.

9. City Council direct all cash in lieu of parkland, generated from the Don Mills Centre Phase II development, pursuant to section 42 of the *Planning Act*, be allocated to the construction of a new arena, and in accordance with the Minutes of Settlement.
10. City Council direct the Deputy City Manager and Chief Financial Officer to report to the Executive Committee to establish a reserve fund called the North York Arena Reserve Fund, for the purpose of the construction of a new twin-pad arena within the vicinity of the Don Mills Centre to be funded by the cash in lieu of parkland generated from the Don Mills Centre, Phase II development.
11. City Council direct the General Manager, Parks, Forestry and Recreation to consider the funding of the new twin-pad arena in developing the Parks, Forestry and Recreation 2011 Capital Budget and 2012-2020 Capital Plan.
12. City Council pass a by-law pursuant to section 252 of the *City of Toronto Act, 2006* providing authority to:
  - a. Enter into a municipal capital facility agreement with the applicant with respect to those portions of the Community Centre Lands containing a community centre and recreational facility, excluding any retail/commercial component, but including any dedicated ancillary parking for community centre or recreational facility use;
  - b. Exempt the leased space within the community centre and recreational facility from taxation for municipal and school purposes, which tax exemption is to be effective from the latest of the following dates:
    - i. The commencement date of the sub-lease between the applicant and the Operator, as referred to in the Minutes of Settlement;
    - ii. The date the municipal capital facility agreement is signed; or
    - iii. The date the tax exemption by-law is enacted.
13. City Council declare that the community centre and recreational facility proposed for the Community Centre Lands, with dedicated ancillary parking facilities is a municipal capital facility to be primarily used for local community activities and is for the purposes of the City and is for a public use.
14. City Council direct the City Clerk to give written notice of the Municipal Capital Facility by-law to the Minister of Education, the Municipal Property Assessment Corporation, the Toronto District School Board, the Toronto Catholic District School Board, the Conseil Scolaire de District du Centre-Sud-Ouest, and the Conseil Scolaire de District du Catholique Centre-Sud.
15. City Council authorize the introduction of the necessary bills to give effect to the municipal capital facilities by-law.

16. The 2010 Parks, Forestry and Recreation Capital Budget be amended by the addition of a Land Acquisition sub-project for \$0.138 million funded from the Citywide Parkland Acquisition Reserve Fund (XR2210) to provide for the land transfer tax and related expenses arising from the City's acquisition of the Community Centre Lands and Parks Top-up Lands as specified in the Minutes of Settlement.
17. City Council authorize the City Solicitor to complete the transactions outlined in this report on behalf of the City, including paying any necessary expenses, including land transfer tax from the 2010 Parks, Forestry and Recreation Capital Budget, funded from the Citywide Parkland Acquisition Reserve Fund, amending the closing, due diligence and other dates and amending and waiving terms and conditions, on such terms as she considers reasonable.
18. City Council request the General Manager, Parks, Forestry and Recreation to report to the Community Development and Recreation Committee on a long-term strategy to ensure that the Community Centre is reverted to the City at the end of the 49-year lease in a state of good repair including the establishment by the lessee or/and sub-lessee of a capital improvement fund to ensure that the Community Centre is in a viable state of good repair.
19. City Council authorize and direct appropriate City officials to take the necessary action to give effect to each of the foregoing directions.

## **FINANCIAL IMPACT**

The City will be responsible for the payment of land transfer tax and usual closing expense, estimated at \$0.138 million, on the acquisition of the Community Centre and Parks Top-up Lands to be conveyed to the City in exchange for an option for future sale of the Arena Lands and access easements to the applicant. Further, under the terms of the Minutes of Settlement, the City will have the use of the Arena Lands until October 31, 2020, after which a new Arena must be constructed. The City will continue to be responsible for the operating costs during this period, but will not be responsible for the payment of property taxes, should title pass to the applicant prior to October 31, 2020.

The Minutes of Settlement commit the applicant to construct and provide to the City, a new 48,570 square foot Community Centre, valued at \$17 million. It is planned that this new Community Centre will be operated by an arms-length not-for-profit organization, with a commitment to provide universal public access at affordable fees, with no operating cost impact on the Parks, Forestry and Recreation Operating Budget.

The City will receive cash in lieu of parkland, currently estimated at \$4.5 million, as the new development is built out, which will be held in the North York Arena Reserve Fund. Parks, Forestry and Recreation will need to acquire a site for this new arena and determine the source of the balance of the estimated \$20 million capital cost for the new twin pad facility.

These commitments from the applicant will fulfill all parkland dedication obligations to the City for the entailed developments.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

## **ATTACHMENTS**

Appendix 1 – Minutes of Settlement

Appendix 2 – Commentary by the Urban Design Panel Members, dated February 11, 2010

**APPENDIX 1  
MINUTES OF SETTLEMENT**

OMB Case No. PL070673

**ONTARIO MUNICIPAL BOARD**

**B E T W E E N:**

**CITY OF TORONTO**

(the "City")

- and -

**C/F REALTY HOLDINGS LTD.**

("CF")

- and -

**DON MILLS RESIDENTS INC.**

("DMRI")

**MINUTES OF SETTLEMENT**

**RECITALS:**

- A. CF owns the property located at the southwest corner of Don Mills Road and Lawrence Avenue East in the City of Toronto, municipally known as 939 Lawrence Avenue East, 49 The Donway West and 75 The Donway West (the "DMC"), as shown on Schedule A, which is being redeveloped for mixed-use intensification in two phases.
- B. The first phase of the DMC, located primarily in the northerly and easterly portions of the site, was previously approved by the Ontario Municipal Board (the "OMB") for redevelopment as a commercial development, and has been constructed.
- C. In November 2001, CF filed an application to amend the in-force Central Don Mills Secondary Plan (Part D.7 of the North York Official Plan) ("OPA Application"), and an application to amend Zoning By-law No. 7625 of the

- former City of North York, as amended ("ZBL Application"), in respect of the DMC.
- D. On June 10, 2007, CF appealed its OPA Application and ZBL Application to the OMB, and the appeals were consolidated and bear OMB Case No. [PL070673](#) ("OPA and ZBL Appeals").
  - E. CF has agreed to modify its proposal in response to discussions with the City, DMRI and Rein Kuris, an individual.
  - F. The Parties have agreed to settle all of their differences arising from CF's OPA and ZBL Appeals as set out in these Minutes, and state that the Recitals are true.
  - G. CF has volunteered to enter into a further agreement pursuant to Section 37 of the *Planning Act* (the "Section 37 Agreement") for the purpose of implementing these Minutes in a manner satisfactory to the City and CF and otherwise has not agreed that it is or was compelled to do so.

### **Settlement of Ontario Municipal Board Appeals**

- 1. The Parties agree to support, before the Ontario Municipal Board, the Land Use Plan for Phase 2 of the DMC as shown on the attached Schedule A, and will request the OMB to allow the OPA and ZBL Appeals, as revised, generally in accordance with Schedule A, upon execution and registration of the Section 37 Agreement, satisfactory to the City Solicitor and CF.

### **Community Centre**

- 2. CF will construct or cause to be constructed a publicly accessible community centre (the "CC") that has floor space area of at least 48,570 square feet. The value of the CC shall be based on the City's present benchmark of \$350.00 per square foot multiplied by the floor space area of 48,570 square feet for a total of \$17 million. The per square foot benchmark value of \$350.00, as well as the total value of the CC, will be indexed annually based upon 2010 dollars.
- 3. Block F, as shown on Schedule A, (the "CC Lands") will be developed with a building which shall include the CC (which CC will include the recreational facilities further described in section 4), and the building constructed on the CC Lands may include retail and commercial uses (including medical service uses) and underground parking garage and loading facilities.
- 4. Unless otherwise mutually agreed upon by the General Manager, Parks, Forestry, and Recreation of the City of Toronto (the "GM") and CF, the CC will include among its principal functional components a competition-size

- swimming pool, fitness area, running/walking track, meeting rooms, gymnasium and auditorium (which may be combined with the gymnasium). In addition, at the option of CF, but subject to the provisions of Schedule B, the CC may include a partial or complete level of underground parking.
5. CF covenants that the construction of the CC will commence prior to the earlier of (a) the date of issuance of a building permit for Building E, or (b) the date of issuance of a building permit for Building G, with substantial completion (as such term is defined in the *Construction Lien Act* (Ontario)) to occur no later than October 12, 2020. All references to buildings to be as shown on Schedule A.
  6. CF shall provide letters of credit (collectively, the "LCs"), in a form satisfactory to the City Solicitor, as set out in paragraph 6 of Schedule B and in the aggregate amount of \$17 million (indexed annually from 2010 dollars) to secure the substantial completion of construction of the CC by the deadline set out in section 5 above. In the event that the CF Landlord fails to substantially complete (as determined in accordance with the *Construction Lien Act* (Ontario)) the CC by October 12, 2020, the City may draw down on the LCs to the extent necessary to pay the costs it incurs to complete the construction of the CC. If the LCs are drawn down by the City, then the Ground Lease as defined in section 9 shall automatically be terminated (without any further action by the parties thereto).
  7. The CC will be operated by a community centre operator (the "Operator") selected by CF, acceptable to the GM, and in consultation with DMRI. The Operator will be an arms-length not-for-profit organization.
  8. The Operator will operate the CC so as to provide for universal public access at affordable fees, and appropriate community input and participation in its programming, acceptable to the GM, in accordance with the provisions of the Section 37 Agreement and in accordance with the provisions of the Ground Lease and CC Sublease referred to in section 9.
  9. Immediately following the Land Exchange, as referred to in section 12, the City will grant a ground lease of the CC Lands to CF or an entity designated by CF (the ground lessee being the "CF Landlord") for a term of 49 years at nominal rent or as otherwise set out in sections 9(b) and 10 below, on a fully net and carefree basis to the City and on the terms set out in this Section 9 and on such other terms satisfactory to the GM and CF (the "Ground Lease"):



- (a) The CF Landlord will sublease the CC to the Operator (the "CC Sublease"), with the CC Sublease commencing prior to or upon substantial completion of the CC and terminating on the date that is one day prior to date on which the Ground Lease expires, for nominal base rent. The CC Sublease will be fully net and carefree to the CF Landlord, with all costs of operations, repairs, maintenance and replacements being the responsibility of the Operator. The obligations and liabilities under the Ground Lease with respect to the CC (including the repair, maintenance, replacement and operation thereof) will be non-recourse to the CF Landlord, CF and CF's affiliates. Without limiting the generality of the foregoing, following substantial completion of construction of the CC, (i) the City's sole remedy for a breach of the covenants and responsibilities under the Ground Lease relating to the CC or the repair, maintenance, replacement and operation thereof will be the termination of the Ground Lease as such Ground Lease applies to the CC only without recourse to the CF Landlord, CF and CF's affiliates, and (ii) the CF Landlord, CF and CF's affiliates shall have no liability for any breaches or defaults by the Operator. The Ground Lease and the CC Sublease shall contain provisions that, once constructed, the CC will continually be operated by the Operator as a community centre as described in section 8 during the term of the CC Sublease at no cost to the City. Should the Operator default under the CC Sublease, such default entitles the CF Landlord to terminate the CC Sublease (a "Termination Default") and if CF intends to terminate the CC Sublease, then CF shall provide notice of the Termination Default to the City in accordance with the notice provisions of the Ground Lease, following which CF will use good faith efforts for a period of 90 days from the date of such notice to the City to arrange for a new Operator in accordance with the terms of section 7, failing which, the City or the CF Landlord will be entitled to terminate (or partially surrender, as the case may be) the Ground Lease as such Ground Lease applies only to the CC (but the Ground Lease continues to be in effect with respect to the other premises demised thereunder) without recourse to the CF Landlord, CF or any of CF's affiliates, and the City may make such other arrangements for operation of the CC as it deems appropriate. The CF Landlord agrees that it will not terminate the CC Sublease following the occurrence of a Termination Default until the expiry of the 90-day period referred to in the preceding sentence. Following the termination of the Ground Lease as it applies to the CC, the CF Landlord, CF and CF's affiliates will have no further obligation to the City with respect to the CC, including, without limitation, the operation thereof (except for the ongoing parking obligations referred to in Section B, paragraph 1). The Ground Lease will contain terms providing for the survival of shared access and

operation of the improvements on the CC Lands as between all of the uses referred to in this Section 9 in the case of the partial termination or partial surrender of the Ground Lease referred to in this section 9(a). Notwithstanding the foregoing, the City and CF acknowledge and agree that, upon the City and the CF Landlord becoming entitled to terminate or surrender the Ground Lease in accordance with the foregoing, the City will have the option of terminating the Ground Lease in full without recourse to the CF Landlord, CF or any of CF's affiliates.

- (b) The CF Landlord will be permitted to construct or cause to be constructed on the CC Lands, in addition to the CC, retail, commercial and medical space and ancillary space relating thereto in the building that houses the CC and to sublease to third parties any such retail, commercial and medical space and ancillary space relating thereto for retail or commercial, medical and ancillary uses or any combination thereof. If the CF Landlord has subleased such space for the uses referred to in the preceding sentence, then the CF Landlord will pay to the City market rent for the subleased space provided that the amount of rent payable by the CF Landlord to the City for such subleased space shall not be greater than the rent received from the subtenant under the sublease, and provided further that the amount of rent payable by the CF Landlord to the City for the subleased space will be reduced by the aggregate amount of the costs of operation, repairs, maintenance and replacements of the subleased space referred to this subsection 9(b). For clarity, the potential retail, commercial, medical and ancillary building components referred to in this section 9(b) shall be excluded from calculation of the minimum 48,570 square feet of CC floor space area.
  - (c) The CF Landlord will be permitted to construct or cause to be constructed parking under the CC. The terms relating to the parking level are set out in section 10 below.
10. If parking is constructed under the CC, those parking spaces shall be available to users of the DMC, including the staff and patrons of the CC, on an unreserved and shared basis and, so long as it does not impose any charge for the use of such spaces, the CF Landlord will pay no rent to the City. If, at any time, the CF Landlord requires payment by the users of the parking under the CC, the CF Landlord will pay market rent to the City for the use of this underground parking, provided that the amount of rent payable by the CF Landlord to the City for the underground parking shall not be greater than the payment received from the users thereof and provided further that the amount of rent payable by the CF Landlord to the City for the underground parking, as calculated in accordance with the foregoing, will be reduced by the aggregate amount of (i) the costs of

operation, repairs, maintenance and replacements of the underground parking, and (ii) the amortization of all costs of the construction of the underground parking on or in the CC Lands calculated on a straight line basis over such period as the CF Landlord, acting reasonably, determines is reasonable having regard to the nature of the item as well as interest on the unamortized portion of such costs, calculated monthly, from the date on which the costs were incurred, at an annual rate of 9%. The underground parking shall not be included in the value of \$17 million (nor in the LCs) for the CC referred to in section 2 above, nor in the minimum CC floor space area of 48,570 square feet.

11. Additional terms of these Minutes in respect of the CC are set out in Schedule B, and are intended to be legally binding.

### **Land Exchange and Arena Lease**

12. The City and CF agree to exchange the ownership of lands presently owned by them within the DMC (the "Land Exchange") on the following terms:
  - (a) For the purposes of these Minutes:
    - (i) the "Closing Date" means the Closing Date set out in Schedule C-1;
    - (ii) the "Arena Lands" means that portion of Block G shown on Schedule A which is designated as Part 15 on Plan 66R-24113;
    - (iii) the "Hydro Lands" means that portion of Block G owned by Toronto Hydro designated as Part 14 on Plan 66R-24113;
    - (iv) the "Park Top-up Lands" means a portion of the Local Park shown on Schedule A whose area is determined as the difference in area between the Arena Lands and the CC Lands;
    - (v) the "Arena Lease" means a lease from the CF Transferee (as defined below) to the City of the lands and building comprising the Arena Lands, and will include the grant to the City of a right to allow public parking on the DMC for users of the Arena (as such public parking spaces are constituted on the DMC from time to time at the discretion of the owner of the DMC);
    - (vi) the "Arena Turnover Date" means the date which is the later of the end of the term of the Arena Lease and the APS Completion Date, as set out in section 13(c).

- (b) On the Closing Date, the City will grant to CF (or such entity designated by CF, the grantee being the "CF Transferee") an option to purchase the Arena Lands (the "Option"). Further terms of the Option are set out below and the Option will also be subject to such other terms satisfactory to the GM and CF.
  - (c) On the Closing Date, CF will convey to the City the CC Lands, together with easements for access satisfactory to the City Solicitor.
  - (d) On the Closing Date, CF will convey to the City the Park Top-up Lands. This conveyance shall occur at the same time and on the same terms as the conveyance of the remainder of the Local Park lands as set out in Section 18.
13. The Option will be subject to the following terms:
- (a) The Option will be irrevocably and unconditionally granted by the City to the CF Transferee for consideration of \$2.00.
  - (b) The Option is to be exercised by delivery of written notice from the CF Transferee to the City, copied to the GM, the Chief Corporate Officer and the City Solicitor. Upon the exercise of the Option there shall be automatically in effect (without further documentation or action by any party) an agreement of purchase and sale (the "APS") which will be binding and unconditional (save as to compliance with the *Planning Act*), under which the City shall transfer the Arena Lands to the CF Transferee for consideration of \$2.00.
  - (c) The APS will be completed on a date which will be not later than 60 days following exercise of the Option (the "APS Completion Date"). As at the time that the APS is completed on the APS Completion Date, title to the Arena Lands shall be subject to no encumbrances other than those that affected the Arena Lands on the Closing Date. Further provisions regarding the transfer of the Arena Lands are set out in section 30.
  - (d) The Option may be exercised by the CF Transferee at any time following the Closing Date but not later than October 31, 2020. After October 31, 2020 the Option shall be null and void.
  - (e) If the Option is exercised and the APS Completion Date occurs prior to October 31, 2020, the CF Transferee will grant to the City the Arena Lease for a term comprising the Stub Period. The "Stub Period" means the uninterrupted period of time commencing on the APS Completion Date and ending on October 31, 2020. The Arena Lease will provide for the payment of nominal base rent, and will be on the terms set out in Schedule C-2 and on further terms to be

satisfactory to the GM and CF, all of which terms are intended to be legally binding.

- (f) If the Option is not exercised by October 31, 2020 there shall be no Arena Lease. Nothing in these Minutes shall be construed as requiring the City to demolish the arena building within the Arena Lands, or to be responsible for the cost thereof.
  - (g) All liability for land transfer taxes exigible in relation to the Option or the APS shall be borne by the CF Transferee. The APS resulting from the exercise of the option shall accord with the terms of these Minutes and with such further terms as CF and the GM shall agree.
14. Additional terms of the agreement in respect of the Land Exchange are set out in Schedule C-1, and are intended to be legally binding.
15. INTENTIONALLY DELETED.

#### **Parkland Obligations and Cash-in-Lieu**

16. CF will satisfy the alternative parkland dedication requirements contained in City of Toronto By-law No. 812-2008, the details of which are described in Schedule D.
17. The City covenants that all cash-in-lieu of parkland payments made by CF with respect to the Phase 2 development of DMC will be placed in a segregated reserve fund which will be used by the City towards construction of a new arena, save and except for cash in lieu paid following the issuance of the first building permit for the new arena in which case such funds may be used at the discretion of the GM for other park purposes.
18. Prior to condominium registration of the last of the buildings on the west side of O'Neill Road, being Buildings B1, 75 The Donway West, B2, and D, but in no case later than October 12, 2020, the deed for the Local Park, held in escrow, will be transferred to the City, upon its request. An escrow agreement for the conveyance of the Local Park shall be entered into prior to the issuance of any building permit for any of Buildings A1, A2, B1, 75 The Donway West, B2, D, E and G, but in no event later than October 12, 2010.
19. Prior to the registration of the escrowed deed, CF covenants to improve the Local Park to at least base park condition, to the GM's satisfaction, and to make improvements above base park standards, as may be mutually agreed upon in accordance with section 21, and CF shall convey the Local Park to the City in an environmental condition suitable for residential/parkland uses in accordance with section 31. Until the transfer takes place, the land for the Local Park may be used by CF, without fee, for

- existing commercial uses and/or for construction staging. No development charge credit shall be given with respect to the cost of any base or above base park improvements, nor shall the costs of these improvements be considered parkland dedication pursuant to section 42 of the *Planning Act*.
20. The City covenants to release the park land transfer that is being held in escrow under the Phase 1 Site Plan Agreement upon execution of an escrow agreement pursuant to section 18.
  21. A committee consisting of representatives of CF, the City and DMRI will be convened to provide input on the design of the Local Park, above base park condition. The committee will be led by CF's landscape architects, and decisions pertaining to the design and improvement of the Local Park to above base park condition will be made by the GM and CF cooperatively. The design will address sight lines for a potential crosswalk over The Donway West, in the vicinity of the Local Park.
  22. The Local Park will be maintained in a good and orderly fashion by CF, with appropriate indemnity and insurance provisions to be secured through the Section 37 Agreement, satisfactory to the GM, in consultation with the City Solicitor.
  23. The east-west pedestrian walkway corridor from the CC and west to the Local Park, the mews treatment adjacent to the Local Park as well as the connection/mews within Parcel 2 will be designed by CF landscape architects, to the satisfaction of the Chief Planner & Executive Director, City Planning (the "Chief Planner"), in consultation with the GM.
  24. Additional terms of these Minutes in respect of the Local Park and the calculation of the alternative parkland dedication requirements that are applicable to the DMC are set out in Schedule D, and are intended to be legally binding.

### **Easements, Rights-of-way**

25. Upon the completion of the CC and conveyance of the Local Park, CF covenants to grant (or to cause the relevant owner entity to grant) to the City, a public access easement and/or right of way to enable access and egress to and from the CC to the Local Park to the satisfaction of the City Solicitor. These public access easements shall include, but may not be limited to, a pedestrian access easement through the DMC site between Buildings B2 and D and between Buildings E and G, as well as a vehicular easement in favour of the City between Buildings B2 and D for purposes of access to maintain the Local Park, if necessary.

## **Servicing**

26. CF agrees to make provision through the site plan approval process with respect to improvements to any municipal infrastructure required for redevelopment. CF agrees to make provision through the site plan approval process with respect to improvements to any municipal infrastructure required for redevelopment, including proportionately conveying to the City, for nominal consideration, such land as may be required to achieve a 27 metre right-of-way for The Donway West adjacent to the DMC as well as providing for an appropriate boulevard treatment functionally equivalent to established City standards.

## **General**

27. Nothing in these Minutes shall be deemed or construed as attempting to fetter the discretion of City Council should the OMB decline to exercise its jurisdiction with respect to any portion of the OPA and ZBL Appeals, as revised, to be in accordance with these Minutes.
28. The City and CF acknowledge the need to amend the Phase 1 Site Plan Agreement, as required, to accord with these Minutes, to the satisfaction of the City Solicitor.
29. With respect to all conveyances to the City, CF's solicitor shall provide to the City a title opinion confirming good and marketable title in the City's standard form and otherwise satisfactory to the City Solicitor.
30. On the APS Completion Date, the CF Transferee will accept title to the Arena Lands subject to all restrictions, easements and other encumbrances existing as of the Closing Date. The City agrees not to further encumber (or permit the encumbrance) of the Arena Lands from and after the date of these Minutes. Notwithstanding section 13(c) or the first sentence of this section 30, on or before the APS Completion Date, the City will release any easements in its favour that benefit the Arena Lands, and comply with its obligations under paragraph 1 of schedule C-1.
31. CF shall satisfy the City's environmental policies with respect to all conveyances to the City. The CC Lands shall be in an environmental state suitable for CC purposes, as evidenced through a registered Record of Site Condition which may be based on a site specific risk assessment satisfactory to an environmental peer reviewer, retained by the City, at CF's expense.
32. For the purpose of any conveyances or leases contemplated by these Minutes, the Parties agree that the Chief Corporate Officer shall have all necessary delegated authority for the purpose of implementing the intent of these Minutes.

33. The City and CF will work cooperatively to establish the fair market value of the land that is subject to the Land Exchange for purposes of determining the land transfer tax payable.
34. These Minutes are subject to approval by Toronto City Council at its February 2010 meeting and are open for acceptance as confirmed by the City Solicitor or her delegate for 24 hours following the conclusion of the February 2010 City Council meeting.
35. The Parties acknowledge that they have sought and received legal advice or had the opportunity to do so and determined not to obtain it in connection with these Minutes.
36. These Minutes may be executed in one or more counterparts, which together shall constitute a complete set of these Minutes, and executed counterparts may be delivered by email or facsimile transmission.
37. The Parties to these Minutes will cooperate to achieve the intent of this settlement in a timely fashion. Any unresolved issues in the interpretation and/or implementation of this settlement shall be brought to the attention of the Chief Planner.
38. Section 1 shall be effective on the execution of these Minutes, and the remainder of these Minutes shall become effective after the final approvals by the OMB referred to in section 1.

**IN WITNESS WHEREOF**, the Parties have executed these Minutes as of the date(s) indicated below.

) **CITY OF TORONTO**

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**Per:**

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Date:

) I have the authority to bind the Corporation.



) **C/F REALTY HOLDINGS LTD.**

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) **Per:**

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Date:

) I have the authority to bind the  
Corporation.

) **DON MILLS RESIDENTS INC.**

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) **Per:**

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Date:

) I have the authority to bind the  
Corporation.

# SCHEDULE A

## LAND USE PLAN FOR DMC PHASE 2



## **SCHEDULE B**

### **TERMS PERTAINING TO COMMUNITY CENTRE**

1. Terms pertaining to parking for the CC shall be inserted in the Ground Lease and Section 37 Agreement, to the satisfaction of the GM and CF, and for greater clarity but not to limit the aforesaid discretion of the GM, there shall be adequate unreserved parking spaces provided to service the needs of staff and patrons of the CC on a shared basis with DMC patrons. The number and location of the shared parking spaces shall be determined in accordance with a parking study to the satisfaction of the GM in consultation with the Executive Director of Technical Services. Both CF and the City acknowledge that the staff and patrons of the CC shall not be restricted from use of the public parking located at the DMC (as such public parking is constituted from time to time at the discretion of the owner of the DMC).
2. CF and the City will enter into the necessary agreement to exempt the CC from taxes as a municipal capital facility, pursuant to the *City of Toronto Act, 2006*, which shall provide that the CC will be exempt from municipal taxes during such time as it continues to be used for community and recreational purposes.
3. CF shall carry or cause to be carried insurance for property, liability and all risks, with respect to the premises demised under the Ground Lease, in a form satisfactory to the GM.
4. As a term of the Ground Lease, with proper notice from the City in respect of a right of way widening requirement for the possible light rapid transit line along Don Mills Road, the Ground Lease shall be terminated but only insofar as it pertains to those lands required for the purpose of the right of way widening. The design of the CC building shall have regard to the potential for said right of way widening, to the satisfaction of the Executive Director, Technical Services.
5. Pending the construction of the CC, the CC Lands may be used by CF (or its affiliates) and their respective contractors for construction staging and use by DMC patrons, snow storage and the storage of maintenance vehicles for the DMC, provided that the City shall be wholly indemnified with regard to any liability which shall include but not be limited to environmental contamination resulting from CF or its affiliates and their respective contractor's use of the CC Lands.
6. The LCs described in section 6 shall be provided by CF to the City as follows:

- a. Prior to condominium registration for Building B2, an LC in the amount of Building B2 GFA divided by the total GFA of Buildings B2, D, E and G times \$17 million as indexed annually from 2010 dollars;
  - b. Prior to condominium registration for Building D, an LC in the amount of Building D GFA divided by the total GFA of buildings B2, D, E and G times \$17 million as indexed annually from 2010 dollars;
  - c. Prior to building permit issuance for either of Buildings E or G, an LC for the remaining portion of \$17 million that has not been collected.
7. The Ground Lease will precipitate the need to amend or modify the parkland provisions of the City of Toronto Official Plan to address the leasehold disposition to the CF Landlord.

## **SCHEDULE C-1**

### **TERMS PERTAINING TO LAND EXCHANGE**

1. The City will consent to and cooperate with any application by CF or the CF Transferee to quit claim/extinguish the 23 June 1959 Indenture which restricts the use of the Block G lands to arena and parking uses only. The City will also consent and cooperate in seeking release and sale of the Hydro Lands and related easements to the CF Transferee's benefit.
2. The conveyance of the CC Lands and the delivery of escrow of the Park Top-up Lands referred to in section 12 shall close on October 12, 2010, with the possibility of such date being extended on consent of the solicitors for CF and the City (the "Closing Date"). The City shall be responsible to pay the land transfer tax payable at law on the conveyance of the CC Lands and the Park Top-up Lands.
3. CF (or its affiliates) shall have access to the Arena Lands on terms satisfactory to the GM prior to the Closing Date for the purpose of environmental testing or as otherwise required by the CF Transferee for purposes of closing the Land Exchange.
4. The CF Transferee shall not commence the demolition of the arena building on the Arena Lands prior to the Arena Turnover Date.
5. The CF Transferee shall be responsible for environmental remediation of Block G, as necessary under applicable law, save for remediation for contamination that occurs during the period commencing at the Closing Date and ending at the Arena Turnover Date as a result of the City, its agents, contractors, and invitees' use of the Arena Lands during this period.
6. CF will give any notice to the public as may be directed by the OMB with respect to the proposed Official Plan and Zoning By-law Amendments pertaining to Block G, as well as any Official Plan Amendments necessary in respect of Schedule B, paragraph 7.

## **SCHEDULE C-2**

### **ARENA LEASE TERMS**

1. Base rent of \$1/year for the duration of the Arena Lease.
2. The Arena Lease will be fully net and carefree to the CF Transferee and, without limiting the generality of the foregoing, the City will be responsible for:
  - a. all costs of operations, repairs, maintenance and replacements for the premises demised under the Arena Lease; and
  - b. carrying insurance for property, liability and all risks, in a form satisfactory to the CF Transferee, for the premises demised under the Arena Lease.

Notwithstanding the foregoing, the City shall not be obligated to reimburse to or pay on behalf of CF property taxes with respect to the premises demised under the Arena Lease.

3. During the duration of the Arena Lease, CF shall allow users of the Arena to park within publicly available parking spaces within the DMC (as such spaces are constituted from time to time at the discretion of the owner of the DMC).
4. If CF or any affiliate thereof acquires ownership of the Hydro Lands prior to the Arena Turnover Date, then, at the City's option, CF or such affiliate (as the case may be) will lease the Hydro Lands to the City on the terms of the Arena Lease (the "Hydro Lease").
5. At the end of the term of the Arena Lease, the City shall deliver vacant possession of the Arena Lands (and, if the Hydro Lease has come into effect, the Hydro Lands).

## SCHEDULE D

### PARKLAND CALCULATIONS

1. CF's obligations in respect of the parkland dedication pursuant to the alternative rate parkland dedication requirements contained in City of Toronto By-law No. 812-2008 will be satisfied through conveyance of the portion of the Local Park not otherwise required to make up any shortfall in land area necessary to achieve a land exchange of equal areas as between the Arena Lands and the CC Lands as referenced in section 12, together with the payment of cash in lieu of parkland pursuant to Bylaw 812-2008.
2. The parkland dedication shall be calculated on the basis that Block G is wholly owned by the CF Transferee and therefore the Hydro Lands shall be included in the determination of the parkland dedication requirement.
3. At the time that the parkland dedication/cash in lieu pursuant to section 42 of the *Planning Act* becomes due on a building-by-building basis, credit for the land area of the parkland to be dedicated will be applied proportionally to each building, so that each building will contribute with both parkland conveyance and cash in lieu.
4. The methodology illustrated by the following calculation, which relies on parameter values taken from Schedule A and the current draft site survey as revised on February 9, 2010, shall be used to determine the parkland conveyance obligation under City of Toronto By-law No. 812-2008, subject to adjustment in accordance with the provisions of that by-law should any right-of-way widening along The Donway West be required. The parkland obligation will be finally determined on or before the finalization of the escrow agreement.

#### Calculation

Arena Lands including the Hydro Lands (5,316.70 m<sup>2</sup>) are exchanged for CC Lands (4,363.10 m<sup>2</sup>) including future corner rounding (5.10 m<sup>2</sup>) at the southeast corner of the site plus part (953.60 m<sup>2</sup>) of the Local Park (5,463.00 m<sup>2</sup>) the remainder of which (4,509.40 m<sup>2</sup>) is conveyed to the City under By-law 812-2008. Most (4,666.30 m<sup>2</sup>) of the Arena Lands are incorporated into mixed use (all of which is treated as residential for purposes of the parkland conveyance calculation) as new Parcel 4 but a portion (650.40 m<sup>2</sup>) is integrated into commercial as an addition to Parcel 0.

#### Parameter Values

##### 1. PARCEL LAND AREAS

Parcel 0: Pt 1 + Pt 13

$$121,223.90 \text{ m}^2 + 650.40 \text{ m}^2 = 121,874.30 \text{ m}^2$$

Parcel 1: Pt 2  
5,791.10 m<sup>2</sup>

Parcel 2: Pt 3 + Pt 4 + Pt 5 + Pts 7&8 + (Pt 6 – (Pts 12&13&14 – Pts 10&11))  
2,708.30 m<sup>2</sup> + 4,897.80 m<sup>2</sup> + 3,884.30 m<sup>2</sup> + 3,603.00 m<sup>2</sup> + 4,509.40 m<sup>2</sup>  
= 19,602.80 m<sup>2</sup>

Parcel 3: Pt 9  
3,876.10 m<sup>2</sup>

Parcel 4: Pt 12 + Pt 14  
4,409.90 + 256.40 = 4,666.30 m<sup>2</sup>

Total Site Area: Parcel 0 + Parcel 1 + Parcel 2 + Parcel 3 + Parcel 4  
121,874.30 m<sup>2</sup> + 5,791.10 m<sup>2</sup> + 19,602.80 m<sup>2</sup> + 3,876.10 m<sup>2</sup> + 4,666.30 m<sup>2</sup> =  
155,810.60 m<sup>2</sup>

2. COMMERCIAL LAND AREA subject to parkland conveyance

Redeveloped land in Parcel 0  
= 121,874.30 m<sup>2</sup> – 19,479.00 m<sup>2</sup> = 102,395.30 m<sup>2</sup>

in which 19,479.00 m<sup>2</sup> unredeveloped land consists of 4,497.00 m<sup>2</sup> existing 1090 Don Mills Rd office building + 14,982.00 m<sup>2</sup> existing Metro food store

3. MIXED USE LAND AREA subject to parkland conveyance

All land in Parcel 1 + Parcel 2 + Parcel 3 + Parcel 4  
= 5,791.10 m<sup>2</sup> + 19,602.80 m<sup>2</sup> + 3,876.10 m<sup>2</sup> + 4,666.30 m<sup>2</sup>  
= 33,936.30 m<sup>2</sup>

*APD Calculation*

Parkland conveyance obligation  
= 0.02 x 102,395.30 m<sup>2</sup> + 0.15 x 33,936.30 m<sup>2</sup>  
= 2,047.906 m<sup>2</sup> + 5,090.445 m<sup>2</sup> = 7,138.351 m<sup>2</sup>  
= 7,138.35 m<sup>2</sup>

*Parkland Provided*

Local Park  
= 5,463.00 m<sup>2</sup> – 953.60 m<sup>2</sup>  
= 4,509.40 m<sup>2</sup>

*Parkland Deficit (to be compensated by cash in lieu)*



Deficit  
 $= 7,138.35 \text{ m}^2 - 4,509.40 \text{ m}^2 = 2,628.95 \text{ m}^2$

## APPENDIX 2 DESIGN PANEL COMMENTARY

### **Don Mills Centre - Phase 2**

*Provincial Facilitation Urban Design Panel - Review of Optional Approaches  
February 11, 2010*

**To:**  
Office of The Provincial Development Facilitator – Paula Dill

**Commentary by Urban Design Panel Members:**

Calvin Brook – BMI/Pace  
Joe Lobko - du Toit Allsopp Hillier | DTAH  
Don Schmitt – Diamond + Schmitt Architects Inc. \*  
Rudy Wallman – Rudy Wallman Architects Limited  
(\*DS Not available for final meeting)

### **Executive Summary**

*The Urban Design Review Panel supports the agreement amongst the parties, (further described in the following), which identifies the basis of a built form and open space strategy intended to guide development of Phase 2 of the Don Mills Centre.*

### **Introduction**

The Architects and Urban Designers listed above agreed to form a review panel, (coordinated by Provincial Mediator - Paula Dill), providing urban design advice with respect to alternative development frameworks for the Don Mills Centre Phase 2 lands, to the following parties:

- Cadillac Fairview Development/Fram Development
- City of Toronto
- Don Mills Ratepayers Inc (DMRI)
- Don Mills Friends

Each of the parties agreed that the following principles would inform discussions intended to seek agreement with respect to an overall planning and urban design framework for ongoing development of the Don Mills Shopping Centre site:

1. Existing and/or acceptable road pattern to remain. Main spine not to be eliminated or altered.
  2. Total gross floor area to be achieved through settlement.
  3. Parkland in the amount of 7222.1m<sup>2</sup> to be provided. Cash-in-lieu may be considered as an option.
  4. Consideration should be given to achieving parkland contiguous to the community facility.
  5. Settlement must realize scheme within an acceptable timetable including the consideration of on and off-site arena.
  6. Must be a financially viable solution.
  7. Any potential land exchange involving arena must be for an equal area.
  8. Commercial/retail to be provided, wherever possible, on all frontages of main street.
  9. Resolution of built form issues to appropriately relate to the character of Don Mills.
- Discussion Items: Medical services

Three meetings were held to review the current development application, as well as alternative approaches to development, on the Phase 2 portion of the site. During the first and second meetings, a number of suggestions/observations emerged, which informed the development of the site plan options, (generated by Giannone Petricone Associates Inc. Architects on behalf of Cadillac Fairview/Fram), which became the focus of discussion during the third and final meeting.

Suggestions/observations intended to complement and expand the list of principles and considerations listed above, included the following:

- Consider inclusion of the arena site in development proposals. This would allow the agreed upon density to be distributed over a greater land area, while redevelopment of the arena site would allow its O'Neill Road (Street E), frontage to become an active retail/commercial frontage, reinforcing the 'Main Street' idea, intended to inform the design of this street from The Donway West to the Public Square. (This inclusion of the arena site in the development area to be considered assumes the identification of a suitable alternative neighbourhood site for the construction of a new arena facility.)
- Support indicated for the principle of concentrating height and density towards the middle portions of the site, away from the existing lower rise forms of housing on the south and west sides of the Donway West, and away from Don Mills Road.
- Support indicated for an extensive, 'green', well landscaped promenade, along the entire Donway West frontage, to recall, (or introduce for this block), a sense of the 'garden city' ambition of the original Don Mills community.
- Consider optional locations for the suggested community centre, both at the corner of Don Mills Road and The Donway West, as well as locations more internal to the site. The corner location would provide the community centre with a very strong visual presence within the broader neighbourhood, and potentially serve as an appropriate public gateway to the Don Mills Centre.
- Consider optional approaches to the inclusion of park and open space within the development. Options to include a park space immediately adjacent to the suggested community centre, as well as locations remote from the community centre. The applicant was asked to provide a precedent review of existing Toronto park spaces that might be similar in scale and character to the park space possible here, to inform decision making with respect to the scale, type and form of park space to be included, as well as its location within the development.

At the third and final meeting, all parties agreed to a development framework moving forward, as generally described below. This Urban Design panel supports that agreement for the reasons listed in the discussion that follows. Please refer to the attachments with this report, which provide an illustrated site plan as well as photos of the model presented.

#### ***Recommended Development Framework***

The proposal is characterized by the following:

- Community Centre located at the corner of Don Mills and The Donway West (Block F)
- Park site along the Donway West, at the bend in the road, remote from the Community Centre – approximately 0.54 ha (1.35 acres) in area
- The assumed long term relocation of the arena allows for four development sites along O'Neill Road (Street E), providing continuous retail/commercial frontage along this primary street including:
  - Block B2 (32 storey tower/7 storey podium), Grade level retail/commercial uses
  - Block G (24 storey tower/7 storey podium), Grade level retail/commercial uses
  - Block D (16 storey tower/6 storey podium), Grade level retail/commercial uses
  - Block E (14 storey tower/6 storey podium), Grade level retail/commercial uses

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- Blocks A1/A2 as 11 storey towers (2) w 5 storey podium along Donway north of Street A
- Block B1 as 12 storey tower
- Existing 13 storey commercial tower converted to residential uses with new townhouse frontage running east/west along its base, forming a new frontage to the proposed park.

**Commentary:**

- A primary gateway to the Centre from the Donway to the south, O'Neill Road (Street E) is provided with a continuous frontage of mixed use development, predominantly including ground related retail and service commercial uses on both sides of the street, supporting in the strongest way the intended 'main street' character of this primary Don Mills Centre street.
- The corner location for the Community Centre seems to position this more public facility in a very desirable location, as a gateway to the Centre as a whole, and at a low rise scale compatible with its context.
- The two tallest towers are located towards the centre of the development, and staggered from one another across Street E, in a manner which helps to reduce their relative visual impact, in relation to one another. In this area of the development, four towers are proposed in total in contrast to the five tower approach suggested in the development application.
- A generously scaled landscaped boulevard, characterized by a double row of trees, is proposed along the south side of Street F, as a means of providing a strong pedestrian, landscape and visual connection between Don Mills Road, the proposed Community Centre and the Park, helping to define a strong link between these elements.
- The proposed park, located along The Donway, is presumed to be primarily characterized by soft (vs hard) landscaping, serving as a complement to the more urban square completed as part of Phase 1. Three development sites have direct frontage on the park, and suggestions were made with respect to the inclusion of a 'public' walkway between those frontages and the public park, to ensure that the park feels public and welcoming and not part of a private residential development.

Concerns were expressed with respect to the connectivity of the park in this location with the surrounding community, isolated from easy and safe crossing points further along the Donway in each direction. Suggestions to possibly help address this concern included consideration of site lines from both adjacent intersections, (with the prospect of a new pedestrian crossing point?), and the development of a continuous, well landscaped, (double line of trees), public walkway along the north side of the Donway. The inclusion of a pedestrian pathway along the west side of Block B2 (and Block D) would also help to increase access to this park. The park size proposed is similar in scale to the Jean Sibelius Square (Kendle and Well) at .58 ha, and Bellevue Square (Kensington Market) at .5 ha, though in this case with a modified 'quarter circle' shape, rather than rectangular.

- We understand that tower floorplates would be limited to 825 SM in area; a critical factor in minimizing their visual and environmental impacts on the surrounding low to mid rise existing community.
- In general, the panel felt that this approach had the greatest potential with respect to balancing and integrating the arrangement of building elements with the arrangement, scale and potential character of the park, streetscape and open space opportunities identified.

*End of Comments*

*Attachments List: Preferred Site Plan, Photos of Development Strategy*

