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WITH PREJUDICE

October 31, 2021

VIA EMAIL

Jessica Braun
City of Toronto, Legal Services
Planning and Administrative Tribunal Law
Section
26th Floor, Metro Hall
55 John Street
Toronto, ON M5V 3C6

Dear Ms. Braun:

**RE: Don Mills Residents Inc. ats City of Toronto and C/F Realty Holdings Ltd.
Court of Appeal File No.: C69640
Our File No.: 1357**

We write further to our meeting on October 28th, 2021, and the ongoing discussions between our clients about the potential resolution of the appeal by Don Mills Residents Inc. (“**DMRI**”) to the Ontario Court of Appeal, and larger planning issues about community space at Don Mills Centre.

At the close of the meeting you requested that DMRI provide its proposal for a path forward on the appeal for consideration by the City in advance of its November 9th and 10th Council meeting. At that meeting City Council will be considering the proposal of C/F Realty Holdings Inc. (“**Cadillac Fairview**”) and 169 the Donway West Inc. (“**Lanterra**”) regarding the incorporation of approximately 19,000 square feet of community space into their development at 169 The Donway West. Council will also be considering the City-initiated Official Plan and Zoning By-Law Amendments for 966 Don Mills Road at the same meeting.

The balance of this letter sets out DMRI’s proposals for moving these matters forward. It is our hope that these proposals will substantively advance the parties’ discussions and ultimately lead to a resolution that is optimal for the parties involved and, more importantly, the broader Don Mills community.

A large long-term care facility is operated in Don Mills by Thompson House. The current facility is aged and needs significant repair, or to be replaced in its entirety. The costs of repairs or replacement of that facility are beyond the resources of Thompson House and it is at risk of closure in the next few years if a solution cannot be found. This would be a

significant loss to the Don Mills community, which is in dire need of long-term care services.

The Federal and Provincial governments have recently announced a large amount of funding for the creation or repair of long-term care facilities. Our client has been in discussions with both these levels of government, and Thompson House, and have been working toward an agreement-in-principle for the construction of a new long-term care facility in Don Mills. That facility will be operated by Thompson House to replace its existing facility, and be financed using the available sources of government funding. Those discussions have been very positive. The only piece missing from completing a viable solution is land upon which to build the proposed long-term care facility.

966 Don Mills Road seems ideally suited for this purpose. In the City's scan of potential uses for that property, one of the ideas canvassed was a long-term care or senior's facility. That idea was strongly supported in the community. While a long-term care facility is not a community centre, it would be a significant benefit for the community and could potentially incorporate into its design other uses or aspects that would provide community benefits and amenity.

This leads to DMRI's first proposal to resolve this matter. It consists of the following:

- The City agrees to engage in the discussions with DMRI, the Provincial and Federal governments, and Thompson House, and to support the use of 966 Don Mills Road as a site for a future long-term care facility incorporating other community uses;
- DMRI would continue to support Lanterra's proposal with respect to its development at 169 The Donway West;
- In exchange for the above, upon an agreement being reached securing 966 Don Mills Road as the site of a future long-term care facility, DMRI will withdraw its appeal to the Ontario Court of Appeal in its entirety. It would request that the City waive enforcement of the costs of the Superior Court proceedings as part of this resolution; and
- While it should not be necessary in the context of the terms of this proposed resolution, DMRI would also be prepared to confirm that it will not appeal the City-initiated Official Plan Amendment and Zoning By-Law Amendment for 966 Don Mills Road as part of a resolution consistent with this framework.

The contemplated agreement with respect to the use of 966 Don Mills Road for a long-term care facility incorporating other community uses is likely to be a complicated one. It cannot be completed along the timelines proposed by the City and Cadillac Fairview/Lanterra. As part of this resolution DMRI proposes that the parties extend those timelines by a further 90 days to allow those negotiations to play out in earnest, with an eye to reaching an agreement that can fully and finally resolve this matter.

DMRI strongly believes that this proposal is an optimal resolution for all involved. It would be a significant benefit to the community; secure the future use of 966 Don Mills Road; meet public policy goals important to all levels of government; and would bring an end to the cost and uncertainty of ongoing litigation.



We understand that the City and Cadillac Fairview/Lanterra wish to move forward and resolve the outstanding matters as quickly as possible. DMRI anticipates that its requested additional timeline may, as a result, meet with some resistance by either or both parties. It would be unfortunate were such a prime opportunity be passed over on the basis of those concerns. To nevertheless keep the discussion moving forward and demonstrate its ongoing good faith in these negotiations, DMRI puts forward the additional alternate proposal should the above not be agreeable to the City.

That proposal is:

- DMRI will continue to support the proposal by Lanterra with respect to its development at 169 The Donway West;
- DMRI will modify its appeal to the Ontario Court of Appeal to withdraw its request for injunctive relief/specific performance requiring the construction of the community centre contemplated by the 2010 Minutes of Settlement. Its requests for declaratory relief and a trial to determine consequential damages would continue;
- A restriction or requirement would be placed on 966 Don Mills Road that there shall be no future changes to its use without the formation of a working group, including no fewer than three members of the executive of the DMRI, to review those potential future uses. There shall be no change in the future use of the property without the agreement of that working group; and
- DMRI will agree not to appeal the City-initiated Official Plan Amendment and Zoning By-Law Amendment for 966 Don Mills Road.

The narrowing of DMRI's appeal as contemplated by this proposal is somewhat different than what was discussed during our October 28th meeting. By removing the request for injunctive relief/specific performance, it should address the City's concerns about the potential that there would be two community centres at Don Mills Centre if DMRI's appeal is successful. As presently contemplated this proposal should also avoid any concerns about mootness with respect to that appeal.

We note the City's reliance on policies 4.3.2 and 4.3.8 of its Official Plan for its contention that park and open space lands (such as 966 Don Mills Road) are prohibited from being sold or developed for residential or other uses. We appreciate you forwarding these policies and explaining the City's position with respect to them.

DMRI nevertheless has some concerns about the wording of those sections, including specifically that development is "generally prohibited" and sale or disposal of such lands is "discouraged". As part of a resolution based on the second proposal in this letter DMRI asks that the City agree that, with respect to 966 Don Mills Road, those policies will be interpreted to read "prohibited" in both instances identified above. This should address our client's concerns about the policies as drafted



Please contact us at any time should you wish to discuss this matter further. We look forward to hearing from you further with respect to the City's position on the proposals as set out herein.

Sincerely,

RAYMAN BEITCHMAN LLP



Conner Harris
CH/rf

CC: *Roberto Zuech, Litigation Counsel, City of Toronto*
Client