Attachment 2 – Confidential Information made public on April 18, 2011

WITHOUT PREJUDICE

MINUTES OF SETTLEMENT

AMONG:

Worsley Beach Limited
("Worsley")

-and-

Kew Beach Neighbourhood Association
("KBNA")

-and-

Toronto District School Board
("TDSB")

-and-

City of Toronto
("City")

WHEREAS:

A. Worsley Beach Limited has appealed to the Ontario Municipal Board (the "OMB") under subsection 34(11) of the *Planning Act, R.S.O. 1990*, c. P.13, as amended and subsection 114(15) of the *City of Toronto Act, 2006*, S.O. 2006, c.11, Sched.A, as amended, due to the City's lack of decision on a proposed amendment to Zoning By-law 438-86 (the “By-law Amendment”) and a site plan for the lands municipally known as 66 to 76 Kippendavie Avenue (the "Appeals").

B. The proposed rezoning and site plan would permit the development of a four storey, sixty-five unit condominium building with an underground parking garage (the "Development").

C. A pre-hearing conference relating to the appeals was held on December 1, 2010 at which time Worlsey, the KBNA, the TDSB, the City, Alexandria Struke and Vittoria Oddi-Peirce were all named as parties to the proceedings.

D. A second pre-hearing has been scheduled for April 19, 2011 and a ten day hearing has been scheduled to commence on June 13, 2011.

E. At its meeting of March 22, 2011, the Toronto and East York Community Council directed the City Solicitor to retain the services of an independent mediator for

the purpose of trying to facilitate a settlement between the parties to the OMB hearing.

F. The parties participated in a full day of mediation with an independent mediator on April 6, 2011 and the parties hereto have reached agreement on the issues as set out below.

NOW THEREFORE in consideration of the sum of two dollars ($2.00), the receipt and sufficiency of which is acknowledged, the premises and other good and valuable consideration, Worsley, the KBNA, the TDSB and the City, being the parties to these Minutes of Settlement (the “Agreement”), agree to and with each other as follows:

1. The Development will contain no more than 60 dwelling units. The By-law Amendment and the site plan will be amended in this regard.

2. There shall be no habitable indoor living space located above four storeys in height. The term "habitable indoor living space" shall be defined in the By-law Amendment so as to prohibit use of the rooftop access spaces for anything other than storage and access to the roof.

3. The Development will contain no more than 7 private rooftop access points. Each access shall be a maximum of 16.31 m^2 or 175 ft^2 in size. The By-law Amendment and the site plan shall be amended in this regard.

4. The common outdoor amenity area located on the roof shall have a maximum of 273.42 m^2 and shall be bordered on the south, east and northern sides by non-accessible green space having a minimum depth of 1.2 metres or 4 ft on each side. The By-law Amendment and the site plan shall be amended in this regard.

5. The south side yard setback above the third storey of the building will be increased to a minimum of 2.5 metres. The By-law Amendment and the site plan shall be amended in this regard.

6. The east front yard setback above the third storey of the building will be increased by a minimum of 1.5 metres. The By-law Amendment and the site plan shall be amended in this regard.

7. The Kippendavie Avenue access and garbage room shall be built in accordance with the Ground Level Floor Plan A2.02 dated June 10, 2010.

8. Notwithstanding any decrease in the number of units or total gross floor area, the Development shall have no less than 58 resident and 10 visitor parking spaces. The By-law Amendment and the site plan shall be amended in this regard.

9. The maximum FSI to be permitted for the development is 1.895. The By-law Amendment shall be amended in this regard.

10. All outdoor lights on the building shall be positioned so as to ensure that there is no light spillage or intrusion onto adjacent properties and properties facing the building, including those to the south, north and east on Kippendavie Avenue. There shall be no neon lighting on the eastern façade of the building. All lighting

on the roof shall be shut off by no later than 11pm each night. The site plan agreement will contain conditions to this effect.

11. Worsley undertakes and commits that pile driving will not be permitted during the construction of the Development, or in connection with any site work prior to construction.

12. The City shall circulate for the review of all parties to this Agreement any conditions to site plan approval that may be proposed by Toronto Technical Services. The engineers retained by the KBNA and the TDSB, respectively, will be provided with an opportunity to review the conditions and comments issued by Toronto Technical Services, and all the reports upon which those comments and conditions are based, and to provide comments to Toronto Technical Services on same.

13. Prior to the issuance of any building permit, Worsley shall satisfy all conditions imposed by Toronto Technical Services including, but not limited to, conditions related to water, geohydrotechnical, stormwater, sanitary and other infrastructure issues.

14. It shall be a condition of site plan approval that all agreements of purchase and sale for units in the Development contain a warning clause, and the condominium declaration provide wording, to the satisfaction of the Chief Planner, providing full disclosure regarding the rights associated with existing chimneys located at 60 Kippendavie Avenue.

15. Within two (2) weeks of executing this Agreement, the parties will ensure that a meeting is convened of each party's engineering consultant. The purpose of the meeting is to:

    (a) Subject to paragraph 16, determine whether the "zone of influence" identified in reports to date is accurate or whether it should be expanded to ensure all properties potentially affected by the Development are included within the zone of influence;

    (b) Once the extent of the zone of influence is agreed upon, catalogue the properties within the area and creating a list of same including legal description and municipal address;

    (c) Using best practices, identify the terms of reference by which a protocol for the following activities will be developed:

        (i) Pre and post construction assessment of the properties within the zone of influence;

        (ii) Ongoing monitoring of such properties during the construction of the Development;

        (iii) Reporting to the City and the other parties to this Agreement on the results of (i) and (ii), above.

16. The zone of influence shall include the property owned by the TDSB generally located at the southeast corner of Kippendavie Avenue and Queen Street East municipally known as 101 Kippendavie Avenue and 1939 Queen Street East.

17. Worsley shall be solely responsible for paying the costs of engaging an independent third party engineering firm - to be chosen following consultation with and approval by the parties to this Agreement - to complete the following work in accordance with the terms of reference identified by the parties' respective engineers (as set out in paragraph 15 above) in order to assess the potential impact of the Development on the properties and municipal infrastructure identified as lying within the zone of influence:

    (a) pre and post construction assessments of the properties identified to be situate within the zone of influence;

    (b) monitoring of those properties during construction of the Development;

    (c) a hydro geotechnical assessment following a storm event pre and post construction of the Development; and,

    (d) reporting to the City and other parties to this Agreement on the results of (a) to (c) above.

17. Worsley shall obtain and maintain an insurance policy(s) in the minimum amount of $25 million to provide coverage for any damage to the properties identified in accordance with the process set out in paragraphs 15 to 16, above that is caused by the Development, including any causes related to the construction thereof. The insurance policy(s) shall name each of the properties identified as being within the zone of influence as additional insured parties or properties, as the case may be. The insurance policy(s) shall include, amongst other things, coverage to insure against third party damages from taking water (dewatering) and vibrations associated with the construction of the Development. Upon request, Worsley shall deliver evidence of the required insurance to any of the named insureds in the form of a certificate of insurance signed by an authorized representative of the insurer.

18. No portion of the Development or building shall be used for any commercial purposes. Without limiting the generality of the foregoing, no cell towers or cellular telephone antennas shall be located on the rooftop of the building. The By-law Amendment and the site plan shall be amended in this regard.

19. This settlement is conditional upon:

    (a) the terms of reference and protocols identified in paragraphs 15 to 16, above, being agreed upon by the engineers retained by each party to this Agreement;

    (b) the parties being satisfied with the final form of the By-law Amendment.

In the event that such agreements are not reached, the terms of this Agreement shall not bind the parties hereto, and any party may ask the Ontario Municipal Board to set a procedural order for the hearing of the Appeals.

20. Prior to approval of a draft plan of condominium, Worsley shall pay to the City by certified cheque the amount of $25,000.00 for the purpose of contributing toward the implementation of the recommendations of the Basement Flooding Environmental Assessment for Study Area 32.

21. Prior to the Ontario Municipal Board hearing, Worsley shall provide each of the parties to this Agreement with a complete set of plans, including a revised site plan and elevations, amended to reflect the commitments made in this Agreement.

22. Worsley agrees that it shall not seek any rezoning, minor variance, site plan amendment or other development approval which would have the effect of altering any condition of these Minutes.

23. This Agreement shall enure and be binding on all the parties, their successors and assigns.

24. If any individual provision(s) of this Agreement is or are determined by a Court of competent jurisdiction to be illegal or beyond the power, jurisdiction or capacity of any of the parties, such provision(s) shall be severed from this Agreement and the remainder of the Agreement shall continue in full force and effect, mutatis mutandis and in such case, all parties shall negotiate in good faith to amend this Agreement in order to implement the intentions set out herein.