

Offer to Settle



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BY EMAIL

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**Without Prejudice and
Confidential
*until conditions met***

Dear Ms. Bisset:

Re: WITHOUT PREJUDICE SETTLEMENT OFFER

**1750, 1790, 1800, 1830 and 1900 The Queensway and 290, 300, 310, and
320 North Queens Street, TORONTO
LPAT Case No.: PL171129
LPAT File No.: PL171129**

We are the solicitors for FIMA Developments (“FIMA”) the Owner the above referenced site (the “Site”).

Background

The Site is approximately 6.03 ha in size and is located on the north side of The Queensway between North Queen Street and The West Mall. The Site includes Staples, Via Allegro, Red Lobster, LCBO, Starbucks, etc. The Site is currently designated *Mixed Use Areas* in the Official Plan and an Official Plan Amendment is required, *inter alia*, to Policy 3.2.1.9 of the City’s Official Plan regarding Affordable Housing on large sites. The proposal provides for 200 new affordable housing units.

Official Plan and Zoning By-law Amendment applications were submitted to the City in order to permit a proposed mixed-use development on the subject site in 2013. In 2014, the City initiated a study to undertake a new Secondary Plan for the Sherway Area. We

note that Etobicoke York Community Council in 2014 directed that these applications be addressed before the Secondary Plan came forward through the deletion of staff's recommendation that the public meeting process for the applications be withheld until the "the Notice of Completion for the North Queen Street Extension Municipal Class Environmental Assessment is issued and the Sherway Area Study has advanced to the draft recommendation stage" (see December 6, 2013 Preliminary Staff Report to EYCC and January 14, 2014 EYCC minutes). In 2017, FIMA appealed its applications to the Ontario Municipal Board, now continued as the Local Planning Appeal Tribunal ("LPAT"), as no decision had been made by Council.

A Pre-hearing Conference ("PHC") in respect of the appeals has occurred, and no parties or participants beyond FIMA and the City have been identified. FIMA and representatives of the City agreed to participate in LPAT-led mediation in April, 2019. Through the mediation and numerous meetings with staff, FIMA revised its proposal to address the concerns raised by City staff. In particular, FIMA made an Offer to Settle in October, 2019 (the "Offer to Settle"). City Council considered the Offer to Settle at its meeting of October 29 and 30, 2019, and provided further direction on the matter which was shared confidentially with FIMA.

FIMA proposed further private mediation sessions, which FIMA and City staff participated in during the months of March to July, 2020. As a result of that mediation, all built form and urban structure issues have been resolved to staff's satisfaction, including provision of a new public park (20% of the net site area), new public roads, detailed massing / building layout, building height and density. Further, a substantial Section 37 contribution has been proposed as set out herein.

FIMA is now in a position to make the enclosed revised settlement offer (the "Revised Offer to Settle"). The Revised Offer to Settle has been carefully thought out and now includes a detailed phasing plan that will generally implement the development on the Site, over time, while providing a significant public park, public streets, community services and facilities and affordable housing on the Site.

We have drafted the Revised Offer to Settle and phasing plan utilizing a series of triggers including use of registration of the draft plan of subdivision, registration of condominiums, and issuance of above grade building permits. This series of mechanisms is workable for FIMA, and if necessary, FIMA is prepared to explore alternative triggers, provided that the alternatives will work from a logistical and economic feasibility perspective.

Details of the Revised Offer to Settle

The October 21, 2019 Offer to the Settle is replaced by this Revised Offer to Settle. We believe the Revised Offer to Settle satisfactorily addresses City staff's concerns and addresses City Council's October 29/30, 2019 resolution. If City Council resolves to

support the Revised Offer to Settle, our client will revise the redevelopment proposal that was appealed to the LPAT by way of a resubmission to the City, and a request for approval of the LPAT for the redevelopment proposal set out herein.

The Revised Offer to Settle is as follows:

1. The proposed development has been revised in accordance with the enclosed plans. In particular, the revised proposal as depicted in Appendix 1 dated July 14, 2020 (the “**Revised Proposal**”) incorporates the following:
 - (a) A public park dedication to the City comprised of 10,710 square metres, representing 20% of the net site area;
 - (b) New public streets are proposed to complete the Nova Road extension to The Queensway (in two segments) and the extension of Boncer Drive from Nova Road to the southerly property limit of the Hydro Corridor. The settlement proposal reserves FIMA's ability to request strata title for a maximum of two driveways beneath Nova Road connecting the underground parking areas north and south of Nova Road in the future. Permission for these tunnels will be subject to further study and staff review, and further Council approval of these encroachments into the municipal roadway. FIMA has agreed to work with the City for completing the extension of Boncer Drive across the Hydro Corridor to the north with Hydro One as discussed in the Phasing Triggers (Appendix 2);
 - (c) The building massing has been revised to reflect building height (in metres and storeys), setbacks, step backs and separation distances, substantially in accordance with those depicted on the Revised Plans;
 - (d) The floorplate of the towers will not exceed a gross construction area of 750 m²;
 - (e) A maximum of 169,148 square metres of gross floor area of non-residential and residential uses (representing a gross FSI of 2.805); and
 - (f) A minimum of 25% of the dwelling units shall contain two or more bedrooms, of which 10% of the dwelling units shall contain three or more bedrooms.
2. The Owner and the City shall enter into a Section 37 Agreement to be registered on title to the Site, to secure the following community benefits:
 - (a) 200 Affordable Rental Housing Units (“ARHU”) in accordance with the general terms set out in Appendix 3;

- (b) a Child Care Centre with a maximum value of \$5 million which will be conveyed to the City in fee simple located in Building E1;
- (c) \$520,000.00 for the provision of community services and facilities, streetscape improvements, public art and / or public realm improvements, etc. to the satisfaction of the Chief Planner and Executive Director ("Chief Planner") in consultation with the Ward Councillor; and
- (d) \$250,000.00 being directed to local community centre improvements in consultation with the Ward Councillor.

The in-kind elements of the Section 37 contribution will be phased throughout the development of the Site. The cash contributions will be subject to the City's standard requirements including timing of payment, indexing, etc.

Other matters will be secured as a legal convenience in the Section 37 Agreement. In particular, but without limiting the generality of the foregoing:

- (i) Delivery of the new public roads, specifically the Nova Road and Boncer Drive extensions referenced herein;
 - (ii) The provision of a minimum of 25% of the dwelling units shall contain two or more bedrooms, of which 10% of the dwelling units shall contain three or more bedrooms;
 - (iii) The provision of an on-site public park of a minimum of 10,710 square metres, equivalent to 20% of the net site area;
 - (iv) POPS of 1,000 square metres at the north-west corner of The Queensway and North Queen Street;
 - (v) POPS of 2,355 square metres central to the Site (south of Nova Road); and
 - (vi) The conveyance of lands from HONI to the City required for Boncer Drive through the Hydro Corridor to the northern limit of the Hydro Corridor and associated terms, conditions and phasing satisfactory to the City including the grant of a temporary easement to FIMA for parking until such time as it is required for Boncer Drive to be further extended north beyond the Hydro Corridor and it is appropriate for the easement to be released.
3. The City and the Owner shall jointly request that the LPAT through the existing applications and Appeals, allow the Appeals, in part, to approve an Official Plan Amendment and Zoning By-law Amendment to permit the Revised Proposal. The Owner and the City will jointly request a settlement hearing date of the LPAT as soon as the LPAT's calendar can accommodate it, following the public release of

the Revised Offer to Settle and any City Council resolution in relation to the Revised Offer to Settle (see paragraph 9 below).

4. The City and the Owner shall work together to expeditiously finalize the form of the Amendments. Said modifications shall be consistent with and implement the Revised Proposal and the Sherway Area Secondary Plan.
5. The City and the Owner agree that the implementing Official Plan document(s) will be provided to LPAT such that the Revised Proposal will conform to the Official Plan and the Sherway Area Secondary Plan. The Owner will maintain its rights to participate as a Party in the Sherway Area Secondary Plan LPAT hearing and will support the Revised Proposal.
6. The Owner shall carry out the phased development of the Site and provision of community infrastructure and benefits as set forth in Appendix 2, “Phasing Triggers”. Details of the Section 37 Agreement implementing the offer will be consistent with Appendix 2.
7. FIMA will submit an application for approval of a single Draft Plan of Subdivision in order to implement this proposed Settlement for the Site, before the LPAT Order is issued. The details of the public park, new public roads and other municipal infrastructure will be secured through the plan of subdivision process, consistent with this offer.
8. If this offer is accepted, it is the intention of the Owner and the City to proceed cooperatively in order to finalize the following matters:
 - (a) the proposed Official Plan Amendment, in a form satisfactory to the parties;
 - (b) the proposed Zoning By-law Amendment(s) are in a form satisfactory to the parties, including securing the new affordable rental units, child care centre, and appropriate Section 37 provisions;
 - (c) a Section 37 Agreement satisfactory to the parties has been entered into and registered to the satisfaction of the City Solicitor, securing the benefits and matters of legal convenience listed above;
 - (d) the Owner has, at its sole expense:
 - (i) submitted a revised Functional Servicing Report, including confirmation of water and fire flow, sanitary and storm water capacity, Stormwater Management Report and Hydro-Geological Report (the “Engineering Reports”) to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction

Services, in consultation with the General Manager, Toronto Water;
and

- (ii) secured the design and the provision of financial securities for any upgrades or required improvements to the existing municipal infrastructure and/or new municipal infrastructure identified in the accepted and agreed to Engineering Reports to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, should it be determined that improvements or upgrades and/or new infrastructure are required to support the development as set out in the Engineering Reports.
 - (e) the Owner has submitted a revised Transportation Impact Study acceptable to, and to the satisfaction of, the General Manager, Transportation Services and that such matters arising from such study, be secured if required.
 - (f) the Owner has submitted a revised Electromagnetic Field Analysis, Noise Study, Air Quality Study, Energy Strategy and Wind Study acceptable to the Chief Planner and Executive Director, City Planning, and securing such mitigation matters through the Site Plan Approval process, and if necessary, revise the proposed Zoning By-law Amendment to address any mitigation measures arising from the accepted studies or reports.
 - (g) the Owner has submitted an application for approval of Draft Plan of Subdivision to implement the Settlement Offer and to secure matters such as lands to be conveyed to the City, new public streets, parkland dedication, and any required municipal infrastructure, as well as phasing of development on the Site, to the satisfaction of the Chief Planner and Executive Director, City Planning and the Chief Engineer and Executive Director, Engineering and Construction Services.
 - (h) the Owner and City have agreed to a final detailed Phasing Plan, acceptable to the Chief Planner and Executive Director, City Planning, General Manager, Transportation Services, General Manager, Chief Engineer and Executive Director, Engineering and Construction Services, and City Solicitor.
9. This Offer is conditional upon:
- a) City Council authorizing the conveyance of the Child Care Centre from FIMA to the City upon acceptable terms and conditions;

- b) The conveyance of lands from HONI to the City as described above, with the related temporary easement, is authorized by City Council and acceptable terms and conditions are finalized; and
- c) The provision of a draft Section 37 Agreement by the City Legal Services Division.

The timing of the public release of the contents of this Offer and any acceptance shall be mutually agreed upon by the City Solicitor and the Owner, and is intended occur once the three conditions listed above have been fulfilled.

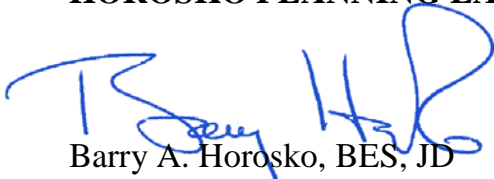
The parties shall jointly request LPAT to approve the FIMA appeals, in whole or in part, and work cooperatively to implement said approvals utilizing traditional legal mechanisms.

As noted above, it is our intention, if Council accepts this Revised Offer to Settle, to proceed at the LPAT on the basis of the Revised Proposal. Accordingly, upon acceptance by City Council, this letter and the contents of this offer will be treated by both parties as With Prejudice once accepted. It is understood that the parties will work together to finalize the draft Amendments, reflecting the foregoing prior to the hearing.

Implementation of this Revised Offer to Settle will be carried out in an expeditious fashion by both parties.

All respectfully submitted,

HOROSKO PLANNING LAW



Barry A. Horosko, BES, JD

cc. Daniel Mantella, James Mantella
Jason Fidani

Encl.

Appendix 1 – Revised Plans dated July 14, 2020

Appendix 2 – Phasing Triggers

Appendix 3 – General Terms of Affordable Rental Housing Units

Appendix 1 – Revised Plans dated July 14, 2020

Appendix 2: Phasing Triggers

1750-1900 The Queensway and 290-320 North Queen Street (the "Lands") Confidential and Without Prejudice (Updated July 15, 2020)

1.0 Definitions

1.1 Building identified in Phase 1A and 1B – assumption that the building groupings remain the same for the purposes of this document.

- Buildings BC (1A)
- Buildings AD (1B)
- Building E1 (Affordable Housing and Child Care Centre)
- Building E2
- Building F
- Building G
- Hydro One lands of approximately 20 m by 70 m for a future extension of Boncer Drive to the northern limit of the Hydro One lands (“the **ROW Lands**”)
- The FIMA lands to the north of the Hydro One corridor (the “**HomeSense Lands**”)

2.0 General Provisions

2.1 The controls and restrictions contained in the phasing plan are only intended to limit or restrict the issuance of building permits for the future redevelopment of the Lands as proposed through the OPA / ZBA applications and not the lawfully existing and ongoing operations of the existing site, renovations, building enlargements or extensions thereto and building replacements. FIMA and the City each reserve their rights pursuant to the *Planning Act* in this regard.

3.0 Parkland & Parkland Dedication

3.1 Section 118/119 Restriction on Parkland until conveyance.

3.2 **Parkland Dedication Trigger:** the entire parkland dedication (20% of the Lands, consisting of 10,710 square metres as shown on A101.S) conveyed, in base park condition, prior to the issuance of the second above grade building permit being either the latter of: the issuance of any above grade building permit for Building B or the issuance of any above grade building permit for Building C on the Lands. For clarity, only one above grade building permit for Building B or C, south of Nova Road, shall be issued before the park is dedicated.

The later Building of Building B or Building C to obtain an above grade building permit is referred to as the “**Second Building**”.

3.3 Construction staging may be permitted on the park through the park occupancy permit process/park access agreement currently in place at the City.

3.4 **Above Base Park Improvements** for the entire park:

3.4.1 **Trigger:** Above base park improvements to be completed satisfactory to the GM, PFR, the earlier of:

- a) prior to registration of Condominium under the *Condominium Act* for the Second Building; and
- b) prior to the issuance of an Above Grade Building Permit for Building A and prior to the issuance of an Above Grade Building Permit for Building D; and
- c) no later than three (3) years after issuance of the an Above Grade Building Permit for the Second Building.

3.4.2 Typical process and procedure applies for the design, approval of plans for improvements, securities, development charge credit process, and environmental requirements, in consultation with FIMA.

4.0 **Affordable Housing Lands (Building E1)**

4.1 Section 118/119 Restriction on Lands for Building E1.

4.2 **Trigger for commencement:**

- a) prior to the issuance of any Above Grade Building Permit for Building A and
- b) prior to the issuance of any Above Grade Building Permit for Building D,

the Owner shall have obtained and have issued by the Chief Building Official an Above Grade Building Permit for Building E1.

4.3 **Trigger for completion and occupation:** Building E1 shall be substantially completed the earlier of:

- a) prior to registration of Condominium under the *Condominium Act* for the Building A; and
- b) prior to registration of Condominium under the *Condominium Act* for the Building D; and

- c) prior to fifty (50%) of the market-rent dwelling units being constructed and ready for occupancy on the Lands; and
- d) no later than three (3) years after issuance of any Above Grade Building Permit for Building A and Building D.

4.4 Terms and conditions provided regarding affordable housing expectations on the Lands and the processes and procedures associated with the affordable housing process.

5.0 Child Care Centre Lands (Building E1)

5.1 Trigger for commencement:

- a) prior to the issuance of any Above Grade Building Permit for Building A and
- b) prior to the issuance of any Above Grade Building Permit for Building D,

the Owner shall have obtained and have issued by the Chief Building Official an Above Grade Building Permit for Building E1.

5.2 Trigger for completion and occupation: Building E1 shall be substantially completed the earlier of:

- a) prior to registration of Condominium under the *Condominium Act* for the Building A; and
- b) prior to registration of Condominium under the *Condominium Act* for the Building D; and
- c) prior to fifty (50%) of the market-rent dwelling units being constructed and ready for occupancy on the Lands; and
- d) no later than three (3) years after issuance of any Above Grade Building Permit for Building A and Building D.

Title to the Child Care Centre shall be transferred to the City upon completion.

5.3 Typical process and procedure applies for the design and approval of plans for the Child Care Centre, compliance with *Child Care and Early Years Act* and associated regulations, guidelines and by-laws, securities, lease arrangements for not-for-profit entities, operational requirements for child care centre and other matters identified in the Child Care Centre Development Guideline (2016).

6.0 Public Streets and Infrastructure

- 6.1 No Above Grade Building Permits (including any conditional permits) shall be issued for Buildings A to G until all of Nova Road and associated infrastructure are in place (conveyed).
- 6.2 Boncer Drive (to the south limit of the Hydro Corridor) shall be conveyed at base course asphalt level, at the earlier of:
- a) no later than five (5) years from the issuance of a Demolition Permit for Building 6; or
 - b) prior to an Above Grade Building Permit for Building G.
- 6.3 In addition to the above, no Above Grade Building Permits (including any conditional permits) shall be issued for Building G until:
- a) Such time as the ROW Lands are acquired or should the ROW Lands not be acquired prior to the issuance of an Above Grade Building Permit, satisfactory securities of \$1,000,000.00 (the "**FIMA Securities**") shall be provided to the City for use in the future acquisition of the ROW Lands.
- 6.4 The parties will co-operate to explore options for completing the Boncer Drive extension over the ROW Lands as follows:
- 6.4.1 FIMA will work in conjunction with the City, to acquire by the City, title to the ROW Lands.
 - 6.4.2 Upon acquisition, the City shall provide an easement to FIMA for parking and will continue for parking until such time as the HomeSense Lands are redeveloped and a public road is constructed through the HomeSense Lands connecting to Manstor Road upon terms to be agreed to.
 - 6.4.3 The acquisition, and associated costs for said acquisition (including possible remediation), of the ROW Lands shall utilize:
 - a) the FIMA Securities first; and
 - b) \$520,000.00 from the current FIMA Section 37 contribution, only if necessary.

For absolute clarity, the FIMA Securities shall be utilized first prior to the \$520,000.00 noted in 6.4.3 b) above.

6.4.4 Should the FIMA Securities not be fully utilized, any remaining amounts of the FIMA Securities shall be reimbursed to FIMA.

6.4.5 For clarity, the obligation of FIMA is for the development applications subject to this agreement and is only for the acquisition and acquisition costs and not to any future road construction costs associated with the ROW Lands.

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Appendix 3:

General Terms of Affordable Rental Housing Units (“ARHU”)

1. The Section 37 Contribution shall include an obligation for the Owner to include the provision of Affordable Rental Housing Units (“ARHU”) to be provided during the development of the entire project in timing as set forth in Appendix B being “Summary of Phasing Plan for Community Infrastructure & Benefits”.
2. Affordable Rental Housing Unit shall mean a rental unit provided for 20 years from the date of availability where the initial rental rate (including heat, hydro and hot water, excluding parking and internet/cable charges) for the unit is set at the average CMHC rent for the City of Toronto by unit type (number of bedrooms) during that calendar year that the unit is constructed and available.
3. The Units shall be maintained as rental housing for a 20-year period. The Owner shall not apply during the 20 year period to convert any of the Rental Units to any non-Rental Housing purposes, nor to demolish the Rental Housing without replacement as Rental Housing on the Site, during this period. The Owner shall also not apply for approval of a Description with respect to any portion of the Rental Housing, nor register any of the Rental Housing under the Condominium Act or for any other form of ownership tenure, such as but not limited to, life lease or co-ownership as defined in c.667 of the Toronto Municipal Code that provide a right to exclusive possession of a unit during this period.

When the 20 year period has lapsed, the owner may apply to the City to remove the rental restrictions.

4. Maximum rents will be set at affordable rents, as defined in the Official Plan of the City of Toronto as rents where the total monthly shelter cost (including heat, hydro and hot water, excluding parking and internet/cable charges) is at or below one times the Average Market Rent for the City of Toronto, by unit type (number of bedrooms), as reported annually by the Canada Mortgage and Housing Corporation in the Fall Market Report, for any first or new tenant for a 15-year period. If utilities are not included in the rent and are to be paid by the tenant, then the rent will be adjusted downward using objective cost data, to the satisfaction of the Chief Planner and Executive Director, City Planning.

During the 15-year affordability period, annual rent increases for sitting tenants will be limited to the same percentage for annual rent increases as the Guideline increase permitted under the *Residential Tenancies Act* or equivalent provincial legislation.

In the event that no Guideline is announced by the Province of Ontario, the applicable percentage shall be the Consumer Price Index for the City of Toronto as of the month prior to the date that the notice of rent increase is served.

At the expiry of the 15-year period, rents can be increased in accordance with the *Residential Tenancies Act* or equivalent provincial legislation.

5. A total number of 200 ARHU shall be provided. The units shall be provided on the following mix of unit types:
 - A. 100 units as 1 bedrooms, with a minimum size of 525 sq ft and an average floor size for all 1 bedroom units of 600 sq ft.
 - B. 80 units as 2 bedrooms, with a minimum size of 650 sq ft and an average floor size for all 2 bedroom units of 725 sq ft.
 - C. 20 units as 3 bedrooms, with a minimum size of 900 sq ft and an average floor size of for all 3 bedroom units of 1,000 sq ft.

The average floor size will be exclusive of balconies, if any.

6. It is intended that the 200 ARHU shall be provided within Building E1, unless agreed upon by the Owner and City to be located elsewhere on the Site.
7. General provisions
 - a) The proposed location of the ARHU may be modified by the parties and only upon being to the satisfaction of the Chief Planner and Executive Director, City Planning. The Owner will construct and operate the ARHU;
 - b) All ARHU will have either dedicated laundry rooms, or en-suite laundry provided, with no extra charges for appliances. Three or more bedroom units will have en-suite laundry facilities within their unit.
 - c) Tenants of the ARHU shall have access to the indoor and outdoor amenity spaces associated with the units with no separate charges except for the customary charges for private bookings. A tenant association for the building will be permitted to book the amenity space at no charge at a maximum of once per month to facilitate tenant meetings;
 - d) Indoor Amenity Space will be provided in accordance with the Zoning By-law, which may include a multipurpose room with kitchen and access to a barrier-free bathroom and will have access to outdoor amenity space;
 - e) Outdoor Amenity Space will be provided in accordance with the Zoning By-law;
 - f) Permanent and visitor bicycle parking/bicycle parking shall be provided in accordance with the Zoning By-law;

- g) Parking will be provided consistent with the by-law requirements and is not included as a part of rent.