

## CONFIDENTIAL APPENDIX A

CC35.24 Confidential Appendix A - Made Public with redactions  
on January 7, 2022



McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
Canada  
Tel: 416-362-1812  
Fax: 416-868-0673

**Michael Foderick**  
Partner  
Direct Line: (416) 601-7783  
Direct Fax: (416) 868-0673  
Email: mfoderick@mccarthy.ca

Assistant: Fiorini, Karen  
Direct Line: (416) 601-8200 x542575  
Email: kfiorini@mccarthy.ca

**WITHOUT PREJUDICE**

July 2, 2021

via email

City of Toronto  
c/o Legal Services Division  
Metro Hall - 26th Floor  
55 John Street  
Toronto, ON M5V 3C6

Attention: Laura Bisset

**Re: Settlement Offer – 10-30 Dawes Road, Toronto  
OLT Case No. PL200569**

We are the solicitors for Dandaw Developments Limited and Marlin Spring Limited Partnership (the “**Owner**”), an entity that controls the properties known municipally as 10, 10A, 12, 18, 20 and 30 Dawes Road in the City of Toronto (together, the “**Property**”).

A previous owner filed an application to amend the Toronto Zoning By-law No. 438-86, which was deemed complete as of April 1, 2019 (the “**Application**”) and taken over by the Owner. On November 6, 2020, the Owner appealed the Application to the Ontario Land Tribunal (the “**Tribunal**”), formerly the Local Planning Appeal Tribunal, pursuant to s. 34(11) of the *Planning Act*, Case No. PL200569 (the “**Appeal**”). In its decision dated April 6, 2021, the Tribunal set a 15 day hearing of the Appeal to commence on January 24, 2022.

Further to our discussions with City Staff and the other parties to the Appeal (the “**Parties**”), we write to make a without prejudice offer to settle the Appeal with the City of Toronto in its entirety (the “**Settlement Offer**”). The proposed Settlement Offer terms are as follows:

### 1. Built Form

The zoning by-law amendment will permit the proposed development (the “**Development**”) in accordance with the zoning envelope depicted on the set of plans and drawings which is attached hereto as Schedule ‘1’, which notably includes the following attributes:

- A mixed-use building with one podium and two residential towers including:
  - Maximum tower heights of 24 storeys (north tower) and 38 storeys (south tower), plus mechanical penthouses;

- Setbacks and setbacks as depicted on the attached Schedule '1' drawings;
- Compliance with 45-degree angular planes in the manner depicted on the attached Schedule '1' drawings;
- A tower separation distance of 25 m between the north and south towers;
- Balconies will be designed so as to not "wrap around" the corners of the towers; and
- There will be no north facing projecting balconies below the 12<sup>th</sup> floor of the north tower (however inset balconies below the 12<sup>th</sup> floor are permitted);

(For greater clarity the Schedule '1' drawings are for zoning, and not site plan approval, purposes and any site plan level details are for illustration purposes only).

- Parking spaces will be provided at a minimum ratio of 0.30 total parking spaces per dwelling unit, broken down as follows:
  - Residential: 0.24 per dwelling unit.
  - Shared residential visitor and non-residential 0.06 per dwelling unit.
  - The non-residential parking spaces shall be inclusive of two (2) below-grade parking spaces that will be available for Daycare Staff. The Daycare shall also have access to a minimum of three (3) at-grade parking spaces for pick up/drop off available during operating hours (7AM - 6PM, Monday to Friday). The two (2) below-grade Daycare parking spaces referred to above shall be dedicated for Daycare use during Daycare operating hours. The three (3) at-grade parking spaces referred to above shall be dedicated for Daycare use during Daycare pick-up and drop-off times.
- In support of the proposed reduction in site vehicular parking to .30/unit, the Owner shall provide a comprehensive Transportation Demand Management Plan, to the satisfaction of the Chief Planner & Executive Director, City Planning, which shall include:
  - Mode share targets intended on shifting travel away from passenger cars and required parking;
  - Method(s) by which the target mode share and parking rates will be reached (e.g. future implementation of a bike share station, car-share or transit pass program);
  - The level of commitment to implement, enforce and maintain the plan moving forward; and
  - Expected short-term and long-term outcomes;

- However, for greater clarity, the City's review of the TDM Plan shall not result in a higher parking ratio than is outlined above, being required.

## 2. New POPS Space

- A privately-owned publicly accessible open space ("**POPS**") with an area of no less than 130 m<sup>2</sup> [REDACTED] will be secured by way of surface easement conveyed to the City in a size and location generally shown on Schedule '1', such easement to be conveyed to the City prior to the earlier of the issuance of any site plan approval for the Property and the issuance of any building permit for the Property and with the specific location, configuration and design to be determined to the satisfaction of the Chief Planner and Executive Director, City Planning, in the context of site plan approval. [REDACTED]  
[REDACTED]  
[REDACTED]
- The Owner may use the POPS area for construction staging during construction of the Development and will complete standard improvements to the POPS no later than one year following first occupancy of the Development.

## 3. Potential Expansion of Coleman Park

- The Owner will make commercially reasonable efforts to purchase 15 Barrington Avenue, Toronto (the "**Potential Park Expansion Lands**") as a potential off-site parkland dedication to the City, in order to expand Coleman Park. The purchase price, and closing costs shall be credited toward, and shall not exceed, the monetary value of the parkland dedication for the Application. The Owner shall attempt to secure release of, or otherwise resolve, the existing easement benefitting 13 Barrington with the owner of 13 Barrington (and be credited with 100% of such additional costs to the extent they exceed fair market value. For greater clarity such costs may include a reduction in value to 15 Barrington if applicable). No credit shall be given toward meeting the environmental requirements contained in the City's Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act* or Base Park Improvements.
- In the event that the Owner is successful in acquiring the Potential Park Expansion Lands and the purchase price and closing costs as outlined above are less than the cash-in-lieu of parkland dedication that would have otherwise been payable, the Owner shall make commercially reasonable efforts to acquire the property at 13 Barrington Avenue, Toronto in order to further expand Coleman Park on the same basis. The Owner is not obligated to pursue the acquisition of 13 Barrington Avenue if the eligible costs and expenses would, if combined with the eligible costs and expenses to acquire 15 Barrington Avenue, exceed the amount of cash-in-lieu of parkland dedication that would be payable in respect of the Development.
- In the event that the Owner is unsuccessful in acquiring the Potential Park Expansion Lands, it shall demonstrate to the City that it made commercially

reasonable efforts to purchase the Potential Park Expansion Lands on terms acceptable to the City, by providing the City with a copy of one or more tendered Agreements of Purchase and Sale ("APS"), and shall update the City monthly on the 15<sup>th</sup> of the month until October 15, 2021 as to the status of its efforts to acquire the Potential Park Expansion Lands. At any time during the term of the Owner's obligation to pursue the acquisition of the Potential Park Expansion Lands the City shall, if requested by the Owner, provide feedback on whether a specific purchase price, or other potential APS terms and conditions, including the release or other proposed resolution of the 13 Barrington easement, would or would not be acceptable to the City prior to the Owner tendering an APS. The Owner is not obligated to tender an APS whose terms and conditions the City would deem unacceptable.

- Provided the Owner is successful in entering into a binding Agreement of Purchase and Sale for the Potential Park Expansion Lands (and is successful in negotiating the release of, or otherwise resolving, the 13 Barrington easement), the Owner shall, within five (5) business days of entering into such Agreement of Purchase and Sale, provide the following documents to the City: (1) a survey of the Potential Park Expansion Lands; and (2) a copy of the fully executed Agreement of Purchase and Sale, confirming the purchase price of the Potential Park Expansion Lands. Prior to conveyance to the City, the Owner shall (1) ensure that the park Expansion Lands are free and clear of any and all physical and title encumbrances, below and above grade (except as may be acceptable to the City Solicitor); (2) complete the environmental requirements of the City's Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*; and (3) complete the design, construction and installation of the City's standard Base Park Improvements, to the satisfaction of the City's General Manager, Parks, Forestry and Recreation Division (the "**General Manager, PFR**"), which consist the following:
  - Demolition, removal and disposal of all existing materials, buildings, foundations and associated servicing;
  - Grading inclusive of 300mm depth topsoil supply and placement. Where lands have been environmentally risk assessed in accordance with Ministry of the Environment, Conservation and Parks regulations, the required depth profile of the environmental soil / soft cap will be 1.5 m of engineered fill compacted to 95% SPD and certified by the consulting engineer;
    - In the case of a risk-assessed site, all materials brought on site shall comply with the site-specific standards outlined in the Certificate of Property Use. In the case where no risk assessment

of the site was required, all materials brought on site shall comply with the Ontario Reg. 153/04 Table 3 RPI standards;

- Sodding #1 nursery grade;
  - Fencing, where deemed necessary;
  - Sanitary and storm service connections with manholes at streetline;
  - Water and electrical service connections; (minimum water: 50mm to the street line including backflow preventers, shut off valves, water metre and chamber; electrical connection to the street line and electrical panel in a lockable cabinet (100 Amp service)), if necessary;
  - Street trees along all public road allowances abutting City-owned parkland; and
  - Standard park sign (separate certified cheque required)
- (the "**Base Park Improvements**").
- Provided the Owner is successful in acquiring the Potential Park Expansion Lands, the Owner will commit to the following obligations in the course of designing, constructing and installing the Base Park Improvements:
    - The Owner will provide a landscape package that demonstrates the incorporation of the Base Park Improvements into the parkland dedication. The landscape package shall be approved as a component pre-approval condition of the site plan application.
    - Prior to the issuance of the first above grade building permit, the Owner will submit a cost estimate and any necessary plans for the Base Park Improvements, to the satisfaction of the General Manager, PFR.
    - Prior to issuance of the first above grade building permit, the Owner will post an irrevocable Letter of Credit in the amount of 120% of the value of the Base Park Improvements for the parkland to the satisfaction of the General Manager, PFR for the duration of the warranty period. No credit shall be given towards the Parks and Recreation component of the Development Charges for costs associated with Base Park Improvements.
    - The construction of the Base Park Improvements to the Potential Park Expansion Lands shall be completed within one year after the issuance of the first Above Grade Building Permit for the Development to the satisfaction of the General Manager, PFR. Unforeseen delays (e.g. weather) resulting in the late delivery of the park block shall be taken into consideration and at the discretion of the General Manager, PFR when determining a revised delivery date for the park block.
    - Should the Owner undertake Base Park Improvements on the park Expansion Lands, following conveyance of the park Expansion Lands to

the City, the applicant will obtain a Park Access Agreement (PAA) from PFR's Planning, Design and Development section. The PAA will outline in detail the insurance requirements, extent of area permitted, permitted use, tree removal and replacement, and duration to the satisfaction of the General Manager, PFR. The applicant will indemnify the City against any claim during any interim use of or work carried out by the applicant on the park.

- Provided the Owner is successful in acquiring the Potential Park Expansion Lands (which may or may not include 13 Barrington Avenue), they shall be conveyed to the City prior to the issuance of the first Above Grade Building Permit for the Development, and a Section 118 restriction will be registered on such lands from the time the Owner closes on such lands and until they have been conveyed to the City.
- The balance of the parkland dedication, if any, shall be satisfied by way of a cash-in-lieu payment, calculated and paid in accordance with Chapter 415 of the Municipal Code.
- If the Owner is unable to enter into a commercially reasonable Agreement of Purchase and Sale for the Potential Park Expansion Lands by November 10, 2021, then the full parkland dedication will be satisfied by way of a cash-in-lieu payment, calculated and paid in accordance with Chapter 415 of the Municipal Code.

#### **4. 10 & 10A Dawes Heritage Building Conservation**

- The Owner will agree to conserve in its current location the 10 Dawes building and portions of the 10A Dawes building consistent with the Heritage Impact Assessment (HIA) prepared by ERA Architects dated April 6, 2021, which the City has the Owner's consent to designate pursuant to the *Ontario Heritage Act* in conjunction with, and conditional on, the other approvals required to implement this proposed settlement.
- The Owner and City will enter into a heritage easement agreement with the City for the heritage component of the Development (10 and 10A Dawes Road), substantially in accordance with plans and drawings prepared by IBI Group Architects (Canada) Inc. and dated April 12, 2021
- The Owner will provide a detailed Conservation Plan prepared by a qualified heritage consultant that is substantially in accordance with the conservation strategy set out in the Heritage Impact Assessment for 10 and 10A Dawes Road, prepared by ERA Architects Inc., dated April 6, 2021 and that details all future conservation efforts as part of this application, to the satisfaction of the Senior Manager, Heritage Planning.



- Staff will not bring forward a by-law designating 10 & 10A Dawes Road under Part IV of the *Ontario Heritage Act* unless Council enacts a road-closure by-law for a portion of Guest Avenue.

## 5. Guest Avenue Straightening and Dawes Road Extension

- The Owner shall submit an application to the City's Transportation Services Division for the closure of a portion of Guest Avenue being approximately 316.9 m<sup>2</sup> + 27.3 m<sup>2</sup> which bisects the Property as generally depicted on Schedule '2' (the "**Guest Avenue LEA Lands**").
- The Owner and City will enter into a land exchange agreement (the "**LEA**") on the general terms and conditions set out below, whereby the Guest Avenue LEA Lands would be conveyed to the Owner and those portions of the Property being approximately 348.4 m<sup>2</sup> and 49.7 m<sup>2</sup>) located on the west side and south sides of the Property respectively as generally depicted on Schedule '2' (the "**New Roadway LEA Lands**") would be conveyed to the City.
- The LEA shall be drafted on the City's form of land exchange agreement, to the satisfaction of the City Solicitor, and shall contain the following terms and provisions:
  - The transaction contemplated in the LEA is conditional upon relevant City authorities making the determination, in their sole and unfettered discretion in the City's capacity as owner of the Guest Avenue LEA Lands, whether or not to declare the Guest Avenue LEA Lands surplus, authorize the sale of the Guest Avenue LEA Lands to the Owner and/or approve the permanent closure of the Guest Avenue LEA Lands as a public highway;
  - Closing of the transaction will occur following City Council's enactment of a valid road closure by-law for the Guest Avenue LEA Lands, and on a date 15 days from confirmation by the City that the Road Works noted below have been completed to the satisfaction of Transportation Services;
  - The Guest Avenue LEA Lands shall be transferred "as is, where is;"
  - The LEA will contain a provision whereby the Owner or any assignee makes an additional payment to the City if the Owner or any assignee seeks and is granted additional height and density for the Guest Avenue LEA Lands than what is contemplated herein;
  - Prior to conveying the New Roadway Lands to the City the Owner shall remediate the New Roadway LEA Lands, to the extent necessary, to ensure that the lands comply with O. Reg. 153/04 for use as roadway (the "**Environmental Remediation**");
  - Prior conveyance of the New Roadway LEA Lands the Owner shall build out the public lane portion of New Roadway LEA Lands to the standards and specifications of construction, materials, methods and workmanship as prescribed by the City and in effect at the time of the acceptance of this

Offer, and in accordance with City's Fair Wage Policy and Labour Trades Contractual Obligations in the Construction Industry policy, as applicable, to a base course asphalt condition (the "**Road Works**");

- The Owner shall provide a letter of credit of 120% of the estimated cost of the Road Works as security for the duration of the warranty period;
- In constructing the public lane which will be conveyed to the City and it is intended will be opened as a public highway, if requested by the City, the Owner shall use enhanced materials for the public lane, to be secured through and at the time of site plan approval all to the satisfaction of the Chief Planner & Executive Director, City Planning. Such enhancements and other final improvements above the base course of asphalt shall be completed prior to occupancy of the Development. The enhanced materials, even if installed by the Owner, will ultimately be owned and maintained by the City as part of its public highway and may be constructed pursuant to a Municipal Infrastructure Agreement. (For greater clarity, this clause does not fetter the statutory rights of the Owner under the Site Plan Approval process).
- The Owner shall not be charged a fee of any kind for constructing, or completing the construction of, the Road Works or such other enhancements and other final improvements above the base course of asphalt, but will be charged standard City fees in accordance with Chapter 441 of the Municipal Code if the New Roadway LEA Lands (or other City roads) need to be utilized to construct the Development.
- The City will provide its consent to the Tribunal to amend the Application to include the Guest Avenue LEA Lands prior to closing, subject to the condition that any Final Order be withheld until City Council enacts a valid road closure by-law for the Guest Avenue LEA Lands, which it may choose, or choose not, to do in its sole unfettered discretion. The Owner also acknowledges that if a valid road closure by-law is not enacted, the City may unilaterally withdraw its consent and in that case the Owner must amend its Application, if necessary, to remove the Guest Avenue LEA Lands.
- In addition to the fee simple transfer of the lands New Roadway LEA Lands, the Owner shall convey a permanent above-grade surface easement (the "**Surface Easement**") for at-grade pedestrian movement (2.5 m in width and 134 m<sup>2</sup>) as shown on Schedule '2'. Prior to the final above-grade building permit for the Development the Owner will convey to the City the Surface Easement.

- [REDACTED]



## 6. Functional Servicing

- The Owner will complete a Master Functional Servicing Report (“**MFSR**”), either alone or in combination with neighbouring land owners, which outlines the water, sanitary, and stormwater upgrades necessary for the functional servicing of the Development, which shall be reviewed and approved by the City as part of the implementation of this settlement.
- The Owner will, alone or in concert with other property owners, undertake the work outlined in the MFSR necessary for the functional servicing of the Development in conjunction with the construction of the Development. For greater clarity, the Owner will be required to submit its own Functional Servicing Report for the Development which shall be in the standard form and be consistent with the MFSR.
- The City will authorize a development charge credit to the Owner in an amount equal to the cost of the improvements that are in excess of the improvements necessitated by and attributable to the Development, but not to exceed: i) the actual cost of the work identified in the MFSR or FSR that is undertaken by the Owner that is in excess of the improvements necessitated by and attributable to the Development, and ii) the water, sanitary sewer, and storm water management components of the development charges applicable to the Development.
- The Owner and City shall enter into a Municipal Infrastructure Agreement(s) to authorize the Owner to construct the works identified in the MFSR and/or FSR.

## 7. New Public Daycare and Other Section 37 Community Benefits

The Owner will enter into a Section 37 Agreement with the City, which will be registered on title to the lands, to secure the above matters as well as the following community benefits:

- Public daycare space (the “**Daycare Space**”) will be provided to the City and located within the Development. The Daycare Space will be constructed and finished by the Owner prior to conveyance of the Daycare Space to the City. The Daycare Space will comprise a minimum of 875 m<sup>2</sup> of interior space and 573 m<sup>2</sup> of exterior space (subject to potential minor adjustment between the outdoor and indoor space at the City’s request without impacting the combined total), along with parking for Daycare Staff, in accordance with page 2 of this Settlement Offer. In addition to the Daycare Space noted above, the Owner may elect whether to also convey to the City, or retain for its own use, the basement space of the 10 Dawes Road heritage building (approximately 148 m<sup>2</sup>) together with the Daycare Space.
- Prior to the first occupancy of the Development the Owner will convey to the City the fee simple ownership of the Daycare Space and related exterior portions of the Development, subject to a reciprocal easement and operating agreement. For greater clarity, the Daycare Space shall not be a unit in a condominium.
- Prior to the first Above Grade Building Permit, the Owner will provide a cash contribution of \$500,000 to be allocated towards toys and play-based equipment,

a replacement reserve fund to replace appliances and large equipment due to wear and tear; and start-up operating costs to defray operational deficits incurred during the first year of operation.

- Prior to the issuance of the first above-grade building permit for any building on the Site, the Owner will provide a cash contribution of sixty six thousand six hundred and sixty seven (\$66,667.00) dollars to be paid by the owner and to be allocated toward funding a transportation study at key intersections within the secondary plan area, including Main Street and Stephenson Avenue, Main Street and Danforth Avenue and Main Street and Gerrard Street East to identify and design streetscape improvements at these intersections for the purpose of improved pedestrian and cyclist safety, functionality and an improved public realm, at the discretion of the Chief Planner and Executive Director, City Planning in consultation with the Ward Councillor.

**8. This proposed settlement agreement is conditional on:**

- City Council conditionally accepting this offer during its meeting scheduled for July 14 and 15, 2021;
- The City consenting to a settlement of this site-specific matter which shall be presented to the Tribunal on a date to be scheduled as soon as possible, with a Final Order withheld subject to:
  - Agreement between the City and Owner as to the final form of zoning by-law amendment in accordance with Schedule '1';
  - The matters proposed to be provided by the Owner in this settlement offer being secured in a Section 37 Agreement which is registered on title to the Property, the Guest Avenue LEA Lands and the New Roadway LEA Lands, (as determined by the City Solicitor);
  - City Council adopting a valid road closure by-law for Guest Avenue LEA Lands no later than December 2021, or such other timing as the City and Owner may agree (which Council may choose, or choose not, to do in its sole unfettered discretion), and the execution of the LEA;
  - City Council adopting the City Solicitor's recommendations in Item PB24.1 and the City and Owner entering into a Heritage Easement Agreement as required by those recommendations; and
  - City Council also accepting the Settlement Offer dated July 2, 2021 sent under separate cover related to Official Plan Amendment No. 478 at the meeting scheduled for July 14 and 15, 2021 and the Tribunal implementing same.

This Settlement Offer supersedes any other settlement offers previously sent. We look forward to hearing from you. Should you require further information please do not hesitate to contact the undersigned.

Sincerely,

McCarthy Tétrault LLP

A handwritten signature in black ink, appearing to read 'M. Foderick', is written over a faint, light-colored signature line.

Michael Foderick

Enclosures