

CONFIDENTIAL APPENDIX A



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WITHOUT PREJUDICE

July 15, 2021

via email

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

Attention: Wendy Walberg, Daniel Elmadany and Joanna Wice

**Re: Settlement Offer – 900 Dufferin Street, Toronto
Official Plan Amendment and Zoning By-law Amendment
OLT Case No. PL200106**

We are the solicitors for Dufferin Mall Holdings Inc., (the “**Owner**”), an entity that controls the property known municipally as 900 Dufferin Street regarding the above noted matter (the “**Property**”).

The Owner filed an application to amend the Toronto Official Plan, Toronto Zoning Bylaw No. 569-2013 and Toronto Zoning Bylaw No. 438-86 for the north portion of 900 Dufferin Street, which was deemed complete as of August 13, 2019 (the “**Application**”). On February 7, 2020, the Mall appealed the Application to the Ontario Land Tribunal (the “**Tribunal**”), formerly the Local Planning Appeal Tribunal, pursuant to s. 22(7) and 34(11) of the *Planning Act* (the “**Appeal**”). The Appeal was assigned Case No. PL200106 and the Tribunal set a 15 day hearing of the Appeal to commence Monday, October 18, 2021.

The Application consists of two new mixed use development blocks, east block and west block, which are connected by a three level underground parking garage. The east block includes one residential tower which is located on a podium and the west block includes two residential towers which are located on a base building.

Further to our extensive discussions with City Staff, the local Councillor, and the other parties to the Appeal, 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 & Development Statistics

Negotiated through mediation and subsequent discussions with the community and Councillor, the zoning by-law amendment will permit the proposed development (the

“Development”) in accordance with the zoning envelope and Development site statistics attached hereto as Schedule ‘1’, which notably includes the following attributes:

- Two mixed use development blocks (east block and west block), with three residential towers (one located on the east block and two located on the west block) including:
 - Reduced maximum tower heights of 16 storeys at approximately 66 metres (Tower A), 36 storeys at approximately 126.5 metres (Tower B) and 19 storeys at approximately 75 metres (Tower C), as measured to the top of the mechanical penthouses roof;
 - Setbacks and stepbacks as depicted on the attached Schedule ‘1’ drawings which were modified to contribute to a positive public realm, enhance the streetscapes along Croatia Avenue and Dufferin Street and also further reduce shadow impacts on the public realm;
 - Compliance with 45-degree angular planes in the manner depicted on the attached Schedule ‘1’ drawings to ensure appropriate transition to nearby *Neighbourhoods* and reduce the mass and scale of the development; and
 - Substantial tower separation distances as depicted on the attached Schedule ‘1’ drawings that are well in excess of the Tall Building Design Guidelines requirements.

(For greater clarity the gross floor area in Schedule ‘1’ is an estimate and will be finalized when the final form and content of the Zoning By-law Amendment is finalized. In the Zoning By-law Amendment balconies and other typical projections will be permitted.)

2. Official Plan Amendment

- The Owner will amend the Application to enlarge the Official Plan Amendment (the **“OPA”**) to include the entire Property, substantially in accordance with the version attached hereto as Schedule ‘2’.
- The Owner will seek direction from the Tribunal on the expansion of the OPA boundaries as well as undertake the preparation and mailing of the revised Tribunal hearing public notice for the revised Application following acceptance by the City of this Settlement Offer.

3. Parkland Dedication & POPS Space

- One public park on the east block along Dufferin Street, which represents full satisfaction of the on-site parkland dedication requirements, having a minimum size of 2,079 square metres, will be conveyed to the City in a size and location generally shown on Schedule ‘1’, prior to the issuance of the first above-grade building permit.
- If requested by the City, the Owner shall construct above-base park improvements to the public park to a value not to exceed the total of the Parks

and Recreation component of the City's Development Charge By-law and shall receive a credit against the Development Charges otherwise payable in the full amount of such additional hard and soft costs. (The timing of the conveyance of the public park will not be delayed in any way related to above-base park improvements, which may be designed and completed following conveyance of the public park).

- This parkland dedication shall satisfy all current and future parkland dedication requirements in respect of the Development in accordance with the *Planning Act*.
- The Owner shall also provide a privately-owned publicly accessible open space ("POPS") in a minimum size of 435 square metres and in the location generally shown on Schedule '1', such easement to be conveyed to the City in accordance with the timing established in the Section 37 Agreement. The specific design to be determined as part of site plan approval.
- The POPS easement shall include provisions which clarify that it will be a surface easement, Development features for wind mitigation may overhang the POPS, a parking garage may be located below the POPS, and the POPS may be terminated in accordance with Schedule '2', to facilitate the future construction of Pauline Avenue extension in the event more of the Property redevelops in the future.
- The Owner shall also provide a public access surface easement over the private street of a minimum width of no less than 18.5 metres and in the location generally shown on Schedule '1', and such easement will be conveyed to the City in accordance with the timing established in the Section 37 Agreement. The specific design will be determined as part of site plan approval.

4. Section 37 Contribution

- The provision of 70 affordable rental housing units for a period of 99 years, generally in accordance with the terms set out in Schedule '3' and such other terms and conditions as may be agreed to between the City and the Owner, and provided the City approves the units for Open Door incentives.
- A minimum of 3,382 square metres of gross floor area is dedicated to the 70 affordable rental housing units and the unit types and sizes shall be determined in the Section 37 Agreement and shall reflect the unit mix and average size as set out in Schedule '3', all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor.
- The proposed number of affordable rental housing units, affordable rental housing unit mix, and affordable rental housing unit sizes are based on a total gross floor area that will be established in the Zoning By-law Amendment. If there are any adjustments to the total gross floor area, the proposed number of affordable rental housing units, affordable rental housing unit mix and/or affordable rental housing unit sizes will be adjusted accordingly, to the satisfaction of the Chief Planner and Executive Director, City Planning.
- As the Owner is developing a rental building, the Owner also agrees to maintain all the market residential dwelling units as rental housing (not secure rents),

within the same tower(s) as the affordable rental housing units, for a period of at least 40 years commencing from the date occupancy of those rental dwelling units within a residential building proposed as rental tenure and with no applications for demolition or conversion from residential rental use during such 40 year period, all to the satisfaction of the Chief Planner and Executive Director, City Planning.

- While we understand that Community Planning Staff are not supportive of this request for additional height and density beyond Schedule '1', the Owner is willing to provide an additional 50 affordable rental housing units for a period of 99 years on the same terms and conditions for the 70 affordable rental housing units, for a total of 120 affordable rental housing units (a total minimum of 5,797 square metres gross floor area), provided an additional 4 storeys (a maximum of 3 metres per storey) on Tower A or a maximum of 3,685 square metres of gross floor area based on 89% of the gross construction area are added to the development and provided the City approves the affordable rental housing units for Open Door incentives.

5. The Owner agrees that the following matters are to be secured as a matter of convenience in the Section 37 Agreement

- The provision of the POPS in accordance with the City's standard terms and conditions;
- The provision of a public access easement over the private street;
- That the owner will construct and maintain the Development site in accordance with Tier 1, Toronto Green Standard, and the owner will be encouraged to achieve Tier 2, Toronto Green Standard, or higher, where appropriate, consistent with the performance standards of Toronto Green Standards applicable at the time of the site plan application for each building on the Development site;
- Requirements associated with the construction management plan;
- Implementation of, and/or mitigation measures listed, in any the reports, studies and plans accepted by the City submitted by the Owner and any such implementation measures secured in the appropriate agreements;
- The required transportation improvements, including any required improvements along Croatia Street and/or Dufferin Street and the associated warrant analysis, and transportation demand management (TDM) measures identified in the Transportation Impact Study accepted and satisfactory to the General Manager,

Transportation Services and secured to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;

- The provision of a wind tunnel study and securing and implementing the mitigation measures identified in any such accepted study;
- The provision of a revised landscape plan and soil volume plan for the land subject of the Zoning By-law Amendment;
- The provision of a public utilities plan for the lands subject of the Zoning By-law Amendment to ensure, among other matters, that above ground and underground utilities and streetscape elements, such as street trees, sidewalk locations are located at appropriate locations for all new and existing streets and such plan should be submitted as a separate grayed out underlay on the Landscape Plan required above;
- Should the public street extension of Pauline Avenue extend through the rest of the Dufferin Mall site, the manner in which the City in the future will be able to require the relocation and removal of the loading spaces within the lands subject of the Zoning By-law Amendment of where the future public street may be located will be set out and such terms and conditions of which are satisfactory to the Owner and the City; and
- Prior to the issuance of any building permit, including permits for excavation and shoring, the owner shall enter into a municipal capital facility agreement ("Contribution Agreement") with the City to provide Open Door Affordable Housing Program incentives for the affordable rental housing units to be developed on the lands; the owner shall provide such affordable rental housing dwelling units in accordance with such agreement(s) to be entered into with the City, all to the satisfaction of the Executive Director, Housing Secretariat, the Chief Planner and Executive Director, City Planning and the City Solicitor.

6. Holding (H) Symbol as it relates to the Garrison Trunk Sewer

- If the City and Owner agree that the matters related to the Garrison Trunk Sewer cannot be resolved prior to the issuance of an Order of the Tribunal in a manner satisfactory to the Chief Engineer and Executive Director, Engineering and Construction Services, the Owner agrees that a Holding (H) Symbol may be placed on the Zoning By-law Amendment, in a form and content to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, whereby prior to any redevelopment of the lands, that matters related to the Garrison Trunk Sewer, including any approvals required by the Ministry of Environment, Conservation and Parks under the *Ontario Water Resources Act*, the removal and decommissioning of the existing Garrison Truck Sewer be undertaken, the new sewer(s) designed and constructed and demonstrated that the newly constructed sewer(s) are able to service the

Development, all at the sole cost and expense of the owner of the lands and to the satisfaction of the City, prior to the Holding (H) Symbol being lifted.

7. This proposed settlement agreement is conditional on:

- City Council accepting this offer by the conclusion of its meeting scheduled for July, 2021, with an amendment that adds 4 additional storeys to Tower A, and 50 affordable units for a total of 120 affordable units within the Development and 20 storeys on Tower A (on otherwise the exact same terms and conditions set out herein).
- The City consenting to amend the Application to include the revised OPA attached hereto as Schedule '2'.
- The City consenting to supporting a settlement of the Appeal.

8. In order to implement the settlement, the Owner agrees that the following conditions will be imposed as part of the Tribunal Order

- Agreement between the City and Owner as to the final form of the Zoning By-law Amendment permitting the Development depicted in Schedule '1' and the other terms contained within this Settlement Offer;
- Agreement between the City and Owner as to the final form of the Official Plan Amendment which shall be substantially in accordance with Schedule '2';
- The Owner has, at its sole cost and expense:
 - Submitted a revised Functional Servicing Report, together with supporting documentation, including confirmation of water and fire flow, sanitary and storm water capacity, a Stormwater Management Report and a Hydrogeological Report (the "**Engineering Reports**") to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water;
 - Confirmed that the implementation of the Engineering Reports that are accepted by the Chief Engineer and Executive Director, Engineering and Construction Services either do not require changes to the proposed Zoning By-law Amendment or any such required changes have been made to the proposed Zoning By-law Amendment to the satisfaction of the Chief Planner and Executive Director, City Planning, the City Solicitor and the Chief Engineer and Executive Director, Engineering and Construction Services;
 - Submitted a revised Transportation Impact Study including identifying the TDM measures, improvements to Croatia Street and/or Dufferin Street and any required analysis to the satisfaction of the General Manager, Transportation Services, and the Chief Planner and Executive Director, City Planning and that such matters arising from such study, including the required TDM measures, be secured where appropriate and as required;

- Secured the requirement for the design of any upgrades or required improvements to the existing municipal infrastructure and/or new municipal infrastructure identified in the accepted Engineering Reports to support the development, including securing the provision of financial securities for any such upgrades or improvements, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, and such upgrades or improvements shall have been secured at the discretion of the Chief Engineer and Executive Director, Engineering and Construction Services in the appropriate agreements with the City or otherwise addressed through the Holding (H) Symbol in the Zoning By-law Amendment;
- Provided a revised Sun/Shadow Study which includes the new public park on Croatia Street at 1141 Bloor Street, the new public park on this Development site, the new school at 90 Croatia Street, and Dufferin Grove, satisfactory to the Chief Planner and Executive Director, City Planning and the General Manager, Parks, Forestry and Recreation;
- Provided a Wind Tunnel Study for the development, and thereafter secure and implement mitigation measures identified in any accepted Wind Tunnel Study/Report satisfactory to the Chief Planner and Executive Director, City Planning;
- In addition to the reports and studies listed above, filed such other Official Plan Amendment and Zoning by-law Amendment application materials with the City that require modifications as a result of the Settlement Offer for circulation and comment by all applicable divisions, agencies and boards, both internal and external, to the City, the circulation of the applicant shall have been completed and the Chief Planner and Executive Director, City Planning, shall be satisfied with revised resubmission;
- Provided a revised landscape plan and soil volume plan for the lands subject of the Zoning By-law Amendment, including streetscape cross-sections, all satisfactory to the Chief Planner and Executive Director, City Planning, General Manager, Transportation Services, and the Director, Urban Forestry; and
- Provided a Public Utilities Plan for the lands subject to the Zoning by-law Amendment to ensure, among other matters, that above ground and underground utilities and streetscape elements, such as street trees, sidewalk locations are located at appropriate locations for all new and existing streets and such plan should be submitted as a separate grayed out underlay on the Landscape Plan required above, all satisfactory to the Chief Planner and Executive Director, City Planning, the Chief Engineer and Executive Director, Engineering and Construction Services, General Manager, Transportation Services, and the Director, Urban Forestry.
- The owner has entered into a Section 37 Agreement with the City that has been executed and registered on title to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor securing the owner's section 37 contributions identified above and the matters agreed to and/or required in support of the development of Development site.

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', written in a cursive style.

Michael Foderick

Enclosures