

# Public Attachment A

LRO # 80 Notice

Registered as AT4068009 on 2015 11 17 at 11:36

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 22

## Properties

*PIN* 06301 – 0004 LT  
*Description* PT LT 5 REGISTRAR'S COMPILED PLAN 9846 BEING PARTS 1, 4, 5, AND 6, ON PLAN 66R-28031; S/T SC603499; T/W TB611173; S/T SC312678, FORMERLY SCARBOROUGH; CITY OF TORONTO  
*Address* 1001 ELLESMERE ROAD  
SCARBOROUGH

## Consideration

*Consideration* \$2.00

## Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

*Name* CITY OF TORONTO  
*Address for Service* Metro Hall, Legal Services  
Station 1260  
26th Floor  
55 John Street  
Toronto ON M5V 3C6

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation, Kelly Matsumoto, Solicitor for the City of Toronto.

## Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

## Signed By

David Kwok-Wai Lee 55 John St., 26th Floor acting for Signed 2015 11 03  
Toronto Applicant(s)  
M5V 3C6

Tel 416-392-8047

Fax 416-397-5624

I have the authority to sign and register the document on behalf of the Applicant(s).

## Submitted By

CITY OF TORONTO 55 John St., 26th Floor 2015 11 17  
Toronto  
M5V 3C6

Tel 416-392-8047

Fax 416-397-5624

## Fees/Taxes/Payment

*Statutory Registration Fee* \$62.85

*Total Paid* \$62.85

## File Number

*Applicant Client File Number* : 6400-700-2014-205392012

THIS AGREEMENT made as of this 28<sup>th</sup> day of, October, 2015

**B E T W E E N :**

**GOLDMAN ELLESMERE 2 DEVELOPMENTS INC.**  
(the "Owner")

**OF THE FIRST PART**

- and -

**CITY OF TORONTO**  
(the "City")

**OF THE SECOND PART**

**WHEREAS:**

- A. The Owner is the registered owner of lands in the City of Toronto (the "**City**"), municipally described as 1001 Ellesmere Road, and legally described in Schedule "A" hereto (the "**Site**");
- B. To permit the development of the Site with ninety-one townhouses and a commercial building (the "**Development**"), the Owner submitted applications to amend the Official Plan of the City of Toronto (the "**Official Plan**") and the former City of Scarborough Employment Districts Zoning By-law No. 24982 (the "**Zoning By-law**") (together, the "**Applications**");
- C. The Applications include an amendment to permit an increase in the height and density of the Development beyond what is permitted by the Zoning By-law;
- D. Subsection 37(1) of the *Planning Act* allows City Council, in a by-law passed under Section 34 of the *Planning Act*, to authorize increases in the density and height of development not otherwise permitted by the applicable zoning, in return for the provision of such facilities, services, and matters as the City may desire and specify in such by-law;
- E. The Official Plan contain provisions relating to the authorization of height and density of development as required by subsection 37(2) of the *Planning Act*;
- F. The Owner has elected to provide the facilities, services, and matters required by the City in return for certain authorized increases in height and density as set forth in the draft Zoning By-law Amendment as attached as Schedule "B" hereto;
- G. This Agreement has been entered into by the Parties pursuant to Section 37(3) of the *Planning Act*, subject to compliance with the provisions of Section 37(2) of the *Planning Act*, in order to evidence, confirm, and secure the Owner's obligations to provide those facilities, services and matters described; and

- H. This Agreement may be registered against the Site and the City is entitled to enforce the provision of this Agreement against each of the other Parties and their successors and assigns, and subject to the *Registry Act*, R.S.O. 1990, c. R. 20 (the "*Registry Act*"), and *Land Titles Act*, R.S.O. 1990, c. L. 5 (the "*Land Titles Act*"), any and all subsequent owners of the Site, all on a joint and several basis.

IN CONSIDERATION of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the Parties to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the Parties covenant and agree, to and with each other, as follows:

## 1. SCHEDULES

- 1.1 The following schedules form part of this agreement:

Schedule "A" – Legal Description of the Site

Schedule "B" – Zoning By-law Amendment

## 2. DEFINITIONS

- 2.1 For the purposes of this Agreement, the term:

2.1.1 "**Applications**" mean the applications submitted by the Owner to the City in order to amend the Official Plan and Zoning By-law to permit the Development;

2.1.2 "**Application to Court**" has the meaning set forth in Section 7.3.1;

2.1.3 "**Block 1, Block 2, Block 3 and Block 4**" mean those lands delineated and identified as Block 1, Block 2, Block 3 and Block 4 on Schedule 1 to the Zoning By-law Amendment attached as Schedule "B" to this Agreement.

2.1.4 "**Building Code Act, 1992**" means the *Building Code Act, 1992*, SO 1992, c 23, as amended, re-enacted or substituted from time to time;

2.1.5 "**Building Permit**" means a permit issued by the City's Chief Building Official pursuant to Section 8 of the *Building Code Act* to construct the Development or a portion thereof, but does not mean a permit issued by the City's Chief Building Official for demolition, excavation, or shoring on, or at, the Site;

2.1.6 "**Chief Planner**" means the Chief Planner and Executive Director, City Planning Division of the City, or his or her designate;

2.1.7 "**City**" means the City of Toronto;

- 2.1.8 “**City Solicitor**” means the City Solicitor for the City and shall include his or her designates;
- 2.1.9 “**Date of Final Approval of the Zoning By-law Amendment**” has the meaning set forth in Section 7.2.2;
- 2.1.10 “**Development**” means the development of the Site with ninety-one townhouses and a commercial building;
- 2.1.11 “**Development Charges**” means those charges under the City’s Development Charges By-law, being By-law No. 1347-2013, as amended, re-enacted or substituted from time to time;
- 2.1.12 “**Development Charges Act**” means the *Development Charges Act, 1997*, S.O. 1997, c 27, as amended, re-enacted or substituted from time to time;
- 2.1.13 “**Education Development Charges**” means those charges as may be payable under a by-law enacted pursuant to the *Education Act*, R.S.O. 1990, c.E.2, as amended, re-enacted or substituted from time to time;
- 2.1.14 “**Final Confirmation Date**” has the meaning set forth in Section 7.2.1;
- 2.1.15 “**Final Disposition**” has the meaning set forth in Section 7.3.2;
- 2.1.16 “**Land Titles Act**” means the *Land Titles Act*, R.S.O. 1990, c. L. 5;
- 2.1.17 “**Municipal Act**” means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
- 2.1.18 “**Non-Residential Construction Price Index**” means the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Construction Price Statistics Publication No. 62-007-XPB, or its successor;
- 2.1.19 “**Notice of Termination**” has the meaning set forth in Section 7.4.1;
- 2.1.20 “**Official Plan**” means the City of Toronto Official Plan;
- 2.1.21 “**Ontario Building Code**” means Ontario Regulation 350/06 of the *Building Code Act, 1992*;

- 2.1.22 “**Owner**” means the registered owner of the Site;
- 2.1.23 “**Parties**” means the Owner and the City;
- 2.1.24 “**Permitted Amendments**” has the meaning set forth in Section 7.4.2;
- 2.1.25 “**Planning Act**” means the *Planning Act*, R.S.O. 1990, c. P. 13, as amended;
- 2.1.26 “**Phases**” means the phases in which Owner shall construct the Development as more particularly described in Section 4.4;
- 2.1.27 “**Registry Act**” means the *Registry Act*, R.S.O. 1990, c. R. 20;
- 2.1.28 “**Site**” means the lands municipally known as 1001 Ellesmere Road in the City of Toronto, more particularly described in the attached Schedule “A” which forms part of this Agreement;
- 2.1.29 “**Staff Report**” means the report dated March 25, 2015, submitted to City Council by the City Solicitor with recommendations in respect of the Applications to amend the Official Plan and Zoning By-law to permit the Development;
- 2.1.30 “**Substantially Complete**” means completion of the superstructure of a building and its enclosure with a roof, finished exterior cladding and installation of all exterior doors and windows;
- 2.1.31 “**Unwinding Date**” has the meaning set forth in Section 7.4.1;
- 2.1.32 “**Zoning By-law**” means City of Scarborough Employment Districts Zoning By-law No. 24982; and
- 2.1.33 “**Zoning By-law Amendment**” means the Zoning By-law Amendment substantially in the form attached hereto as Schedule “B”, subject to the terms of this Agreement.

### 3. CONFIRMATION OF RECITALS

- 3.1 The Parties confirm and agree that the recitals are true, both in substance and in fact.

#### **4. COMMUNITY BENEFITS AND OTHER SECURED MATTERS**

##### **Section 37 Cash Contributions**

- 4.1 The Owner shall pay TWO HUNDRED AND TWENTY-SIX THOUSAND DOLLARS (\$226,000.00) to the City for improvements to the Birkdale Ravine and/or for local park improvements, to be provided as follows:
- 4.1.1 A payment to the City of no less than FIFTY-NINE THOUSAND AND SIX HUNDRED DOLLARS (\$59,600.00) prior to the issuance of any Building Permits for Block 3 (the dwelling units fronting the Ellesmere Service Road); and
- 4.1.2 A payment to the City of no less than ONE HUNDRED AND SIXTY-SIX THOUSAND AND FOUR HUNDRED DOLLARS (\$166,400.00) prior to the issuance of any Building Permits for all other dwelling units.
- 4.2 In the event the cash contribution referred to in Section 4.1 has not been used for the intended purposes listed in Subsections 4.1.1 and 4.1.2 within three (3) years of the Date of Final Approval of the Amending By-law, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner, in consultation with both the local City Councillor and the Owner, provided that the purpose(s) is/are identified in the Toronto Official Plan and will benefit the community in the vicinity of the Site.
- 4.3 If the payments set out in Section 4.1 above are not made prior to the registration of the final plan of subdivision for the Development, the cash amount of each installment payment set out in Subsections 4.1.1 and 4.1.2 above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto and calculated from the date of this Agreement to the date of submission of the funds by the Owner to the City.

##### **Phasing of the Development**

- 4.4 The Owner shall construct and maintain the Development in the following Phases:  
Phase 1 – Blocks 1, 2, and 4; and  
Phase 2 – Block 3 (being the dwelling units fronting the Ellesmere Service Road).
- 4.5 The Owner shall not apply for a Building Permit regarding Phase 2 – Block 3 of the Development until Block 4 (the commercial building) of the Development is Substantially Complete to the satisfaction of the Chief Planner or without the prior written consent of the Chief Planner if the Owner wants to apply for a Building Permit earlier than the timeframe contemplated in this Section 4.5.

## **5. DEVELOPMENT CHARGES , PARK LEVY AND CONTRIBUTIONS**

5.1 The City and the Owner acknowledge and agree that the facilities, services, and matters to be provided to the City pursuant to this Agreement do not:

- (a) constitute Development Charges nor do they qualify as a development charge credit under the Development Charges By-law No. 1347-2013 or any successor by-law, or
- (b) constitute a parks levy payment pursuant to Section 42 of the *Planning Act*.

5.2 The Owner acknowledges and agrees that any payments or contributions made to the City pursuant to this Agreement are separate and distinct from any other payment the Owner may be liable for pursuant to the *Planning Act* or other applicable legislation, including but not limited to the aforesaid Development Charges or park levy payments pursuant to Section 42 of the *Planning Act* and *Development Charges Act*. The Owner further acknowledges that the Owner may be required to make such other payments or pay such other charges as may be applicable in addition to the contributions made pursuant to this Agreement.

## **6. LEGAL AUTHORITY**

6.1 The City represents and the Owner acknowledges that the Ontario Municipal Board has the legal authority to approve the Zoning By-law Amendment substantially in the form attached as Schedule "B", and that the City has the legal authority to enter into this Agreement with the Owner.

6.2 The Owner on behalf of itself and its successors and assigns, acknowledges, and agrees that it shall be estopped from contesting, before any court of competent jurisdiction, the power or authority of the Ontario Municipal Board to approve the Zoning By-law Amendment and of the City to enter into this Agreement.

## **7. COMPLETION AND UNWINDING**

7.1 Subject to subsection 7.4 hereof, this Agreement shall be effective, enure to the benefit of, and be binding upon the Parties hereto, and their respective heirs, executors, administrators, successors, and assigns on and after the date of this Agreement. On the Final Confirmation Date, the City and/or the Owner shall give notice in writing to the other Party that the Final Confirmation Date has occurred, and upon either Party hereto giving such notice, subsection 7.4 hereof shall have no further effect. In the event no such notice is given within 30 days after the Final Confirmation Date, subsection 7.4 shall have no further effect.

## 7.2 Final Confirmation Date and Date of Final Approval

7.2.1 The “**Final Confirmation Date**” for the purposes of this Agreement shall be the second (2<sup>nd</sup>) business day, other than a Saturday, following the later of:

- (a) the Date of Final Approval of the Zoning By-law Amendment; and
- (b) such other date as may be agreed to by the Parties hereto, provided that the occurrence of the Final Confirmation Date in accordance with the foregoing shall be expressly conditional upon such Zoning By-law Amendment being approved, in force, and/or in effect in accordance with this subsection on the Final Confirmation Date.

7.2.2 The “**Date of Final Approval of the Zoning By-law Amendment**” for the purposes of this Agreement shall be the first day upon which all of the provisions of the Zoning By-law Amendment have actually come into force and effect, with all applicable appeal or rehearing periods having lapsed with no appeals nor rehearing requests to the Ontario Municipal Board, and/or Applications to Court having been launched with respect thereto or with any such appeals or rehearing requests to the Ontario Municipal Board and/or Applications to Court having been finally determined in favour of the Zoning By-law Amendment, so that a Building Permit(s) would be issued by the Chief Building Official for the City, permitting the construction contemplated by the Zoning By-law Amendment to the heights and densities as permitted thereunder, upon the Owner obtaining all requisite approvals, submitting the appropriate applications for a Building Permit(s), and paying the requisite application fees.

7.3 For the purposes of this Agreement, the term:

7.3.1 “**Application to Court**” means an application for leave to appeal, an appeal, an application for judicial review, an application to quash pursuant to the *Municipal Act* and includes an appeal(s) from a Decision or Order in respect of any of these which are made to a Court; and

7.3.2 “**Final Disposition**” means any of the following events:

- (a) the issuance of an Order of the Ontario Municipal Board finally disposing of the Zoning By-law Amendment, which rejects the Zoning By-law Amendment or certain parts thereof, or results in certain amendments to the Zoning By-law Amendment;
- (b) the issuance of an Order of the Ontario Municipal Board which follows a rehearing by the Ontario Municipal Board finally disposing of the Zoning



By-law Amendment, which rejects the Zoning By-law Amendment or certain parts thereof, or results in certain amendments to the Zoning By-law Amendment;

- (c) the issuance of an Order of the Court which finally disposes of an Application to Court and rejects the Zoning By-law Amendment or certain parts thereof, or results in certain amendments to the Zoning By-law Amendment.

#### 7.4 Unwinding of this Agreement

7.4.1 The date of unwinding of this Agreement, should such occur (hereinafter referred to as the “**Unwinding Date**”), shall be the earlier to occur of:

- (a) the date of Final Disposition of the Zoning By-law Amendment if the Final Disposition rejects the Zoning By-law Amendment; and
- (b) The date of expiry of the sixty (60) day period specified in a written notice of termination, which is given pursuant to subsections 7.4.4, 7.4.5 or 7.4.6 hereof (“**Notice of Termination**”).

7.4.2 At any time within thirty (30) days from the date of the occurrence of a Final Disposition of the Zoning By-law Amendment (which results in the Zoning By-law Amendment coming into force or effect with modification(s) or amendment(s) thereto), then sixty (60) days written Notice of Termination may be given by either the City or the Owner to the other. Unless the City and the Owner otherwise agree, the Unwinding Date shall occur on the expiry of the sixty (60) day period specified in such Notice of Termination. If a Notice of Termination is not given in accordance with this subsection, the modification(s) or amendment(s) shall be deemed to be “**Permitted Amendments**” for the purposes of this Agreement.

7.4.3 If, as a result of being required to do so by the Final Disposition of the Zoning By-law Amendment, Council passes, or adopts a modification(s) or amendment(s) to the Zoning By-law Amendment which is not one of the Permitted Amendments pursuant to subsection 7.4.2 then, at any time within thirty (30) days from the date of the giving of notice of the passing or adoption of such amendment(s) or modification(s) by the City to the Owner, sixty (60) days written Notice of Termination may be given by either the City or the Owner to the other. After passing or adopting one of the aforesaid amendment(s) or modification(s), the City shall forthwith give notice thereof to the Owner. Unless the City and the Owner otherwise agree, the Unwinding Date shall occur on the

expiry of the sixty (60) day period specified in such Notice of Termination. If a Notice of Termination is not given in accordance with this subsection, the modification(s) or amendment(s) shall be deemed to be one of the Permitted Amendments for the purposes of this Agreement.

7.4.4 If the Final Confirmation Date has not occurred on or before **December 31, 2015** then written Notice of Termination may be given by either the City or the Owner to the other. Unless on or prior to the expiry of sixty (60) days after the date on which such Notice of Termination was given to such other Party, either the Date of Final Approval of the Zoning By-law Amendment occurs, or the City and the Owner hereto otherwise agree, the Unwinding Date shall occur on the expiry of such sixty (60) day period.

7.4.5 On or after the occurrence of the Unwinding Date, the Owner, at the Owner's expense, may expunge registration of this Agreement by appropriate means according to the requirements of the registry system pertaining to the affected property and the City shall co-operate with all requests of the Owner, acting reasonably, in such respect, including the execution of releases and quit claims in suitable form for registration.

7.4.6 Without fettering City Council in any way in the exercise of its discretionary powers, on or after the occurrence of the Unwinding Date, City Council may repeal or amend the Zoning By-law Amendment with the object of restoring the provisions of the Zoning By-laws applicable to the Site to the state they were in on the day immediately prior to the date of the passing of the Zoning By-law Amendment. With respect to any repealing or Zoning By-law Amendment(s) passed pursuant to this subsection either on or after the occurrence of the Unwinding Date, the Owner covenants and agrees that it will not object to the passing, approval, or coming into force and effect of such rescinding By-law(s).

7.4.7 On the occurrence of the Unwinding Date, the Chief Financial Officer and Treasurer of the City shall return any cash or letters of credit deposited by the Owner pursuant to this Agreement.

## **8. ENUREMENT**

8.1 This Agreement shall enure to the benefit of, and be correspondingly binding upon, the Parties and their respective successors and assigns with respect to all or any portion of the Site.

- 8.2 Notwithstanding anything in this Agreement to the contrary, in the event the City acquires any part of the Site for any municipal purpose, including road widening, the City shall not be bound by this Agreement as an Owner.

## **9. REGISTRATION OF AGREEMENT**

- 9.1 The Owner hereby consents, at its sole expense, to the registration of this Agreement against the title to the lands comprising the Site; provided however that in the event that this Agreement is terminated pursuant to the provisions of Section 7, then the City shall forthwith execute all requisite documents or assurances in order to discharge and delete the registration of this Agreement from the title to any lands encumbered by this Agreement.

## **10. TITLE/POSTPONEMENTS**

- 10.1 The Owner hereby agrees to procure and provide to the City any postponement agreements which the City Solicitor considers necessary to ensure that this Agreement shall have priority over any other interest, other than the fee simple interest and the permitted encumbrances, in the Site.
- 10.2 The Owner shall, at its sole expense, provide to the City prior to registration of this Agreement against the title to the Site hereof, a title opinion for the Agreement from the Owner's solicitors, addressed to the City, in a form satisfactory to the City Solicitor.

## **11. FURTHER ASSURANCES**

- 11.1 The Parties covenant and agree that at all times and from time to time hereafter upon every reasonable written request to do so, they shall make, execute, deliver, or cause to be made, done, executed, and delivered, all such further acts so as to effectively implement and carry out the true intent and meaning of this Agreement.

## **12. NOTICES**

- 12.1 Any notices required or desired to be given to any of the Parties in connection with this Agreement, or arising therefrom, shall be in writing and shall be personally delivered or sent by facsimile transmission or other means of instantaneous transmission in regular commercial usage at such time, verified by a transmission report as follows:

- (a) To the Owner at:  
Goldman Ellesmere 2 Developments Inc.  
55 St. Clair Avenue West, Suite 240  
Toronto, ON  
M4V 2Y7

Attention: Mr. Murray Goldman  
Fax: 416-962-5841

(b) To the City at:  
City of Toronto  
Attn: City Solicitor  
55 John Street  
26<sup>th</sup> Floor, Metro Hall  
Toronto ON  
M5V 3C6

Fax: 416-397-4420

12.2 Any notice shall be deemed to have been given and received on the date that same is given and received, or if not a business date, on the next business day.

12.3 Any Party may, from time to time, by written notice sent to the other Parties, in accordance with the foregoing provisions, change the address or facsimile number to which its notices are to be delivered or transmitted (as the case may be).

### **13. INDEMNITY**

13.1 The Owner will well and truly save, defend, and keep harmless and fully indemnify the City and each of its elected officials, officers, employees, and agents of, from, and against all manner of actions, suits, claims, executions, and demands which may be brought against or made upon the City, its elected officials, officers, employees, and agents or any of them and of, from and against all loss, costs, charges, damages, liens, and expenses which may be sustained, incurred, or paid by the City, its elected officials, officers, employees, and agents, or any of them, by reason of, or on account of, or in consequence of the fulfilment by the Owner of its obligations under this Agreement including the default or breach by the Owner of its obligations under this Agreement or by reason of any negligence or wilful default of the Owner, its officers, employees, agents, or persons acting under its direction in connection with the Owner's obligations hereunder. The Owner will pay to the City and to each such elected official, officer, employee, or agent on demand any loss, costs, damages, and expenses which may be sustained, incurred, or paid by the City or by any of its elected officials, officers, employees, and agents in consequence of any such action, suit, claim, lien, execution, or demand and any monies paid or payable by the City or any of its elected officials, officers, employees, or agents in settlement of or in discharge or on account thereof. The Owner releases the City and each of its elected officials, officers, employees, and agents of, from and against all manner of actions, suits, claims, executions, and demands which could be brought against or made upon the City, its elected officials, officers, employees, and agents or any of them and of, from and against all loss, costs, charges, damages, liens and, expenses which may be sustained, incurred or paid by the Owner by reason of, or on account of, or in consequence of the fulfilment of their respective obligations or exercise of their respective powers under this Agreement, provided, however, that such release shall not apply to any loss, costs, charges, damages, liens, and expenses incurred by the Owner arising from the gross negligence and/or wilful

misconduct of the City, its officers, employees, agents, or persons for whom it is responsible in law. Any amounts owing to the City pursuant to the obligation of the Owner to indemnify the City pursuant to the terms of this Agreement may be collected by the City, in addition to any other remedies it may have, as taxes with all such amounts to be payable as directed by City Council pursuant to Section 264 of the *City of Toronto Act, 2006*, S.O. 2006, c 11, as amended from time to time.

- 13.2 The obligations of the Owner to indemnify and release the City under the provisions of this Agreement shall survive any termination or release in whole or in part of this Agreement, anything in this Agreement to the contrary notwithstanding.

#### **14. SEVERABILITY**

- 14.1 If any covenant or provision, except for Section 7, of this Agreement, including all or any part of this clause, is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions hereof shall continue in full force and effect.

- 14.2 Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable in order to effectively implement and carry out the true intent and meaning of this Agreement.

#### **15. JURISDICTION TO ENTER INTO AGREEMENT**

- 15.1 This Agreement is entered into pursuant to subsection 37(3) of the *Planning Act*. If this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the power and jurisdiction of the City, and appeals from such decision have been exhausted, the Owner and the City agree that the Zoning By-law Amendment may be repealed by the City, and the Owner covenants and agrees not to oppose or question or cause to be opposed or questioned, the repeal thereof.

- 15.2 Notwithstanding subsection 15.1, 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 Party bound hereby, such provision(s) shall be severed from this Agreement if both the Owner and the City agree, and the remainder of the Agreement shall continue in full force and effect, *mutatis mutandis*; and in such case, the Owner and the City agree to negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein. If the Owner and the City cannot agree that such provision or provisions shall be severed, the City may repeal the Zoning By-law Amendment and the provisions of subsection 15.1 shall apply to such repeal.

15.3 It is agreed and acknowledged by the Parties hereto that each is satisfied as to the jurisdiction of the City to pass the Zoning By-law Amendment and each Party hereto is satisfied as to the jurisdiction of the other to enter into this Agreement. The Owner therefore covenants and agrees that it shall not question the jurisdiction of the City to enter into this Agreement, nor question the legality of any portion thereof, and likewise the City agrees it shall not question the jurisdiction of the Owner to enter into this Agreement nor question the legality of any portion hereof. The Parties hereto, their successors, assigns, lessees, and sub-lessees are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction.

## 16. INTERPRETATION

16.1 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.

16.2 Reference to an official of the City in this Agreement is deemed to include a reference to the official of the City who performs the duties of the referenced official from time to time.

16.3 Whenever the provisions of this Agreement require an approval or consent of any official of the City, the approval or consent may alternatively be given by City Council or such other official as City Council may direct or is otherwise empowered to act.

16.4 This Agreement shall be construed with all changes in number and gender as may be required by the context.

## 17. FORCE MAJEURE

17.1 Notwithstanding anything in this Agreement to the contrary, if the Owner or the City are *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, material shortage, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion, or other act of God, then the performance of such obligation is excused for so long as such cause exists, and the party so delayed shall be and is entitled, without being in breach of this Agreement, to carry out such obligations within the appropriate time period after the cessation of such cause.

17.2 Nothing in section 17.1 shall operate to excuse the Owner from the prompt payment of cash to the City in accordance with the terms of this Agreement.

## 18. GOVERNING LAW

18.1 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Ontario and of Canada applicable thereto, and the Parties submit to the jurisdiction of the courts of the Province of Ontario.

- 18.2 Any reference in this Agreement to any law, by-law, rule, regulation, order, or act of any government, governmental body, or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time, or as a reference to any successor thereto.

## 19. APPLICABLE LAW

- 19.1 The Parties agree that for the purposes of Section 8(2) of the *Building Code Act* this Agreement shall be considered to be "other applicable law". The Parties also agree that wherever the provisions of this Agreement permit the City to refuse to process a Building Permit such provisions shall apply equally to the City's Chief Building Official.

## 20. TAXES

- 20.1 The Owner covenants and agrees to pay, and fully indemnify the City in respect of any taxes, including the *Excise Tax Act*, RSC 1985, c E-15 (goods and services tax) associated with the benefit to the City of any facility, service, matter, or thing referenced in this Agreement and provided to the City for the benefit of the City by the Owner, including any service, matter or thing required under Section 41 of the *Planning Act* provided:

- (a) such indemnity shall be net of any rebate available to the City; and
- (b) the Owner may defend against the imposition of such taxes in the name of the City provided that the Owner may, in such event, elect to pay and satisfy any such claim for taxes in such event the City shall inform the Owner fully of such claim for taxes and shall offer the Owner every co-operation in the defence of said claim for taxes.

For clarity, the Parties acknowledge and agree that as at the date of execution of this Agreement the Parties have not determined whether goods and services tax will be exigible upon the said facilities, services, matters, and things and agree that in the event the goods and services tax is exigible the Owner will be responsible for the payment thereof and will fully indemnify and save harmless the City with respect thereto.

- 20.2 Upon the request of the Owner, the City agrees that it shall provide the relevant, if any, HST/GST registration number for a particular department or agency of the City.

## 21. TIME OF THE ESSENCE

- 21.1 Time is of the essence of this Agreement and every part of this Agreement, and no extension or variation of this Agreement shall operate as a waiver of this provision.

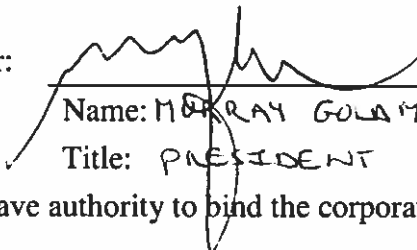
**22. EFFECTIVE DATE**

22.1 This Agreement shall be effective from and after the earlier of the signing of this Agreement by the City, or by their duly authorized delegates, and the Final Confirmation Date.

**IN WITNESS WHEREOF** the Parties have affixed their corporate seals under the hands of their officers duly authorized in that regard.

**EXECUTED** at Toronto, this 28 day of October, 2015.

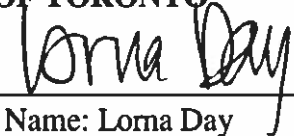
**GOLDMAN ELLESMERE 2 DEVELOPMENTS INC.**

Per:   
Name: MURRAY GOLDMAN  
Title: PRESIDENT  
I have authority to bind the corporation.

**APPROVED AS TO FORM**

  
For Anna Kinastowski  
City Solicitor

**CITY OF TORONTO**

Per:   
Name: Lorna Day  
Title: Director, Community Planning  
  
\_\_\_\_\_

I have authority to bind the corporation.

Authorized by Ontario Municipal Board Order June 2, 2015.  
  
\_\_\_\_\_  
City Clerk



**SCHEDULE "A" – LEGAL DESCRIPTION OF SITE**

**Municipal Address:            1001 Ellesmere Road, Toronto**

**Legal Description:**

**PIN 06301-0004 (LT)**

**PT LT 5 REGISTRAR'S COMPILED PLAN 9846 BEING PARTS 1, 4, 5, AND 6, ON PLAN 66R-28031; S/T SC603499; T/W TB611173; S/T SC312678; FORMERLY SCARBOROUGH; CITY OF TORONTO**

**SCHEDULE "B" – ZONING BY-LAW AMENDMENT**

**CITY OF TORONTO**

**BY-LAW No. -2015**

Authority: Ontario Municipal Board Order issued on ~~~, 20~~ in Board File No. PL140391

**CITY OF TORONTO**

**BY-LAW No. ~~~~~-2015(OMB)**

**To amend former City of Scarborough Employment Districts Zoning By-law No. 24982 (Dorset Park Employment District), as amended, with respect to the lands municipally known as 1001 Ellesmere Road.**

WHEREAS the Council of the City of Toronto has been requested to amend its Zoning By-law pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, with respect to lands municipally known in the year 2015 as 1001 Ellesmere Road (the "Lands"); and

WHEREAS pursuant to Section 37 of the *Planning Act*, a By-law passed under Section 34 of the *Planning Act* may authorize increases in the height or density of development beyond that otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law; and

WHEREAS subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, a municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

WHEREAS the owner of the Lands has elected to provide the facilities, services or matters as are set out in this By-law; and

WHEREAS the increase in height and density of development permitted under this By-law beyond that otherwise permitted on the Lands by By-law No. 24982, as amended, is to be permitted in return for the provision of the facilities, services and matters set out in this By-law and to be secured by one or more agreements between the owner of the Lands and the City of Toronto; and

WHEREAS the Ontario Municipal Board, by its Order issued on ~~~, 20~~ in Board File No. PL140391, determined to amend Zoning By-law No. 24982, as amended, with respect to the Lands;

THEREFORE pursuant to the Order of the Ontario Municipal Board issued on ~~~, 20~~ in Board File No. PL140391 the Ontario Municipal Board orders as follows:

1. Schedule "A" of the Employment Districts Zoning By-law No. 24982 (Dorset Park Employment Area) is amended for the lands outlined in the attached Schedule '1' by deleting the existing Industrial (M) zoning and replacing it with the Commercial Residential (CR) Zone, the Performance Standards as shown on Schedule '1' and noted Exceptions 845 and 846, so that the amended zoning shall read as follows:

CR – 721 – 1010 – 1084 – 1086 – 1092 – 1192 – 2029 – 2061 – 2710

CR – 722 – 1010 – 1084 – 1086 – 1092 – 1192 – 2029 – 2061 – 2710

CR – 723 – 1011 – 1013 – 1084 – 1086 – 1092 – 1192 – 2029 – 2061 – 2062 – 2710 – 2711

CR – 492 – 913 – 1119 – 2029 – 2619

P

845

846

2. Schedule "B", PERFORMANCE STANDARDS CHART, is amended by adding the following Performance Standards:

**INTENSITY OF USE**

721. Maximum 24 **townhouse dwelling units** having an attached rear garage and a minimum unit width of 4.2 m.
722. Maximum 22 **townhouse dwelling units** having an attached rear garage and a minimum unit width of 4.2 m.
723. Maximum 45 **townhouse dwelling units** having a detached garage in the rear yard and a minimum unit width of 4.5 m.

**SETBACKS**

1013. Minimum setback from the **lot** line that abuts the TTC/SRT Rail Line to the rear main wall of a **dwelling unit**: 25.0 m.
1092. Minimum interior **side yard** setback: 1.0 m.

**SETBACKS FROM LOT LINES OTHER THAN STREET LINES**

1119. Minimum setback from **lot** lines other than **street lines** 15.0 m.

**GROSS FLOOR AREA**

2619. **Gross floor area** of all buildings (minus the **gross floor area** of all **basements**) shall be a minimum of 6 500 m<sup>2</sup> and shall not exceed 11 475 m<sup>2</sup>.

**HEIGHT**

2710. Maximum 14.0 m and 3 **storeys**, excluding **basements**, as measured from the average finished grade along the **main wall** of the **dwelling unit** facing any **street** line.
2711. The height measured from the floor of the **structure** of a detached garage to the **eaves** shall not exceed a height of 6.0 m.
3. On those lands identified as Exception No. 845 on Schedule '1' hereto, the following provisions shall apply:
- (a) Only the following uses are permitted in the **Commercial/Residential Zone (CR)**
- Permitted Uses:**
- **Townhouse Dwelling**
  - **Private Home Day Care**
- Temporary Use:**
- Temporary Sales Trailer for the sales of residential dwelling units
- (b) Where garages, accessed from a **lane**, are attached to a **dwelling unit** there shall be a minimum 15m<sup>2</sup> of outdoor amenity area provided on the roof of the attached garage.
- (c) Measurement of required **yard** and building setbacks shall be from the **street** or **lane** line, and shall not be affected by required corner roundings.
- (d) The following definitions shall apply to the lands encompassed by Exception No. 845:
- Lane**  
shall mean a public or private right-of-way which is not for general traffic circulation and which may provide an alternate means of access to abutting **lots**.
- Model Home**  
shall mean a finished **dwelling unit** for temporary display to the public prior to occupancy for residential purposes.

### Permitted Projections

The following Projections, to the maximum distance shown below, shall not be considered part of the **main wall**, except that no such projection shall extend into a public **street** or **lane**:

<u>Projections</u>	<u>Distance</u>
<b>Deck, porch, balcony, or similar structure</b>	1.5 m
<b>Decorative or screen wall</b>	1.0 m
<b>Exterior steps or ramps</b>	3.0 m
<b>Bay window, box window or other projecting window</b>	0.6 m
<b>Roof overhang, eave or roof of dormer window</b>	0.6 m provided they are no closer to a lot line than 0.3 m
<b>Chimney, pilaster and projecting columns</b>	0.6 m

### Street

shall mean a public right-of-way for general traffic circulation and which provides the primary access to abutting **lots**.

### Townhouse Dwelling

shall mean a **building** containing three or more **dwelling units**, in which **dwelling units** are separated from each other vertically, and each of which has a separate entrance directly from outside.

### Yard, Flankage

shall mean the space between the exterior side wall of a building and a **side lot line** bounding upon a **street** or **lane** and extending from the front main wall to the rear main wall.

(e) Matters to be provided pursuant to Section 37 of the Planning Act, R.S.O. 1990, c.P. 13, as amended:

- i) The density of development permitted by this By-law is permitted subject to the owner of the lands, at its expense and in accordance with and subject to the execution and registration of the agreements referred to in Section (ii) herein, providing or funding the following facilities, services and matters, as follows:
  - a. \$226,000 to improve the Birkdale Ravine and/or local park improvements, to be provided on the following basis:
    - i) \$59,600 prior to the issuance of building permits for **dwelling units** fronting Ellesmere Service Road; and
    - ii) \$166,400 prior to the issuance of building permits for all other **dwelling units**.
- ii) The owner of the lands shall enter into one or more agreements with the City of Toronto pursuant to Section 37 of the Planning Act, R.S.O., 1990, c.P. 13 as amended, to secure the facilities, services and matters referred to in Section (i) herein, which agreement shall be registered as a first priority on title to the lands to which this By-law applies.
- iii) Each installment payment set out in Sections 3(e)i.a.i) and ii) above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date of execution of the Section 37 Agreement to the date of

payment of the funds by the owner to the City. Each installment payment set out in Sections 3(e)i.a.i) and (ii) above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date of execution of the Section 37 Agreement to the date of payment of the funds by the owner to the City.

iv) The owner shall construct the development in the following phases:

Phase 1 – Blocks 1, 2 and 4

Phase 2 – Block 3 ( the dwelling units fronting Ellesmere Service Road)

v) The Section 37 Agreement will set out further details of the phasing plan referred to in Section (iv) herein.

(f) **Model Homes** shall be permitted on the lands encompassed by Exception 845. Each **Model Home** shall be of the permitted **dwelling unit** type within the zone category and shall comply with the provisions of the **Performance Standards Chart, Schedule “B”** for the **dwelling unit** type, and the **Exceptions List, Schedule “C”**, as amended by this By-law.

The maximum number of **Model Homes** shall be as follows:

i) 1 **townhouse dwelling unit** with detached garage

ii) 1 **townhouse dwelling unit** with attached garage

4. On those lands identified as Exception No. 846 on Schedule '1' hereto, the following provisions shall apply:

(a) Only the following uses are permitted in the **Commercial/Residential Zone (CR)**

**Permitted Uses:**

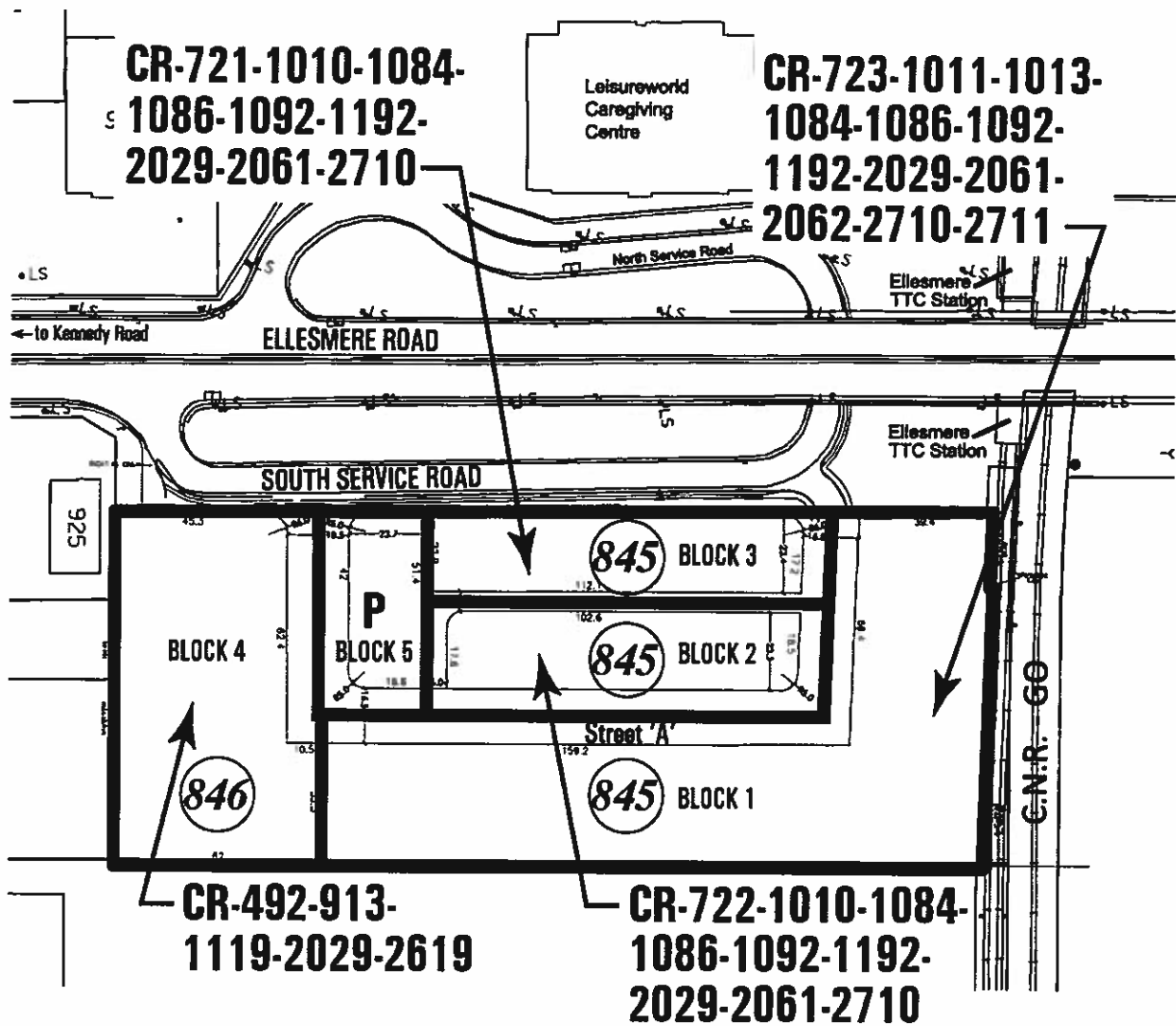
- **Financial Institutions**
- **Medical Centres**
- **Offices**
- **Personal Service Shops**
- **Restaurants**
- **Retail Stores**

(b) **Additional Permitted Uses** provided that they do not individually or collectively exceed 20% of **gross floor area** of all buildings (minus the **gross floor area** of all **basements**):

- **Business and Trade Schools**
- **Data Storage Facilities**
- **Performing Arts Studio**
- **Pet Grooming Establishment (excluding overnight boarding of animals)**
- **Fitness Centre**
- **Veterinary Hospital**

PURSUANT TO THE DECISION/ORDER OF THE ONTARIO MUNICIPAL BOARD ISSUED ON ~~~~, 20~~ UNDER OMB CASE NO. PL140391.

### Schedule '1'



**TORONTO** City Planning Division  
**Zoning By-Law Amendment**

1001 Ellesmere Road

File # 13 268032 ESC 37 0Z

 Area Affected By This By-Law

Dorset Park Employment  
 Not to Scale  
 04/08/2015  
