

## Offer to Settle



April 26, 2022

BY EMAIL

Gabe Szobel  
Solicitor, Planning & Administrative Tribunal Law  
City of Toronto, Legal Services  
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55 John Street  
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**Without Prejudice  
and Confidential  
*until accepted***

Dear Mr. Szobel:

**RE: WITHOUT PREJUDICE SETTLEMENT OFFER  
41-75 FOUR WINDS DRIVE, NORTH YORK  
CITY FILE NO.: 20 226957 WET 07 OZ  
OLT CASE / FILE NO.: OLT-21-001121**

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We are the solicitors for Berncray Holdings Inc. (“Berncray”) the Owner the above referenced site (“the Site”). We are writing to confirm the results of our settlement discussions in order to achieve a consensual resolution, which have all been discussed and resolved with City staff.

### Background

The Site is located near the northeast of the Finch Avenue West and Sentinel Road intersection. The Site is 1.06 ha (2.61 acres) in size with approximately 113.7m of frontage along Four Winds Drive. The Site is currently occupied by a community commercial/retail plaza with an existing gross floor area of approximately 3,996.0 m<sup>2</sup> (43,013 ft<sup>2</sup>). The current uses include a grocery store, eateries, medical centre, and other smaller shops and services. The Site also includes an office building (currently occupied by a dental clinic, office and worship uses) at the southwest corner of the property. The Site is currently designated

*Mixed Use Areas* in the Official Plan and the proposal is generally permitted by the in effect Official Plan. The Site is within the boundary of OPA 482 (adopted but not approved) and OPA 483 (endorsed by Council but not adopted) – given their status they are informative but not determinative.

A Zoning By-law Amendment was filed on December 4, 2020. The application was deemed complete on February 23, 2021. The effect of the Zoning By-law Amendment would be to permit the redevelopment of the Site to permit a total gross floor area (“GFA”) of 43,745 square metres within the Subject Lands, in which 42,323 square metres are residential GFA and 1,422 square metres are retail/commercial GFA. The proposal consists of two mid-rise buildings at 9 and 11 storeys, and one high rise building at 32 storeys. Subsequently, Site Plan Approval and Draft Plan of Condominium applications were filed on November 2, 2021. The Site Plan Approval application has not been deemed a complete submission, and the Draft Plan of Condominium was deemed complete on January 5, 2022.

A Case Management Conference (“CMC”) in respect of the appeals has occurred. Berncray and representatives of the City agreed to participate in Mediation that has occurred. Through the Mediation Berncray has revised its proposal to address the concerns raised by City staff.

To this end, all built form issues have been resolved to staff’s satisfaction, detailed massing / building layout, building height and density. Further, a Section 37 contribution has been proposed as set out herein. The details of this proposal are of fundamental importance for this package offer to settle, as the details with the revisions requested by staff affect the overall cost of the contributions as well as the economic feasibility for the owner to commit to deliver the public benefits contained herein.

### Details of the Settlement

We are pleased to present the following proposal for the settlement of our client’s appeals. We understand that this proposed settlement is supported by City staff. If City Council resolves to support the revised development proposal and settlement terms described below, our client will revise its appeal at the OLT and proceed to a Settlement Hearing with the City on that basis.

**This Offer to Settle is conditional upon acceptance by City Council at its meeting on May 11 and 12, 2022.**

The Offer to Settle is:

1. The proposed development shall be revised as required to reflect the revisions depicted on the enclosed plans. In particular, the Revised Proposal as depicted in Appendix A shall incorporate the following:

- (a) The building massing shall be revised to reflect building height (Building C at 9 storeys; Building B at 14 storeys; and Building A at 25 storeys), setbacks, step backs and separation distances, substantially in accordance with those depicted on the plans which accompany this offer.
  - (b) The floorplate of the towers will not exceed a gross construction area of 750 m<sup>2</sup> with a minimum separation distance between towers of 25 metres.
  - (c) A total of 43,201 square metres of gross floor area of non-residential and residential uses, of which a minimum 1,500 sq m will be for non-residential uses. The overall site design and massing has been maintained as negotiated with efficiencies being found in the internal building design occurring.
  - (d) A parking ratio for residents of 0.5 spaces per unit, plus visitor parking of 0.1 spaces per unit and 1.0 per 100 sq m for non-residential uses supported by the work by NexTrans.
  - (e) At least 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. These ratios are in accordance with the Growing Up Guidelines.
  - (f) At least a minimum indoor residential amenity of 2 sq. m. per unit and a minimum outdoor residential amenity of 2 sq. m. per unit. These minimum requirements are in accordance with the standards of By-law 569-2013.
  - (g) Two loading spaces, one Type 'C' Building C, and one Type 'G' located in Building A and to be utilized for all buildings.
  - (h) A holding symbol ("h") be placed on a portion of the site as part of the amending zoning by-law. An amending by-law to remove the "h" shall be enacted by City Council when the following have been provided for to the satisfaction of the Chief Planner and Executive Director, City Planning:
    - i. Provision of a Structural Engineering Report prepared and certified by a Professional Engineer, confirming that Building B can be structurally supported above the existing stratified parking garage (with a top elevation of 189.74 m ASL (west) to 190.65 m ASL (east), described as Part 24 (Diagram No. 13) on Plan 66R-5909.
    - ii. The uses within the area subject to the hold are those that are permitted in the C2(12) Zone of the Former City of North York Zoning By-law 7625.
2. The Owner and the City shall enter into a Section 37 Agreement to be registered on title to the Site, to secure a cash contribution of \$2,040,000.00 to the City of Toronto

upon issuance of the first above grade building permit, to be phased by building in accordance with the following schedule:

<i>Building</i>	<i>Percent of Total GFA</i>	<i>Amount Payable at Above Grade Building Permit per Building</i>
Building A	45.0%	\$918,000.00
Building B	31.1%	\$634,440.00
Building C	23.9%	\$487,560.00
<b><i>Total Payable Upon All Above Grade Permits Issued</i></b>		<b><i>\$2,040,000.00</i></b>

The cash contribution 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) Public access easements related to east-west and north-south pedestrian connections running through the Site (as shown on the attached plans);
- (ii) A bike share module being provided on-site;
- (iii) Transportation Demand Management measures including but not limited to:
  - (1) Unbundle vehicle space from unit sale;
  - (2) Provide 2 car share parking spaces and engage with car share company for future implementation;
  - (3) Provide information package for new residents. The information package includes TTC schedules, GO Transit Schedules, community and cycling maps, where appropriate. The Information Package can be distributed at the sale office;
  - (4) Provide one-time pre-loaded PRESTO Cards with the starting value of \$150 (inclusive of the registration fee) for each residential unit on demand basis. This will help the future residents to consider taking TTC service as an alternative mode of transportation. The pre-loaded PRESTO Cards can be distributed in conjunction with the Information Package at the time of purchase or at occupancy.

- (iv) Prior to site plan approval, the owner agrees to implement the recommendations of the Compatibility & Mitigation Study by SLR, dated April 2021 with a response dated October 20, 2021, and the peer review of Hemmera dated January 11, 2022.
- (v) As a condition within the Section 37 Agreement prior to Site Plan Approval being granted and any building permit being issued for the development, at the Owner at its sole expense:
  - (1) has submitted a revised Functional Servicing Report, including confirmation of water and fire flow, sanitary and storm water capacity, Stormwater Management Report and Hydrogeological 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;
  - (2) 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;
  - (3) 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; and
  - (4) has submitted a revised Wind Study acceptable to the Chief Planner and Executive Director, City Planning, and securing such mitigation matters through the Site Plan Approval process.
- 3. The City and the Owner shall jointly request that the OLT through the existing applications and Appeals, allow the Appeals, in part, to approve a Zoning By-law Amendment to permit the Revised Proposal. The Owner and the City will jointly request a settlement hearing date of the OLT as soon as the OLT's calendar can accommodate it.

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.
5. If this offer is accepted, then it is the intention of the Owner and the City to proceed cooperatively in order to finalize the following matters:
  - (a) the proposed Zoning By-law Amendment(s) are in a form satisfactory to the parties, including securing appropriate Section 37 provisions;
  - (b) a Section 37 Agreement satisfactory to the parties with appropriate arrangements have been made for the execution and registration to the satisfaction of the City Solicitor, securing the benefits and matters of legal convenience listed above;

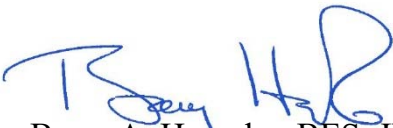
The parties shall jointly request OLT to approve the Berncray appeals, in whole or in part, and work cooperatively to implement said approvals utilizing traditional legal mechanisms.

As noted above, it is our intention that if Council accepts this offer we will proceed to the OLT on the basis of these revisions. 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 Settlement will be carried out in an expeditious fashion by both parties.

All respectfully submitted,

**HOROSKO PLANNING LAW**



Barry A. Horosko, BES, JD

cc. Clients  
David McKay, MHBC  
Michael Spaziani, MSAI

Encl.

**Appendix A – Revised Plans**