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File No. 704272

WITHOUT PREJUDICE

March 7, 2024

By E-Mail to *Amanda.Hill@toronto.ca* and *Amrit.Sandhu@toronto.ca*

Amanda Hill and Amrit Sandhu
City of Toronto, Legal Services Division
26th Floor, Metro Hall
55 John Street
Toronto, Ontario M5V 3C6

Dear Ms. Hill and Ms. Sandhu:

**Re: Without Prejudice Settlement Offer
Appeals of Official Plan Amendment, Zoning By-law Amendment and Site
Plan Control Applications
City File Nos. 22 221903 NNY 15 OZ and 22 221901 NNY 15 SA
1779-1787 Bayview Avenue, Toronto
OLT Case Nos.: OLT-23-000369, OLT-23-000370, OLT-23-000371**

As you know, we are counsel to Condor Properties Ltd. (the “**Owner**”), the applicant in respect of the lands municipally known as 1779-1787 Bayview Avenue in the City of Toronto (the “**Lands**”).

Applications and Appeals

In October 2022, the Owner submitted Official Plan Amendment and Zoning By-law Amendment applications (the “**OPA Application**” and the “**ZBLA Application**”), together with a Site Plan Control application (collectively, the “**Applications**”), to the City of Toronto (the “**City**”) to permit the development of a 35-storey mixed-use building on the Lands.

In April 2023, the Owner appealed the Applications to the Ontario Land Tribunal (the “**Tribunal**” or “**OLT**”).

Without Prejudice Offer to Settle the Appeals

As you are aware, the Tribunal has scheduled a 15-day hearing for the appeals of the OPA Application and the ZBLA Application (collectively the “**Appeals**”) to begin on November 25, 2024.

As a result of a series of mediation sessions that occurred at the end of 2023 and earlier this year, as well as ongoing discussions between the Owner and its consultants and City staff, our client's architect, Arcadis Architects (Canada) Inc. ("**Arcadis**"), prepared revised architectural plans dated February 16, 2024 (the "**Revised Plans**"), a copy of which is attached.

We are writing to present the City with a "without prejudice" offer to settle the Appeals to the Tribunal based on the following terms:

1. The Owner and the City will work cooperatively to prepare a revised draft zoning by-law amendment to permit a development on the Lands substantially in accordance with the Revised Plans (the "**Revised Draft ZBA**"), for a 35-storey residential building with a height of 114.5 metres, and approximately 28,905 square metres of gross floor area as calculated under City Zoning By-law No. 569-2013 (the Revised Draft ZBA would allow for some reasonable rounding up of various measurements and development statistics).
2. The Owner and the City will work cooperatively to prepare a revised draft Official Plan Amendment to permit a development on the Lands substantially in accordance with the Revised Plans (the "**Revised Draft OPA**").
3. City Council will consent to the demolition of the designated heritage building at 1783-1785 Bayview Avenue, in accordance with Section 34 of the *Ontario Heritage Act*, subject to the incorporation of the front (westerly) façade of such building into the new residential building at its southwest corner, as reflected in the Revised Plans and as described in the Heritage Impact Assessment prepared by Goldsmith Borgal & Company Ltd. Architects ("**GBCA**"), dated February 16, 2024 (a copy of which is attached), all subject to and in accordance with a Conservation Plan satisfactory to the Senior Manager, Heritage Planning and subject to the following further conditions as set out below:
 - a. Prior to issuance of a final OLT Order in connection with the appeal of the ZBLA application for the Lands, the Owner shall:
 - i. Enter into a Heritage Easement Agreement with the City for the property at 1783-1785 Bayview Avenue, substantially in accordance with the plans and drawings prepared by Arcadis, dated February 16, 2024, submitted with the Heritage Impact Assessment prepared by GBCA, dated February 16, 2024, subject to and in accordance with the approved Conservation Plan required in item 3.a.ii below, all to the satisfaction of the Senior Manager, Heritage Planning, including execution of such agreement to the satisfaction of the City Solicitor; and

- ii. 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 1783-1785 Bayview Avenue, prepared by GBCA, dated February 16, 2024, and details all future conservation efforts as part of this application, all to the satisfaction of the Senior Manager, Heritage Planning.
 - b. Prior to final Site Plan Approval in connection with the proposed development on the Lands, the Owner shall:
 - i. Provide final Site Plan drawings substantially in accordance with the approved Conservation Plan required in item 3.a.ii above to the satisfaction of the Senior Manager, Heritage Planning;
 - ii. Provide an Interpretation Plan for the subject property, to the satisfaction of the Senior Manager, Heritage Planning and thereafter shall implement such Plan to the satisfaction of the Senior Manager, Heritage Planning;
 - iii. Provide a Heritage Lighting Plan that describes how the heritage property will be sensitively illuminated to enhance its heritage character to the satisfaction of the Senior Manager, Heritage Planning and thereafter shall implement such Plan to the satisfaction of the Senior Manager, Heritage Planning;
 - iv. Provide a detailed Landscape Plan for the subject property, satisfactory to the Senior Manager, Heritage Planning; and,
 - v. Submit a Signage Plan for the proposed development to the satisfaction of the Senior Manager, Heritage Planning.
 - c. That prior to the issuance of any permit for all or any part of the property at 1783-1785 Bayview Avenue, but excluding permits for repairs and maintenance and usual and minor works for the existing heritage building as are acceptable to the Senior Manager, Heritage Planning, the Owner shall:
 - i. Obtain final approval for the necessary zoning by-law amendments required to permit the proposed development on the Lands substantially in accordance with the Revised Plans;
 - ii. Provide building permit drawings, including notes and specifications for the conservation and protective measures keyed to the approved

Conservation Plan required in item 3.a.ii above, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Planning;

- iii. Provide a Letter of Credit, including provision for upwards indexing in a form and amount and from a bank satisfactory to the Senior Manager, Heritage Planning, to secure all work included in the approved Conservation Plan and Interpretation Plan; and
 - iv. Provide full documentation of the existing heritage property, including two (2) printed sets of archival quality 8" x 10" colour photographs with borders in a glossy or semi-gloss finish and one (1) digital set on a CD in tiff format and 600 dpi resolution keyed to a location map, elevations and measured drawings, and copies of all existing interior floor plans and original drawings as may be available, to the satisfaction of the Senior Manager, Heritage Planning.
- d. That prior to the release of the Letter of Credit required in item 3.c.iii. above, the Owner shall:
- i. Provide a letter of substantial completion prepared and signed by a qualified heritage consultant confirming that the required conservation work, required heritage lighting work, and the required interpretive work has been completed in accordance with the Conservation Plan, Lighting Plan, and Interpretation Plan and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Heritage Planning; and
 - ii. Provide replacement Heritage Easement Agreement photographs to the satisfaction of the Senior Manager, Heritage Planning.
4. City Council authorize the entering into of a Heritage Easement Agreement under Section 37 of the *Ontario Heritage Act* with the owner of 1783-1785 Bayview Avenue in a form and content satisfactory to the City Solicitor and the Chief Planner and Executive Director, City Planning.
 5. City Council authorize the City Solicitor to introduce the necessary Bill in Council authorizing the entering into of a Heritage Easement Agreement for the property at 1783-1785 Bayview Avenue.

6. The Owner and the City will jointly request that the Tribunal convert the next OLT Case Management Conference to a settlement hearing for the Appeals (the “**Settlement Hearing**”).
7. The Owner will present and lead evidence in support of the Revised Plans to the Tribunal at the Settlement Hearing and the Owner and the City will jointly request that the Tribunal allow the appeals of the OPA Application and the ZBLA Application and approve, in principle, the Revised Draft OPA and the Revised Draft ZBA, but withhold its final Order until such time as the OLT has been advised by the City Solicitor that the following conditions have been satisfied:
 - a. the final form and content of the draft Official Plan Amendment and Zoning By-law Amendment are to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;
 - b. the Owner has satisfactorily addressed the Engineering and Construction Services matters in the Engineering and Construction Services Memorandum dated December 13, 2023, or as may be updated, all to the satisfaction of the Chief Engineer & Executive Director;
 - c. the Owner has satisfactorily addressed Transportation Services matters in the Transportation Services memo dated July 31, 2023 (as updated), or as may be updated in response to further submissions filed by the Owner, all to the satisfaction of the Chief Engineer & Executive Director;
 - d. the Owner has submitted a revised Transportation Demand Management Plan acceptable to, and to the satisfaction of the Chief Planner and Executive Director, City Planning and the General Manager, Transportation Services and that matters arising from such Plan be secured, if required;
 - e. the Owner has satisfactorily addressed matters from the Parks, Forestry & Recreation (“PFR”) memorandum dated November 28, 2023, or as may be updated in response to further submissions filed by the Owner, all to the satisfaction of PFR;
 - f. the Owner has satisfactorily addressed matters from the Urban Forestry memorandum dated December 16, 2022, or as may be updated in response to further submissions filed by the Owner, all to the satisfaction of Urban Forestry;
 - g. the Owner has submitted an updated complete Toronto Green Standards (TGS) Checklist and Statistics Template, to the satisfaction of the Chief Planner and Executive Director, City Planning;

- h. the Owner provides the City with confirmation that the Metrolinx Technical Reviews have been completed – as determined in consultation with Metrolinx;
 - i. the Owner has secured replacement of the existing rental housing, including the same number of units, bedroom type and size and with similar rents, to the satisfaction of the Chief Planner and Executive Director, City Planning; and
 - j. City Council has approved the Rental Housing Demolition Application No. 22 224403 NNY 15 RH in accordance with Chapter 667 of the Toronto Municipal Code pursuant to Section 111 of the *City of Toronto Act, 2006* which allows for the demolition of the ten (10) existing rental dwelling units at 1779-1787 Bayview Avenue and the Owner has entered into, and registered on title to the lands, one or more agreements with the City to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, securing all rental housing-related matters necessary to implement City Council's decision.
- 8. The Owner and the City will jointly request that the appeal of the Site Plan Control application be adjourned by the Tribunal, but scheduled for a hearing (if required) no later than the summer of 2024, unless the Owner agrees to a later date, and releasing the currently scheduled hearing dates in November and December 2024. In the meantime, the Owner and the City will use reasonable best efforts to resolve any outstanding matters regarding the Owner's appeal of its Site Plan Control application as expeditiously as possible, subject to appropriate conditions of approval. If the Owner and the City are able to resolve the Site Plan Control application, subject to agreed upon conditions of approval, the Owner will withdraw the appeal of its Site Plan Control application if and when the City advises, in writing, that it is prepared to issue Notice of Approval Conditions. Alternatively, if the Owner and the City are unable to resolve all outstanding matters, the parties will proceed to an OLT hearing and request that the Tribunal adjudicate such matters.
- 9. Whereas the Lands are located adjacent to the City-owned and operated Howard Talbot Park, the Owner agrees that the proposed development on the Lands shall allow the City park to remain free and clear above-grade and below-grade of all physical obstructions, easements, encumbrances and encroachments, to the satisfaction of General Manager, PFR and the City Solicitor.
- 10. Whereas the Owner has taken measures to minimize potential conflict with users of the baseball fields in the adjacent City park to the east of the Lands, including the elimination of certain balconies up to the 7th storey on the east façade of the proposed building, as reflected in the Revised Plans, the Owner will also consent

to the inclusion of the acknowledgement in the following paragraph in a Site Plan Agreement for the proposed development on the Lands, to be registered on title to the Lands.

11. The Owner will include the following acknowledgement in all Agreements of Purchase and Sale and/or Lease Agreements for dwelling units within the proposed development on the Lands:

“The purchaser / tenant acknowledges that there is a City park located immediately to the east of the building, which contains baseball fields, and that occupants of the building and their guests may from time to time experience one or more nuisances resulting from activities located within the park, including noise, lighting and errant balls. The purchaser / tenant further acknowledges that neither the City of Toronto, nor those who are lawfully using the park, including those who have acquired a permit to use the baseball fields, such as the Leaside Baseball Association, will be responsible for such nuisances, unless caused by wilful misconduct.”

12. The Owner and the City shall bear their own costs in respect of the Appeals to the Tribunal and neither the Owner nor the City shall seek an Order from the Tribunal for costs as against the other party.
13. This settlement offer is conditional upon City Council accepting all of the terms of this offer at its meeting that is scheduled to begin on March 20, 2024, and this settlement offer will remain open for consideration until the conclusion of that City Council meeting. The City Solicitor shall advise the Owner, on a confidential basis, as to whether or not the City accepts the settlement offer within 24 hours of the conclusion of the City Council meeting, or as soon as practicable.

Additionally, the Owner is hopeful that a full resolution will be reached with the Leaside Residents Association, as well as Metrolinx and Metro Ontario Real Estate Limited.

Please note that, with respect to item 3 above, it is the Owner’s position that City Council is deemed to have already consented to the Owner’s application to demolish the building at 1783-1785 Bayview Avenue pursuant to subsection 34(4.4) of the *Ontario Heritage Act*, without any terms or conditions. Nonetheless, in the spirit of cooperation and in the context of this “without prejudice” settlement offer, the Owner is prepared to accept the conditions identified in item 3 above, including incorporating the front façade of the existing building into the proposed development, as reflected in the Revised Plans. However, if City Council does not accept this settlement offer, the Owner intends to proceed on the basis of the deemed consent to the demolition, without any terms or conditions, and would not propose to incorporate any portion of the existing building into the proposed new building.

Should this settlement offer be accepted by City Council, the Owner consents to the public release of this letter and the release of the attached Revised Plans (February 16, 2024) and Heritage Impact Assessment (February 16, 2024).

We look forward to receiving confirmation of the City's endorsement of this settlement offer following the City Council meeting scheduled to begin on March 20, 2024. In the meantime, please do not hesitate to contact us if you have any questions regarding this settlement proposal, or if you require anything further in advance of presenting this settlement offer to City Council

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

encls.: Revised Plans (February 16, 2024)
Heritage Impact Assessment (February 16, 2024)

copy: Client