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WITHOUT PREJUDICE

May 3, 2024

By E-Mail Only to *daniel.elmadany@toronto.ca*

Daniel Elmadany
City of Toronto, Legal Services
26th Floor, Metro Hall
55 John Street
Toronto ON M5V 3C6

Dear Mr. Elmadany:

**Re: Without Prejudice Settlement Offer
Appeals by 2941 Eglinton East Limited Partnership
2939-2941 Eglinton Avenue East, Toronto (the "Subject Site")
OLT Case Nos.: OLT-23-000252**

As you know, we are counsel to 2941 Eglinton East Limited Partnership (the "**Owner**"), the applicant/appellant in the above-noted matter. We are writing to present the City with a Without Prejudice Settlement Offer.

Context and Background

In September 2022, the Owner submitted a Zoning By-law Amendment application (Application No. 22 202882 ESC 20 OZ) (the "**ZBA Application**") to the City to permit the development of a 44-storey mixed-use building on the Subject Site that included 555 residential units. Due to the City's failure to make a decision within the statutory timelines, the Owner appealed the ZBA Application to the Ontario Land Tribunal (the "**Tribunal**").

Concurrently with the appeal of the ZBA Application, the Owner appealed a Site Plan Control application (Application No. 22 202881 ESC 20 SA) for the Subject Site (OLT Case No. OLT-23-000253) (the "**Site Plan Appeal**") to the Tribunal.

Offer to Settle the Appeal of the ZBA Application

Notwithstanding the appeals, the Owner and its planning consultants have continued to work collaboratively with City staff to resolve outstanding issues respecting the ZBA Application. Accordingly, we are writing to present the City with a without prejudice offer to settle the appeal of the ZBA Application on the following terms (the "**Settlement Offer**"):

1. The Owner and the City shall work cooperatively to finalize a draft Zoning By-law Amendment to permit the proposed development described below on the Subject Site (the “**Proposed Development**”):
 - a. a 46-storey mixed-use building at approximately 149.55 metres (approximately 156.55 metres inclusive of the mechanical penthouse) on the Subject Site;
 - b. a maximum overall gross floor area of approximately 38,663 square metres, inclusive of a minimum gross floor area of 300 square metres for non-residential uses;
 - c. amenity space in compliance with City-wide Zoning By-law 569-2013;
 - d. approximately 598 dwelling units, consisting of a minimum of 10% 3 bedroom dwelling units and a minimum of 15% 2 bedroom dwelling units to support families with larger households.

The Proposed Development will be substantially in accordance with the architectural plans prepared by Kirkor Architects and Planners, dated March 4, 2024, attached to this letter as Appendix “A” as modified by the Diagram included in Appendix “B” (the “**Revised Plan**”). The Owner will explore additional opportunities for more non-residential uses in the Proposed Development, if it can be accommodated.

2. The Owner and the City will jointly request that the Tribunal convene a settlement hearing, to be heard orally by videoconference or in writing, (the “**Settlement Hearing**”) as soon as reasonably practical following the City Council meeting scheduled to commence on May 22, 2024 and to release all days of the 15-day hearing currently scheduled to commence on August 12, 2024.
3. The Owner and the City will jointly present the Revised Plan to the Tribunal at the Settlement Hearing and request that the Tribunal approve, in principle, a Zoning By-law Amendment to permit the Proposed Development on the Subject Site that is substantially in accordance with the Revised Plan. The Owner and the City will coordinate the presentation of evidence and submissions in support of such requested approval.
4. At the Settlement Hearing, the Owner and the City will jointly request that the Tribunal approve a Zoning By-law Amendment, in principle, and that the Tribunal withhold its final Order until the Tribunal has been advised that the following conditions have been met to the satisfaction of the City Solicitor:

- a. the proposed Zoning By-law Amendment is in a final content and form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
 - b. the Owner has, at its sole cost and expense:
 - i. submitted a revised Functional Servicing Report, Stormwater Management Report, and Hydrogeological Review, including the Foundation Drainage Report or addendums (“**Engineering Reports**”), to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water;
 - ii. secured the design and provision of financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Engineering Reports, to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water, should it be determined that improvements or upgrades are required to support the development, according to the accepted Engineering Reports, accepted by the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water;
 - iii. ensured the implementation of the accepted Engineering Reports does not require changes to the proposed amending By-laws or any such required changes have been made to the proposed amending By-laws, to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, including the use of a Holding (“H”) By-law symbol regarding any new or upgrades to existing municipal servicing infrastructure as may be required;
 - iv. submitted a revised Transportation Impact Study or addendum, acceptable to, and to the satisfaction of, the General Manager, Transportation Services and the Chief Engineer and Executive Director, Engineering and Construction Services and that such matters arising from such study, be secured if required; and
 - v. submitted a revised Arborist Report or addendum and Tree Protection Plan acceptable and satisfactory to the General Manager, Parks, Forestry and Recreation.
5. The Owner shall lead evidence before the Tribunal with respect to how the Owner shall construct the overall proposed height of the building ensure the concerns of

NAVCanada with respect to the Pearson Flight Path are protected and matters of public health and safety are addressed, generally consistent with correspondence to NAVCanada on March 15, 2024 from MHBC Planning.

6. The Owner shall identify the required right-of-way widening as generally shown on Drawing dA1.3 of the Revised Plan in the Zoning By-law Diagram and such lands conveyed to the City as part of the City's standard Site Plan Control Process.
7. The Owner acknowledges that there is an existing municipal easement on the Subject Site. The Owner understands that the City easement is crossing this property under instrument, A139504 for sewers and drains over Part 1 on R-1906. The Owner also understands that the easement does not permit any structures within the easement area. Subject to the Engineering Reports confirming that the City easement is no longer required and appropriate services are available or can be constructed to replace the services within this easement, the Owner acknowledges that the City easement will need to be released prior to any permanent structures being built.
8. The Owner and the City shall bear their own costs in respect of the appeal to the Tribunal of the ZBA Application and neither the Owner nor the City shall seek an Order from the Tribunal for costs as against the other party in this regard.

Site Plan Control Application

Our client understands that the City Solicitor is not seeking direction from Council with respect to the Site Plan Control application or appeal before the Tribunal as the matter is delegated to the Chief Planner and Executive Director, City Planning.

At or in advance of the Settlement Hearing, the Owner and the City will jointly request that the Tribunal adjourn the Site Plan Appeal. Our client will work with City staff to resolve any remaining issues pertaining to a revised Site Plan Control submission to be made by the City that is in accordance with the Proposed Development and will work diligently together and in good faith to resolve any outstanding issues regarding the Site Plan Appeal.

Accordingly, the Owner agrees to work with City staff to resolve the remaining site plan issues in order to finalize the Plans and Drawings for Site Plan Approval and the preparation of associated Notice of Approval Conditions following the approval by the Tribunal of the necessary zoning by-law amendment for the Proposed Development.

The Owner will withdraw the Site Plan Appeal if and when the City confirms in writing that it is in a position to approve the Site Plan Control application, subject to the associated Notice of Approval Conditions.

Community Benefits Charge, In-Kind Contribution

The Owner's will work with City staff to continue to explore the provision of affordable housing units in the Proposed Development to the City as an in-kind contribution to the Community Benefits Charges. Our client understands that City staff will bring forward a separate report on the in-kind contribution offer to Council at a later date once further discussions have concluded on the affordable housing discussion, if agreement is reached. Therefore, this Settlement Offer letter indicates the Owner's intent at this stage for an in-kind contribution towards its required community benefit charge.

Conclusion

This Settlement Offer is conditional upon City Council accepting all the terms of this offer at its meeting scheduled to commence on May 22, 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 City Council has accepted this Settlement Offer within 24 hours of the conclusion of the City Council meeting, or as soon as practicable. If City Council accepts the Settlement Offer, our client consents to the release of this Settlement Offer, including all enclosures.

We look forward to hearing from you following the City Council meeting regarding the Settlement Offer. In the meantime, please do not hesitate to contact the undersigned or my colleague, Michael Cook (michaelc@davieshowe.com), if you have any questions regarding this offer or if you require anything further prior to presenting this Settlement Offer to City Council.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

MRF:MC
encls.:

copy: Client

APPENDIX “A”

Architectural Plans prepared by Kirkor Architects and Planners

dated March 4, 2024

(see attached)