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DELIVERED VIA EMAIL (councilmeeting@toronto.ca)

Marilyn Toft, Toronto City Council
12th Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Marilyn Toft, Secretariat

Dear Mayor Tory and Members of Council:

RE: Agenda Item PH 31.1 – Development Proximity to Rail: Amendment to Official Plan – Final Report dated January 27, 2022

We are the solicitors for CKF Rail Development Limited Partnership (“**CKF Rail**”), the owner of air rights over a rail corridor generally bounded by Bathurst Street, Blue Jays Way, Front Street and Northern Linear Park (the “**Air Rights**”).

We have reviewed the Development in Proximity to Rail: Amendment to the Official Plan – Final Report, dated January 27, 2022 (the “**Final Report**”) and the draft Official Plan Amendment 536 (the “**Draft OPA**”) attached to the Final Report.

Please accept this letter as CKF Rail’s written submission of its objections and concerns with the Draft OPA (the “**City**”) which seeks to amend the Official Plan to require, amongst other things, the submission of a Rail Safety and Risk Mitigation Study as part of a complete application.

By way of background, our client filed a site-specific official plan amendment for a significant mixed-use development in 2017 within the Air Rights. Ultimately, the Ontario Land Tribunal rendered its decision on May 12, 2021 approving Site and Area Specific Policies for the development of the Air Rights. Following the Tribunal’s decision, our client has had discussions with City planning staff for a revised development proposal within the Air Rights and is in the process of filing a further Official Plan Amendment and Rezoning application for same.

Policy 1 of the Draft OPA requires the submission of a Rail Safety and Risk Mitigation Report as part of a “complete application to introduce, develop or intensify land uses within the area of

influence of rail”, however, the proposed policy fails to define the term “area of influence of rail” and fails to distinguish between different types of land uses, including those that may be less or more vulnerable to the operations of a railway in close proximity.

Further, the draft OPA requires a Rail Safety and Risk Mitigation Report be prepared with each development approval, however, the proposed policy does not specify at which stage of the development approval process the Report is required. Therefore, the policy could be interpreted to require such a report a various stages of the development approval process including applications for official plan amendment, zoning by-law amendment and/or site plan approval. Consequently, the draft OPA is unclear and creates uncertainty throughout the approval process with the ability to impose repetitive obligations where it may not be needed or reasonable to do.

Further, Clause (c) of Policy 2 of the Draft OPA requires landowners to enter into legal indemnification agreements with the City. The municipality has a statutory duty to review and approve land use planning applications and therefore, any associated responsibility should remain with the municipality. There are no legal or planning grounds to require landowners to enter into legal indemnification agreements and specifically, impose unlimited liability in this context on landowners as third parties. In our opinion, this proposed requirement is unprecedented, unreasonably onerous and should be removed from the draft OPA. Failure to do so, could create a significant barrier for redevelopment of lands in proximity to rail corridors and facilities for much need housing, including affordable housing, throughout the City.

Accordingly, our client objects to the draft OPA in its current form. Notwithstanding the submission of this letter, our client is nevertheless willing to work with the City to find an appropriate solution to these issues.

Lastly, please accept this letter as our request for notice of any further meetings or decisions of City Council regarding the Draft OPA.

If you have any questions regarding the above, please do not hesitate to contact me at 416-645-4572 or via email at jason.park@devinepark.com.

Yours very truly,
Devine Park LLP



Jason Park
JIP/OMR

cc: CKF Rail Development Limited Partnership