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File No. 703981

***WITHOUT PREJUDICE***

May 31, 2023

**By E-Mail only to *daniel.elmadany@toronto.ca* and *colin.dougherty@toronto.ca***

Daniel Elmadany and Colin Dougherty  
City of Toronto, Legal Services Division  
26<sup>th</sup> Floor, Metro Hall  
55 John Street  
Toronto, Ontario M5V 3C6

Dear Messrs. Elmadany and Dougherty:

**Re: Without Prejudice Settlement Offer  
Appeals of Zoning By-law Amendment, Official Plan Amendment and  
Demolition Permit Applications  
City File Nos.: 21 232793 STE 10 OZ, 22 151499 STE 10 OZ and 220028  
18 Portland Street and 1-9 Niagara Street, Toronto  
OLT Case Nos.: OLT-22-002588, OLT-22-004622, and OLT-23-000132**

As you know, we are counsel to Portland Corp., 1 Niagara Street Limited Partnership, and 2779317 Ontario Inc., all c/o the Density Group Limited (the "**Owner**"), the owner of lands municipally known as 18 Portland Street and 1-9 Niagara Street in the City of Toronto (the "**Lands**").

**Context and Background**

*Zoning By-law Amendment Application and Appeal*

In October 2021, the Owner submitted Zoning By-law Amendment (the "**ZBLA Application**") and Draft Plan of Subdivision applications to the City of Toronto (the "**City**") to facilitate redevelopment of the Lands with a 23-storey mixed-use building at a height of 75.2 metres plus elevator overrun (the "**Proposal**").

The ZBLA Application and the Draft Plan of Subdivision application were appealed to the Ontario Land Tribunal (the "**Tribunal**" or "**OLT**") in March 2022. The appeal of the Draft Plan of Subdivision application was formally withdrawn in April 2023, but the application itself remains with the City.

### *Official Plan Amendment Application and Associated Appeals*

Out of an abundance of caution, in May 2022, the Owner submitted a site-specific Official Plan Amendment application (the “**OPA Application**”) which made clear that the associated fee was being paid under protest. The OPA Application was appealed to the Tribunal in October 2022.

### *Heritage Matters and Appeals*

In January 2023, the Owner received notice that Heritage Designation By-law No. 69-2023 (the “**Designation By-law**”) had been passed by City Council for the 18 Portland Street property. Our client appealed the Designation By-law to the Tribunal on February 6, 2023.

On February 14, 2023, the Owner received notice that its application to demolish the existing structure on 18 Portland Street (the “**Heritage Permit Application**”) had been refused by City Council. The decision to refuse the Heritage Permit Application was appealed to the Tribunal on February 24, 2023. Subsequent to this appeal, and as part of the resolution of what would otherwise have been a contested Tribunal Motion, the appeal of the Designation By-law was withdrawn; however, the appeal of the Heritage Permit Application remains outstanding.

### **Offer to Settle the Appeals**

As you are aware, the Tribunal has scheduled a 10-day hearing for the appeals of the ZBLA Application, the OPA Application and the Heritage Permit Application (collectively, the “**Appeals**”) to begin on July 24, 2023 (the “**Hearing**”).

As a result of recent discussions between the Owner’s planning and heritage consultants, City staff, as well as separate discussions with the Wellington Place Neighbourhood Association (the “**WPNA**”), our client’s architect, RAW Design, prepared revised plans, as reflected in the enclosed architectural plans dated May 30, 2023 (the “**Revised Plans**”).

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 Official Plan Amendment to include a policy recognizing that the existing building located on the Lands subject to the Designation By-law may be temporarily re-located from the Lands to a secure location off-site to be reconstructed, in part, and restored prior to being returned to the Lands to be incorporated into the new development contemplated in the Revised Plans, in accordance with the conditions on the consent to the Heritage Permit Application pursuant to Section 34.1 of the *Ontario Heritage Act*.

2. The Owner and the City will work cooperatively to prepare a revised draft zoning by-law amendment to permit a development on the Lands that is substantially in accordance with the Revised Plans (the “**Revised Draft ZBA**”), for an 18-storey mixed-use building with a height of 60 metres, and approximately 15,039.3 square metres of gross floor area (“**GFA**”) as calculated under City Zoning By-law No. 569-2013 (the Revised Draft ZBA would allow for some reasonable rounding up of this figure). Of the permitted maximum GFA, a minimum GFA for non-residential uses consistent with the CRE zoning for non-residential uses of 1,500 square metres will be identified in the Revised Draft ZBA.
3. In relation to the Heritage Permit Application and appeal, the Owner is proposing a strategy to panelize, reconstruct (in part) and restore the existing building located on 18 Portland Street pursuant to the Designation By-law. The Owner proposes that the Tribunal order that the City consent to the demolition of the building at 18 Portland Street subject to the following conditions (the “**Heritage Permit Conditions**”):
  - a. Prior to issuance of the OLT Order in connection with the OPA Application and ZBLA Application for the Lands, the Owner shall, at its sole cost and expense:
    - i. provide a detailed Panelization Plan, including how these building components will be dismantled, protected and stored during construction, prepared by a qualified heritage consultant and engineer, with such Plan being satisfactory to the Senior Manager, Heritage Planning;
    - ii. provide a Reconstruction and Restoration Plan, prepared by a qualified heritage consultant, with such Plan(s) being satisfactory to the Senior Manager, Heritage Planning; and
    - iii. enter into and register on title to the Lands a Heritage Easement Agreement under Section 37 of the *Ontario Heritage Act*, satisfactory to the Senior Manager, Heritage Planning and the City Solicitor;
  - b. Prior to final site plan approval in connection with the ZBLA Application for the Lands, the Owner shall, at its sole cost and expense:
    - i. provide final Site Plan drawings substantially in accordance with the approved Reconstruction and Restoration Plan required above, to the satisfaction of the Senior Manager, Heritage Planning; and

- ii. provide an Interpretation Plan satisfactory to the Senior Manager, Heritage Planning;
- c. Prior to the issuance of any permit for all or any part of the property at 18 Portland Street and 1-9 Niagara Street, including a heritage permit or a building permit, but excluding permits for interior alterations, repairs and maintenance and usual and minor works for the existing building(s) on the Lands as are acceptable to the Senior Manager, Heritage Planning, or the Chief Building Official and Executive Director, Toronto Building, as applicable, the Owner shall, at its sole cost and expense:
  - i. provide building permit drawings, including notes and specifications for the panelization, reconstruction and protective measures keyed to the approved Panelization Plan and Reconstruction and Restoration Plan required 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; and
  - ii. provide a Letter of Credit(s), including provisions 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 Panelization Plan; the approved Reconstruction and Restoration Plan; and the approved Interpretation Plan;
- d. Prior to the release of one or more of the Letters of Credit required above, the Owner shall:
  - i. provide a letter of substantial completion prepared and signed by a qualified heritage consultant confirming that the required works have been completed in accordance with the Panelization Plan, Reconstruction and Restoration Plan and Interpretation Plan, all to the satisfaction of the Senior Manager, Heritage Planning; and
  - ii. Provide replacement Heritage Easement Agreement photographs (which are photographs of the building once construction is complete to document its final form) to the satisfaction of the Senior Manager, Heritage Planning.

Once the Panelization Plan and the Reconstruction and Restoration Plan are satisfactory to the City, the Owner and the City will work cooperatively to identify any additional building permit requirements, beyond the Heritage Permit Conditions above for the implementation of the required works within those

approved plans, where required, to be secured in the Heritage Easement Agreement and in consultation with the Chief Planner and Toronto Building.

4. The Owner and the City will jointly request that the Tribunal convert the Hearing to a settlement hearing for the Appeals (the “**Settlement Hearing**”).
5. The Owner and the City will jointly present the Revised Plans to the Tribunal at the Settlement Hearing and request that the Tribunal allow the appeals, in part, on the OPA Application, ZBLA Application and the Heritage Permit Application, but withhold its final Order until such time as the OLT has been advised by the City Solicitor that the following conditions have been met:
  - a. the proposed Official Plan Amendment is in a final content and form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
  - b. 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;
  - c. the owner has satisfied the obligations under Paragraph 3.a. above;
  - d. the owner has, at its sole cost and expense, and as applicable:
    - 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, including streetscape and curb extension provisions, 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, Landscape Plan (with a public utility plan underlay in an updated soil volume plan) and Tree Protection Plan acceptable and satisfactory to the General Manager, Parks, Forestry and Recreation.
6. The Owner understands the City is in the process of constructing a watermain upgrade along Portland Street, required to service the development on the Lands, amongst others. The Owner agrees that if the required upgrade and/or improvements to municipal infrastructure to Portland Street being constructed by the City are not in place at the time of requesting any final Order of the Tribunal, in lieu of Paragraph 5. d., i to iii. above, that a Holding ("H") By-law Symbol shall be imposed on the Zoning By-law Amendment generally as follows:
  - a. the owner has demonstrated that the required upgrades to the existing watermain system located on Portland Street (the upgrade of the existing 150mm watermain fronting the Lands on Portland Street) is constructed and operational to the satisfaction of the Chief Engineer and Executive Director of Engineering and Construction Services and the General Manager, Toronto Water;
  - b. the owner submitted a Functional Servicing and Stormwater Management Report, including confirmation of water and fire flow, sanitary and stormwater capacity, acceptable to the Chief Engineer and Executive Director, Engineering and Construction Services;
  - c. if there are any additional upgrades and/or improvements, the execution of a financially secured agreement between the Owner of the Lands and the City, securing the financing and construction of any improvements that

may be required to the City's sanitary sewer, storm sewer and water supply systems to accommodate the proposed development; and

- d. the receipt of all necessary approvals for the infrastructure required, as described above.

If the watermain upgrade along Portland Street is in place and no other improvements to municipal infrastructure are required to accommodate the development, then the Owner and the City agree that a Holding ("H") By-law Symbol will not be required regarding improvements to municipal infrastructure.

7. 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.
8. 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 June 14, 2023, 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 Wellington Place Neighbourhood Association.

We look forward to receiving confirmation of the City's endorsement of this settlement offer following the City Council meeting scheduled to begin on June 14, 2023. 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. As above

copy: Client  
David McKay, MHBC