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**File No. 037175/000001**

May 27, 2024

**DELIVERED BY EMAIL**  
**(iec@toronto.ca)**

Infrastructure and Environment Committee  
City of Toronto  
City Hall, 22nd Floor East  
100 Queen Street West  
Toronto, Ontario M5H 2N2

Dear Chair McKelvie and Members of the Infrastructure and Environment Committee:

**Re: IEC Meeting 14 – May 28, 2024 – Item IE14.6**  
**ReNew Golden Mile Environmental Assessment – Interim Report**  
**Comment Letter from 10285773 Canada Corp. - 1861 O'Connor Drive regarding**  
**O'Connor Drive Reconfiguration to Pharmacy Avenue**

We are counsel to 10285773 Canada Corp., operating as Artlife Developments (“**Artlife**”). Artlife is the owner of 1861 O'Connor Drive in the City of Toronto (“**Subject Property**”).

The Subject Property is directly impacted by the preliminary recommended design of the potential reconfiguration of O'Connor Drive (Alternative 1), as shown in the following figure:



**Figure 1: Preliminary Recommended Design and Subject Property**

We write to provide comments regarding the recommendation to endorse the preliminary recommended alignments and designs for the Golden Mile Reconfigured and New Major Streets Environmental Assessment (“**Golden Mile EA**”) and explain the significant, negative impact to the Subject Property arising from the long-standing uncertainty associated with the potential reconfiguration of O’Connor Drive.

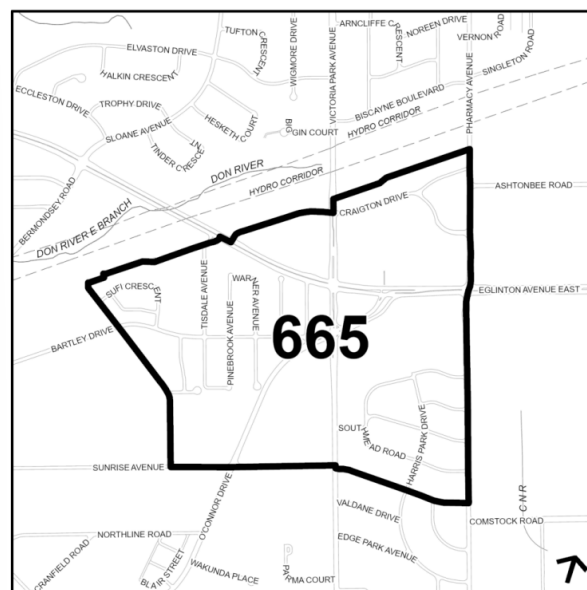
Our client has been actively engaged in the Golden Mile EA process, including attending at the December 2022 public consultation meetings and providing a letter to City staff dated January 11, 2023, as attached as **Attachment 1** to this letter for ease of reference, which summarized our client’s concerns with the alternative alignments of O’Connor Drive, and specifically, Alternative 1.

### **Existing Tribunal Decision and Highest and Best Use**

On June 21, 2021 and October 1, 2021 the Ontario Land Tribunal (the “**Tribunal**”) issued a decision allowing in part Artlife’s appeal of the City of Toronto’s failure to make a decision regarding Artlife’s zoning by-law and site plan applications for the Subject Property to permit a 11-storey mixed use building (the “**Decision**”). The Tribunal approved the site plan application for the Subject Property on December 23, 2022.

Since the Decision was issued, the planning framework applicable to the Subject Property has markedly evolved, with the effect of encouraging greater heights and densities arising from the site’s proximity to major transit (i.e. the Eglinton LRT). Accordingly, the Decision **does not** reflect the highest and best use of the Subject Property. For example, the City adopted Official Plan Amendment 570 (“**OPA 570**”) on July 19, 2022, which identifies the Subject Property as within the O’Connor Protected Major Transit Station Area (“**PMTSA**”), being Site and Area Specific Policy 665 (“**SASP 665**”). This PMTSA applies to lands surrounding the O’Connor station on the Eglinton LRT:

**Map 1 – O’Connor Protected Major Transit Station Area**



**Figure 2: Map 1 – SASP 665**

In addition to City Council's decision to adopt OPA 570, the Tribunal approved a number of settlements of appeals of OPA 499 (the Golden Mile Secondary Plan, which was adopted by City Council on March 9, 2022) and associated site-specific development applications that reflect higher heights and densities than those in the Council-adopted OPA 499.

The legislative and policy framework for land use planning in Ontario increasingly supports intensification of lands proximate to existing and planned transit. The Subject Property can and should be the location of even greater heights and densities than those approved by the Decision.

### **Impacts of Cloud of Expropriation on Redevelopment of the Subject Property**

Notwithstanding the Decision, the pending determination of the preferred alignment of O'Connor Drive and the potential expropriation of lands required for such alignment, continues to have a significant, negative impact on Artlife's ability to develop, market and sell units the Subject Property, as summarized in our letter dated January 11, 2023.

Artlife has not been able to obtain a mortgage with conventional banks and to help finance development as there are significant concerns that the Subject Property may be expropriated by the City. This "cloud of expropriation" has also impacted Artlife's ability to secure deposits and pre-sales from residential brokers and purchasers after a successful pre-registration phase. Potential purchasers have advised that due to public documents identifying a future road through the Subject Property, they would rather invest their deposits on developments without this expropriation risk.

In addition to directly impacting Artlife's ability to redevelop the Subject Property, the uncertainty associated with the preferred alignment of O'Connor Drive has led to two failed acquisitions of the Subject Property.

In 2021, Artlife received two offers from reputable developers to take over the development. The first offer was from Corev Immobilier Inc. ("**Corev**") for \$29,000,000 and the second offer was from Core Acquisition Co. Inc. ("**Core**") for \$23,750,000:

- Artlife and Corev entered into an Agreement of Purchase and Sale dated May 4, 2021. Following its due diligence, Corev sought to terminate the Purchase Agreement and seek a return of its firm deposit due to the possible realignment of O'Connor Drive which potentially would trigger an expropriation of the whole or part of the Subject Property.
- Artlife and Core entered into an Agreement of Purchase and Sale dated October 15, 2021. On December 3, 2021, Core advised our client that it had to pass on the offer, as the key issue was that the extension of O'Connor Drive through the Subject Property was identified as the City's preferred option and would prevent the site from being redeveloped.

It is clear that both Corev and Core failed to execute on the purchase due to risk associated with the potential expropriation of the Subject Property.

While the preliminary recommended alignment of O'Connor Drive proposes to impact only a small portion of the northern 'tip' of the Subject Property, and is purported to not affect the approved building envelope, the disclaimer and notes on Attachment 1 to the Staff Report dated May 13, 2024 (e.g. "The alignment curve on existing O'Connor Drive west of Victoria Park Avenue is subject to

change”), reveal there continues to be ongoing uncertainty regarding the impact of the O’Connor Drive realignment. **To be clear, this cloud of expropriation that lingers over the Subject Property will continue until the City identifies the exact portion the Subject Property that will be required for the realignment of O’Connor Drive.** As noted above, Artlife has already suffered significant and quantifiable damages due to the uncertainty caused by the City’s proposal to realign O’Connor Drive. and fully reserves its rights to seek compensation under the *Expropriations Act* at the appropriate time.

### **Request for Timely Completion of the Golden Mile EA**

The Golden Mile EA has been ongoing for more than half a decade and continues to proceed at, what we view as, a glacial pace. The City’s reply evidence in the Tribunal proceeding resulting in the Decision (specifically, the Reply Witness Statement of Andrew Au, Senior Transportation Planner with the City, dated February 25, 2021) states that “the completion of the MCEA for the Golden Mile Secondary Plan study area is expected to take between 12 to 24 months (1-2 years).” As of the date of this letter, **39 months have passed** and the process is yet to be completed. The City has anticipates it will be another six months before staff report back to City Council seeking authority to prepare the Environmental Study Report and issue a Notice of Completion of Phase 3 and 4, which will presumably not be completed until Q1 2025.

The City’s delay in progressing this environmental assessment is in stark contrast with the time afforded to affected landowners, including Artlife, to provide comments to the Committee in response to the Interim Report to be considered on May 28, 2024. After months of silence on this project, we were provided notice this item would be presented late Friday evening on May 17, 2024, with the staff report being made available on Monday May 20, 2024. This hurried approach to public consultation diminishes the ability of affected landowners to provide meaningful input to the City.

We strongly urge the City to complete Phases 3 and 4 of the Golden Mile EA, and more specifically, the portion of the Golden Mile EA that identifies the preferred alignment of O’Connor Drive, as soon as possible. As noted in our letter of January 2023, timely completion of the Golden Mile EA will help mitigate potential claims from our client under the *Expropriations Act* in the event of an expropriation.

### **Request for Information and Meeting**

In light of the direct impacts of the preliminary recommended design of the potential reconfiguration of O’Connor Drive on the Subject Property, we ask that the City provide our client with copies of interim design drawings (in PDF and CAD electronic format) regarding the potential realignment of O’Connor Drive, as may be revised until the final alignment of O’Connor Drive is determined through the Golden Mile EA.

Kindly continue to provide us with notice of any reports, decisions, and Committee and/or Council meetings regarding the Golden Mile EA and O’Connor Drive Extension, including any decision to

recommend official plan or zoning by-law amendments as contemplated by Recommendation 3 in the May 13, 2024 Staff Report from the City's General Manager, Transportation Services.

We welcome any opportunity to meet with the City to discuss the proposed realignment of O'Connor Drive to help minimize impacts on the Subject Property and mitigate our client's damages.

Yours truly,

**BORDEN LADNER GERVAIS LLP**



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**File No. 037175/000001**

January 11, 2023

**DELIVERED BY EMAIL**  
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Cassidy Ritz  
Manager, Major Projects  
Transportation Services Division  
City Hall, 22nd Floor East  
100 Queen Street West  
Toronto, Ontario M5H 2N2

**Re: Golden Mile Reconfigured and New Major Streets Environmental Assessment  
Preliminary Comments Regarding Proposed Impacts  
10285773 Canada Corp.  
1861 O'Connor Drive, Toronto**

We are counsel to 10285773 Canada Corp., operating as Artlife Developments (“**Artlife**”). Artlife is the owner of 1861 O'Connor Drive in the City of Toronto (“**Subject Property**”). A map showing the approximate location of the Subject Property is enclosed as Schedule “A”.

This letter sets out Artlife’s preliminary comments on the potential impacts on the Subject Property of the alternatives for the O'Connor Drive reconfiguration recommended to be carried forward through Phases 3 and 4 of the Municipal Class EA.

**Development Applications and Related Appeals**

On December 17, 2018, Artlife submitted a zoning by-law amendment application to permit the development of a ten-storey, mid-rise mixed-use apartment building on the Subject Property. On October 16, 2019, Artlife appealed the City’s refusal to make a decision for the rezoning application to the Ontario Land Tribunal (the “**Tribunal**”) (OLT-22-003680).

On May 13, 2020, Artlife submitted an application for site plan approval for the Subject Property to implement the proposed development contemplated by the rezoning application. On June 15, 2020, Artlife appealed the City’s failure to make a decision regarding the site plan application to the Tribunal (OLT-22-003681).

The Tribunal conducted a hearing of the zoning and site plan appeals in March 2021 and issued its decision regarding the appeals on June 21, 2021, which was re-issued on October 1, 2021 (the “**Decision**”).

Since the Decision was issued, Artlife has continued to seek the approvals necessary to redevelop the Subject Property. This includes working with City staff to clear the pre-conditions of Notice of Approval Conditions and the conditions on which the Tribunal's Decision was withheld.

The Tribunal issued Orders dated August 8, 2022 and December 30, 2022 approving the final form of the zoning by-law and the site plan, respectively.

### **Golden Mile Secondary Plan Appeal**

On November 26, 2020, Artlife appealed the City's decision to adopt Official Plan Amendment No. 499, the Golden Mile Secondary Plan ("GMSP") (OLT-22-002510). The Subject Property was not included as part of the GMSP until May 2019, well after Artlife submitted an application to develop the Subject Property in December 2018.

Artlife's appeal letter identified its concerns regarding the proposed realignment of O'Connor Drive as shown in the GMSP and the failure of the policies and mapping of the GMSP to acknowledge the redevelopment potential of the Subject Property.

Artlife has agreed to adjourn its appeal of the GMSP until such time as the City has reached substantial completion of Phase 3 of the Municipal Class EA.

### **Impacts of Expropriation on Subject Property**

Artlife has a direct and significant interest in the Municipal Class EA, especially regarding the identification of the preferred street and block network and impacts on its ability to redevelop the Subject Property. The pending expropriation and uncertainty associated with the road alignment continues to impede Artlife's ability to redevelop and market the property.

#### **1. Impacts from Potential Expropriation**

The possibility of expropriation resulting from the identification of the Subject Property as a potential site to be taken by the City to facilitate the realignment of O'Connor Drive in public documents (e.g. the City's Final Report from the Golden Mile Secondary Plan Study dated November 29, 2019) has negatively impacted our client's ability to make productive use of the Subject Property.

The pending determination of the preferred alignment of O'Connor Drive (and potential expropriation of lands required for such alignment) is impacting Artlife's ability to develop, market and sell the Subject Property in whole or in part.

These impacts relate to the expropriation or imminent prospect of expropriation and include:

1. Financial costs arising from increased rates for borrowing costs required by lenders to facilitate redevelopment of the Subject Property and restrictions on mortgaging the property;
2. Financial costs arising from failed acquisitions of the Subject Property from potential purchasers (including one firm offer);

3. Limitations on Artlife's ability to secure deposits and pre-sales from residential brokers and potential purchasers after a successful pre-registration phase; and,
4. Development costs related to delays as compared to similar projects without expropriation risk

We strongly urge the City to complete Phases 3 and 4 of the Golden Mile EA, and more specifically, the portion of the Golden Mile EA that identifies the preferred alignment of O'Connor Drive, to minimize potential claims from our client arising from the *Expropriations Act* (the "**Act**") in the event of an expropriation.

## **2. Impacts of Reconfiguration Alternatives**

The slide package titled "ReNew Golden Mile: Reconfigured and New Major Streets Environmental Assessment" dated December 15, 2022, identifies alternative alignments of O'Connor Drive on page 19. Of these alternatives, Alternative 1 will have the most significant impact on the Subject Property.

Alternative 1 appears to show that the realigned O'Connor Drive will be located over the majority of the Subject Property. Alternative 1 will likely require a full taking of the Subject Property. In this case, even a partial taking would likely render the Subject Property unsuitable for the mixed-use development approved by the Tribunal. For reference, please refer to the approved site plan, which is attached as Schedule "B".

It is our understanding that Alternatives 2 and 3 will follow the existing O'Connor Drive to the intersection of Victoria Park Avenue. Since the planned right of way of 27m is the same as the existing O'Connor Drive right of way, we do not anticipate a taking of the Subject Property will be required to realize Alternatives 2 and 3. However, there may be impacts arising from construction or development that may impact the Subject Property or its redevelopment.

## **Conclusion**

The lingering possibility that the Subject Property may be expropriated and the potential impacts of the proposed alignments, have had and continue to have significant impacts on the Subject Property. We request that the City proceed expeditiously with Phases 3 and 4 of the Municipal Class EA to minimize the impacts described above.

In providing this notice to the City, our client fully reserves its rights to seek compensation and damages under the Act, including those under Section 22 of the Act.

We look forward to working with the City as it works to evaluate the alternatives and identify a preferred design.



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cc. Client  
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**Schedule A**  
**Location Map of Subject Property**



## Site Plan Approved by Ontario Land Tribunal

