

Authority: Ontario Municipal Board Decisions/Orders issued June 26, 2014, August 24, 2015 and July 13, 2016 in Board File PL130285

CITY OF TORONTO

BY-LAW 591-2018(OMB)

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known as 89 Avenue Road.

Whereas the Ontario Municipal Board pursuant to its Decision/Order issued on June 26, 2014, August 24, 2015 and July 13, 2016 upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, deems it advisable to amend the former City of Toronto Zoning By-law 438-86, as amended, with respect to lands known municipally in the year 2013 as 89 Avenue Road; and

Whereas Subsection 37(3) of the Planning Act provides that, where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, a municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services or matters as set out in the By-law and to enter into one or more agreements with the municipality to secure the facilities, services and matters; and

Whereas the increase in height or density permitted hereunder, beyond that otherwise permitted on the aforesaid lands by By-law 438-86 of the former City of Toronto, as amended, is to be permitted in return for the provision of the facilities, services and matters set out in this By-law and is to be secured by one or more agreements between the owner of such lands and the City of Toronto;

By-law 438-86, as amended, of the former City of Toronto, is further amended by the Ontario Municipal Board as follows:

1. None of the provisions of Section 2(1) with respect to the definitions of *bicycle parking space – visitor, common outdoor space, grade, height, lot, parking space, parking stacker*, sections 4(2)(a), 4(5), 4(8), 4(12), 4(13), 4(16), 4(17), 8(2) 7(b), 8(3) PART 1, 8(3) PART II 1(a)(ii), 8(3) Part III, 8(3) Part XI 2., and 12(2)260 of Zoning By-law 438-86, as amended, being By-law 438-86 of the former City of Toronto, being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", as amended, shall apply to prevent the erection or use of a building containing residential and non-residential uses and *accessory* uses thereto including an *automated parking system*, on the *lot* provided that:

Lot Description

- (a) The *lot* comprises the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law;

Gross Floor Area

- (b) The building may be developed for residential and non-residential purposes, specifically, *dwelling units*, offices and uses permitted in Section 8(1)(f)(b)(iv), except a *dry-cleaner's distributing station*, of By-law 438-86, as amended, and uses accessory thereto, subject to the following provisions:
- (i) The total combined *residential gross floor area* and *non-residential gross floor area* of buildings and structures shall not exceed 9,700 square metres, subject to the following:
- A. The *non-residential gross floor area* of buildings and structures shall not exceed 1,600 square metres nor be located above the third storey;
- B. No non-residential uses shall be permitted on the roof of the building; and
- C. No non-residential uses shall be associated with any outdoor *residential amenity space*;

Setbacks

- (c) No portion of the building or structure erected or used on the *lot* above *grade* is located otherwise than wholly within the areas delineated by heavy lines on Map 2 attached to and forming part of this By-law, with the exception of the following applicable to other than a *lot* line:

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
A. light fixtures, cornices, sills, eaves, mullions, ornamental or architectural elements, balustrades	1.0 metres	Provided the height of such "STRUCTURE" is no higher than that portion of the building to which it is attached
B. parapets and guards	0.6 metres	Provided the height of such "STRUCTURE" is not greater than 1.2 metres above that portion of the building to which it is attached
C. fences, safety railings and guardrails, structures used for outside or open air recreation, safety or wind protection purposes	No restriction	Provided the height of such "STRUCTURE" does not exceed 3.0 metres above the applicable height limit as shown on Map 2

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
D. stairs, stair enclosures, ramps, wheelchair ramps and/or stairs (an associated structures), underground garage ramps and their associated structures, garbage and servicing areas and their associated structures, retaining walls, air shafts, transformer vaults and building code elements required for the functional operation of the building, including but not limited free standing Siamese connections, and free standing accessibility door operators	No restriction	Provided the height of such "STRUCTURE" does not exceed 2.0 metres above the applicable height limit as shown on Map 2
E. canopies and awnings	2.7 metres	Provide the height of such "STRUCTURE" does not exceed 5.0 metres above the finished ground level
F. sliding or folding window shutters	2.0 metres	Provide the height of such "STRUCTURE" is no higher than that portion of the building to which it is attached
G. window washing equipment	2.0 metres	Provided the height of such "STRUCTURE" is not higher than 1.0 metres above that portion of the building to which it is attached
H. balconies	2.0 metres	Provided the height of such "STRUCTURE" is not greater than 2.0 metres above that portion of the eastern wall of the building to which it is attached

- (d) Notwithstanding subsection (c) above, the first three (3) *storeys* of the building above *grade* shall be set back a minimum of 2.7 metres from the westerly *lot* line of the *lot*;

Window Restrictions – South

- (e) No portion of the southern façade of the building or structure erected or used on the *lot* within the Areas identified on Map 3 below the height of 142.0 metres Canadian Geodetic Datum (CGD) shall contain windows, with the exception of the following *supplementary windows*:

AREA on Map 3	Room Type	Window Type
'A'	No restriction	No restriction
'B'	No restriction	Translucent only
'C'	Bedroom only	No restriction, except between the elevations of 123.5 and 135.75 metres CGD the following restriction shall apply: only translucent windows are permitted between the finished floor and 0.76 metres above the finished floor
	All other room types	Translucent
'D'	No restriction	No restriction, except between the elevations of 139.0 and 142.0 metres CGD the following restriction shall apply: only translucent windows are permitted between the finished floor and 0.76 metres above the finished floor

- (f) In addition to the restrictions in subsection (e) above, for any windows within Area 'D' on Map 3 between the elevations of 142.0 and 148.0 metres CGD the following restrictions shall apply: only translucent windows are permitted within the area located between the finished floor and 0.76 metres above the finished floor;
- (g) In addition to the window restrictions in subsections 1(e) and (f) above, no portion of the southern façade of the building or structure erected or used on the *lot* within

the Areas identified on Map 3 shall contain windows associated with a non-residential use, with the exception of the following windows:

AREA on Map 3	Window Type
'A'	No restriction
'B'	Translucent only
'C'	Translucent only
'D'	No restriction

Window Restrictions – North

- (h) No portion of the northern façade of the building or structure erected or used on the *lot* within Area E identified on Map 3 below the height of 156.2 metres CGD shall contain windows, with the exception of the following *supplementary windows*:

AREA on Map 3	Room Type	Window Type
'E'	All room types	Translucent only;

- (i) No portion of the northern façade of the building or structure erected or used on the *lot* within Area 'F' identified on Map 3 below the height of 165.0 metres CGD shall contain windows, with the exception of the following *supplementary windows*:

AREA on Map 3	Room Type	Window Type
'F'	All room types	No restriction, except only translucent windows are permitted between the finished floor and 0.76 metres above the finished floor;

- (j) In addition to the window restrictions set out in subsections 1(h) and (i) above, no portion of the northern façade of the building or structure erected or used on the *lot* within the Areas identified on Map 3 shall contain windows associated with a non-residential use, with the exception of the following windows:

AREA on Map 3	Window Type
'E'	Translucent only;
'F'	No restriction, except only translucent windows are permitted between the finished floor and 0.76 metres above the finished floor;

Balcony Restrictions

- (k) No balconies shall be permitted on the north and south elevations, including Juliette or recessed balconies;

Height

- (l) No portion of any building or structure erected or used on the *lot* above *grade* shall exceed the *height* limit shown in metres and specified by the numbers following the letter H in the areas delineated by heavy lines shown on the attached Map 2, with the exception of the following:
- (i) The structures, elements and enclosures set out in subsection 1(c) above, subject to the restrictions therein;
 - (ii) Dividers, decorative screens, wind screens, planters, water features, access ladders, light fixtures, structures used for outside or open air recreation, safety or wind protection purposes, window washing equipment, window washing screens each extending no more than 3.0 metres above that portion of the building to which it is attached; and
 - (iii) The portion of the building within the H76.5M *height* cell shown on the attached Map 2, above a *height* of 72.0 metres, shall only be used for the following structures, elements and enclosures: a stair tower, an elevator shaft, a chimney stack or other heating, cooling or ventilating equipment, window washing equipment, and a fence, wall or structure enclosing such structures, elements or enclosures, as well as structures, elements and enclosures set out in Section 1(c) of this By-law, with the exception that an enclosed elevator overrun/machine room, vents and/or stacks and green roof elements may extend beyond the H76.5M *height* limit;

Access and Parking

- (m) Access to the *lot* shall be via a driveway on the adjacent property at 99 Avenue Road having a minimum width of 5.1 metres;
- (n) Use of or access via the motor court located at finished ground level on the *lot* is not permitted by the patrons of any *restaurant* use on the *lot*;

- (o) Access to *parking spaces* may be provided by motor vehicle elevators provided that they are readily accessible at all times for the parking and removal of a motor vehicle and provided not less than two (2) motor vehicle elevators are provided and maintained in the building;
- (p) *Parking spaces* shall be provided and maintained on the *lot* for residents and residential visitors, including *accessory* uses thereto, on a non-exclusive basis in accordance with the following ratios:
- (i) A minimum of 0.30 *parking spaces* for a *bachelor dwelling unit*;
 - (ii) A minimum of 0.5 *parking spaces* for a *one-bedroom dwelling unit*;
 - (iii) A minimum of 0.80 *parking spaces* for a *two-bedroom dwelling unit*;
 - (iv) A minimum of 1.00 *parking space* for a *three-bedroom dwelling unit*;
 - (v) A minimum of 0.10 *parking spaces* per *dwelling unit* for residential visitors; and
 - (vi) A minimum of 0.35 *parking spaces* per 100 square metres of gross floor area for offices;

with the proviso that in the event that the calculation of the number of required *parking spaces* results in a number with a fraction, the number is rounded down to the nearest whole number, but there may not be less than one *parking space*;

- (q) A maximum of 15 *parking spaces* permitted pursuant to subsection 1(p) above may be located on lands municipally known as 99 Avenue Road and qualify as *parking spaces* required in subsection (p) above;
- (r) The *parking spaces* provided and maintained on the *lot* shall comply with the provisions of Section 4(17) of By-law 438-86, as amended, except in the event that an *automated parking system* is provided and maintained on the *lot*;
- (s) In the event that a valet parking system is employed on the *lot*, in addition to the *parking spaces* required in subsection (p) above, a minimum of two *parking spaces* shall be provided and maintained in the drop-off area of the ground floor of the building on the *lot* for the purposes of valet parking operations;
- (t) No *parking spaces* shall be permitted for a *restaurant* or any other *non-residential* use on the *lot*;

Loading

- (u) A minimum of one (1) *loading space – type "G"* shall be provided and maintained on the *lot*;

Amenity Space

- (v) *Residential amenity space* shall be provided and maintained on the *lot* in accordance with Section 4(12) of By-law 438-86, as amended, with the following exceptions:
 - (i) The multi-purpose room or rooms need not be contiguous, provided there is at least one room that contains a kitchen and a washroom;
 - (ii) Any outdoor pool area that forms part of *residential amenity space* shall be screened by a portion of the building or a screen with a minimum *height* of 1.8 metres and a maximum *height* of 3.4 metres. If the east side of the outdoor *residential amenity space* is not screened by a portion of the building, it shall be screened with translucent or opaque glass having a minimum *height* of 1.8 metres and a maximum *height* of 3.4 metres;
 - (iii) The lip of any pool associated with the outdoor *residential amenity space* may not be located above a height of 12.0 metres above *grade*;
 - (iv) No outdoor *residential amenity space* may be combined with or used for any non-residential uses including, but not limited to, a restaurant or bar; and
 - (v) If on the second or third storey above *grade* there is *non-residential gross floor area* and outdoor *residential amenity space* on the same floor, then such uses shall be separated by a minimum of 1.5 metres of indoor *residential amenity space*;

Bicycle Parking

- (w) Bicycle parking spaces shall be provided and maintained on the *lot* for residents and residential visitors as follows:
 - (i) A minimum of 0.9 *bicycle parking spaces - occupant* per dwelling unit; and
 - (ii) A minimum of 0.1 *bicycle parking spaces - visitors* per *dwelling unit*; and

Common Outdoor Space

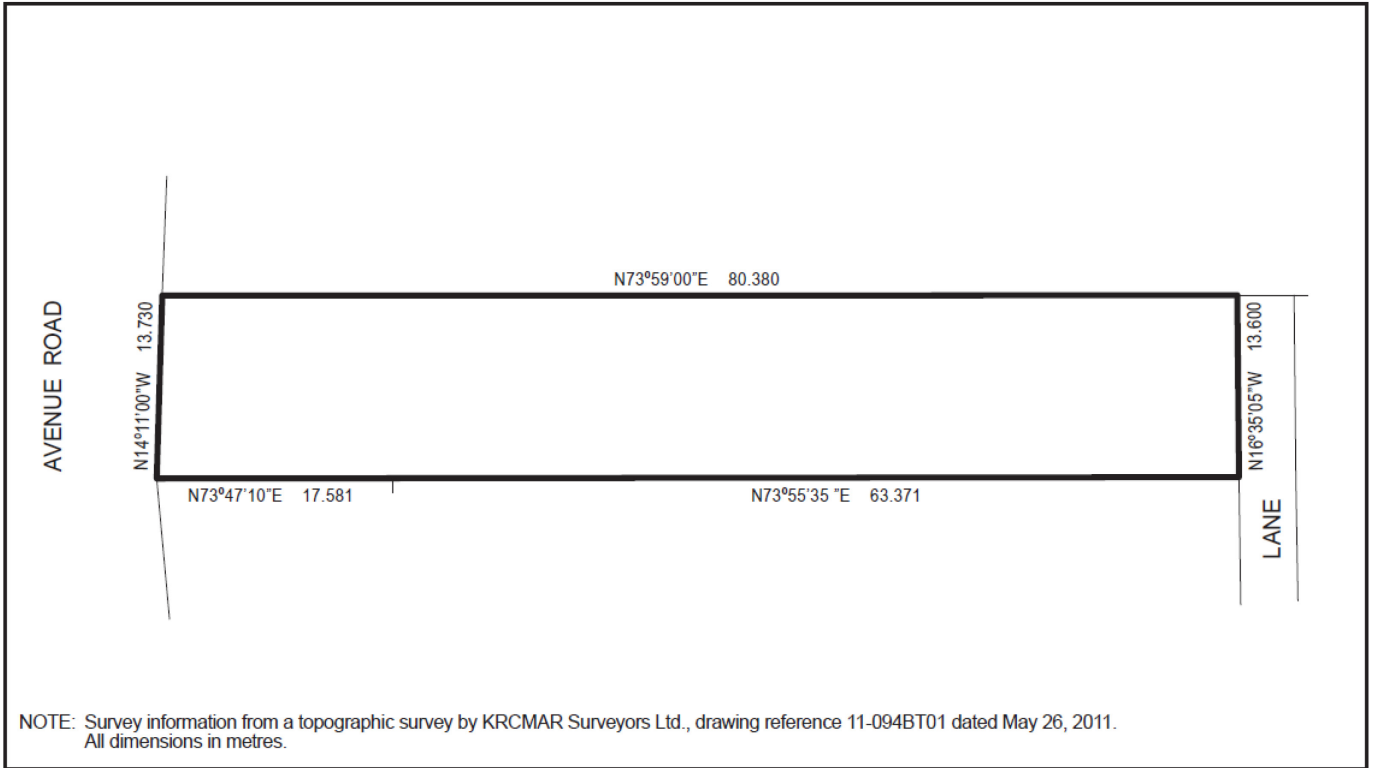
- (x) A minimum of 35 square metres of *common outdoor space* shall be provided and maintained on the *lot*.

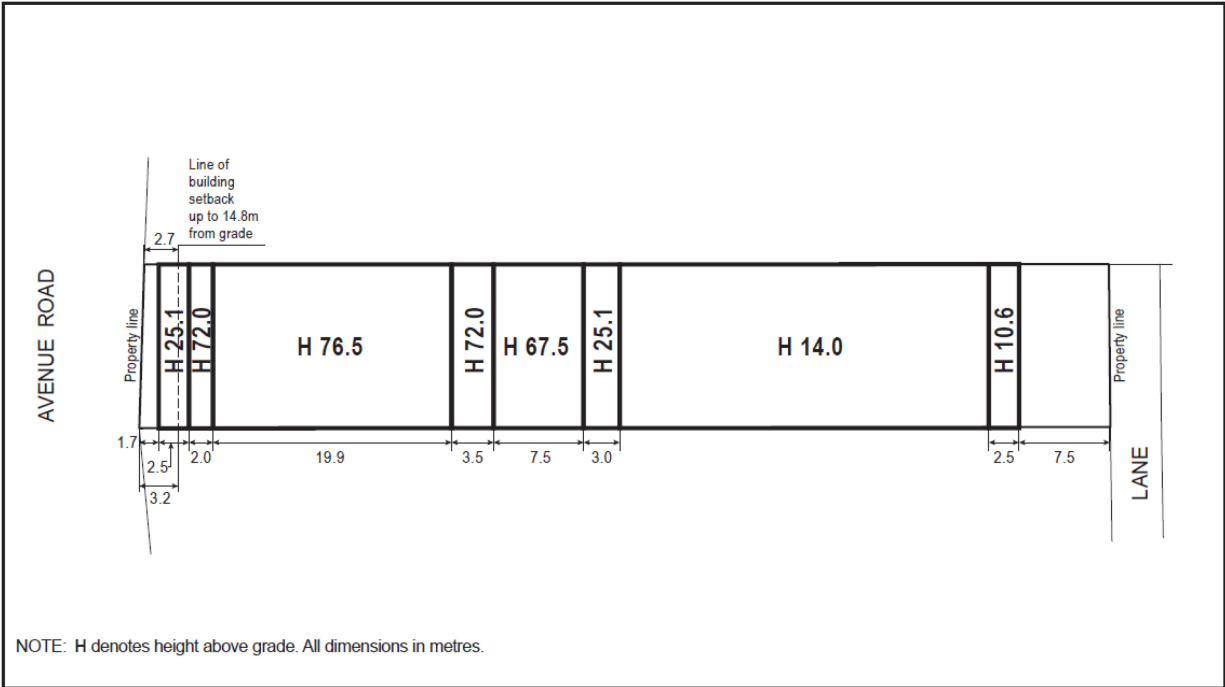
2. Pursuant to Section 37 of the Planning Act and subject to compliance with this By-law, the increase in height and density of development on the *lot* contemplated herein is permitted in return for the provision by the *owner*, at the *owner's* expense, of the facilities, services and matters set out in Schedule 1 hereof as is secured by one or more agreements pursuant to Section 37(3) of the Planning Act that are in a form and registered on title to the *lot*, to the satisfaction of the City Solicitor.

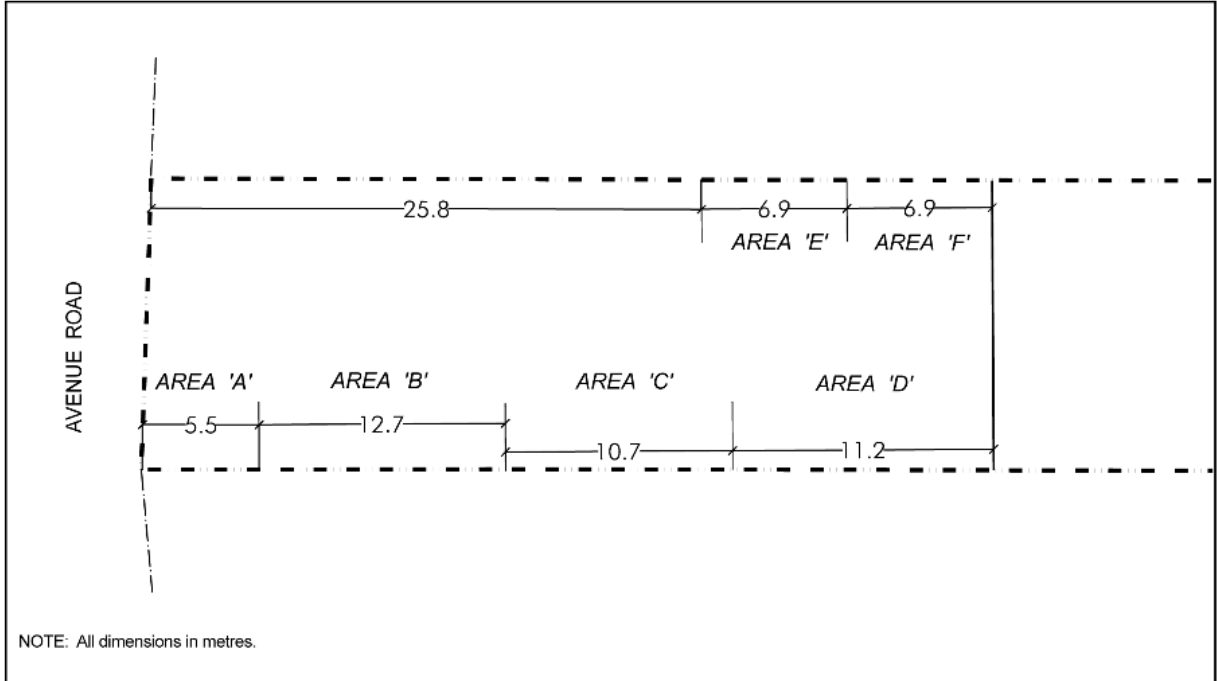
3. Where Schedule 1 of this By-law requires the *owner* to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same.
4. The *owner* shall not use, or permit the use of, a building or structure erected with an increase in height and density pursuant to this By-law unless all provisions of Schedule 1 are satisfied.
5. For the purposes of this By-law, each word or expression that is italicized in this By-law shall have the same meaning as each such word or expression as defined in By-law 438-86, as amended, except for the following:
 - (a) "*Automated parking system*" means a mechanical system for the purpose of parking and retrieving cars without drivers in the vehicle;
 - (b) "*Bicycle parking space – visitor*" shall have the same meaning as provided for in By-law 438-86 with the exception that such *bicycle parking spaces – visitor* may be located outdoors or indoors and within a secured room, enclosure or bicycle locker;
 - (c) "*Common outdoor space*" means the unenclosed, paved, or landscaped area at *grade* between the *front lot line* and the *front wall* of the building that provides amenities for the benefit and enjoyment of pedestrians and that may include *bicycle parking spaces – visitor*, outdoor seating, landscaping and street furniture;
 - (d) "*Grade*" means the Canadian Geodetic elevation of 117.45 metres;
 - (e) "*Height*" means the vertical distance between *grade* and the highest point of the roof, except for those elements prescribed in this By-law;
 - (f) "*Lot*" means those lands outlined in heavy lines on Map 1 attached hereto;
 - (g) "*Parking space*" for the purpose of Section 1 of this By-law shall have the same meaning as "parking space" as defined in Section 2 of By-law 438-86 except where such parking spaces are provided within an *automated parking system*;
 - (h) "*Sales office*" means an office, or sales trailer, used exclusively for the initial sale and/or initial leasing of *dwelling units* and non-residential space to be erected on the *lot*; and
 - (i) "*Supplementary window*" means a window of a kitchen, a bathroom and/or a bedroom of a *dwelling unit*, and/or a living room window that is located in a *dwelling unit* that also has a living room window or windows located in the east or west façade of the building.
6. Despite an existing or future severance, partition, or division of the *lot*, the provisions of this By-law, as amended, shall apply to the whole of the *lot* as if no severance, partition or division had occurred.

7. Except as otherwise provided herein, the provisions of By-law 438-86, as amended, shall continue to apply to the *lot* as well as the buildings and structures on the *lot*.
8. None of the provisions of By-law 438-86 of the former City of Toronto, as amended, or of this By-law shall apply to prevent the erection or use on the *lot* of a temporary *sales office*.

Ontario Municipal Board Decision/Order issued June 26, 2014, August 24, 2015 and July13, 2016 in Board File PL130285







SCHEDULE 1

Section 37 Provisions

The facilities, services and matters set out below are required to be provided to the City at the *owner's* expense in return for the increase in height and density of the proposed development on the *lot* and in accordance with an agreement or agreements under Section 37(3) of the Planning Act where the *owner* agrees as follows:

1. Prior to the issuance of an above-grade building permit:
 - (a) The *owner* shall have made a cash contribution to the City in the total amount of six hundred and fifty thousand dollars (\$650,000.00 CAN) to be allocated at the discretion of the City for the following purposes:
 - (i) local streetscaping improvements (including the hydro burying initiative in the Yorkville Triangle Neighbourhood); and/or
 - (ii) capital improvements to local parks;

such an amount to be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date the zoning by-law is final and binding to the date the payment is made.

2. In the event the cash contribution referred to in Section 1 of this Schedule has not been used for the intended purpose within three (3) years of this By-law coming into full force and effect, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director of City Planning, in consultation with the local Councillor, provided that the purpose(s) is/are identified in the Toronto Official Plan and will benefit the community in the vicinity of the *lot*.
3. As a matter of legal convenience, the agreement shall secure the following:
 - (a) The outdoor *residential amenity space* shall not be accessible to or be used for non-residential use by any owner, tenant, customer, guest or visitor of any non-residential space contained in the development;
 - (b) The lip of any pool associated with the outdoor *residential amenity space* may not be located above a height of 12.0 metres above *grade*;
 - (c) If any space on the same floor as the outdoor *residential amenity space* is used for non-residential purposes, the *owner* agrees that the outdoor *residential amenity space*, including an outdoor pool, which may be contained in such space, shall not be directly accessible to any non-residential space and shall be separated from it by a minimum of 1.5 metres of indoor *residential amenity space*;
 - (d) If no space on the same floor as the outdoor *residential amenity space* is used for non-residential purposes, there is no restriction related to the separation of the outdoor *residential amenity space* from any interior or exterior space that abuts it,

including but not limited to the type of wall, window separation, or openings between these spaces, if any;

- (e) In the event that the *owner* makes an application to obtain condominium approval for the proposed development, the indoor *residential amenity space* that separates the non-residential space from the outdoor *residential amenity space* as described in (c) above, as well as the separating wall, shall form a portion of the common elements areas of the residential condominium. The declaration of the residential condominium shall also provide that the outdoor *residential amenity space* shall not be accessible to or be used for non-residential use by an owner, tenant, customer, guest or visitor of any non-residential space to be contained in the development;
 - (f) The indoor *residential amenity space* will include a boardroom or meeting room, fitness or change area or other similar uses;
 - (g) The *owner* agrees that access to any commercial uses in the development by way of any entrance located on the eastern face of the building shall be prohibited;
 - (h) The *owner* agrees that exhaust venting for any commercial kitchen shall be prohibited from being installed at any location other than the mechanical portion of the building within the H76.5M height cell shown on Map 2, above a height of 72.0 metres; and
 - (i) The *owner* agrees to provide within the 7.5 metre rear yard setback area a "dog comfort station", which shall include a refuse receptacle for dog excrement, bags for users of the rear outdoor *residential amenity space* located within this area to be used to pick up and dispose of dog excrement and a water faucet with a hose to be available from April 1 to November 1.
4. An *automated parking system* may be provided and maintained on the lot. If an *automated parking system* is not provided on the lot, valet parking shall be provided and implemented for the use or uses in the building at all times, and two (2) *parking spaces* for the temporary parking of vehicles shall be located in the drop-off area on the ground floor of the building, to the satisfaction of the General Manager of Transportation Services.
5. Prior to the issuance of the first above-grade building permit for the development the *owner* shall provide at its expense to the satisfaction of the Executive Director, Development Engineering, a Transportation Management Plan for the development.
6. Prior to the issuance of the first above-grade building permit for the development the *owner* shall provide a draft Transportation Management Plan for review and comment to representatives of 77 Avenue Road and 99 Avenue Road in a manner satisfactory to the Executive Director, Development Engineering.
7. The *owner* upon obtaining any and all permissions to remove any of the four (4) existing trees located on the *lot* or a portion of the *lot*, for the purposes of implementing the development in accordance with this by-law, shall plant new trees in a landscape area

between the rear east wall of the building and the east property line of the *lot*, having a caliper of a minimum of 60 millimetres, such trees to be planted in accordance with the City's usual site plan approval requirements applicable to the planting of trees above an underground garage.