

Authority: Ontario Municipal Board Decisions/Orders issued June 30, 2015 and June 28, 2016 in Board File PL140271

## CITY OF TORONTO

### BY-LAW 367-2019(OMB)

**To amend former City of Toronto Zoning By-law 438-86, as amended, respecting the lands identified on Map 1 including 430-444 Dufferin Street and 41 Alma Avenue.**

Whereas the Ontario Municipal Board by Board Decisions/Orders issued June 30, 2015 and June 28, 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 By-law 438-86, as amended, for the former City of Toronto with respect to lands municipally known as 430-444 Dufferin Street and 41 Alma Avenue; and

Whereas the owner of the lands known municipally in the year 2015 as 430-444 Dufferin Street and 41 Alma Avenue appealed a proposed zoning by-law amendment to the Ontario Municipal Board;

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

1. Pursuant to Section 37 of the Planning Act, the heights and density of development permitted by this By-law are permitted subject compliance with the conditions set out in this By-law and in return for the provision by the *owner* of the *site* of the facilities, services and matters set out in Appendix 1 of this By-law, the provisions of which shall be secured by an agreement or agreements pursuant to Section 37(3) of the Planning Act.
2. Upon execution and registration of an agreement or agreements with the *owner* of the *site* pursuant to Section 37 of the Planning Act, securing the provision of the facilities, services and matters set out in Appendix 1 of this By-law, the *site* is subject to the provisions of this By-law, provided that in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a building permit, the *owner* may not erect or use such building until the owner has satisfied the said requirement.
3. Wherever in the By-law a provision is stated to be conditional upon the execution and registration of an agreement entered into with the City pursuant to Section 37 of the Planning Act, then once such agreement has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
4. District Map 48H-313 contained in Appendix 'A' of By-law 438-86, as amended, is further amended by re-designating the land outlined by heavy lines on Map 1, attached to and forming part of this By-law, to "CR".
5. None of the provisions of Sections 2(1) "*grade*", "*lot*", and "*residential amenity space*", 4(2)(a), 4(4)(b), 4(6), 4(7), 4(12), 4(16), 8(3) Part I 1, 2 and 3 and 8 (3) Part II 1(a) of 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 land 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

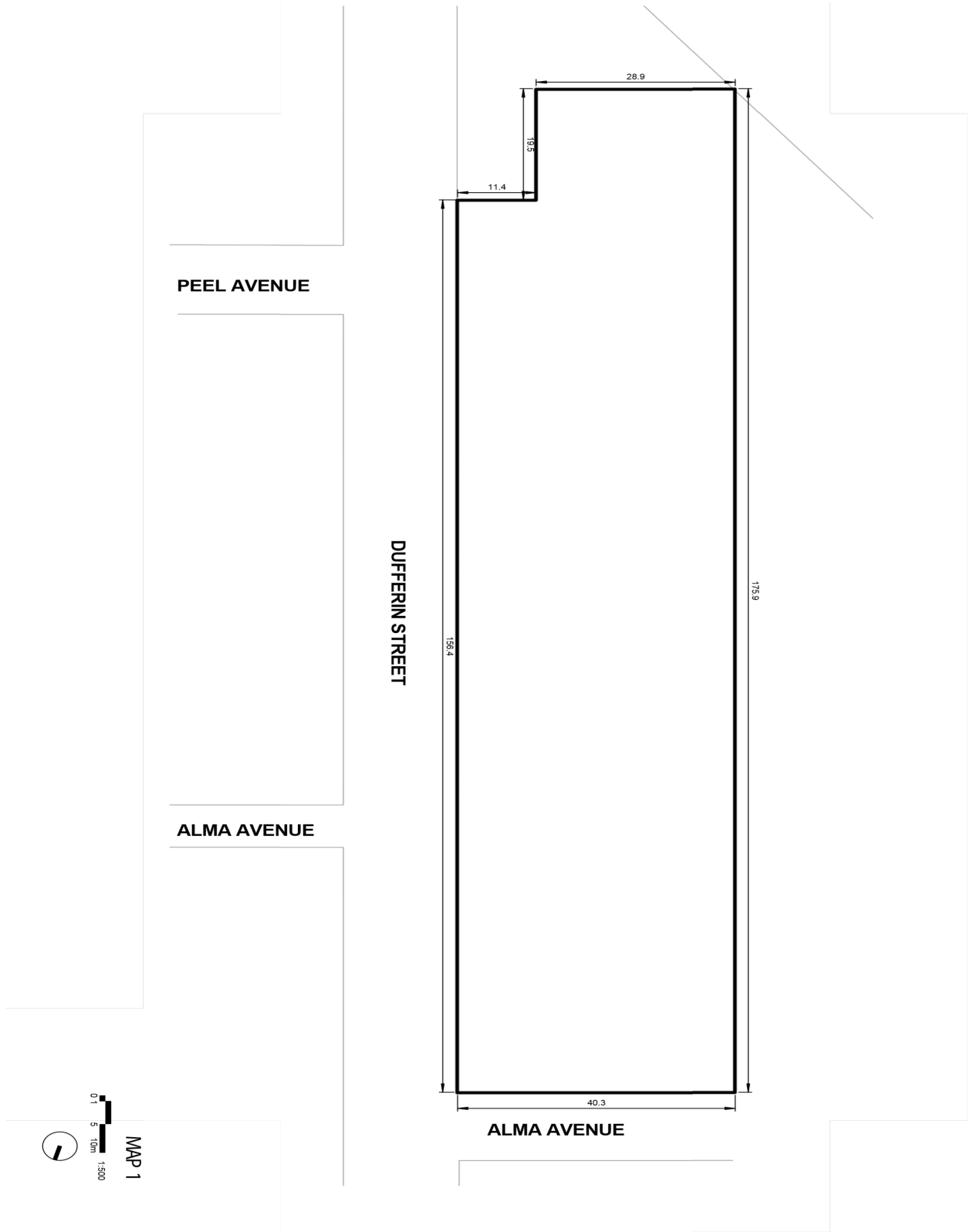
to prevent the erection or use of one *mixed use building* and one *mixed use building* or one *apartment buildings* containing *dwelling units* and *live/work units* on the *lot*, provided that:

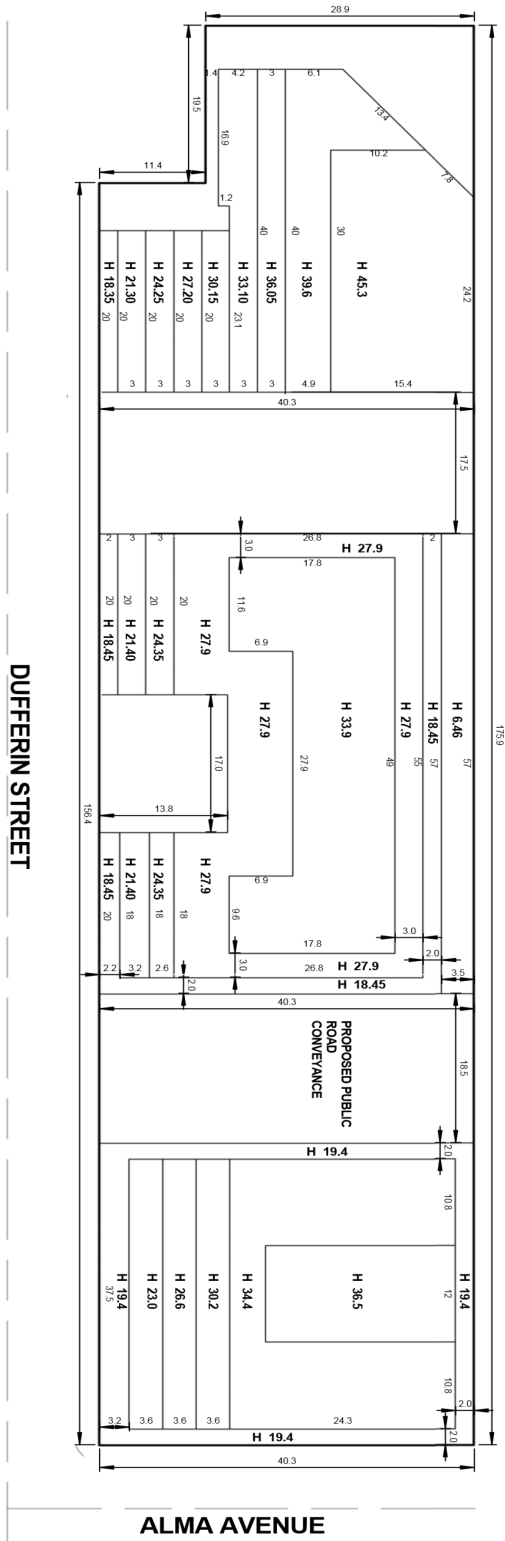
- a. the *lot* comprises at least the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law;
- b. the total combined *residential gross floor area* and *non-residential gross floor area* of a redevelopment on the *lot* shall not exceed 35,700 square metres;
  - i. The *residential gross floor area* shall not exceed 30,050 square metres; and
  - ii. A minimum of 5,550 square metres of *non-residential gross floor* shall be provided on the *lot*;
- c. no portion of a building is located otherwise than wholly within the areas delineated by heavy lines on the attached Map 2 with the exception of the following:
  - i. Canopies, eaves, awnings, building cornices, light fixtures, ornamental and architectural elements, parapets, railing and fences, planters, trellises, window sills, underground garage ramps, landscape and public art features which may extend beyond the heavy lines shown on the attached Map 2; and
  - ii. Balconies which may project a maximum of 1.5 metres from the wall to which they are attached;
- d. no part of a building shall exceed the height limits in metres specified by the numbers following the symbol H as shown on the attached Map 2 but this paragraph does not prevent the erection or use of:
  - i. Window washing equipment, lighting fixtures, ornamental elements, lightning rods, parapets, trellises, eaves, window sills, guardrails, balustrades, railings, stairs, stair enclosures, wheel chair ramps, vents, ventilating equipment, landscape and green roof elements, partitions dividing outdoor recreation areas, wind mitigation, chimney stack, exhaust flues, garbage chute overrun, and public art elements;
- e. a minimum of 10 percent of the dwelling units on the *lot* shall contain at least three bedrooms meeting the definition of bedroom in the Ontario Building Code;
- f. not less than 370 square metres of outdoor *residential amenity space* shall be provided and maintained on the *lot*;
- g. not less than 550 square metres of indoor *residential amenity space* shall be provided and maintained on the *lot* in a multi-purpose room or rooms, at least one of which contains a kitchen and a washroom;
- h. *parking spaces* shall be provided and maintained on the *lot* as per the following minimum requirements:

- i. 213 *parking spaces* shall be provided on the *lot* for residents of buildings on the *lot*; and
- ii. 68 *parking spaces* shall be provided on the *lot* for the shared, non-exclusive use of non-residential uses and residential visitor uses;
- i. two *loading spaces – type G*, two *loadings spaces – type C*, and one *loading space – type B* shall be provided and maintained on the *lot*;
- j. the following uses shall be permitted on Block A as shown on Map 3:
  - i. A *mixed use building* containing *dwelling units*, *live/work units* and those uses permitted within a CR district in section 8(1)(f)(b)(iv); and
  - ii. An *apartment building* containing *dwelling units* and *live/work units*;
- k. the following uses shall be permitted on Block B as shown on Map 3:
  - i. Those uses permitted within a CR district in section 8(1)(f)(a) and (b), except for an *automobile service and repair shop*, *automobile service station*, *car washing establishment*, *motor vehicle repair shop Class A*, or *commercial parking lot*;
  - ii. Those uses permitted within an IC district in section 9(1)(f)(b), except for:
    - A. commercial and municipal baths; *place of assembly*; *place of amusement*; arena, stadium, race track;
    - B. *community centre*; *place of worship*;
    - C. a *retail store*, unless it is ancillary to another permitted use or uses and does not exceed 10 percent of the *gross floor area* of the *Block*;
    - D. *automobile service and repair shop*, *automobile service station*, *car washing establishment*, *motor vehicle repair shop Class A*, or *commercial parking lot*;
    - E. *Storage Warehouse Class A*; and
    - F. *Drive through facility*;
  - iii. arts-related exhibition spaces and galleries; and
  - iv. a *restaurant* provided that it does not exceed 200 square metres;
- l. if development proceeds in phases, the first phase of development shall include 5,500 square metres of *non-residential gross floor area* to be located on Block B as shown on Map 3.

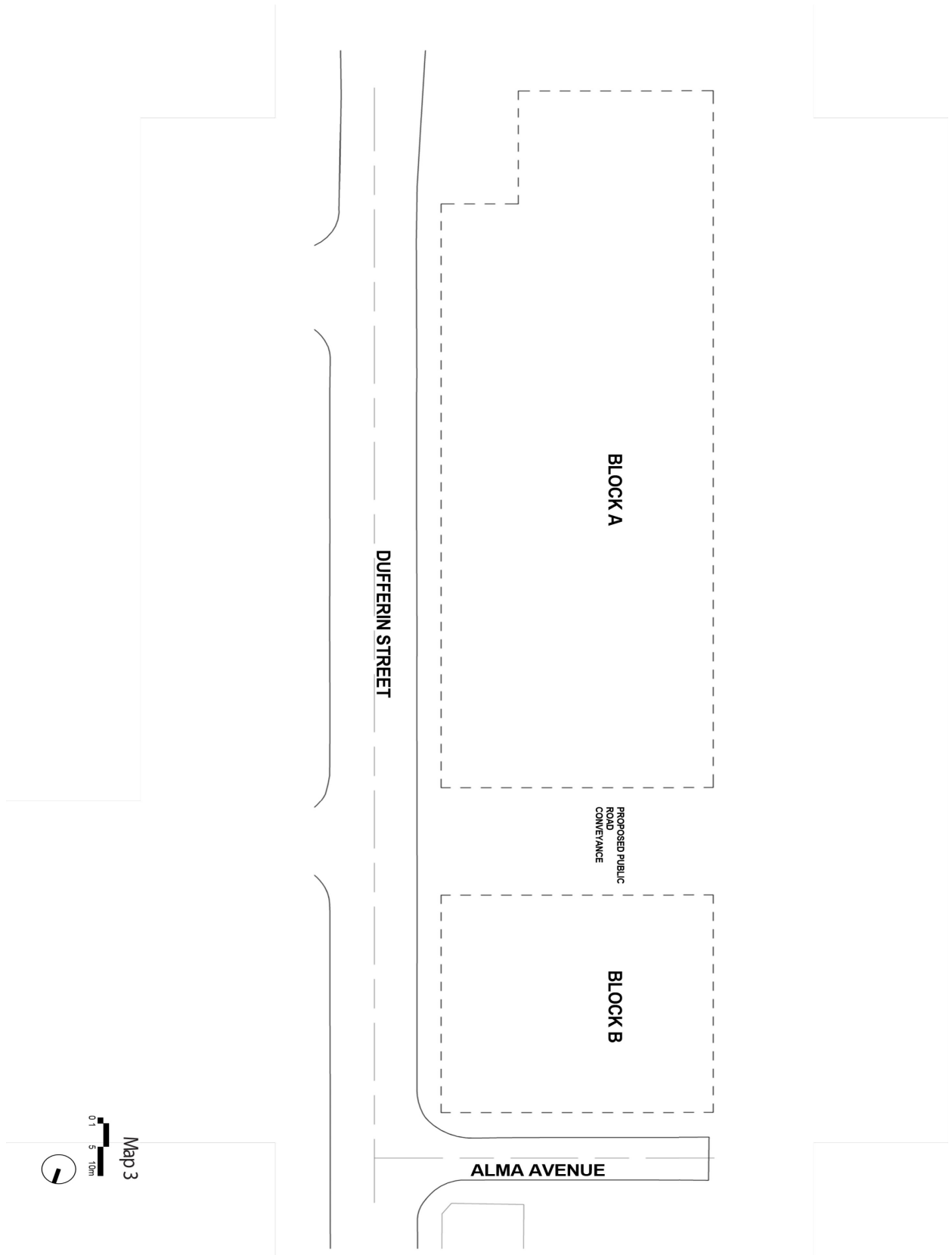
6. For the purposes of this By-law:
- a. "*Block A*" shall mean the lands delineated as Block A on Map 3 of this By-law;
  - b. "*Block B*" shall mean the lands delineated as Block B on Map 3 of this By-law;
  - c. "*grade*" shall mean is 93.85 metres Canadian Geodetic Datum;
  - d. "*lot*" shall mean the lands municipally known in the year 2011 as 430-444 Dufferin Street and 41 Alma Avenue, and delineated in heavy lines on Map 1 attached to and forming part of this By-law;
  - e. "*residential amenity space*" shall mean a common area or areas within a *lot* which are provided for the non-exclusive use of residents of a building for recreational or social purposes; and
  - f. each other word or expression that is italicized shall have the same meaning as each such word or expression as defined in By-law 438-86, as amended.
7. Despite any existing or future severance, partition or division of the *lot*, the provisions of this by-law shall apply to the whole *lot* as if no severance, partition or division occurred.
8. Except as otherwise provided herein, the provisions of By-law 438-86, as amended, shall continue to apply to the *lot*.

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MAP 2  
0 1 5 10m 1:500



Map 3  
0.1 5 10m

**APPENDIX 1**  
**SECTION 37 PROVISIONS**

The facilities, services and matters set out herein are the facilities, services and matters required to be provided by the *owner* to the City in accordance with an agreement or agreements pursuant to Section 37(1) of the Planning Act:

1. The *owner* will provide a minimum of 5,550 square metres of *non-residential gross floor area* in the building on *Block B* to be used as workspace.
2. The *owner* will enter into a 25 year lease with the City for approximately 1,350 square metres of workspace, being all of the leasable workspace on the ground and second storeys of the building on *Block B*, to be used by the City to establish a small business incubation centre in the building.
3. The *owner* consents to the City subleasing the workspace to qualified not-for-profit partners or a post-secondary institution that will operate the space and deliver the small business incubation programming.
4. For the term of the 25 year lease the City shall pay rent at a rate of \$6.50/square foot below market rent for light industrial space, assuming that is what the City is using the space for, plus T.M.I., and market rent shall be based on market rent for similar uses in a similar building in a similar area.
5. The City shall have the opportunity to renew the lease at the end of the 25 year term at market rental rates.
6. For the purposes of calculating the rate of market rent in Section 4 above, an appraisal of the leased space will be conducted at the beginning of the lease, and at the beginning of every 5 years thereafter, so that the rent would be adjusted every 5 years based on changes to market rent. For this purpose the City shall provide an appraisal of the leased space and if the City and the *owner* are unable to agree on the value of the market rental rate both parties shall appoint a mutually agreeable third party appraiser, at the *owner's* expense, whose appraisal shall be binding for the purpose of determining the applicable market rental rate.
7. The *owner* shall finish the leased workspace to base condition which shall include concrete floors, electrical, HVAC, plumbing and fire services entering the space, a finished washroom but otherwise no partitioning or dry-wall. In addition, the *owner* shall provide a cash payment to the City in the amount of \$300,000.00 to be used by the City toward finishing said space.
8. The lease will contain a termination clause, effective at the 10<sup>th</sup> year of the lease and every 5 years thereafter, to allow the City to elect to cease leasing the space and take any pro-rata remaining Section 37 funds (to be based upon \$2,200,000.00 indexed from the date of the Section 37 Agreement, less the \$300,000.00 payment referred to in Section 7 above and less all discounted rents already accrued to the City). Those funds shall be used towards other local community benefits at the discretion of the Chief Planner in consultation with the Ward Councillor.



9. A minimum of 10 percent of the *dwelling units* on the *lot* shall contain at least three bedrooms meeting the definition of bedroom in the Ontario Building Code.