

Made public on December 6, 2012

Appendix "1"
Without Prejudice Settlement Offer

Goodmans^{LLP}

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November 27, 2012

Our File No.: 10-1773

Via Email

City Council, City of Toronto
100 Queen Street West
Toronto, ON
M5H 2N2

Attention: Stephen Bradley

Dear Sirs/Mesdames:

**Re: OMB Case No. PL120931
1443-1451 Bathurst Street**

As you know, we are solicitors for 1451 Bathurst Street Ltd. (now known as 501 St. Clair Avenue West Ltd.) the owner of the properties known municipally as 1443-1451 Bathurst Street and 501 St. Clair Avenue West in the City of Toronto (the "Site"). We are writing on a without prejudice basis with a settlement offer regarding our client's Ontario Municipal Board appeals in respect of the Site. We understand that this matter will be considered by City Council at its meeting commencing on November 27, 2012.

The proposed settlement terms are set out in the proposed Minutes of Settlement attached as Appendix "A" to this letter. If accepted by City Council, our client would be prepared to enter into Minutes of Settlement in that form.

We hope that the settlement offer will be accepted by City Council. The offer will remain open until November 30, 2012, at which time it should be considered withdrawn.

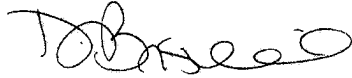
Please do not hesitate to contact me if further information is required.

Goodmans^{LLP}

Page 2

Yours very truly,

Goodmans LLP

A handwritten signature in black ink, appearing to read 'D. Bronskill', with a stylized flourish at the end.

David Bronskill

DJB/

cc: Client

V6140551

Appendix "A"
Proposed Minutes of Settlement

PL120931

ONTARIO MUNICIPAL BOARD

1451 Bathurst Street Ltd. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 438-86 of the City of Toronto to rezone the lands respecting 1443, 1451 and 1451 Bathurst Street to permit the redevelopment of a 25-storey mixed-use building

OMB File No. PL120931

(Approval Authority File No. 11 292997 STE 21 OZ)

MINUTES OF SETTLEMENT

BETWEEN

1451 BATHURST STREET LTD.

(the "Applicant")

AND

CITY OF TORONTO

(the "City")

WHEREAS:

- A. The Applicant has appealed to the Board its Zoning Application (as herein defined);
- B. The Applicant and the City have now reached an agreement to settle the issues between them resulting in joint support for the Revised Development (as defined herein), subject to certain conditions;
- C. The Applicant had also submitted Site Plans, which have not been referred to the Board, associated with its Zoning Application and now intends to submit revised Site Plans for the Revised Development;
- D. The Applicant and the City therefore wish to enter into these Minutes of Settlement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter expressed and the sum of TWO Dollars (\$2.00) of lawful money of Canada now paid by each Party to the other (the receipt and sufficiency of which is hereby acknowledged by each Party), the Parties hereby covenant and agree to and with each other as follows:

**SECTION 1
DEFINITIONS**

- 1.1 "Applicant" means 1451 Bathurst Street Ltd., now known as 501 St. Clair Avenue West Ltd.,
- 1.2 "Applicant's Appeal" means the Applicant's appeal to the Board of the Zoning Application.
- 1.3 "Board" means the Ontario Municipal Board.
- 1.4 "Board Hearing" means the hearing before the Board of the Applicant's Appeal.
- 1.5 "Chief Planner" means the Chief Planner and Executive Director of the City and shall include his or her designates.
- 1.6 "City Council" means the council of the City.
- 1.7 "City" means the City of Toronto.
- 1.8 "*City of Toronto Act*" means the *City of Toronto Act*, S.O. 2006, c. 11, Sche. A, as amended, superseded or replaced from time to time.
- 1.9 "Parties" means each of the Applicant and the City and "Party" means any one of them.
- 1.10 "*Planning Act*" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended.
- 1.11 "Section 37 Agreement" means an agreement pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the City Solicitor, to secure the Section 37 facilities, services and matters.
- 1.12 "Settlement" means the settlement authorized by Item TE20.19 adopted with amendment by City Council at its meeting held on November 27 and 28, 2012.
- 1.13 "Site" means the lands which are the subject of the Applicant's Appeal.
- 1.14 "Revised Development" means the proposed re-development of the Site in accordance with the terms set out in Appendix "1" attached to these Minutes of Settlement.
- 1.15 "Zoning Application" means the application by the Applicant for an amendment to the City's Zoning By-law as set out in the above style of these Minutes of Settlement.

SECTION 2 COVENANTS

Covenants of the Parties

To jointly support the settlement

- 2.1 The Parties each agree,
- (a) from this day forward, to jointly support the Settlement at the Board Hearing of the Applicant's Appeal that would allow for its resolution upon the terms and conditions set out in these Minutes of Settlement, and
 - (b) to that end, either Party may file these Minutes of Settlement at the Board Hearing.

Settlement

- 2.2 The Parties each agree to request the Board to approve a zoning by-law to permit the Revised Development in accordance with the Settlement, generally in the form attached as Appendix "2" to these Minutes of Settlement.

Order to be withheld

- 2.3 The Parties also agree to request the Board to withhold its order approving the zoning by-law until the Board is advised by legal counsel for the City that,
- (a) the final form of the zoning by-law is acceptable to the City Solicitor, and
 - (b) the Applicant has entered into the associated Section 37 Agreement.

Parties shall work in good faith to resolve outstanding issues

- 2.4 The Parties shall work in good faith to finalize the matters set forth in these Minutes of Settlement.

Development to be in conformity with Zoning By-law

- 2.5 The Applicant agrees that,
- no alterations to heights and building envelopes without the consent of the City*
- (a) the Applicant shall not file applications, without the consent of the City Council or the Chief Planner, for rezoning or minor variances pursuant to Sections 34 and 45 of the *Planning Act*, which would alter the heights and building envelopes set out in the Settlement, but
- issues arising during construction of the Revised Development*
- (b) the Parties acknowledge that, subject to subsection (a), the Applicant may file applications, without the consent of the City, to address such other issues as may arise during construction of the Revised Development.

**SECTION 3
GENERAL PROVISIONS**

Enurement

- 3.1 The Parties agree that the covenants, rights, duties, provisos, conditions and obligations herein contained shall enure to the benefit of and be binding upon each of the Parties and each of their respective successors and assigns.

Costs

Parties waive and release each other

- 3.2 Each Party waives any claim for costs against the other arising in any way from those matters settled by these Minutes of Settlement.

Jurisdiction of Council not fettered

- 3.3 The Applicant acknowledges that none of the provisions of these Minutes of Settlement is intended to operate, nor shall have the effect of operating in any way to fetter City Council in the exercise of any of its legislative or quasi-judicial powers, or to oppose any rezoning or minor variance applications as may be filed by the Applicant or its successors pursuant to Sections 34 and 45 of the *Planning Act*.

Registered Owner(s) to Sign Section 37 Agreement

- 3.4 The Applicant will also ensure that the registered owner(s) of the Site will enter into the Section 37 Agreement and that it will procure and provide to the City any release, discharge, quit claim, or postponement of any interest as necessary to ensure that the Agreement shall have priority over any interest other than such permitted encumbrances as the City Solicitor may accept.

IN WITNESS WHEREOF the Parties have executed these Minutes of Settlement by the hands of their proper signing officers, or by the hands of their legal counsel in the subject Board hearing of these matters, duly authorized in that behalf.

501 ST. CLAIR AVENUE WEST LTD.

Name:

(c/s)

Title:

Name:

Title:

I/We have authority to bind the Corporation.

CITY OF TORONTO

Name: Stephen M. Bradley

Solicitor for the City of Toronto

Authorized by Item TE20.19 adopted with amendment by City Council at its meeting held on
November 27 and 28, 2012

Appendix "1"
To Minutes of Settlement
The Terms of Settlement

Built Form

Building Envelopes and Height Restrictions

1. The Revised Development will comply with the building envelopes and heights as shown in the draft by-law set out in Appendix "2" to these Minutes of Settlement, which are summarized as follows:
 - a. The Revised Development will have a maximum of 21 storeys at a maximum height of 69.5 metres (with a maximum floor plate size of 750 square metres), with additional height permitted above the 21st storey 69.5 metre height limit for mechanical equipment and typical overruns to a maximum total combined height of 75.5 metres, which shall be architecturally integrated and focussed on the corner of Bathurst Street and St. Clair Avenue West.
 - b. Habitable residential space (i.e., penthouse units) will also be permitted above the 21st storey 69.5 metre height limit, so long as such space is designed to wrap the south and east sides of any mechanical penthouse/equipment.
 - c. The above noted mechanical penthouse/equipment and any wrapped residential penthouse units,
 - i. shall be stepped back 3 metres on the south and east sides above at height of 69.5 metres, and
 - ii. shall be stepped back a further 2 metres for any space above a height of 72.5 metres (i.e., a potential second level - upper level to penthouse units).
 - d. The podium of the Revised Development shall have a maximum of 6 storeys at a maximum height of 23.1 metres.
 - e. The Revised Development shall have a maximum residential gfa of 20,550 square metres and a maximum non-residential gfa of 950 square metres.

- f. The Revised Development shall have a maximum number of 284 dwelling units (including 7 rental replacement), with at least 10% having two bedrooms, two bedrooms plus den or three bedrooms.
- g. The Revised Development will provide additional publicly accessible private land (at the ground floor only) to achieve a minimum 4.5 metre distance from the street curb edge to building face on St. Clair Avenue West and Bathurst Street, with an extra "opening up" of the corner to achieve 6 metres from street curb edge to building face for a total distance of 10 metres to the south and east respectively, from the existing intersection of the curbs today along both frontages.
- h. The Applicant will revise the street tree planting and design along St. Clair Avenue West and Bathurst Street to allow appropriate long-term tree growth without a further stepback of the building between the 2nd and 6th floors.
- i. The east face of the podium south of the tower and adjacent to the residential lands designated as Neighbourhood on Hilton Avenue shall comply with a 7.5 metre building setback and a 45-degree angular plane above 10.5 metres, except for a limited encroachment of the upper most part (approximately 2.3 metres by 2.3 metres) of the east face of the 6th floor.
- j. No additional notching of the 2nd to 6th floors will be required on the east and south sides of the podium.

Height Projections

- 2. The exceptions to the above noted building height restrictions shall be:
 - a. window washing equipment, lighting fixtures, ornamental elements, partitions dividing outdoor recreation areas and trellises, lightning rods, exhaust flues, cooling equipment, planters, pavers, stairs, stair enclosures, wheelchair ramps extending to a maximum vertical projection of 2 metres,
 - b. railings, cornices, parapet walls, elements of a green roof, extending to a maximum vertical projection of 1.2 metres, and
 - c. landscaping, public art features, and an outdoor pool for resident recreation, each without height restriction,
 - d. provided that, notwithstanding a., b., and c., nothing shall be permitted to exceed the height of 75.5 metres.

Side projections

3. The exceptions to the above noted building envelope restrictions shall be,
 - a. lighting fixtures, ornamental elements, partitions dividing outdoor recreation areas and trellises, lighting rods, exhaust flues, cooling equipment, planters, pavers, stairs, wheelchair ramps, railings, cornices, elements of a green roof, window sills, balustrades, awnings and canopies, landscaping, public art features and an outdoor pool for resident recreation, which may all extend outside the building envelopes to a maximum of 2 metres, and
 - b. balconies may project beyond the building envelope to a maximum of 1.8 metres.

Rental Housing

4. The seven (7) existing rental apartment units on the Site will be replaced to the satisfaction of City Council in the Revised Development, in accordance with standard practice and policies, or in another manner acceptable to the City (such as an alternative location in the local community). The terms regarding replacement and the provision of tenant relocation assistance will be secured in the Section 111 permit/agreement, zoning by-law amendment and Section 37 agreement.

Parking

5. The Revised Development would provide a minimum of 42 public parking spaces on P1 (pursuant to the agreement with the Toronto Parking Authority), 3 car-share spaces on P1 (with electric plug-in) and residential visitor and commercial parking needs met on a “non-exclusive” and shared manner in the Toronto Parking Authority public parking facility.
6. The Revised Development would provide residential parking on levels P2-P4, with additional residential parking needs provided by the above-noted 3 car-share spaces (assuming a reduction of 4 exclusive residential parking spaces for each car-share provided).
7. The 5th level of underground parking originally proposed may be eliminated to reflect the reduced density and number of units.
8. For Clarity – the parking and loading space requirements shall be as follows:
 - a. residential parking shall be provided and maintained within an underground parking garage on the site and in accordance with the following minimum ratios: Bachelor Units – 0.6 spaces per unit; 1-Bedroom Units – 0.7 spaces per unit; 2-Bedroom Units or greater – 0.9 spaces per unit; Residential Visitors – No minimum required, but these may be reduced, up to a maximum 12 parking spaces, by 4 parking spaces for each car-share parking space provided and maintained in an underground parking garage within the site.

- b. A minimum of 42 public TPA parking spaces shall be provided and maintained within an underground parking garage, which TPA spaces may have a minimum length of 5.2 metres, provided they are accessed by a drive-aisle 7 metres in width, and
- c. one Type G loading space shall be provided.

Section 37

- 9. The Applicant will provide \$1.5-million, indexed pursuant to the standard City clause, prior to issuance of an above-grade building permit, as a contribution to be used for capital projects in Ward 21, to the satisfaction of the Chief Planning in consultation with the ward councillor, which may include improvements/renovation to the Wychwood Library, local parkland improvements and/or local public art, and beautification and street enhancement projects.
- 10. The publicly accessible space noted in paragraph 1(g) above will be secured.
- 11. The rental replacement units noted in paragraph 4 above will be secured.
- 12. The Applicant will be required to,
 - a. post a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site, and
 - b. provide and install public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.

Further Refinements

- 13. Any of the above may be further refined upon agreement between the Applicant and Chief Planner, without further Council authority.

Appendix "2"
To Minutes of Settlement
Draft By-law

Authority: Ontario Municipal Board Decision issued on _____, 2013, and Order issued
_____, 2013, in Board File No. PL _____

CITY OF TORONTO

BY-LAW No. ____ - 2013 (OMB)

**To amend the former City of Toronto Zoning By-law No. 438-86, as amended, with respect to the
lands municipally known as 1443, 1445 & 1451 Bathurst Street.**

WHEREAS the owner of the lands known municipally in the year 2012 as 1443, 1445 and 1451 Bathurst Street appealed a proposed zoning by-law amendment to the Ontario Municipal Board; and

WHEREAS the Ontario Municipal Board, by its Decision issued on _____, 2013 and Order issued _____, 2013 in Board File No. PL _____, approved amendments to the former City of Toronto Zoning By-law No. 438-86, as amended, with respect to those lands;

NOW THEREFORE pursuant to the Order of the Ontario Municipal Board, By-law No. 438-86 of the former City of Toronto is amended as follows:

- I. Pursuant to Section 37 of the *Planning Act*, the heights and density of development permitted by this By-law are permitted subject to 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 this 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. Except as otherwise provided herein, the provisions of *By-law No. 438-86* shall continue to apply to the *site*.
5. None of the provisions of Section 4(2)(a), (4(3)(a), 4(4)(b) and (d), 4(6)(b), 8(3)Part I (1), 8(3) Part II(1)(b)(ii), 8(3)Part II(4)(a) and (c), and 12(2)(222) shall apply to prevent the erection and use of a *mixed-use building* with an underground *parking garage*, which may contain *public parking spaces* and *car-share parking spaces*, on the *site*, provided that:
 - (a) the *lot* on which the building is located comprises at least the *site*;
 - (b) The total *residential gross floor area* and *non-residential gross floor area* on the *site* shall not exceed 21,500 square metres, of which:
 - i. the total *residential gross floor area* shall not exceed 20,550 square metres; [and
 - ii. the total *non-residential gross floor area* shall not exceed 950 square metres;
 - (c) the total number of *dwelling units* shall not exceed 284, of which, at least ten percent (10%) of the total number of *dwelling units* shall have two bedrooms, two bedrooms plus den and or three bedrooms,
 - (d) the *height* of each portion of a building or structure erected above *grade* within the *site*, in respect of each *building envelope* area, has a maximum *height* in metres as shown following the symbol "H" on Map 2 for the corresponding *building envelope* area, including mechanical and rooftop elements, and
 - a. within the *building envelope* area showing a maximum *height* of metres of 23.1m. on Map 2, the maximum number of storeys shall be 6,

- b. within the *building envelope* area showing a maximum *height* of 69.5m. on Map 2, the maximum number of storeys shall be 21,
 - c. within the *building envelope* areas showing maximum *heights* of 72.5m. and 75.5m. on Map 2, the maximum number of storeys shall be 21, but this shall not preclude a mechanical penthouse and an adjacent set of *dwelling units* within the 75.5m. *height* area or 72.5m. *height* area.,
- (e) the preceding subsection (d) shall not apply to:
- i. window washing equipment, lighting fixtures, ornamental elements, partitions dividing outdoor recreation areas and trellises, lightning rods, exhaust flues, cooling equipment, planters, pavers, stairs, stair enclosures, wheelchair ramps extending to a maximum vertical projection of 2 metres;
 - ii. railings, cornices, parapet walls, elements of a green roof, extending to a maximum vertical projection of 1.2 metres; and
 - iii. landscaping, public art features, and an outdoor pool for resident recreation;
 - iv. provided that paragraphs i., ii, and iii, shall not apply to permit anything above a *height* of 75.5 metres,
- (f) no part of any building or structure erected within the site shall be located above grade other than within a *building envelope*, with the exception of the following:
- i. window washing equipment, lighting fixtures, ornamental elements, partitions dividing outdoor recreation areas and trellises, lighting rods, exhaust flues, cooling equipment, planters, pavers, stairs, wheelchair ramps, railings, cornices, elements of a green roof, window sills, balustrades, awnings and canopies, all of which may extend beyond the building envelope to a maximum of 2m.;
 - ii. balconies may project beyond the building envelope to a maximum of 1.8 metres; and
 - iii. landscaping, public art features and an outdoor pool for resident recreation;
- (g) Notwithstanding Section 4(4) of *By-law No. 438-86*, parking shall be provided and maintained within an underground *parking garage* on the *site* and in accordance with the following minimum ratios:
- i. Bachelor Units – 0.6 spaces per unit

- i. Bachelor Units – 0.6 spaces per unit
 - ii. 1-Bedroom Units – 0.7 spaces per unit
 - iii. 2-Bedroom Units or greater – 0.9 spaces per unit
 - iv. parking for non residential uses and residential visitor parking shall be satisfied by the provision of at least 42 *public parking spaces*;
- (h) Notwithstanding Section 4(4) of *By-law No. 438-86*, the total number of parking spaces required to satisfy parking requirements for residents, may be reduced, up to a maximum 12 *parking spaces*, by 4 *parking spaces* for each *car-share parking space* provided and maintained in an underground *parking garage* within the *site*;
- (i) A minimum of 42 *public parking spaces* shall be provided and maintained within an underground *parking garage*;
- (j) Despite Section 4(17) of *By-law No. 438-86*, the *public parking spaces* to be provided and maintained within the underground *parking garage* shall have a minimum length of 5.2 metres, provided they are accessed by a drive-aisle 7 metres in width. [Subject to TS comment]
- (k) One *Type G loading space* shall be provided and maintained within the *mixed-use building* on *site*.
6. The *owner* of the *lot* shall ensure that all water mains, sanitary and storm sewers and appropriate appurtenances required for the development of this lot have been built or secured via a letter of credit acceptable to the Director of Technical Services prior to the issuance of a below grade building permit, which for clarity shall not include any permit for demolition, excavation or shoring.
7. For clarity, all Appendices and Maps attached to this By-law are incorporated into this By-law and are deemed to be part of this By-law.
8. A temporary *sales office* shall be permitted on the *site*.
9. Despite any existing or future severance, partition, or division of the *site*, the provisions of this By-law shall apply to the whole of the *site* as if no severance, partition or division occurred.
10. For the purpose of this By-law, the following expressions shall have the following meaning:
- (a) "*building envelope*" means a building envelope for each height area within the *site* as shown by an "H" and as delineated by the lines on Map 2 and Map 2A attached hereto;

- (b) "*By-law 438-86*" means By-law No. 438-86, as amended, of the former City of Toronto being, "A By-law to regulate the use of land and the erection, use, bulk, height, spacing 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";
- (c) "*car-share parking space*" means a *parking space* used exclusively for the parking of a *car-share motor vehicle*;
- (d) "*car-share motor vehicle*" means a motor vehicle available for short term rental, including an option for hourly rental, for the use of at least the occupants of a building erected on the *site*;
- (e) "*City*" means the City of Toronto;
- (f) "*height*" means the vertical distance between *grade* and the highest point of the building or structure and for clarity shall exclude any permitted projections from the sides of *building envelopes*, and shall include the highest point of any mechanical penthouse and elevator overrun;
- (g) "*grade*" means 157.1 metres above Canadian Geodetic Datum; [subject to Planning confirmation]
- (h) "*site*" means those lands outlined by heavy lines on Map I attached hereto;
- (i) "*owner*" means the registered owner of the *site* or any part thereof;
- (j) "*sales office*" means an office located on the *lot* in a temporary building, structure, facility or trailer satisfactory to the City's Chief Planner used exclusively for the sale of *dwelling units* and the sale or leasing non-residential floor space within the *mixed use building* to be erected on the *lot*;
- (k) "*public parking space*" means a *parking space* used for and operated by the Toronto Parking Authority of the *City*;
- (l) Each other word or expression, which is italicized in this by-law, shall have the same meaning as each such word or expression as defined in *By-law 438-86*.

APPENDIX 1 to zoning by-law

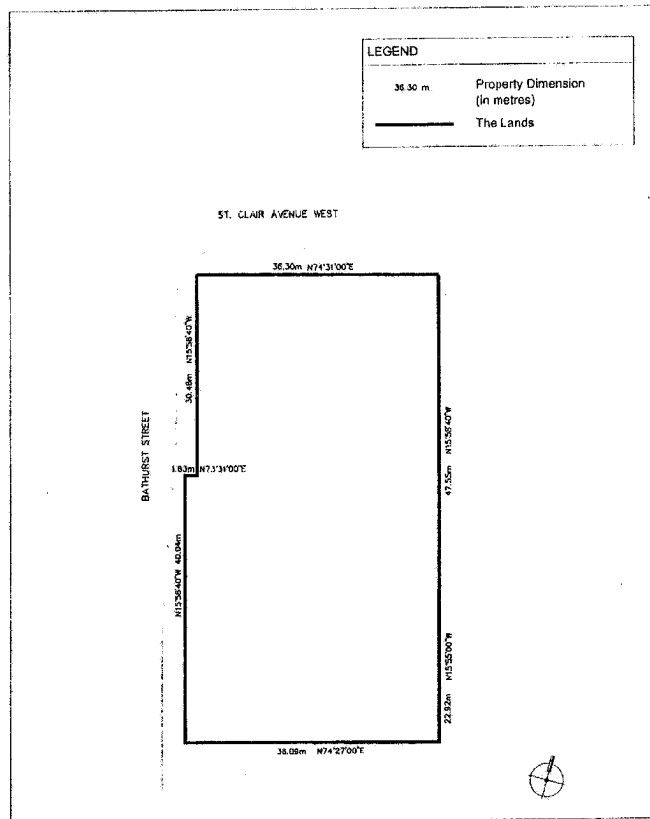
SECTION 37 PROVISIONS

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*:

[as set out in Appendix "I" to Minutes of Settlement]

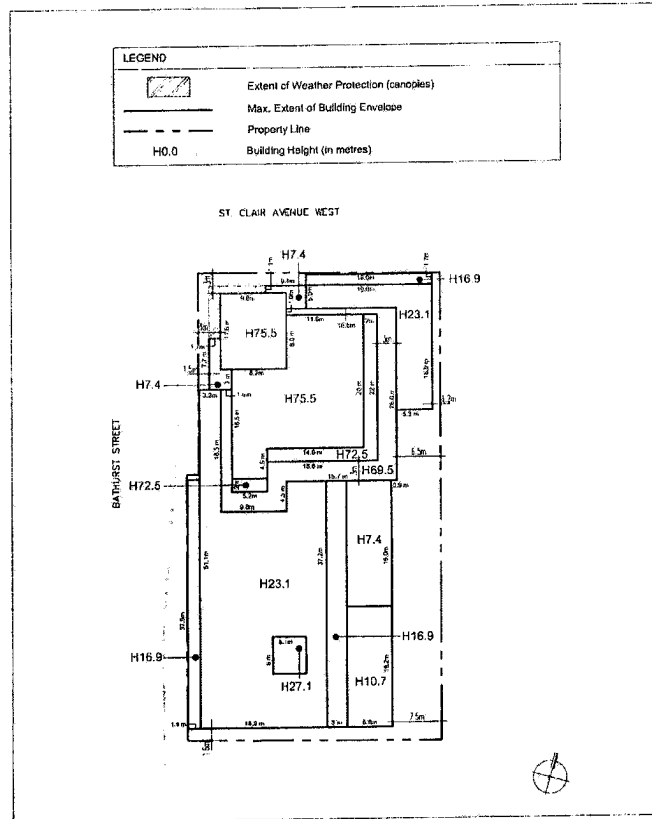
1. The owner shall enter into an agreement with the *City* pursuant to Section 37 of the *Planning Act*, to secure the provision of said facilities, services and matters, in a form satisfactory to the *City's* Solicitor as set forth in this Appendix 1 with conditions providing for indexed escalation of financial contributions, no credit for development charges, indemnity, insurance, HST, termination and unwinding, and registration and priority of the agreement.

MAP 1



Note: Survey Information taken from Surveyor's Real Property Report by Avenli Surveying Inc.
Project 10-145-2, Dated November 05, 2010
All dimensions in meters.

MAP 2



Note: H denotes building height measured from established grade (157.1).
All dimensions in meters.

MAP 2A

