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BY EMAIL

Mr. Gabe Szobel and Mr. Jason Davidson
Solicitors, Planning & Administrative Tribunal Law
City of Toronto
26th Floor, Metro Hall
55 John Street
Toronto ON M5V 3C6

Dear Messrs.. Szobel and Davidson

**Re: 2221-2231 St. Clair Avenue West and 2237, 2255 and 2283 St. Clair Avenue West,
Etobicoke
OLT Case No. OLT-22-002449
City of Toronto By-law No. 1170-2011
Without Prejudice Settlement Offer**

As you are aware, Aird & Berlis LLP acts on behalf of Clair West Limited ("**Clair West**") and Cobalt Developments Limited ("**Cobalt**") with respect to the properties municipally known as 2221-2231 and St. Clair Avenue West and 2237, 2255 and 2283 St. Clair Avenue West, respectively, in the City of Toronto (respectively, the "**Clair West Site**" and the "**Cobalt Site**", and collectively, the "**Sites**").

The Sites are generally located on the south side of St. Clair Avenue West, midblock between Keele Street/Weston Road to the east and Jane Street to the west in an area identified as an *Avenue* in the City of Toronto Official Plan (the "**Official Plan**"). The Clair West Site is located immediately east of the Cobalt Site. The Sites are within the area subject to Official Plan Amendment No. 144 ("**OPA 144**") and Zoning By-law No. 1170-2011 ("**ZBA 1170-2011**"), both of which were adopted by the City of Toronto in 2011 and subsequently appealed by various landowners in the area.

Our clients are both an appellant (Cobalt) and a party (Clair West) to the appeals of OPA 144 and ZBA 1170-2011.

In March 2021, Clair West submitted an application to the City for amendment to City of Toronto Zoning By-law No. 438-86 ("**By-law 438-86**") to facilitate a 12-storey mixed-use building with retail at grade on the Clair West Site (the "**Clair West Application**").

In September 2021, Cobalt submitted an application to the City for an amendment to By-law 438-86 to facilitate a mixed-use development consisting of two 12-storey buildings with retail at grade on the Cobalt Site (the "**Cobalt Application**"). The Cobalt Application proposed a party-wall condition along the east lot line with the building proposed by the Clair West Application.

Appeal of OPA 144 and ZBA 1170-2011

At its meeting held on September 22, 2011, City Council adopted OPA 144, implementing the City-initiated St. Clair Avenue West Study. The City also passed the corresponding ZBA 1170-2011, which made amendments to parent By-law 438-86 to implement the direction of OPA 144.

OPA 144 and ZBA 1170-2011 were subsequently appealed to the then-Ontario Municipal Board (now, the Ontario Land Tribunal (“the **OLT**”)) by four landowners in the area subject to OPA 144 and ZBA 1170-2011 (the “**Appeal**”).

Following a second pre-hearing conference, held on July 15, 2016, the OLT issued an order bringing portions of OPA 144 into force for the lands west of Runnymede Road, without prejudice to the continuation of the appeals of OPA 144 east of Runnymede Road and of ZBA 1170-2011.

The OLT then held a Case Management Conference on November 30, 2021. At this Case Management Conference, the OLT granted party status to our client Clair West.

After cooperative settlement discussions with City Staff as endorsed by Council, on June 21, 2022, the OLT approved an amendment to OPA 144 only as it pertained to the Sites and without prejudice to the remaining appellants to OPA 144. This amendment updated the compatibility policies of OPA 144 to be consistent with other City-initiated instruments, including Official Plan Amendment No. 231 and re-designated the Sites as *Mixed Use*.

We are now writing to provide a **without prejudice settlement offer** which would resolve our clients’ concerns with ZBA 1170-2011 and enable the parties to jointly request that the OLT bring a revised ZBA 1170-2011 into force on the Sites, allowing for the resolution of the concerns advanced by Cobalt and Clair West and the withdrawal of the Cobalt Application and the Clair West Application (together, the “**Applications**”).

Settlement Proposals

In our view, the settlement proposals described herein ensure Council’s original intent to allow for mixed-use development along St. Clair Avenue West to proceed, and allow for the development of the Sites in a cohesive manner. The revised development proposals are demonstrated in the attached Architectural Plans and Shadow Studies prepared by RAW Design Inc. and dated January 9, 2023, which are enclosed herewith. The revised development proposals are captured in a draft revised ZBA 1170-2011, also enclosed herewith.

The settlement proposals for the Clair West Site and the Cobalt Site (together, the “**Settlement Proposals**”) include shared revisions that enable the comprehensive redevelopment of this important stretch of St. Clair Avenue West:

- A private laneway has been added to the rear of the Sites to accommodate loading and servicing away from the frontage along St. Clair Avenue West; and
- Increased west and east setbacks for the Clair West Settlement Proposal and the Cobalt Settlement Proposal respectively (described in further detail below) have been incorporated in order to establish a mid-block connection between the Sites as requested by City Staff.

The settlement proposal for the Clair West Site (the “**Clair West Settlement Proposal**”) includes the following modifications from the Clair West Application:

- The height of the building has been reduced from 12 storeys (43.12 metres to the top of the penthouse) to 11 storeys (42.02 metres to the top of the penthouse);
- The streetwall height along St. Clair Avenue West has remained at 4 storeys in height and has slightly increased to 6 storeys at the northeast corner of the Clair West Site;
- The gross floor area has decreased from 21,502 square metres to 19,442 square metres;
- The massing has been revised in order to accommodate City Staff’s vision for the building;
- The live/work units on the ground floor have been removed in favour of increased retail space, as requested by City Staff;
- Indoor amenity space has been added to the rooftop, contiguous with the outdoor amenity space on this level;
- The setback from the western property line has increased from 0 metres to 7.402 metres in order to accommodate the above-mentioned mid-block connection; and
- The boundaries of the Clair West Site have been revised to provide one half of the right of way for the future extension of Mondovi Gate, by conveying a portion (10 metres in width) along the eastern property line.

The settlement proposal for the Cobalt Site (the “**Cobalt Settlement Proposal**”) includes the following modifications from the Cobalt Application:

- The height has been reduced from 12 storeys (44.17 metres to the top of the penthouse) to 11 storeys (42.45 metres to the top of the penthouse);
- The streetwall height along St. Clair Avenue West has remained at 4 storeys in height, and has slightly increased to 6 storeys at the northwest corner of the Cobalt Site;
- The gross floor area has decreased from 38,326 square metres to 35,112 square metres;
- The setback from the east property line has increased from 5.53 metres to 7.37 metres in order to accommodate the above-mentioned mid-block connection;
- The massing has been revised in order to accommodate City Staff’s vision for the buildings;
- Indoor amenity space has been added to the rooftop, contiguous with the outdoor amenity space on this level;
- The proposed road widening along St. Clair Avenue West has slightly increased from 4.869 metres to 4.94 metres;

- As requested by the local Councillor, the setback from the western property line has increased from 0 metres to 5.283 metres in order to allow for a clear, unimpeded view from St. Clair Avenue West toward Runnymede Park;
- A setback of 2.5 metres has been incorporated above the 4th floor along the south façade; and
- As requested by City Staff, the vehicular access to the Cobalt Site from St. Clair Avenue West has been eliminated, and all vehicular access will instead be taken from the new private laneway at the south end of the Sites.

Implementation

Based on our clients' discussions with City Staff, we understand that the Settlement Proposals are acceptable to City staff and will form the basis of a report to Council at the meeting commencing on **March 29, 2023** recommending that Council support the Settlement Proposals. This settlement offer is conditional upon that timing being achieved and the following implementation matters:

1. The City shall consent to the request by Clair West and Cobalt that the Settlement Proposals be considered as soon as reasonably possible following the Council decision at a Settlement Hearing to be scheduled in advance of the OLT hearing for OPA 144 and ZBA 1170-2011 (scheduled for June 19-June 30, 2023);
2. The City shall consent to the request by Clair West and Cobalt, that the OLT allow the Appeal in respect of ZBA 1170-2011, in part, as it relates to the Sites and issue an Order bringing ZBA 1170-2011 into force and effect on the Sites, revised to permit the Settlement Proposals. The City shall advise the OLT that it supports the modifications to the applicable zoning to permit the Settlement Proposals in any hearing before the OLT, subject to the following conditions:
 - a. the proposed Zoning By-law Amendment(s) are in a final form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
 - b. the Applicant has provided confirmation of water, sanitary and stormwater capacity to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, or the Chief Engineer and Executive Director, Engineering and Construction Services has determined that holding provisions are required in the Zoning By-law amendment and that the final form of Zoning By-law Amendments includes same;
 - c. the Applicant has submitted a revised Transportation Impact Study, including an updated Parking and Loading Study and Transportation Demand Management strategy to the satisfaction of, the General Manager, Transportation Services and that such matters arising from such study have been secured, if required;
 - d. the Applicant has provided an updated pedestrian level wind study based on wind tunnel analysis and the Toronto Green Standard template and statistics, to the satisfaction of the Chief Planner & Executive Director, City Planning; and

- e. the Applicant has appropriately addressed comments from Urban Forestry respecting the tree preservation and soil volume requirements for the Sites.

For greater clarity, Clair West and Cobalt shall provide the evidence in support of the Settlement Proposals at any settlement hearing;

3. Clair West and Cobalt shall work with the City through the Site Plan Control process to:

- a. construct and maintain the development of the Sites in accordance with Tier 1, Toronto Green Standard, and will be encouraged to achieve Tier 2, Toronto Green Standard, or higher, where appropriate, consistent with the performance standards of Toronto Green Standards applicable at the time of the site plan application for the development;

- b. prior to commencement of any excavation and shoring work, submit a Construction Management Plan to the satisfaction of the Chief Building Official and Executive Director, Toronto Building, the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services, and the Chief Engineer and Executive Director, Engineering and Construction Services and thereafter shall implement the plan during the course of construction; the Construction Management Plan will include, but not be limited to the following construction-related matters: noise, dust, size and location of staging areas, location and function of gates, dates of significant concrete pouring, lighting details, vehicular parking and queueing locations, street closures, parking and laneway uses and access, refuse storage, site security, site supervisor contact information, and a communication strategy with the surrounding community, including matters related to the construction of streets or infrastructure, and any other matters requested by the Chief Building Official and Executive Director, Toronto Building, the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services, and the Chief Engineer and Executive Director, Engineering and Construction Services;

- c. prior to the earlier of condominium registration for the development on the Cobalt Site or occupancy of the development on the Cobalt Site, prepare all documents and grant, on terms set out in the Site Plan Agreement, a public access easement in favour of the City in perpetuity, including support rights as applicable, for public pedestrian and vehicular use of the rear laneway having a width of not less than 6.0 metres measured from the south property boundary the full combined width of the Clair West Site and the Cobalt Site, all to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services and the City Solicitor; and such access easement, in addition to rights afforded to the general public shall include rights for the abutting property owners to use the easement for the purpose of direct access to their properties, with such lands to be free and clear of all other physical and title encumbrances (except those permitted at the discretion of the City Solicitor including those shown on the enclosed Architectural Plans prepared by RAW Design Inc. and dated January 9, 2023). Clair West and Cobalt shall, at their own expense, construct and maintain the rear laneway lands referred to herein at a standard required of a public lane to the satisfaction of the General Manager, Transportation Services, with the design, details and configuration to be determined and secured in the context of site plan approval; and shall provide the City with an indemnity against liability in accordance standard City requirements;

d. provide the City with an option to require the fee simple conveyance for nominal consideration, free of any encumbrances of both the southerly 3.0 metre wide portion of the laneway lands referred to in Part 3c. up to southwest corner of the proposed building on the Cobalt Site and the 6.0 metre wide portion of the laneway beyond the southwest corner of the proposed building on the Cobalt Site to Cobalt Avenue to the City, all to the satisfaction of the General Manager Transportation Services and the City Solicitor on terms set out in the Site Plan Agreement; the option shall be exercisable at the discretion of the General Manager, Transportation Services, to facilitate a public lane at the rear of Sites; if the City exercises its option, the then owner of the of property shall prepare all documents and convey the lands to the City on a date that is 120 days following the delivery of notice by the City, or a date otherwise determined appropriate by the General Manager, Transportation Services, to the satisfaction of the City Solicitor; and prior to conveyance, and as may be required, the owner shall assess and remediate the lands being conveyed, in accordance with the most current environmental policies of City Council and reconstruct the rear access as a public lane;

e. prior to the earlier of condominium registration or occupancy, prepare all documents and grant, on terms set out in the Site Plan Agreement, an easement in favour of the City in perpetuity, including support rights as applicable, for public pedestrian and vehicular use of Mondavi Gate to the east of 2231 St. Clair Avenue West having a width of not more than 10.0 metres the lands generally shown as Part 5 and Part 6 of the enclosed Draft Reference Plan prepared by R. Avis Surveying Inc. and dated September 6, 2020, all to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services and the City Solicitor; with such lands to be free and clear of all other physical and title encumbrances (except those permitted at the discretion of the City Solicitor). The owner shall, at its own expense, construct and maintain the lands referred herein to the standard required of a City Street to the satisfaction of the General Manager, Transportation Services, with the design, details and configuration to be determined and secured in the context of site plan approval; and shall provide the City with an indemnity against liability in accordance standard City requirements;

f. provide the City with an option, to require the fee simple conveyance for nominal consideration, free of any encumbrances of the lands referred to in Part 3e. to the City (and generally shown as Part 5 and Part 6 of the enclosed Draft Reference Plan prepared by R. Avis Surveying Inc. and dated September 6, 2020), all to the satisfaction of the General Manager Transportation Services and the City Solicitor on terms set out in the Site Plan Agreement; the right shall be exercisable at the discretion of the General Manager, Transportation Services, to facilitate a connection of Mondavi Gate from St. Clair Avenue West to Ryding Avenue; upon receipt of such notice, the then owner of the of property shall prepare all documents and convey the lands to the City on a date that is 120 days following the delivery of notice, or a date otherwise determined appropriate by the General Manager, Transportation Services, to the satisfaction of the City Solicitor; and prior to conveyance, and as may be required, the owner shall assess and remediate the lands being conveyed, in accordance with the most current environmental policies of City Council and reconstruct as a public street;

g. prior to issuance of the first above grade building permit, the owner shall provide the City with a fee simple conveyance for nominal consideration, free of any encumbrances

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of the 4.94 metre road widening on St. Clair Avenue West to the City, all to the satisfaction of the General Manager Transportation Services and the City Solicitor on terms set out in the Site Plan Agreement;

h. explore the possibility of recessing the ground floor units on the east side to increase the setback of the ground floor only from the property line; and

4. Clair West and Cobalt shall withdraw and/or request closure of the Applications with the City in the event that the OLT approves the Settlement Proposals and shall not request any reimbursement of fees.

In support of this **without prejudice settlement offer** please find enclosed Architectural Plans and Shadow Studies by Raw Design Inc. depicting the Settlement Proposals, along with a revised version of ZBA 1170-2011 with site-specific provisions to permit the Settlement Proposals and a Draft Reference Plan prepared by R. Avis Surveying Inc. and dated September 6, 2020.

Finally, we understand that the City and the local Councillor may hold a Community Meeting to present the within Settlement Proposals to the public, if requested by the City in advance of presenting any settlement at the OLT. Clair West and Cobalt shall also provide the Settlement Proposals to the remaining appellants of OPA 144, and ZBA 1170-2011.

We greatly appreciate the cooperation of City Staff in arriving at a resolution on ZBA 1170-2011 and also appreciate your willingness to bring this matter forward for consideration by Council at the meeting commencing on March 29th, 2023. In the event that Council does not accept our clients' settlement offer with respect to ZBA 1170-2011, our clients will proceed to prepare for a hearing beginning on June 19, 2023.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



Eileen P. K. Costello
EPKC/NM

cc. Client

AIRD BERLIS