

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON MAY 19, 2015
FROM:	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	REQUEST FROM O.C. HOLDINGS '87 INC. TO EXTEND ITS OPTION TO PURCHASE PARTS 2, 3 AND 4, PLAN 33R-17213 - INNOVATION PARK, PHASE I

RECOMMENDATION

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, on the advice of the Manager, Realty Services, the following actions **BE TAKEN**:

- a) the request submitted by O. C. Holdings '87 Inc. to extend its option to purchase until May 1, 2017, on approximately 9.79 acres of land located on the east side of Innovation Drive, described as Parts 2, 3 and 4, Plan 33R-17213, save and except Parts 1 and 2, Plan 33R-19042, as outlined on the location map attached to this report, **BE APPROVED**; and
- b) the attached proposed By-law (Appendix "B") **BE INTRODUCED** at the Municipal Council meeting to be held on May 26, 2015, to approve this request and to authorize the Mayor and the City Clerk to execute the Amended Option Agreement.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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City Council Report – April 28, 2008 (Offer to Purchase – O.C. Holdings '87 Inc.)
City Council Report – June 11, 2013 (Extension of Option Request – O.C. Holdings '87 Inc.)

BACKGROUND

On April 28, 2008, Municipal Council accepted an amended offer from O.C. Holdings '87 Inc. to purchase 23.16 acres of land, and also to option an additional 10.24 acres of land in Innovation Park, Phase 1 at a purchase price of \$65,000.00 per acre until May 1, 2013. On June 11, 2015, Municipal Council granted a two-year extension to the original option agreement.

This 23.16 acre site is currently the home of Original Cakerie, a 143,465 square foot bakery that has grown to be the largest privately-owned dessert manufacturer in Canada. They are a leading manufacturer of high quality frozen desserts for retail and foodservice customers across North America. In 2013, Original Cakerie achieved a grade "A" from the British Retailer Consortium's (BRC) Global Standard for Food Safety.

On October 14, 2014, Original Cakerie agreed to convey the westerly 30 feet of their optioned land to CT Innovation to permit the expansion of CT Innovation's manufacturing facilities. This left Original Cakerie with a 9.79 acre optioned parcel.

Over the past 5 years, Original Cakerie's investment in London has been over \$75,000,000. They currently employ over 250 people. As they continue to seek to expand their growth and product capabilities, they may require additional manufacturing space on the optioned lands.

The assessed value of their current London facility is just over 10.6 million dollars.

On April 23, 2015 the Original Cakerie submitted a request for a two-year extension on their optioned land (attached). The Original Cakerie is committed to London and plans on exercising this option if they meet growth expectations. There has been no other expression of interest for the purchase of these lands.

In addition to extending this option, the company asked if assignable language could be added to the new option agreement to permit a corporation affiliated with the optioner, provided both would be subsidiaries of the same corporation. Such language has been added to the attached amending option agreement as paragraphs two and three.

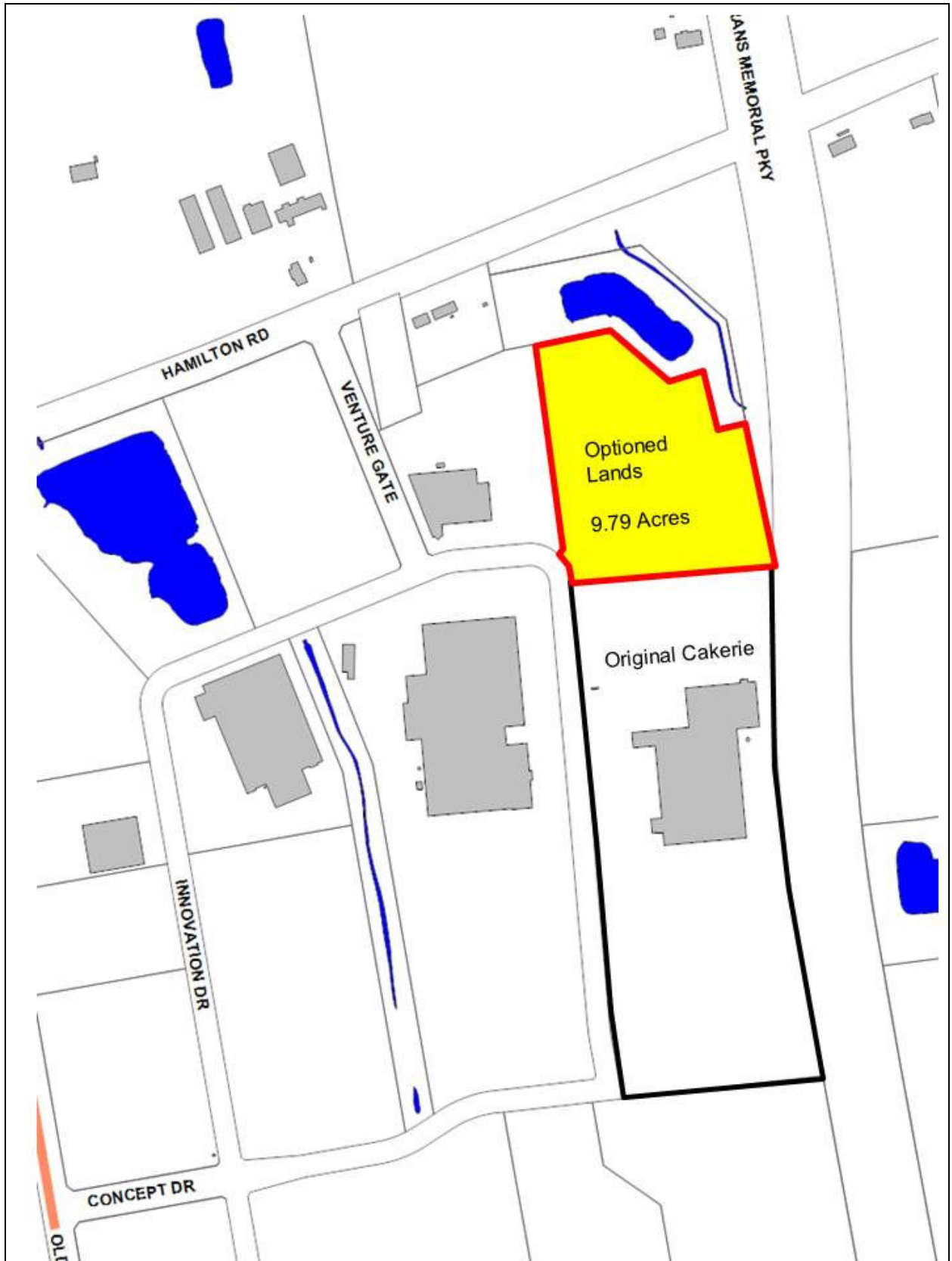
A location map of the subject property is attached for the Committee's information.

PREPARED BY:	RECOMMENDED BY:
BILL WARNER MANAGER, REALTY SERVICES	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

May 1, 2015

cc: Mark Henderson, Director of Business Liaison
Kapil Lakhotia, General Manager, LEDC
David G. Munteer, Solicitor II
Bill Warner, Manager, Realty Services

LOCATION MAP



APPENDIX “B”

Bill No.

By-law No.

A By-law to approve and authorize an Amending Option Agreement between The Corporation of the City of London and O.C. Holdings '87 Inc., and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the “City”) to enter into an Amending Option Agreement with O.C. Holdings '87 Inc., (the “Agreement”);

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule “A” to this By-law, being an Amending Option Agreement between the City and O.C. Holdings '87 Inc., is hereby authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on May 26, 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading - May 26, 2015
Second reading – May 26, 2015
Third reading – May 26, 2015

SCHEDULE "A"

AMENDING OPTION AGREEMENT

THIS AMENDING OPTION AGREEMENT made as of the _____ day of May, **2015**.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(the "Vendor")

OF THE FIRST PART;

- and -

O.C. HOLDINGS '87 INC.
(the "Purchaser")

OF THE SECOND PART;

WHEREAS:

- A. The Vendor and Purchaser entered into an Agreement of Purchase and Sale dated the 16th day of May, 2008, (the agreement as amended being herein referred to as the "Purchase Agreement"), pursuant to which the Vendor agreed to sell, and the Purchaser agreed to purchase, the lands as therein described for the consideration and upon the terms and conditions set forth therein;
- B. Pursuant to the Purchase Agreement, the Vendor granted to the Purchaser the right and option to purchase approximately 9.79 acres of land as more particularly shown as Parts 2, 3 and 4 of Plan 33R-17213, save and except Parts 1 & 2 of Plan 33R-19042, on Appendix "A" hereto (the "Option to Purchase");
- C. The Purchaser and Vendor have agreed to extend the Option to Purchase as more particularly set forth herein;

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of \$10.00 paid by each of the Vendor and Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

- 1. Until May 1, 2017, the Purchaser shall have the option to purchase all or any part of Parts 2, 3 and 4 of Plan 33R-17213, save and except Parts 1 & 2 of Plan 33R-19042, from the Vendor at a purchase price of \$65,000 per acre on the terms hereinafter set forth. The option shall be exercisable at any time on or prior to the Expiry Date, by the delivery by the Purchaser to the Vendor of written notice of such exercise, signed by the Purchaser, and in which Purchaser designates all or that portion of Parts 2, 3 and 4 of Plan 33R-17213, save and except Parts 1 & 2 of Plan 33R-19042, in respect of which Purchaser is exercising the Option. On the delivery of such a notice of exercise, the Purchaser shall be obligated to purchase, and the Vendor shall be obligated to sell, that portion of Parts 2, 3 and 4 of Plan 33R-17213, save and except Parts 1 & 2 of Plan 33R-19042 (or all thereof if such be the case) designated in the said notice on and subject to the same terms and conditions as are contained in the Vendor's then current standard form of offer to purchase industrial lands in the Innovation Park, Phase 1, with the closing of the transaction to occur on the first business day which is at least sixty (60) days after the date of exercise.

2. At any time prior to closing, the Optioner may assign this Agreement to a corporation affiliated with the Purchaser to be incorporated pursuant to the Ontario or Canada Business Corporations Act, and upon delivery to the Vendor of a notice of such assignment and a covenant by the assignee in favour of the Vendor pursuant to which the assignee agrees to assume all covenants and agreements to be kept, observed and performed by the Optioner, pursuant to this Agreement, the assignee shall be entitled to and bound by, and the Optioner shall cease to be entitled to and shall be released from, all of the benefits and obligations of the Optioner, pursuant to this Option Agreement Transaction.

For the purposes of this Agreement, a corporation shall be deemed to be affiliated the Optioner if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person or corporation.

3. That within sixty (60) days of receipt of notice of the exercise of this Option, the Board of Directors for O.C. Holdings '87 Inc. shall have approved the business plan for the Optioner's acquisition and intended development of the Property.
4. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same instrument.
5. This Agreement shall enure to the benefit of and be binding upon that parties and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement as evidenced by the signatures of their properly authorized officers.

O.C. HOLDINGS '87 INC.

Per: _____
Name: Dave Hood
Title: President

I have Authority to Bind the Corporation

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Name: Matt Brown
Title: Mayor

Per: _____
Name: Catharine Saunders
Title: City Clerk

We have Authority to Bind the Corporation

APPENDIX "A"

