

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON MAY 28, 2013
FROM:	BILL WARNER MANAGER OF REALTY SERVICES
SUBJECT:	REQUEST FROM O.C. HOLDINGS '87 INC. TO EXTEND ITS OPTION OVER PARTS 2, 3 and 4, PLAN 33R-17213 INNOVATION PARK, PHASE I

RECOMMENDATION

That, on the recommendation 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, 2015, on approximately 10.24 acres of land located on the east side of Innovation Drive, described as Parts 2, 3 and 4, Plan 33R-17213, as outlined on the location map attached as Schedule "C" 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 June 11, 2013, 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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Board of Control Report - February 19, 2008 (Offer to Purchase – O.C. Holdings '87 Inc.)
Board of Control Report - April 23, 2008 (Amended Offer to Purchase – 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.

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. Their frozen desserts are distributed nationally and available from coast to coast throughout North America.

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

On April 30, 2013 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.

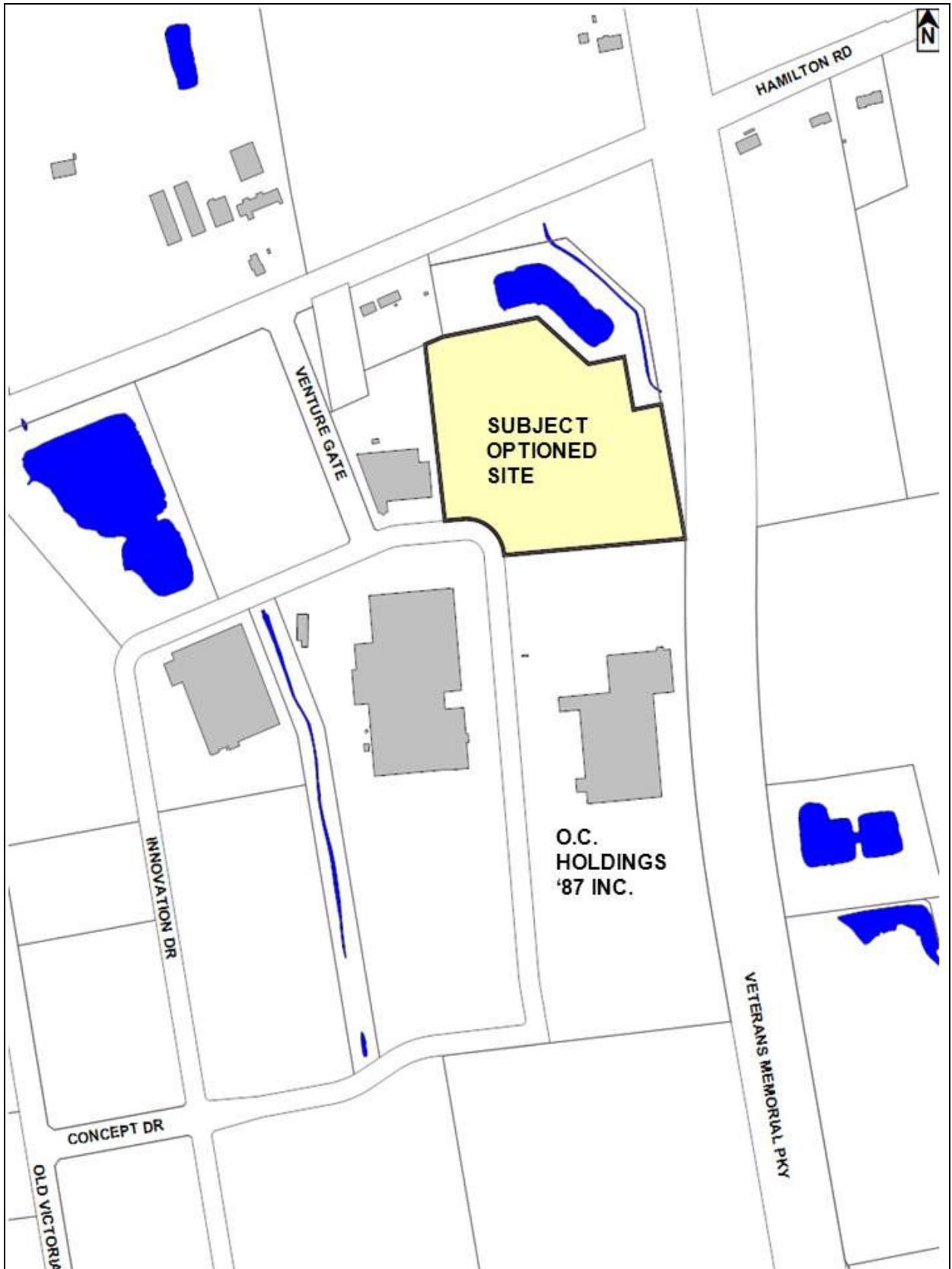
A location map of the subject property is attached as Schedule "C".

RECOMMENDED BY:
BILL WARNER MANAGER OF REALTY SERVICES

May 15, 2013

- cc: Martin Hayward, Chief Financial Officer
Harvey Filger, Director of Corporate Investments & Partnership
David G. Mounteer, Solicitor II
Mark Henderson, Director of Business Liaison
Peter White, LEDC

SCHEDULE "C"



APPENDIX "B"

Bill No.

By-law No.

A By-law to 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 June 11, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - June 11, 2013
Second reading - June 11, 2013
Third reading - June 11, 2013

SCHEDULE "A"

AMENDING OPTION AGREEMENT

THIS AMENDING OPTION AGREEMENT made as of the _____ day of June, 2013.

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 10.24 acres of land as more particularly shown as Parts 2, 3 and 4 of Plan 33R-17213 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, 2015, the Purchaser shall have the option to purchase all or any part of Parts 2, 3 and 4 of Plan 33R-17213 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, 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 (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. 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.
- 3. 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: Joe Fontana
Title: Mayor

Per: _____
Name: Catharine Saunders
Title: City Clerk

We have Authority to Bind the Corporation

APPENDIX "A"

