June 18, 2014

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File 16363.00001

BY EMAIL clerk@toronto.ca

City of Toronto
Toronto City Hall
100 Queen Street West, 13th Floor W.
Toronto, ON M5H 2N2

Attention: Mayor and Members of Council
Ulli S. Watkiss, City Clerk

Dear Mesdames and Messrs:

Re: DEVELOPMENT CHARGES COMPLAINT
Medallion Developments Inc.
545 - 565 Sherbourne Street

Please be advised that we represent Medallion Corporation ("**Medallion**") with respect to the property municipally known as 545-565 Sherbourne Street, within the City of Toronto (the "**Subject Lands**"). Existing on the Subject Lands are three high-rise towers containing a total of 1,116 residential rental apartment units and approximately 6,010 square metres of retail gross floor area at grade.

Development Proposal

Medallion has now received the required approvals to intensify the Subject Lands with the construction of a fourth tower over the existing commercial podium. The tower will have 43 storeys, adding a total of 369 new purpose-built rental units to the City's limited rental stock; the proposal also includes three-storey, street-level townhouses that will improve the streetscape along Bleecker Street (the "**Development**"). A zoning by-law amendment and site plan approval are required in order to implement the Development.

History of the Applications

Medallion submitted its application for a zoning by-law amendment in December of 2008. A preliminary staff report was presented to the East York Community Council on March 9, 2009. Between September 2009 and June 2010, Medallion agreed to participate in two community

consultation meetings and four working group meetings with community residents, and the application was revised to respond to comments received. The site plan application was submitted as long ago as February 3, 2011.

On September 13, 2011, a staff recommendation report was considered by the Community Council and on October 25, 2011, Council adopted staff's recommendation to approve the zoning by-law amendment in principal with final approval subject to, among other things, the execution of three agreements: 1) a Section 37 Agreement; 2) a Site Plan Agreement; and 3) a Section 111 Agreement (collectively, the "**Agreements**"). The staff recommendation report also set out in detail what contributions were to be provided by way of the Section 37 Agreement.

Between October 2011 and the end of December 2013 - a two year time frame - Medallion worked diligently to have the three Agreements finalized and executed. However, our client was confronted with numerous administrative delays beyond its control and errors in the draft Agreements that prevented them from being finalized expeditiously, which in turn prevented the zoning by-law amendment from receiving final approval in a timely manner. This delay occurred despite Medallion's repeated emails and phone calls requesting that outstanding concerns be addressed and matters be moved forward.

It was not until November 2013, several years into the development process, that Medallion was advised that they could no longer obtain a conditional building permit and at the same time pay the development charges owing, in order to secure the development charge rate. In fact, on November 20, 2013, Medallion received notice from City staff that its initial building permit was ready for issuance, subject only to payment of development charges and nominal permit fees. Immediately upon receipt of this notice, Medallion informed staff that it intended to tender payment of the development charges. However, at this point, staff had learned that as a result of the new development charges by-law, the payment was to be refused because the zoning had not come into effect. One month prior, with the passage of the new development charges by-law, the definition of "building permit" was changed to include only those permits relating to above grade work.

On February 20, 2014, after Medallion's request to be included on the January 2014 Council agenda was refused by legal staff, Council passed Bill 122, providing final approval of Medallion's zoning by-law amendment. Subsequently, on May 30, 2014, development charges in the amount of $5,246,662 were paid to the City in accordance with Schedule A-2 of Development Charges By-law No. 1347-2013, which applies as of February 1, 2014. Had Medallion's extended approval process concluded only a few months earlier, Medallion would have owed approximately $1,000,000.00 less in development charges.

Since the approval of Medallion's zoning by-law, Medallion has continued to be subjected to administrative delay beyond its control. The events causing this delay are detailed in the enclosed Chronology of Events. It is clear from the Chronology that Medallion has been working diligently towards the finalization of the Section 37 Agreement since early 2014 and prior thereto. Furthermore, the Section 111 Agreement process, which was also a pre-condition to final approval of the zoning by-law, was commenced in mid-2013.

Once the Agreement was executed on February 13, 2014, City staff was advised that forthcoming payment of development charges was not intended to preclude any appeal that Medallion may wish to pursue in connection with the payment thereof. In response, the City immediately advised that permits would not be issued until such time as Postponements from the mortgagees were registered in favour of the City. However, the pre-conditions to the final approval of Medallion's Zoning By-law included only the execution of a Section 37 Agreement and not the registration of Postponements. Awaiting the registration of such Postponements was beyond Medallion's reasonable expectations and is contrary to Medallion's previous dealings with the City. In 2006, in relation to a previous Section 37 Agreement for the Subject Lands, an undertaking to obtain the Postponements was given on September 21, 2006, the Section 37 Agreement was registered on October 17, 2006, and the Postponements were not registered until January 2007.

Notice of Complaint

Pursuant to the provisions of Section 2 of the *Development Charges Act* (the "**Act**"), we hereby submit our client's formal complaint to Council for the imposition of this development charge on the grounds that:

1. The amount of the development charge was incorrectly determined; and

2. There was an error in the application of the development charge by-law, being By-law Number 1347-2013 (the "**DC By-law**").

Reasons for the Complaint

The reasons for filing this complaint are as follows:

1. The application of the increased development charge rate, from Schedule A-1 to Schedule A-2 of the DC By-law, was a result of undue, administrative delays beyond our client's control. Had the Agreements been finalized efficiently, the final approval of the zoning by-law amendment been tabled for an earlier Council meeting, and City staff

acted in accordance with expected protocol, then the amount of development charges owing would have been approximately $1,000,000.00 less.

2. Medallion has been working cooperatively with the City and local residents to provide this much needed reinvestment in the St. James Town neighbourhood. The Development will improve the streetscape, contribute $1,000,000 toward community improvement through the Section 37 Agreement, increase the City's stock of market rental units, provide new affordable housing, and provide a full range of units types with 18% being family-sized units. Medallion should not be penalized in this manner, which will impact the feasibility the project. Respectfully, since the Development will offer substantial benefits to the City, the City should be willing to forego the cost associated with the administrative delay that was beyond our client's control.

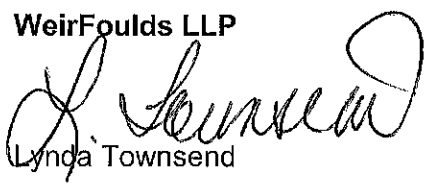
3. Based on the circumstances, Medallion should be entitled to enter into an agreement to allow for the payment of development charges in accordance with Schedule A-1 as provided for in section 415-8 C. of the DC By-law and section 27 of the Act.

4. By application of the *Planning Act*, R.S.O. 1990, c. P.13, Medallion has had a right to appeal the zoning by-law amendment to the Ontario Municipal Board since mid-2009, on the basis of Council's failure or neglect to make a decision on the application within 120 days. In this scenario, development charges would have been payable under a completely different regime and at a substantially lesser rate. Instead, Medallion chose to work cooperatively with the City and the residents to deliver a Development that satisfies all parties involved. Medallion should not be penalized for this approach, given the lack of control it had over the length of time taken to complete the process.

On the basis of the above reasons and such further reasons as may arise, we would ask that the City proceed to schedule a hearing of this complaint before Council. We would ask that notice of the hearing be sent to the address provided below. We appreciate your consideration of this submission.

Yours truly,

WeirFoulds LLP



Lynda Townsend

LT/jm
Encl.
c: Mr. Howard Paskowtiz, Medallion Developments Inc.
6519885.2

Chronology of Events

RE: 712953 Ontario Limited – Section 37 Agreement, Section 111 Agreement and Section 118 Restriction with City of Toronto
545, 555, 561 and 565 Sherbourne Street, Toronto (the "**Project**")

No.	Date	Description
1.	January 21, 2014	• Email from Christina Achkarian ("CA") to Howie Paskowitz ("HP") advising that the finalized Section 37 Agreement and Section 111 Agreement would be sent for signature shortly. • CA advises that Agreements should be to HP by January 27, 2014.
2.	January 27, 2014	• Introductory letter from Patrick Anderson ("PA") to CA which encloses a draft form of Opinion Letter, including Permitted and Non-Permitted Encumbrances and "2007" Postponement procedure.
3.	January 28, 2014	• Letter to HP from PA asking him to forward the most current draft Agreements from the City of Toronto.
4.	February 7, 2014	• Email from CA to HP advising that she is giving the Agreements a final "read through"
5.	February 8, 2014	• Email from PA to CA enclosing four PINs as requested by her to HP.
6.	February 10, 2014	• Email from CA to HP advising that she does not have the legal descriptions so the Agreements are not in execution form.
7.	February 11, 2014	• Letter to CA from PA advising that the legal descriptions were originally sent to her in our introductory letter of January 27, 2014 and providing her with a further copy of that letter and the legal descriptions.
8.	February 11, 2014	• Email from HP to PA attaching draft Agreements. HP advises that he is reviewing the Agreements to ensure all required changes have been made. • CA requested that the signed Agreements be returned to her by February 13, 2014 to be signed and registered by the City.
9.	February 12, 2014	• Letter to CA from PA advising that we have provided HP with our comments which HP will take up with her directly. • PA suggests to CA that wording be included in both Agreements and advises that if this paragraph is included, then the client will be satisfied with the form of Agreements.
10.	February 13, 2014	• Letter to HP from PA reaffirming PA's suggestion that in connection with the Development Charges, that HP should give consideration to getting a side letter confirming that the agreement to pay DC's does not preclude any appeal HP intends to pursue.
11.	February 13, 2014	• Letter to CA from PA enclosing signed Agreements and other supporting documentation (Letter and Agreements were delivered by hand).

12.	February 13, 2014	• Letter to CA from PA addressing the issue of obtaining Postponements. • PA suggests to CA that client gives Undertaking to produce Postponements when available.
13.	February 13, 2014	• Memo from Megan MacKeigan (MM) re her telephone conversation with CA. • CA advises that no permits will be issued until everything is registered, including the Postponements.
14.	February 13, 2014	• Email from CA to PA acknowledging receipt of the Agreements. • CA advised PA that she will bring the Agreements to City Hall herself on February 14, 2014 to have the Section 37 Agreement signed by "Gregg". • Section 111 Agreement to be signed by City Manager and that may take until February 17, 2014.
15.	February 14, 2014	• Letter to CA from PA authorizing certain corrected pages to be slip-sheeted into the Agreements.
16.	February 20, 2014	• Email from PA to HP advising re whether City would hold up permits until postponements were registered.
17.	February 20, 2014	• Email to HP from CA advising that postponements need to be registered before permits are issued and that she needs the s. 118 Restriction drafted and registered prior to the postponements as well.
18.	February 20, 2014	• Email from PA to HP offering to get in touch with CA and offering to draft s. 118 Restriction. • PA notes that CA is again requesting a postponement for a document which does not yet exist.
19.	February 21, 2014	• Letter from CA to PA enclosing fully executed s. 37 and s. 111 Agreements.
20.	February 21, 2014	• Email to CA from PA sending her the draft s. 118 Restriction.
21.	February 26, 2014	• Letter to CA from PA revising that she review our draft s. 118 Restriction in order to expedite the presentation to the First & Second Mortgagees and with the approval of the Postponements.
22.	February 26, 2014	• Email from CA to PA apologizing for delay in reviewing s. 118 Restriction.
23.	February 27, 2014	• Email from CA to PA requesting an amendment to s. 118 Restriction.
24.	February 27, 2014	• Email from PA to CA enclosing revised s. 118 Restriction.
25.	March 6, 2014	• Letter to CA from PA requesting that the client has met with the First & Second Mortgagees to advise of the requirement for the consent to a postponement to the Agreements.
26.	March 10, 2014	• Email from CA advising amended s. 118 Restriction is satisfactory.
27.	March 12, 2014	• Email from PA to HP suggesting that HP consider doing a side letter to AHO re DC's.

28.	March 12, 2014	• Letter from PA to CA enclosing signed Ack& Dir for the s. 118 Restriction.
29.	April 4, 2014	• Letter to Tzen-Yi Goh (the solicitor for Great West Life) as an introduction and enclosing draft materials including postponements.
30.	April 4, 2014	• Letter to CA from PA re status of availability of signed Postponements.
31.	April 30, 2014	• Email from PA to HP advising that there is no activity at our end, still waiting for GWL to review postponements.
32.	May 2, 2014	• Letter from PA to CA advising that the delay of permits for he project is creating significant difficulties for the client. • Advising CA that in past dealings with the City, the City accepted an Undertaking from the client re the production of the postponements in order for the permits to be provided in a timely matter.
33.	May 5, 2014	• Email from CA to PA advising that a building permit cannot be issued until the rental housing matters have been secured. • CA also advises in this email that a fee of $5,000.00 re the easement agreement will be required.
34.	May 6, 2014	• Letter to CA from PA (by email and courier) enclosing assigned Ack & Dirs from GWL and the draft Postponements.
35.	May 9, 2014	• Email to CA asking to whom we are to message the draft Postponements (through Teraview).
36.	May 13, 2014	• Memo to File from TL re voicemail from CA advising that her Teraview is "acting up" and she will advise to whom we should message the draft Postponements shortly.
37.	May 14, 2014	• Email to CA from TL again requesting to whom we are to message the draft Postponements and when she would expect to have an opportunity to register same.
38.	May 14, 2014	• Email to CA from TL advising that she had successfully messaged the Postponements and s. 118 Restriction to her (CA).
39.	May 15, 2014	• Email from TL to CA advising that she will also message the Postponements and s. 118 Restriction to her clerk, Stephanie Morrow and attaching 4 current PINs as she had requested.
40.	May 20, 2014	• Email to HP and Peter Grater ("PG") from PA advising that we had been contacted by CA's clerk, Cindy Du ("CD") and we are having a conference call with her at 2:00 p.m. regarding some questions she has on the draft registrations.
41.	May 21, 2014	• Email from CD advising that all Agreements, Postponements and s. 118 Restriction have been registered.

42.	May 22, 2014	• Letter from PA to PG enclosing copies of registered documents and advising that we would be following up on the availability of the permits.
43	May 22, 2014	• Letter from PA to CA inquiring as to the availability of permits and if there are any outstanding matters preventing the release of permits to advise.
44.	May 23, 2014	• Memo to File from Teresa Lingard ("TL") who spoke with CD and CD had advised that she has notified Zoning, Building and Planning that all Agreements and Postponements and the s. 118 Restriction have been registered.
45.	May 26, 2014	• Letter from PA to HP advising that PA had received a telephone call from CA. She advised that she had notified the Building Department that the s. 118 Restriction had been registered. • She also advised that it is her belief that a Notice of Approval of Conditions for the Site Plan is required.