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July 6, 2018

Economic Development Committee
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Economic Development Committee and Council

BY EMAIL

Re: Comments for Distribution to the Economic Development Committee and Council as it relates to 100 Queens Quay East and Item ED31.7 – Report For Action – Imagination, Manufacturing, Innovation and Technology (IMIT) Property Tax Incentive Program – Applications. Meeting date July 9, 2018.

The Report for Action – Imagination, Manufacturing Innovation and Technology (“IMIT”) property tax incentive program applications to City Council (the “Staff Report”) and the corresponding Review of Applications under the IMIT program performed by Hemson Consulting Ltd. (the “Hemson Report”), all as it relates to recommending refusal of the IMIT application for 100 Queens Quay East has three primary flaws in its analysis:

1. An abuse of process as it relates to the inadvertent or intentional delay in the processing of the 100 Queens Quay IMIT application;
2. The creation of an unfair competitive environment by giving preferential treatment in awarding the IMIT to 440 Front and not to 100 Queens Quay East; and
3. Erroneous assumptions and rationale to arrive at the conclusion that the Development Grants under the IMIT program not be awarded to 100 Queens Quay East.

Abuse of Process – Timing

100 Queens Quay East applied for the Development Grants under the IMIT program on July 4, 2017.

Council adopted recommended changes to the IMIT program on April 24-27, 2018.

Notwithstanding that 100 Queens Quay East applied for the IMIT program over a year ago and 10 months prior to Council adopting recommended changes to the IMIT program, staff did not process the application in a timely manner and instead delayed the process by waiting for changes to be adopted by Council that were highly prejudicial to 100 Queens Quay East. At the time of applying for the Development Grants under the IMIT program, 100 Queens Quay East had every expectation based on City Staff's previous processing of Development Grants for projects such as One York Street and 45 and 141 Bay Street that it would be awarded the Development Grants under the IMIT program.

If City Staff were truly processing the 100 Queens Quay application under the pre-existing rules as the Staff Report indicates in its summary (which later contradicts itself in the body of the report) then Staff would have awarded the IMIT grant to 100 Queens Quay, and 100 Queens Quay would have had every expectation that such IMIT grant would be awarded. The City is now equitably estopped from refusing to award the Development Grants under the IMIT program to 100 Queens Quay East based on its own, prejudicial inaction. Failure to award the Development Grants under the IMIT program will result in harm to 100 Queens Quay East and creates an unfair competitive environment where only certain applications are arbitrarily processed under the pre-existing rules and others under the new rules.

Unfair Competitive Environment

The Staff Report recommends granting the Development Grants under the IMIT program to 440 Front Street, but not to 100 Queens Quay East.

Both 440 Front Street and 100 Queens Quay East are located in similar atypical office markets that are only starting to emerge and are competing for the same tenants that are looking for new product at a discount to the existing core product being developed. 100 Queens Quay East has already bid directly against 440 Front Street for tenants, to provide one site with the Development Grants under the IMIT program and not the other is prejudicial to 100 Queens Quay East as it will result in an unfair competitive advantage in favour of one party over the other.

The main rationale distinguishing the two sites provided in the Hemson Report and relied upon in the Staff Report is that the 440 Front Street location (also referred to as "The Well") favours residential development. This is not accurate. There are several office developments by multiple developers within 500 metres of 440 Front Street, including:

- 49 Spadina – 190,000 square feet of office space
- Portland Commons – 460,000 sf of office space
- 388 King Street West – 800,000 sf of office space
- King Adelaide Centre – 360,000 sf of office space
- King Portland Centre – 250,000 sf of office space, currently under construction

By contrast, 100 Queens Quay East is the first private office development in the Lower Yonge Precinct/East Bayfront since 1 Yonge Street was built in 1971. The area is primarily residential,

which is in fact a key reason why the entire “Sugar Wharf” development only supports 600,000 square feet of office development whereas the “The Well” development supports 1 million square feet of office development.

The main rationale to support the Development Grants under the IMIT program for 440 Front Street and not for 100 Queens Quay East is incorrect and creates an unfair competitive environment between two projects that are competing for similar tenants.

Flawed Assumptions in the Staff Report and Hemson Reports

The rationale that 440 Front Street is more of a residential market has already been shown to be flawed as demonstrated above. In addition to that flawed assumption, the following assumptions are also flawed:

- The Hemson Reports “But For” test for 100 Queens Quay East states that: “Standardized Financial Analyses indicated that the grants are not likely to be a deciding factor in development decisions”.
- ➔ This is patently wrong as there is no supporting financial analysis provided that supports this position and furthermore 100 Queens Quay East as part of the consultation process provided a financial analysis, on a confidential basis, that illustrated that the Development Grants from the IMIT program were a deciding factor for 100 Queens Quay East.
- The Hemson Report “But For” test also makes the following statement: “It is important to note that the new LCBO headquarters component of the project was a requirement of the Province’s RFP and thus was a known “pre-lease” factor in the purchase of the site.”
- ➔ This is another erroneous assumption for multiple reasons.

While the LCBO headquarters was a known pre-lease assumption, the RFP process and documentation issued in February 2015 by Infrastructure Ontario and LCBO explicitly required the selected proponent to seek the Development Grants under the IMIT program (see relevant sections from RFP attached as Schedule A to this letter), so 100 Queens Quay would have assumed the Development Grants under the IMIT program in its financial analysis when bidding to acquire the site.

Furthermore, the known LCBO “pre-lease” factor that the Hemson Report relies upon only accounts for the 180,000 sf of office space that LCBO is leasing, the balance of the office space being developed was also undertaken with the assumption that the Development Grants under the IMIT program would be provided. The selected proponent under the RFP had no obligation to develop more office space than what

was required for the LCBO headquarters, the decision to develop the additional 400,000 square feet of office was made under the assumption that the Development Grants under the IMIT program would be provided, “but for” the Development Grants under the IMIT program, the decision to develop the additional 400,000 square feet of office may indeed not have been made and correspondingly, the price paid to the Province of Ontario for the lands would most certainly have been lower.

- Both the Staff Report and the Hemson Report claim to be evaluating the 100 Queens Quay East application under the pre-existing rules.

→ Notwithstanding this claim, both reports contradict that assertion by continually referencing that 100 Queens Quay East falls within the “expanded Financial District” a fact that is irrelevant if the application is being reviewed under the rules existing at the time of the 100 Queens Quay East’s application and by pointing out very clearly that rejecting the application for 100 Queens Quay East will help to form the funding strategy for SmartTrack.

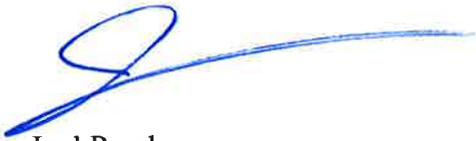
In conclusion we ask that City Staff reconsider their recommendation not to provide the Development Grants under the IMIT program to 100 Queens Quay East based on an abuse of process, the creation of an unfair competitive environment and flaws in the rationale provided in both the Staff Report and Hemson Report, all of which have been described above.

We are not in any way objecting to the direction adopted by Council in April 2018 as it relates to the Development Grants under the IMIT program on a go forward basis, but sites such as 100 Queens Quay East, that in good faith applied for the Development Grants under the IMIT program well before the Council decision should not be unfairly, arbitrarily and prejudicially denied the Development Grants under the IMIT program.

Yours very truly,

MENKES 55 LAKESHORE INC.

Per:



Joel Pearlman

Senior Vice President, Investments

Schedule "A"

Relevant Excerpts from the LCBO RFP Process

Cover page to 2015 RFP



LCBO

Request for Proposals

**in connection with
the Disposition of the
LCBO Head Office Lands and
Provision of the New LCBO Facilities**

RFP No. 15-073P

(RFP Version 4.0)

| | |
|-------------|---|
| SCHEDULE 1 | RFP DATA SHEET |
| | APPENDIX A – OVERVIEW OF TRANSACTION STRUCTURE |
| SCHEDULE 2 | REQUIREMENTS FOR NEW LCBO FACILITIES |
| SCHEDULE 3 | SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA |
| | APPENDIX A – TECHNICAL SUBMISSION REQUIREMENTS |
| | APPENDIX B – FINANCIAL SUBMISSION REQUIREMENTS |
| | APPENDIX C – PROPOSAL FORMAT AND EVALUATION |
| SCHEDULE 4 | PROPOSAL SUBMISSION FORMS |
| | APPENDIX A – RFP STAGE 1 PROPOSAL SUBMISSION FORM |
| | APPENDIX B – RFP STAGE 2 PROPOSAL SUBMISSION FORM |
| | APPENDIX C – CERTIFICATE OF OFFICER |
| SCHEDULE 5 | PRICE FORMS |
| | APPENDIX A – RFP STAGE 1 PRICE FORM |
| | APPENDIX B – RFP STAGE 2 PRICE FORM |
| SCHEDULE 6 | FORM OF AGREEMENT OF PURCHASE AND SALE (INCLUDING THE ASSIGNMENT OF TPLC OPTION AGREEMENT, THE LCBO GROUND LEASE, THE LCBO OFFICE LEASE, THE SITE DEVELOPMENT PROVISIONS, THE LCBO RETAIL LEASE) |
| SCHEDULE 7 | NEGOTIATIONS PROTOCOL AGREEMENT |
| SCHEDULE 8 | CONFIDENTIALITY AGREEMENT |
| SCHEDULE 9 | ADMINISTRATIVE CHECKLIST |
| | APPENDIX A – RFP STAGE 1 ADMINISTRATIVE CHECKLIST |
| | APPENDIX B – RFP STAGE 2 ADMINISTRATIVE CHECKLIST |
| SCHEDULE 10 | REQUEST FOR INFORMATION FORM |
| SCHEDULE 11 | LIST OF DOCUMENTS IN THE DATA ROOM |

**Excerpt from table
of contents
incorporating the
office lease into
the RFP**

Form of office lease included as part of RFP

(HEAD OFFICE TORONTO)

THIS LEASE made in quadruplicate as of ●(INSERT MONTH) ●(INSERT DATE), 20●● (INSERT YEAR) (the "Effective Date").

B E T W E E N:

●(INSERT NAME OF LANDLORD)

(herein called the "Landlord")

- and -

LIQUOR CONTROL BOARD OF ONTARIO

(herein called the "Tenant")

SUMMARY

The following is a summary of certain provisions, which are part of, and are referred to in subsequent provisions of this Lease. Any conflict or inconsistency between these provisions and the provisions contained elsewhere in this Lease will be resolved in favour of the provisions contained elsewhere in this Lease:

(a) **Address of Premises:** ●(INSERT ADDRESS OF PREMISES)

(b) **Rent:** (i) **Base Rent**

●(INSERT BASE RATE) per annum

●(INSERT AMOUNT) payable monthly, based on Twenty Five Dollars (\$25.00) per square foot per annum of the Rentable Area of the Premises, expected to be ●(INSERT NUMBER OF SQUARE FEET) square feet

(ii) **Proportionate Share of Realty Taxes**

●estimated to be (INSERT REALTY TAX AMOUNT) per square foot of the Rentable Area of the Premises for the year ●(INSERT YEAR)

(iii) **Proportionate Share of Operating Costs**

●estimated to be (INSERT OPERATING COSTS AMOUNT) per square foot of the Rentable Area of the Premises for the year ●(INSERT YEAR). Subject to cap of Seventeen Dollars (\$17.00) as adjusted after the first Rental Year.

SCHEDULE "G"
REALTY TAX ADJUSTMENT
(YEAR END)

1. **Definitions**

In this schedule:

- (a) **"Realty Taxes"** means all taxes, rates, duties, charges, levies and assessments whatsoever in the nature of realty taxes, whether municipal, provincial or federal charged or levied upon or attributable to the Office Portion of the Building, or upon the Landlord on account thereof, including all taxes, rates, duties, levies and assessments for local improvements, education and schools and all taxes, grants or assessments which may in the future be levied in lieu of Realty Taxes, but shall exclude any tax paid by the tenants which was attracted by the tenants' improvements, any tax such as personal and corporate income taxes, business taxes, capital tax, profits or excess profits taxes assessed upon the income of the Landlord, excise tax, value-added tax, sales tax, goods and services tax, business transfer tax, any and all impost charges or any other tax or assessment which is personal to the Landlord, any interest or penalties for late payment of Realty Taxes, and any other charges included in the tax bill that are not Realty Taxes. Should the Landlord undertake any improvements which result in an increase in Realty Taxes, the Tenant shall not be liable to pay any portion of any increase in Realty Taxes levied as a result of such improvements; and
- (b) For the sake of clarity, the Landlord here by covenants to make application under the Imagination, Manufacturing, Innovation, Technology (IMIT) Programme to obtain a Tax Increment Equivalent Grant (TIEG) as well as a Brownfield Remediation Tax Assistance (BRTA) grant and other grants, rebates or deferrals of Realty Taxes that may be available in respect of the Building or the Tenant's occupancy thereof and the Realty Taxes payable by the Tenant shall be reduced by the amount of such grants (other than rebates for portions of the Building not occupied by the Tenant) or deferrals of Realty Taxes. For the sake of clarity, a grant, rebate or deferral arises on account of the Tenant's occupancy, then the entire amount of such grant, rebate or deferral shall be allocated to the credit of the Tenant. If the Landlord loses the benefit of the grant, rebate or deferral for any reason as a result of a default by the Landlord under its IMIT or agreement with the City, the Tenant's Realty Taxes shall nonetheless be calculated as though such grant, rebate or deferral continued to be available. Any grant, rebate or deferral shall not be assignable or otherwise transferable by the Landlord, except to a successor in interest of the Landlord under this Lease who is bound to provide to the Tenant the benefits herein referred to.

Relevant excerpt from office lease requiring any successful proponent to seek the development grants under the IMIT program