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Via Email to clerk@toronto.ca and Courier

Mayor and Members of Council
City of Toronto
100 Queen Street West, 10th Floor, West Tower
Toronto, ON M5H 2N2

Attention: Ms. Ulli Watkiss, City Clerk

Dear Sirs/Mesdames :

Re: City Council Item PH10.1- City-Initiated Priority Retail Streets Zoning By-law Amendments

145 King Street West and 200 King Street West

Commerce Court - 25 King Street West, 199 Bay Street, 30 Wellington Street West, 21 Melinda Street and 56 Yonge Street

We are the solicitors for bcIMC Realty Group (“**bcIMC**”) as well as two of bcIMC’s affiliated companies, 145 King Street West Holdings Inc. and 200 King Street Holdings Inc. (collectively the “**Companies**”). The Companies are the registered owners of lands, as described further below (collectively the “**Properties**”) situated within the area subject to the proposed amendments to former City of Toronto Zoning By-law No. 438-86, as amended (“**By-law 438-86**”) and Comprehensive Zoning By-law No. 569-2013 (“**By-law 569-2013**”) relating to “Priority Retail Streets”(the “**Proposed Amendments**”).

145 King Street West Holdings Inc. and 200 King Street Holdings Inc. are the registered owners, respectively, of the properties identified as 145 King Street West (“**145 King**”) and 200 King Street West (“**200 King**”), each improved with existing Class “A” office-commercial developments that currently provide a significant proportion of retail/service uses at street level along their King Street frontages identified as priority retail streets in the Proposed Amendments.

BcIMC is the registered owner of lands municipally identified as 25 King Street West, 199 Bay Street, 30 Wellington Street West, 21 Melinda Street and 56 Yonge Street (the “**Commerce Court Lands**”). The Commerce Court Lands are bounded by Bay Street (west), Wellington Street (south) and King Street West (north), and also front along a portion of Yonge Street, identified as a priority retail street.

We are writing to express the Companies' concerns with respect to the Proposed Amendments as they apply to the Properties. For the reasons set out herein, the Companies are of the view that it would be premature for the Proposed Amendments in their current form to be approved and would thus respectfully seek a deferral of the matter.

Description of the Properties

145 King and 200 King

145 King and 200 King are both existing locations of major office-commercial towers within the Financial District, situated directly at the intersection of University Avenue and King Street, with internalized accesses to St. Andrew Subway station and the underground PATH walkway system. 200 King is located within the northwest quadrant of King Street and University Avenue and is developed with 25-storey office building, with at-grade retail/service uses, originally completed in approximately 1985. 145 King, situated in the southeastern quadrant of the intersection, is the location of a 29-storey office tower, also with ground level retail uses, completed in approximately 1973. In each case, the existing buildings (the "**King Street Buildings**") already provide substantial amounts of at-grade retail/commercial space along their frontages abutting King Street, mainly occupied by financial institutions, and incorporate significant amounts of glazing at street level.

Within the Downtown Plan, approved as part of Official Plan Amendment No. 406 on June 5, 2019 by the Minister of Municipal Affairs and Housing, both 145 and 200 King are designated *Mixed Use Area 1* and are located within the area of the *Financial District*. Both 145 and 200 King are also proposed to be subject to By-law 569-2013 and zoned *CR* within that by-law.

The Commerce Court Lands

The Commerce Court Lands are the subject of applications for site-specific zoning by-law amendments to former City of Toronto Zoning By-law No. 438-86 as amended ("**By-law 438-86**") and Zoning By-law No. 569-2013, as amended ("**By-law 569-2013**") approved by Council on October 2, 2019 (Item TE 8.11) (collectively, the "**Commerce Court ZBAs**"). The Commerce Court ZBAs provide for the redevelopment of the Commerce Court Lands with the addition of a 65-storey commercial office tower and attached 3-storey glazed pavilion on the southerly portion of the site, as well as the maintenance of two existing office towers and the existing, heritage Hotel Victoria building (56 Yonge Street), subject to alterations as approved by Council (the "**Commerce Court Development**"). The bills for enactment of the Commerce Court ZBAs are anticipated to be introduced at Council's November 26, 2019 meeting, together with the bill to designate 56 Yonge Street as a heritage property pursuant to the *Ontario Heritage Act*.

Nature of Companies' Concerns

In their present form, the Proposed Amendments raise a number of concerns for the Companies in their application to the Properties.

From the outset, we appreciate that the City has provided for exemptions for existing buildings within the Proposed Amendments, through the provisions of the Proposed Amendments that

recognize “lawfully existing buildings” and “lawful uses”, but are of the view that such exemptions are both overly restrictive and uncertain.

For example, where all or part of ground-floor space fronting along a priority retail street that was once used for one permitted type of street-related retail/services use (such as a bank) is proposed to be converted to another permitted use (such as a restaurant), the conversion would seem to cause the loss of the exemption in the Proposed Amendments. Internal extensions and additions to improve building interiors or to add or reconfigure uses, all of which are normal commercial leasing activities, would also seem to cause the loss of the exemption. Given that such activities are part of typical leasing operations for non-residential buildings such as the King Street Buildings at 145 and 200 King, we would request that the Proposed Amendments provide for appropriate exemptions for both 145 and 200 King and the King Street Buildings, without the restrictions as presently proposed.

We also note that the Proposed Amendment to By-law 438-86 does not currently include any parallel provision to recognize lawfully existing buildings or uses. In view of the fact that By-law 569-2013 continues, at present, to be under adjudication before the Local Planning Appeal Tribunal, the absence of any such provisions within the amendment for By-law 438-86 may conceivably pose obstacles for lawfully existing buildings to achieve compliance under the current “dual” regime for zoning review that operates at the City for building permit issuance. The absence of such provisions within the Proposed Amendment for By-law 438-86 potentially means that sites with lawfully existing buildings or uses that remain wholly subject to that former regime will not receive the benefit of any exemption from the application of the Proposed Amendments.

In addition to the above, the Companies would note two additional concerns with the Proposed Amendments’ substantive aspects:

1. As currently drafted, the Proposed Amendments do not adequately take into account the variations in character between identified streets or different segments of the same street. As the Proposed Amendments relate to the Financial District, in particular, the limit on offices or financial institutions to 15 m of the required 60 % lot frontage requirement for street-related uses is unduly restrictive and arguably incompatible with the district’s existing and planned function as a location for the concentration of uses to support business offices, financial services sectors and other prestige employment.
2. The prohibition of lobbies or entranceways, parking entrances, servicing areas or service spaces within the minimum 60% lot frontage requirement again insufficiently acknowledges the context of the Financial District and does not conform to the intent of Priority Retail Policy 6.40 in the Downtown Plan.

With respect to the Commerce Court Lands, the proper operation of transitional provisions set out in the Proposed Amendments is a significant concern. Given the comprehensive planning and design analysis that provided the basis for Council’s recent approval of the Commerce Court ZBAs, it is submitted that the Proposed Amendments should provide for a clear exemption of the Commerce Court Lands from their application.

The Commerce Court Development as approved contemplates the *in situ* retention of the Hotel Victoria building at 56 Yonge Street, subject to Council- approved alterations. It is anticipated

that the existing hotel uses within the Hotel Victoria will be also maintained. Such hotel uses, however, are not permitted by the Proposed Amendments as ground floor street-related retail uses on priority retail streets that would satisfy the Proposed Amendments' required provision of ground floor retail equal to the 60% of the Yonge Street frontage.

In this regard, the provisions respecting transition should be clarified in a manner which is consistent with the recently approved Official Plan Amendment No. 406 (the "**Downtown Plan**"). Policy 1.9 of the Downtown Plan provides a specific transition regime that effectively indicates that the Plan, inclusive of the retail policies in Policies 6.39- 6.43 that are the basis of the Proposed Amendments, does not apply to development applications deemed to be "complete" prior to the approval of OPA 406 on June 5, 2019, as follows:

1.9 This Plan does not apply to applications for official plan amendment, zoning by-law amendment, draft plan of subdivision or condominium approval, site plan approval, consent or minor variance which were complete prior to the approval of this Plan and which are not withdrawn. In-force site specific official plan and/or zoning by-law amendments shall be deemed to conform with this Plan.

As the applications for rezoning that preceded Council's decision in respect of the Commerce Court ZBAs (City File No. 17 277715 STE 28 OZ) were deemed complete on December 20, 2017 by the City, the Commerce Court Development is not subject to the priority retail policies set out in the Downtown Plan. The Proposed Amendments should be modified to provide a clear exemption from their provisions for the Commerce Court Development.

It is acknowledged that City staff, in a Supplementary Report, dated November 20, 2010 in respect of the Proposed Amendments, have recommended that the Proposed Amendment to By-law 569-2013 be revised to incorporate a new transitional provision (s. 600.20.15.2) that would exempt buildings for which a complete application for zoning by-law amendment was filed on or prior to June 5, 2019. Given the late release of the Supplementary Report, however, further time is required to review the technical implications of the proposed revision.

Furthermore, we note that this transitional language is found exclusively in the Proposed Amendment to By-law 569-2013. No parallel provisions for exemptions or other transitional mechanism exists in the Proposed Amendment to By-law 438-86, which creates the potential for inconsistent treatments for the same development under two zoning regimes. A proposed development may be exempt from the application of the standards applicable to retail streets pursuant to By-law 569-2013, but still subject to the standards pursuant to By-law 438-86 by virtue of the absence of appropriate transitional provisions therein. Given the continued requirement for compliance with both zoning regimes while By-law 569-2013 remains under appeal, the omission of the transitional provisions from the Proposed Amendment to By-law 438-86 could thus potentially operate to prevent building permits from issuing for a development otherwise in receipt of rezoning approvals and subject to transitional provisions in the Proposed Amendment to By-law 569-2013.

In light of these outstanding issues, the Companies would respectfully request that Council defer any decision in respect of the Proposed Amendments to permit affected landowners to further consult with staff on the form and drafting of the Proposed Amendments.

In the absence of such deferral, for the foregoing reasons, the Companies would respectfully object to Council's approval of the Proposed Amendments in their current form.

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Please provide us with notice of any decision by Council as well as notice of any further consideration of this matter by Council, Community Council or other Committee.

Yours truly,

McCarthy Tétrault LLP

Per:



Cynthia A. MacDougall

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