## RECOMMENDATION

(a) That the Mayor and Clerk be authorized and directed to execute an Agreement with DUCA Financial Services Credit Union Limited ("DUCA"), Hamilton 116 King Street West Inc."Hotel"), Darko Vranich Holdings Limited ("Vranich Holdings"), Darko Vranich ("Vranich") and the City of Hamilton ("City") respecting the replacement of the existing FirstOntario Credit Union mortgages on the leasehold estate and improvements for the Sheraton Hotel property on King Street West with a new first mortgage in favour of DUCA which new mortgage pays out the existing mortgages and increases the mortgage amount as set out in Confidential Schedule "A" to this Report but retains a significant equity in the Leasehold Estate, ensures the new mortgage is still subject to the City's ownership and Landlord Interest under the Ground Lease and maintains the existing Corporate and Personal Guarantees of Vranich Holdings and Darko Vranich;

(b) That the Mayor and City Clerk be authorized and directed to execute the Agreement referenced in sub-section (a) and all ancillary documents that may be necessary to enable the completion of the re-financing in a manner that protects the City's interests, provided such documentation is in a form and content satisfactory to the Director of Economic Development, the General Manager of Finance and Corporate Services and the City Solicitor.
EXECUTIVE SUMMARY
The City is the owner of the lands on which the Sheraton Hotel is located. These lands are leased to the owner of the Hotel being Hamilton 116 King Street West Inc. which is an entity controlled by Darko Vranich and is operated as a Sheraton under licence from Sheraton Hotels. The Hotel owner wishes to re-finance its existing FirstOntario Credit Union mortgage loans of $19,000,000.00 with DUCA Financial Services Credit Union for $23,000,000.00. To achieve that re-financing, the Hotel owner and DUCA have requested that the City enter into an Agreement acknowledging that the conditions precedent for the new mortgage have been met and giving consent to the necessary assignments in exchange for continued protection of the City’s interests and continued guarantees from the Corporate and Personal Guarantors.

It is recommended that the City enter into such an Agreement and provide any other documentation necessary to achieve the re-financing, satisfactory in form and content to the City Solicitor, the Director of Economic Development, and the General Manager of Finance and Corporate Services.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS
There are no adverse financial or legal implications associated with the adoption of the Recommendations proposed.

HISTORICAL BACKGROUND
The City of Hamilton is the owner of the land under the Sheraton Hotel on King Street West which land has been leased by the City from 1983-2069 for the purpose of the construction, maintenance and operation of a first class luxury hotel. The Ground Lease is supported by other supplementary and complimentary agreements related to the overhead bridge to the Convention Centre, the inter connection to Jackson Square and the underground parking for the Hotel and Jackson Square.

The Hotel has had a number of previous owners. The current owner is Hamilton 116 King Street West Inc. The principal of that company is Darko Vranich. The current luxury hotel licence is with Sheraton Hotels.

There are management agreements for the Hotel which require the hotel to be operated as a first class luxury hotel.

Subject to the City’s interest, the Ground Lease permits the Hotel owner to mortgage the Leasehold Estate together with the Improvements for the purpose of constructing and improving the Hotel. In addition, when the leasehold estate and improvements are mortgaged, there can be assignments of the Leasehold interest in the Hotel and in the various supplementary and complimentary agreements related to the bridge, the parking, etc. to the mortgage company as part of the security for the loan.
The current mortgages on the leasehold estate are held by FirstOntario Credit Union Limited with the first being for $12,000,000.00 and the second being for $7,000,000.00. The total outstanding debt under the mortgages has been “paid down” to less than the $19,000,000.00 total as per Confidential Schedule “A” to this Report.

The Hotel owner has arranged for new replacement financing for the existing first and second mortgages with a new first mortgage in favour of DUCA. This new mortgage would “pay out” the existing FirstOntario mortgages but increase the mortgage amount to $23,000,000.00. Under the Ground Lease, the Hotel owner is permitted to mortgage the Hotel Leasehold Estate and Hotel Improvements without the prior approval of the City but it must do so in a manner that protects the interests of the City under the Ground Lease and the other supplementary and complimentary agreements.

In order for the new mortgage to be effective in terms of securing the loan, there are a number of assignments particularly related to the supplementary and complimentary agreements that are needed by DUCA and they require the City’s acknowledgement and consent, which consent cannot be unreasonably withheld.

The Hotel owner and the new proposed mortgage company, DUCA, have requested the City to enter into an agreement whereby the City acknowledges that the conditions precedent for the mortgaging of the leasehold interest and the Hotel improvements have been met and for the purpose of acknowledging and consenting to the necessary assignments of the various agreements.

Thus, this report to Council seeking Council authority to have the Mayor and Clerk execute the requested agreement along with any other documentation that may be necessary for the completion of the re-financing arrangements.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The commercial details related to the request by the Hotel owner and the new mortgage company are set out in Confidential Schedule “A” to this Report. Those details have been reviewed and assessed by the Manager of the Real Estate Section and the Manager of the Urban Renewal Section under the Director of Economic Development and by the Finance Division under the General Manager of Finance and Corporate Services. Both believe that the interest of the City under its Ground Lease and other agreements remain protected in this proposed transaction and that, while the mortgage amount will be increased, the equity to debt ratio will remain at an appropriate level and there will still be significant equity in the leasehold estate such that there should be sufficient value in the Leasehold Estate and Improvements to keep the Leasehold Estate attractive and to enable the Hotel to continue to be operated at a first class luxury hotel level.
The existing Ground Lease provides that money when borrowed on the basis of the Leasehold Estate should only be used for the improvement of the Hotel itself. The Director of Economic Development and the General Manager of Finance and Corporate Services are satisfied that the increased financing is supportable given that the present Hotel owner has invested significantly more in the leasehold improvements of the Hotel as shown in Confidential Schedule “A” than the amount of the refinanced mortgage and a favourable equity to debt ratio remains after the re-financing.

The legal interests of the City remain protected under the Ground Lease and the other supplementary and complimentary agreements by way of the covenants by DUCA and the Hotel in the proposed agreement with the City.

Thus, the above recommendations.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS
There are no policies affected by the Recommendations proposed.

RELEVANT CONSULTATION
There has been collaboration in the preparation of this Report by the City Solicitor the General Manager of Finance and Corporate Services and the Director of Economic Development.

ALTERNATIVES FOR CONSIDERATION
The existing agreements to which the City is already committed do not provide any viable alternatives for consideration and the consents requested cannot be unreasonably withheld.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN
Strategic Priority #1
A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

Strategic Objective
1.3 Promote economic opportunities with a focus on Hamilton’s downtown core, all downtown areas and waterfronts.
APPENDICES AND SCHEDULES ATTACHED

Confidential Schedule “A” with Confidential Appendix attached to the Schedule.