SUBJECT: Lister Block – Agreement of Purchase and Sale
(FCS08060/PED08168/CM08018) (City Wide)

RECOMMENDATION:

a) That the Agreement of Purchase and Sale, attached as Appendices “A”, “B”, “C” and “D” to report FCS08060/PED08168/CM08018, dated June __, 2008, between the City of Hamilton and LIUNA Local 837 Lister Property Corporation, be approved subject to (b) below;

b) That the Mayor and Clerk be authorized to execute the Agreement of Purchase and Sale in a form satisfactory to the City Solicitor, attached as Appendices “A”, “B”, “C”
and “D” to report FCS08060/PED08168/CM08018, between the City of Hamilton and LIUNA Local 837 Lister Property Corporation;

c) That the General Manager of Public Works be authorized to engage MHPM Project Managers Inc., to act as the City’s Project Manager during the Lister Block Rehabilitation Project to the upset limit of $400,000 and that this amount be funded from the Unallocated Capital Reserve; and

d) That the General Manager of Planning and Economic Development be authorized to engage Clinton Brown Company Architecture (CBCA), as the City of Hamilton’s Heritage Consultant during the Lister Block Rehabilitation Project to the upset limit of $50,000 and that this amount be funded from the Unallocated Capital Reserve.

Joseph L. Rinaldo
General Manager
Finance and Corporate Services

Tim McCabe
General Manager
Planning and Economic Development Dept

Glen Peace
City Manager

EXECUTIVE SUMMARY:

In March 2008, the City entered into a Province of Ontario Amending Agreement for Lister Block (refer to report FCS08030), that provided a $7 million dollar grant to support the rehabilitation of the Lister Block for use and occupancy by the City.

The Province of Ontario’s Amending Agreement allows for either the purchase or lease by the City of the Lister Block with the following conditions:

Province’s General Conditions:
- Enter into a Lease or an Agreement of Purchase and Sale before June 30, 2008;
- City has taken occupancy of the Lister Block, by March 31, 2012, and continue to substantially occupy until March 31, 2028.

This Amending Agreement, with the Province, permitted the City to continue negotiations for an Agreement of Purchase and Sale with the LIUNA Local 837 Lister Property Corporation (LIUNA), before June 30, 2008. The Agreement of Purchase and Sale, (the “Agreement”), attached as “Appendices “A","B","C" and “D” to report FCS08060/PED08168/CM08018, for a rehabilitated Lister Block, is the result of these negotiations.

The Agreement provides for the City to purchase the rehabilitated Lister Block for a purchase price of $25 million (excluding Tenant Improvements) subject to the various conditions incorporated within the Agreement.
The following outlines the timeline of events contained within the Agreement with further details for each milestone detail described further under the Analysis/Rationale section of this report:

**By August 1, 2008** – LIUNA will provide the City with a design team consultant listing; LIUNA and the City will complete a Heritage Condition Survey and both parties are to reach agreement on the identity of the independent engineer.

**By October 15, 2008** – LIUNA to submit to the City, the Heritage Conservation Strategy, the utility service design, site plan application, base building floor plans and detailed performance specifications.

If any of the conditions required by October 15, 2008, are not fulfilled to the City’s satisfaction, acting reasonably, then the Agreement shall be deemed null and void. Both parties shall be relieved of any further obligations and responsible for their own costs and expenses.

**By December 19, 2008** – the City will have reviewed and provided approvals for the various items that were required to be submitted to the City by October 15, 2008, listed previously.

If any of the conditions required by December 19, 2008, are not fulfilled to the City’s satisfaction, acting reasonably, then the Agreement shall be deemed null and void. Both parties shall be relieved of any further obligations and responsible for their own costs and expenses.

**By June 30, 2009** – LIUNA will have applied for and obtained valid Heritage and Building Permits.

**July 2, 2009 – July 29, 2011** – Construction work to rehabilitate Lister Block takes place.

**August 1, 2011 – March 31, 2012** – Tenant improvements are completed for final occupancy.

**Certain aspects of the Agreement are particularly noteworthy:**

Closing Date and Provincial Grant

The Lister Block project is scheduled to be completed on or before March 31, 2012, (the “Closing Date”), at which time, the Lister Block is to be available for occupancy by the City.

In the event that the Lister Block is not available for Occupancy by the Closing Date, for any reason, and to the extent that the City is unable to obtain an extension from the Province of the expiration date for the Grant, the purchase price for the Lister Block shall be reduced by the amount of the Grant that was cancelled to a maximum amount of the $7 million.
Holdback – Adjacent Development Guarantee

As per discussions with LIUNA, their intentions are to construct a development adjacent to the Lister Block containing approximately 100 rental retirement home units and 100 condominium units for seniors (“Adjacent Development”).

In February 2008, Council directed staff that an Agreement of Purchase and Sale for the Lister Block be conditional upon securing an agreement with LIUNA for the Adjacent Development. Staff have estimated that, based on the proposed Adjacent Development, that the City would benefit from annual total tax revenues of at least $1 million (municipal portion amounts to $600,000).

Hence, the Agreement provides for the City to be entitled to withhold from the purchase price a holdback of $1 million. This amount shall be placed into an interest-bearing GIC and retained by the City until the Adjacent Development is ready for occupancy by the fifth anniversary date following the Closing Date.

Heritage


It is important to note that any disputes between LIUNA and the City arising with respect to any heritage related matters shall be referred to the City’s Heritage Consultant and, if necessary, referred by the City’s Heritage Consultant for resolution to the City’s General Manager of Planning and Economic Development, whose decision shall be final and binding on the parties.

Financial and Economic Benefits

Staff have estimated the expected tax impact of purchasing the rehabilitated Lister Block and moving City staff from other currently leased space within the Downtown core area into Lister. The tax impact in 2012 is estimated to be approximately $1.3 million (refer to the Financial Analysis section for further details) less any revenues realized by the leasing of space for retail purposes. It has been estimated that the market rate for commercial retail space would be approximately $25.50 per square foot on a gross basis. For example, if 2,000 square feet of space of the rehabilitated Lister Block was leased out for retail purposes, the City could expect to earn approximately $51,000 in annual gross rent. Therefore, the net impact would be $1.25 million annually. This amount could be further off-set by additional tax revenues created by the Adjacent Development as proposed by LIUNA or by other spin-off developments in this area of the downtown initiated by the City’s leadership efforts in rehabilitating the Lister Block.
Unlike leasing, by pursuing the purchase option for the Lister Block, the City will have acquired an asset.

**BACKGROUND:**

In the Spring of 2005, the City was seeking to enter into a long-term 15-year lease arrangement with the LIUNA Local 837 Lister Property Corporation (LIUNA) (refer to report PD05095/FCS05052/CM05018). The lease proposal was intended to provide the incentive for the project proponents to commence redevelopment of the Lister Block property, an essential component to the City’s Downtown revitalization plans. The annual municipal tax impact of this original proposal was estimated to be approximately $312,000 to $364,000 assuming the City was to lease 60,000 square feet in a new building of 120,000 square feet.

Report PD05095/FCS05052/CM05018 noted that:

> “From a strategic perspective, the Lister Block is considered a keystone property, anchoring the corner of James and King William Streets, and is an essential component to the City’s Downtown revitalization plans.”

Immediately following Council’s June 14, 2006, approval of a Heritage Permit for demolition of the Lister Block Buildings (refer to report PED06169). The Province appointed a Provincial Development Facilitator (Mr. Allan Wells) to chair a Working Group to evaluate the merits of rehabilitating the Lister Block. The Report of the Provincial Facilitator was submitted to Council in September 2006. As a result, in June 2007, the Premier of Ontario announced a $7 million grant to support the rehabilitation of the Lister Block. In September 2007, the City entered into a Conditional Grant Agreement for the $7 million with the Province.

In March 2008, the City entered into a revised Amending Agreement with the Province, (refer to report FCS08030), which provided for either the purchase or lease of the Lister Block.

The Amending Agreement includes the following conditions:

**Province’s General Conditions:**

- Enter into a Lease or an Agreement of Purchase and Sale before June 30, 2008;
- City takes occupancy of the Lister Block, by March 31, 2012, and continues to substantially occupy until March 31, 2028.

**Province’s Purchase Conditions:**

- For the period to March 31, 2028, City agrees not to sell Lister;
- Agreement of Purchase and Sale cannot subsequently be amended without prior written consent of the Province;
- Commencing March 31, 2009, the City will provide the Province with annual reports stating that the Agreement of Purchase and Sale is still in good standing and outlines the progress with the renovation of the Lister Block.
The Amending Agreement permitted the City to continue negotiations for an Agreement of Purchase and Sale for the Lister Block before June 30, 2008, and ensured that due diligence could be undertaken.

At the February 27, 2008, Committee of the Whole, Council directed staff to provide further information when reporting back regarding an Agreement of Purchase and Sale of the Lister Block:

a) That the issue on the Lister Block Proposal be tabled, pending further calculation, information from staff on the items noted on Pages 22, 23 and 24 of the Peer Review presentation (for item details, refer to Appendix “E” to report FCS08060)/PED08168/CM08018);

b) That staff be directed to calculate all the potential financials associated with the ownership of Lister through lease arrangements and additional assessment base increases;

c) Furthermore, that this purchase option be conditional upon securing an agreement with Hi-Rise/LIUNA and Kingsway Arms for the residential development;

d) That steps be taken to seek a confirmation and extension from the province related to the restoration grant; and

e) That staff provide a recommendation for consideration by committee.

With respect to resolution (a), the proposed Agreement for Purchase and Sale for the Lister Block, includes all the various recommendations outlined by the City’s Peer Review Consultants.

Resolution (b) will be addressed, in part, by LIUNA/HI-RISE in their presentation at the June 23, 2008, Committee of the Whole meeting. In addition, staff did investigate the revenue opportunities should the City decide to lease out some space of the rehabilitated Lister Block for retail purposes. The market rate for commercial retail space would be approximately $25.50 per square foot on a gross basis. Therefore, if 2,000 square feet of ground floor space of the rehabilitated Lister Block was leased out for retail purposes, the City could expect to earn approximately $51,000 in annual gross rent. In addition, should the Adjacent Development proceed (based on LIUNA's proposal presented in February 2008), the estimated annual total tax revenues generated would be at least $1 million (municipal portion amounts to $600,000).

In response to resolution (c), staff have considered contractual mechanisms that could provide the assurance that the Adjacent Development’s expected economic benefits will accrue to the City. Hence, the Agreement provides for the City to be entitled to withhold from the purchase price $1 million. This amount shall be retained by the City until the Adjacent Development is ready for occupancy by the fifth anniversary date following the Closing Date.

Resolution (d) was completed in March 2008 with the City entering into the Provincial Amending Conditional Grant Agreement.
ANALYSIS/RATIONALE:

The following provides an overview of the conditions which have been included in the Agreement of Purchase and Sale:

Closing Date and Provincial Grant

The Lister Block project is scheduled to be completed on or before March 31, 2012, (the “Closing Date”), at which time, the Lister Block is to be available for occupancy by the City.

The City has the right to move up the Closing Date to a date not earlier than thirty (30) days from the completion of the rehabilitated base building.

In the event that the Lister Block is not available for Occupancy by the Closing Date, for any reason, and to the extent that the City is unable to obtain an extension from the Province of the expiration date for the Grant, the purchase price for the Lister Block shall be reduced by the amount of the Grant that was cancelled to a maximum amount of the $7 million.

The only exception to above would be if the delays were a result of unreasonable City actions.

Holdback – Adjacent Development Guarantee

As per discussions with LIUNA, their intentions are to construct a development adjacent to the Lister Block containing approximately 100 rental retirement home units and 100 condominium units for seniors (“Adjacent Development”).

In February 2008, Council directed staff that an Agreement of Purchase and Sale for the Lister Block be conditional upon securing an agreement with LIUNA for the Adjacent Development. Staff have estimated that, based on the proposed Adjacent Development, that the City would benefit from annual total tax revenues of at least $1 million (municipal portion amounts to $600,000).

Hence, the Agreement provides for the City to be entitled to withhold from the purchase price a holdback of $1 million. This amount shall be placed into an interest-bearing GIC and retained by the City until the Adjacent Development is ready for occupancy by the fifth anniversary date following the Closing Date.

Lister Building Heritage Conservation Strategy and Process

Over the course of the past two years, there have been numerous heritage conservation documents, reports and studies compiled by various specialists and consultants addressing the Lister Block. All attest, in one form or another, to the varying state and condition of building fabric and heritage components that should be conserved or protected.
In order to adopt a coherent, strategic approach to addressing the long-term conservation and rehabilitation of the Lister Building, the City is advocating a staged or phased approach to identifying conservation issues and their potential remedies as part of the project management of the Lister Block project and the Purchase Agreement.

There are three key elements of this staged or phased approach: a base line inventory, an overall strategy and detailed implementation. These are described, in more detail, as follows:

- the establishment of a base line inventory. Immediately upon an agreement being signed, an inventory will be undertaken to record the existing condition of those interior non-heritage features which can be removed or, due to deterioration, those features that are to be left in place. This is intended to assist the LIUNA’s employees, contractors or agents in determining what can be removed from the building during the LIUNA’s pre-construction clean-up of the site and to ensure conservation of the heritage features.

- the preparation of a heritage conservation, rehabilitation management strategy and program prior to design approvals. It is intended that this will clearly identify the overall intent and objectives of the rehabilitation project that will be the subject of the Heritage Conservation Strategy Document required in the Agreement. This may include items or features to be retained, lost items to be restored or those features that may be removed. Methods of repair, restoration or cleaning will also be included with further refinement of details or conservation practices to be included as parts of the heritage permit application.

- the submission of an application for a Heritage Permit under Part IV of the Ontario Heritage Act. This submission would fulfill the requirements of the Ontario Heritage Act for those alterations likely to affect the reasons for designation and heritage attributes and which are necessary as part of required construction of the Project. It is expected that the heritage permit application will include detailed architectural drawings and any other related specifications, all of which are to submitted and approved by the Director of Planning under Council’s delegated authority. Conditions may be attached to the approval addressing such matters as detailed specifications.

It should be noted that in the original Council approval of the heritage permit for the demolition of the Lister Block (permit no. HP2006-017) considered by COW on June 12, 2006, and Council on June 14, 2006, included a number of conditions, (refer to report PED06169). Briefly, the conditions addressed the following matters:

(i) the applicant applies for and receives all necessary approvals under the Building Code Act and the Planning Act and all other applicable by-laws prior to demolition;

(ii) the applicant retrieves material and artifact samples from the building;

(iii) retrieved materials should be stored and displayed in a new replacement structure;
(iv) the applicant is to submit plans and drawings for a new replacement structure for approval by the Director of Real Estate and Development; and

(v) that the consent to demolish and repeal designation not commence for sixty (60) days from the date of the Council decision to allow for consultation with the Ministry of Culture.

All of the recommendations were approved by Council on June 14th, 2006. After discussions with the Ministry of Culture and the establishment of the Lister Working Group, the entire matter came back to COW and Council on September 27, 2006, with a new approach prepared by Conservation Architects, Julian Smith and Clinton Brown. As a result of this approach, condition (v) referenced above was amended by “extending the date to no earlier than the day after City Council makes a final decision in relation to a new Heritage Permit application for the subject property”. For reference purposes, a copy of the advice provided by the Ontario Heritage Trust to the Minister of Culture, during this period, respecting the provincial heritage value of the Lister Block is attached as Appendix “F” to report FCS08060/PED08168/CM08018.

The September 27, 2006, Council condition was broadly based upon the assumption that, if a new conservation option was proposed and agreed to, a new heritage permit application would have to be made to the City and approved by Council. In approving that application, it would then be possible to void the previous demolition approval through another condition. As noted previously, staff is proceeding on the basis that the matter of Council approval of a new heritage permit application for this rehabilitation project will be managed under Council’s delegated authority to the Director of Planning.

Heritage Component included in the Agreement

With respect to the Heritage Component of the Lister Block Project, the Agreement makes provision for all the requirements set out above by including the following:

a) Immediately upon execution of the Agreement, LIUNA will permit the City’s Heritage staff and Heritage Consultant to conduct a heritage condition survey, by no later than August 1, 2008, and is to be completed prior to the removal of any materials from the site. The purpose of the heritage condition survey is to record and identify any interior heritage features which are to be removed, due to deterioration, and all such features which are to be left in place, to do test patches and take test samples of any specific heritage features, as may be required.

b) LIUNA and the City agree to develop a Heritage Conservation Strategy document respecting the heritage strategy to be applied to the Lister Block Project. Final approval would be granted by the City;

c) LIUNA shall have applied for and obtained a valid Heritage Permit;

d) LIUNA shall design the rehabilitation and prepare the construction documents in accordance with the Lister Block Reports: “Lister Building, Hamilton, Ontario Heritage
Report,” Julian Smith & Associates and Clinton Brown Company Architecture (September 23, 2006), and “Report of the Provincial Development Facilitator on the Lister Block, Hamilton, Ontario,” Alan Wells (September 27, 2006); and

e) The design and construction documents will be reviewed to the satisfaction of the City; prior to the issuance of building and heritage permits;

f) LIUNA shall submit detailed architectural drawings regarding all heritage elements for review and approval to the satisfaction of the City, prior to the issuance of a heritage permit;

g) The City’s Heritage Consultant shall review and approve any proposed changes to the treatment of heritage elements that may arise during construction;

i) Any disputes arising with respect to any heritage related matters shall be referred to the City’s Heritage Consultant and, if necessary, referred by the City’s Heritage Consultant for resolution to the City’s General Manager of Planning and Economic Development, whose decision shall be final and binding on the parties.

j) LIUNA shall give the Site Consultants three (3) business days prior written notice of any critical phases of construction relating to heritage matters.

**Parking**

The Agreement provides for a minimum of forty (40) on-site surfaced parking spaces for exclusive use by the City.

In the event that the parking area is required to facilitate the Adjacent Development, LIUNA shall ensure that the City will continue to have the use of forty (40) parking spaces, at all times and at no cost to the City, which spaces are to be located within three hundred (300) metres of the rehabilitated Lister Block.

The provision for forty (40) surface parking spaces differs from earlier presentations of fifty (50) surface parking spaces as the development’s proponent has refined the parking space limitations. The City’s Planning staff have done a preliminary parking design for the rear land being sold to the City and can confirm this area can only accommodate forty (40) parking spaces.

**Tenant Improvements**

Tenant Improvements are not provided in the base purchase price but have been factored into the financial analysis of the Lister Project at an estimated cost of $3.3 million. As per the Agreement, LIUNA shall have completed the construction of the base building by July 29, 2011. This completion date will enable the City to commence the construction of the required tenant improvements. The selection of a firm for the installation of the tenant improvements is at the sole discretion of the City and not included in the Agreement. It is anticipated that the City will follow a competitive bidding process for this work.
Development Charges, Levies, etc.

LIUNA shall not be responsible for the payment of any heritage charges, parkland dedication fees or development charges for the Lister Block that are imposed by the City.

LIUNA shall be responsible for the payment of all fees and charges, etc., including, but not limited to, heritage charges, parkland dedication fees or development charges, whether present or future, relating to the Adjacent Development.

It should be noted that all development in Downtown Hamilton is presently exempt from development charges.

August 1, 2008 Conditions

The Agreement stipulates that the following conditions must be fulfilled to the satisfaction of the City (acting reasonably) by August 1, 2008, failing which, the Agreement would be deemed null and void and the parties shall be relieved of any further obligations to one another hereunder:

a) LIUNA shall provide the City with a list of Design Team Consultants subject to the approval of the City. The Design Team cannot materially change without the written consent of the City.

b) The City shall appoint an independent third party Consulting Engineer (“Independent Engineer”) to resolve any subsequent dispute arising between LIUNA and the City in respect of matters relating to the design and construction of the Lister Project, with the exception of any heritage-related matters. The choice of an Independent Engineer shall be subject to the approval of LIUNA; and

c) LIUNA and the City shall complete the Heritage Condition Survey.

October 15, 2008 Conditions

If any of the conditions required by October 15, 2008, are not fulfilled to the City’s satisfaction, acting reasonably, then the Agreement shall be deemed null and void. Both parties shall be relieved of any further obligations and responsible for their own costs and expenses.

a) LIUNA shall submit one standard utility service design;

b) LIUNA shall submit to the City, an application for site plan approval;

c) LIUNA shall submit to the City, base building floor plans for each floor, including a calculation of the net useable square footage area for each floor and the areas in which the building will be barrier-free;

d) LIUNA shall submit to the City, base building sections;
e) LIUNA shall submit to the City, the detailed performance specifications;

f) LIUNA shall submit to the City, the preliminary description of all Part 11 equivalencies, building classifications and occupancy requirements;

g) LIUNA shall submit and obtain the approval of the City’s Heritage Consultant of the Heritage Conservation Strategy;

h) LIUNA shall submit to the City, the following with respect to the sustainability of the Lister Project:

1. Building energy computer simulations, in accordance with ASHRAE 90.1 or MNECB and a calculation of the predicted energy cost created by the Development, compared to the energy cost of the ASHRAE 90.1 or MNECB reference building;

2. Written description of the sustainable design features associated with Development including a description of the life-cycle features;

3. LEED scorecard, identifying the number of LEED points that would be eligible for the Development; and

4. Description of the commissioning activities that LIUNA will perform prior to occupancy.

i) The Lister Project will be in compliance with the City’s Barrier-Free Design Standards, subject to reasonable interpretation of the heritage building features. LIUNA is to submit to the City a description of all proposed issues that would not be in compliance with the City’s Barrier-Free Design Standards;

j) LIUNA shall submit to the City a description, including the duration, of all post-construction warranties; and

k) LIUNA shall submit to the City, a structural assessment report on the Lister Block Building, prepared by a licensed structural engineer.

LIUNA and the City agree to meet within thirty (30) days of LIUNA’s submissions as referred to above, to provide comments on said submissions and to facilitate the correction of any deficiencies to their submissions, if any.

**December 19, 2008 Conditions**

If any of the conditions required by December 19, 2008, are not fulfilled to the City’s satisfaction, acting reasonably, then the Agreement shall be deemed null and void. Both parties shall be relieved of any further obligations and responsible for their own costs and expenses.
a) LIUNA shall have applied for and obtained from the City, site plan approval for construction of the Lister Project in accordance with its’ site plan application;

b) LIUNA shall have obtained from the City, final and binding approval to its’ base building floor plans, base building sections, structural assessment report and detailed performance specifications for the Lister Project;

c) The City shall decide by December 19, 2008, in its’ sole discretion, whether the stand-alone HVAC system or the district system is to be installed. In the event the City decides the district system is to be installed, LIUNA and the City agree to adjust the purchase price, to the extent that the cost of the materials and installation of the district system differs from the cost of the materials and installation of the stand-alone system.

**June 30, 2009 Conditions**

The Agreement stipulates that the following conditions must be fulfilled to the satisfaction of the City (acting reasonably) by June 30, 2009:

a) LIUNA shall have applied for and obtained a valid Heritage Permit for the construction of the Lister Project; and

b) LIUNA shall have applied for and obtained a valid Building Permit for all construction related to the Lister Project.

LIUNA agrees to commence construction of the Lister Project forthwith upon issuance of the aforementioned Permits.

The expiry date of the foregoing conditions contained in this section may be extended by the City, at its’ sole discretion.

In the event that there occurs a non-fulfilment of any of the above-noted conditions set out by June 30, 2009, LIUNA and the City acknowledge and agree that they each shall be responsible for their own costs and expenses incurred to such time with respect to implementing the provisions of the Agreement and each party shall be relieved of any further obligations to the other hereunder.

**General Construction Matters**

LIUNA and the City agree with respect to general construction matters as follows:

a) The Lister Project must proceed, as per the Project Schedule (or such an updated Project Schedule, as may be agreed upon from time to time);

b) LIUNA shall indemnify and save the City harmless from and against any losses arising from property damage or personal injury related to the Lister Project occasioned solely by any act or omission of LIUNA or those for whom it is, in law, responsible (which indemnification shall survive Closing);
c) LIUNA shall grant access to the site at any time or times, without notice, to four (4) designated representatives of the City;

d) LIUNA shall give the Site Consultants three (3) business days prior written notice of any critical phases of construction. The City acknowledges that LIUNA shall be entitled to continue with its’ construction schedule notwithstanding that the Site Consultants are not in attendance at the Lister Project at the time prescribed following delivery of any notice as aforesaid;

e) LIUNA and its’ Design Team shall consult with the Site Consultants during the design development of the Lister Project. The City’s Site Consultants shall be invited to all of LIUNA’s Site Team meetings throughout the construction process, and minutes of all such meetings shall be provided to the City’s Site Consultants.

f) The working drawings and specifications prepared by the Design Team for the Project shall be submitted to the City at no less than at the 30%, 60% and 90% stages of the design development, as per the approved Project Schedule. The City must provide its comments with respect to the working drawings submitted by LIUNA at the 30%, 60% and 90% stages within ten (10) business days of their receipt, otherwise the City shall be deemed to have approved the applicable submission;

g) LIUNA and the City shall co-operate in the City arranging for City-provided services to the lot line of the subject lands. The City will be responsible for any City-provided services up to the lot line; and

h) LIUNA covenants and agrees to remove from title any construction liens or other liens or encumbrances registered as of or after Closing, and LIUNA indemnifies and saves harmless the City against any and all claims, causes of action, loss and costs arising from any construction liens, liens, or encumbrances registered after closing which relate to the construction of the Lister Project; such indemnification to survive the Closing.

**Dispute Resolution**

In the event that any dispute arises between LIUNA and the City in respect to matters relating to the construction and design of the Lister Project, with the exception of any heritage-related matters, then either party shall have the right on delivery of three (3) business days notice to the other to have any matter in dispute submitted to the Independent Engineer for determination. Any decision rendered by the Independent Engineer in respect to the foregoing shall be binding upon the parties hereto. LIUNA and the City shall each be responsible for half of the fees payable to the Independent Engineer for attending to any dispute resolution and each party shall bear its’ own costs in respect to the submission of documents and materials to the Independent Engineer for determination.

Subsequent to completion of construction of the Project, decisions of the Independent Engineer may be referred by either party to arbitration, as provided for in the *Arbitration Act, 1991, S.O 1991, c. 17.*
GST

The agreement calls for the City to self-assess and therefore is cost neutral for both parties.

**ALTERNATIVES FOR CONSIDERATION:**

**OPTION 1**

An alternative consideration would be for the City to not enter into an Agreement of Purchase and Sale of a rehabilitated Lister Block by the June 30, 2008, deadline imposed by the Provincial Amending Conditional Grant Agreement. Failing to enter into this Agreement would require the City to repay the $7 million grant.

**OPTION 2**

Council, at its' meeting of April 23, 2008 instructed Downtown and Community Renewal staff to seek alternative Municipal uses for the Lister Block. City Housing was consulted but there are no capital funds available. City Clerks has identified the need for archival space as has the Culture Division for storage of historic works plus additional work area and storage space for which there are currently funds available. This option was investigated further.

This option would be to reuse the existing main floor of the Lister Block and the facades fronting James Street North and King William Street. The remainder of the existing building would be demolished and a new industrial quality building of 50,000 square feet would be constructed.

Downtown and Community Renewal have consulted with the City Clerk, as well as, the Director of Culture. The City Clerk’s Division has a requirement of approximately 15,000 square feet of archival storage. The Culture Division requires 35,000 square feet for historically significant items. This creates a unique opportunity to establish an interactive museum using 50,000 square feet. The main floor space would be utilized for City purposes, as well as, for complimentary retail lease space.

Currently, the City Clerk’s Division has capital funding of approximately $800,000 and the Culture Division has capital funds of $1,350,000. This option is not recommended as this alternative implicates partial demolition of the designated Lister Block Building, a significant heritage resource. As well, pursuing these alternatives may require the City to repay the $7 million provincial grant.
Financial

The financial impacts identified with the proposed Lister Block rehabilitation are based on the following assumptions:

- Based on 65,000 useable sq ft
- $10.50 per sq ft for operating costs (excludes $2.00 sq ft in property taxes)
- $3.3 million tenant improvements
  - Tenant improvement and operating cost estimates as provided by the City’s consultant, MHPM Project Managers Inc who conducted the peer review of the proposal’s costs
- One-time moving costs of approximately $1.3 million for staff to be relocated from other current downtown leased sites to the rehabilitated Lister Block have been excluded
- $7 million Provincial Grant
- 20 year debenture term
- 6% cost to borrow

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</tbody>
</table>
As identified above, the expected tax impact of purchasing the rehabilitated Lister Block and moving City staff from other currently leased space within the Downtown core area into Lister is approximately $1.4 million less any revenues realized by the leasing of space for retail purposes. It has been estimated that the market rate for commercial retail space would be approximately $25.50 per square foot on a gross basis. For example, if 2,000 square feet of space of the rehabilitated Lister Block was leased out for retail purposes, the City could expect to earn approximately $51,000 in annual gross rent. Therefore, the net impact would be $1.35 million annually. This amount could be further off-set by additional tax revenues created by the Adjacent Development as proposed by LIUNA. Unlike leasing, by pursuing the purchase option for the Lister Block, the City will have acquired an asset.

**Other Accommodation Financial Considerations**

**City Hall** – The financing cost of the City Hall renovations has been provided for within the City’s Capital Financing Plan and, as such, no further tax impacts are expected. It is anticipated that the operating cost should be tax neutral.

**Public Health** – Based on the Education Centre Project Business Plan, the expected increase in annual accommodation costs in 2012 is approximately $1.7 million or 0.3%.

**Staffing** – N/A.

**Legal** – The City, by entering into the Agreement, is committed to purchasing a rehabilitated Lister Block for $25 million subject to the various conditions contained within the Agreement.
POLICIES AFFECTING PROPOSAL:

N/A.

RELEVANT CONSULTATION:

Legal Services
Public Works Department - Capital Planning & Implementation Division
Peer Review Consultants - MHPM Project Managers Inc. and Clinton Brown Company
Architecture

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No

Environmental Well-Being is enhanced. ☑ Yes ☐ No

Economic Well-Being is enhanced. ☑ Yes ☐ No

Does the option you are recommending create value across all three bottom lines?

☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?

☑ Yes ☐ No
AGREEMENT OF PURCHASE AND SALE

PURCHASER: CITY OF HAMILTON, agrees to purchase from VENDOR: LIUNA LOCAL 837 LISTER PROPERTY CORPORATION, the following:

REAL PROPERTY:
Address: ____________________________ fronting on the ________ side of ________ in the and having a frontage of ________ more or less by a depth of ________ more or less and legally described as Lot 33 and Part of Lots 34, 35, 36, 47 and 48, Nathaniel Hughson Survey, City of Hamilton, being the whole of P.I.N. 17167-0005 (R), presently being a six storey retail-office vacant building known as the “Lister Block” and municipally known as 28 James Street North, together with associated lands at the rear having frontage on Hughson Street North, in the City of Hamilton, as outlined in red on Schedule “A” attached hereto, subject to revision upon preparation of the final reference plan and survey provided for in this Agreement (the “Property”)

PURCHASE PRICE: TWENTY-FIVE MILLION Dollars (CDN $ 25,000,000.00)

DEPOSIT:

Purchaser submits (with this offer) One Dollars (CDNS 1,000.00) negotiable cheque payable on acceptance to the Vendor’s solicitor to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. Purchaser agrees to pay the balance as follows:

The Purchaser agrees to pay the balance of the purchase price to the Vendor by uncertified cheque drawn on a Schedule 1 Canadian Bank on the date set for closing, subject to the usual closing adjustments.

See Schedule “B” for further provisions and Schedule “C” for Project Schedule Chart.

SCHEDULES “A”, “B” and “C” ATTACHED HERETO FORM(S) PART OF THIS AGREEMENT.

1. CHATTELS INCLUDED: N/A

2. FIXTURES EXCLUDED: N/A

3. RENTAL ITEMS: The following equipment is rented and not included in the Purchase Price. The Purchaser agrees to assume the rental contract(s), if assumable: N/A

4. IRREVOCABILITY: This Offer shall be irrevocable by Purchaser until 11:59 p.m. on the 29th day of June 2008, after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Purchaser in full without interest.

5. COMPLETION DATE: This Agreement shall be completed by no later than 5:00 p.m. March 31, 2012. Upon completion, vacant possession of the property shall be given to the Purchaser unless otherwise provided for in this Agreement.

6. NOTICES: Vendor hereby appoints the Listing Broker as Agent for the purpose of giving and receiving notices pursuant to this Agreement. If the Co-operating Broker represents the interests of the Purchaser in this transaction, the Purchaser hereby appoints the Co-operating Broker as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided herein or, where a facsimile number is provided herein, when transmitted electronically to that facsimile number. SEE Schedule “B”, Clause 19.

7. GST: If this transaction is subject to Goods and Services Tax (G.S.T.), then such tax shall be (in addition to) the Purchase Price. If this transaction is not subject to G.S.T., Vendor agrees to provide on or before closing, a certificate that the transaction is not subject to G.S.T.

8. TITLE SEARCH: Purchaser shall be allowed until 6:00 p.m. December 19, 2008, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (commercial/office) may be lawfully continued, and that the principal building may be insured against risk of fire. Vendor hereby consents to the municipality or other governmental agencies releasing to Purchaser details of all outstanding work orders affecting the property, and Vendor agrees to execute and deliver such further authorizations in this regard as Purchaser may reasonably require.

9. FUTURE USE: Vendor and Purchaser agree that there is no representation or warranty of any kind that the future intended use of the property by Purchaser is or will be lawful except as may be specifically provided for in this Agreement.

10. TITLE: Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for; (a) any registered restriction or covenants that run with the land providing that such are complied with; b) any registered municipal agreements and registered
agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact that said present use may not lawfully be continued,

12. DOCUMENTS AND DISCHARGE. Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Vendor. If requested by Purchaser, Vendor will deliver any sketch or survey of the property within Vendor’s control to Purchaser as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Purchaser on completion, is not available in registrable form on completion, Purchaser agrees to accept Vendor’s lawyer’s undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same on title within a reasonable period of time after completion, provided that on or before completion Vendor shall provide to Purchaser a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Vendor directing payment to the mortgagee the mortgagee’s amount required to obtain the discharge out of the closing funds.

13. INSURANCE. All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Vendor. Pending completion, Vendor shall hold all insurance policies, in a form and in an amount satisfactory to the Purchaser, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Purchaser may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Vendor is taking back a Charge/Mortgage, or Purchaser is assuming a Charge/Mortgage, Purchaser shall supply vendor with reasonable evidence of adequate insurance to protect Vendor’s other mortgage’s interest on completion.

14. PLANNING ACT. This Agreement shall be effective to create an interest in the property only if Vendor complies with the subdivision control provisions of the Planning Act by completion and Vendor covenants to proceed diligently at his expense to obtain any necessary consent by completion.

15. DOCUMENT PREPARATION. The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Vendor, and any Charge/Mortgage to be given back by the Purchaser to Vendor at the expense of the Purchaser. If requested by Purchaser, Vendor covenants that the Transfer/Deed to be delivered on completion shall contain the document prepared by Section 50 (22) of the Land Title Act.

16. TITLE. Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for: (a) any registered restriction or covenants that run with the land providing that such are complied with; b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact that such present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Vendor and which Vendor is unable or unwilling to remove, remedy or satisfy and which Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction.

17. TIME LIMITS. Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Vendor and Purchaser or by their respective lawyers who may be specifically authorized in that regard.

18. ADJUSTMENT. Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Purchaser.

19. CONSUMER REPORTS. The Purchaser is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

20. AGENCY. It is understood that the brokers involved in the transaction represent the parties as set out in the Confirmation of Representation below.

21. AGREEMENT IN WRITING. If there is conflict between any provision written or typed in this Agreement (including any Schedule attached hereto) and any provision in the printed portion hereof, the written or typed provision shall supersede the printed provision to the extent of such conflict. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Purchaser and Vendor. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

22. ELECTRONIC REGISTRATION. The Vendor and Purchaser acknowledge and agree that if the Teraview Electronic Registration System (the “ERS”) is operative in the Land Registry Office in which the title to the Property is recorded, then the following provisions shall apply:
APPENDIX “A” TO FCS08060/PED08168/CM08018 – Page 3 of 3

(a) the parties shall instruct their respective solicitors to enter into an escrow closing agreement on the Vendor’s Solicitors’ standard form, which form shall be approved by the Purchaser’s solicitor acting reasonably (hereinafter referred to as the “Escrow Document Registration Agreement”), establishing the procedures for completion of this transaction by means of the ERS;

(b) the delivery and exchange of documents, monies, possession (subject to tenancies) of and keys to the Property and the release thereof to the Vendor and the Purchaser, as the case may be, may not occur contemporaneously with the registration of the transfer/deed of land and other registrable documentation, and shall be governed by the Escrow Document Registration Agreement pursuant to which the Vendor’s Solicitors and the Purchaser’s Solicitors will hold in escrow all documents, monies and/or keys received by them and will not release same to their respective clients except in strict accordance with the Escrow Document Registration Agreement; and

(c) each of the parties hereto agrees that any documents not intended for registration on title to the Property may be delivered to the other party hereto in properly executed form by facsimile transmission or other similar system reproducing the original, provided the party transmitting any such document shall also deliver the original thereof to the recipient party by overnight courier sent on the Closing Date or by such other means and/or within such other time as may be agreed to by the parties respective solicitors.

DATED AT Hamilton this ______ day of ______ 2008

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

CITY OF HAMILTON

Date June , 2008

(Signature) 

DATE

(Witness)

(Purchaser)

(Seal)

Date

(Witness)

(Vendor)

(Seal)

The undersigned Vendor agrees to the above Offer.

I, the Undersigned Vendor, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Broker the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Broker to my lawyer.

DATED AT Hamilton this ______ day of ______, 2008.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

LIUNA LOCAL 837 LISTER PROPERTY CORPORATION

Date June , 2008

(Signature) 

DATE

(Witness)

(Vendor)

(Seal)

Date

(Witness)

(Vendor)

(Seal)

SPOUSAL CONSENT: The Undersigned Spouse of the Vendor hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

Date

(Witness)

(Seal)

Acknowledgement

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

Date

(Vendor)

Date

(Purchaser)

Address for Service:

Vendor’s Lawyer

Purchaser’s Lawyer

Tel. No. ( )

Legal Services Section, City of Hamilton

Attention: Randy Lebow

Address: 900-5075 Yonge St. Toronto, ON M2N 6C6

M2N 6C6

(416) 222-0344

(416) 222-2391

Fax No. FAX NO.

905-546-2424 ext. 2622

905-546-4370
Sketch of Lands to be Conveyed to the City of Hamilton
Schedule “A” to the Agreement of Purchase and Sale
1. DEVELOPMENT

The intention of the within transaction is to complete the rehabilitation of the building situated on the Property known as the “Lister Block Building” and to provide the Purchaser with forty (40) site surface parking spaces for the exclusive use of the Purchaser on such terms and conditions as are set out below (hereinafter sometimes referred to as the “Project” or the “Development”). Both the Vendor and the Purchaser shall proceed diligently towards the completion of the Project and shall act commercially reasonable in all matters relating thereto. In addition and except where specifically set out in this Agreement to the contrary, all consents and/or approvals required to be provided by any party to this Agreement in respect of the Project shall be in writing and shall not be unreasonably withheld or delayed.

2. COMPLETION DATE

This transaction is scheduled to be completed on or before March 31, 2012, (hereinafter referred to as the “Closing Date” or “Date of Closing” or “Closing”), at which time the Vendor shall deliver to the Purchaser the Lister Block Building constructed in the manner hereinafter contemplated by the parties hereto and cleared for occupancy by the City of Hamilton Building Services Division (“Occupancy”). Subject to the provisions of Section 3 herein, in the event that the Vendor is unable to deliver Occupancy by the Closing Date, then the Vendor shall be permitted such extensions to the Closing Date as may be necessary to obtain Occupancy for the Project. Save and except for delays resulting from “Force Majeure” matters as hereinafter provided in paragraph 21, (which delays shall result in such extensions to the Closing Date as may be necessary to enable the Vendor to obtain Occupancy for the Project) the Vendor shall be allowed to extend the Closing Date from time to time for up to sixty (60) days in the aggregate, by delivering written notice thereof to the Purchaser prior to the then scheduled Closing Date.

The Purchaser shall have the right, at its sole discretion, to move up the closing date to a date that is no earlier than thirty (30) days following the date the rehabilitation/construction of the base building is completed as set out in the Project Schedule hereinafter referred to, being Schedule “C” to this Agreement.

3. PROVINCIAL GRANT

The Vendor hereby acknowledges that the Purchaser has pursuant to a grant agreement dated September 7, 2007, been provided with a grant from the Province of Ontario in the amount of Seven Million ($7,000,000.00) Dollars (the “Grant”) to facilitate the completion of the Project and that the Grant provides for an Occupancy deadline of March 31, 2012. In the event that the Lister Block Building is not available for Occupancy by March 31, 2012 for any reason, then the Purchaser shall use all commercially reasonable efforts possible to have the Province extend the
expiration date of the Grant and to the extent that the expiration date of all or any portion of the
Grant is so extended, then the Closing Date for the within transaction shall also be extended
accordingly. The Purchaser shall also endeavour to obtain any additional extensions for the Grant
as may be necessary to facilitate Occupancy and the Closing Date shall be amended from time to
time to coincide with any such extensions. To the extent that the Purchaser is unable to obtain an
extension of the expiration date for the Grant (or any part thereof) which results in a cancellation
of any portion of the Grant, then, to the extent that the same was not occasioned by any act or
omission of the Purchaser, including a decision by the Purchaser to use district heating and cooling
system rather than a stand-alone heating and cooling system, the purchase price in the within
transaction shall be reduced by the amount of the Grant that was cancelled [being a maximum
amount of Seven Million ($7,000,000.00) Dollars].

4. HOLDBACK

It is the intention of the Vendor to construct a development adjacent to the Project containing
approximately 100 rental retirement home units and approximately 100 condominium units for
seniors or a project of an equivalent development in terms of tax assessment, which development
is acceptable to the Purchaser, (hereinafter referred to as the “Adjacent Project” or the “Adjacent
Development”). To the extent that the Vendor is unable to complete construction of the Adjacent
Project by the Closing Date, and have the same cleared for Occupancy by such time, then the
Purchaser shall be entitled to holdback from the proceeds payable in the within transaction the sum
of ONE MILLION ($1,000,000.00) Dollars, which holdback shall be placed into an interest
bearing GIC and shall be retained by the Purchaser as its absolute property if the Vendor is unable
to obtain Occupancy for the said development on the Adjacent Property by the later of the fifth
anniversary date following the Closing Date or March 31, 2012.

5. DEVELOPMENT CHARGES, LEVIES, IMPOSTS ETC.

The Purchaser acknowledges and agrees that the Vendor shall not be responsible for the payment
of any heritage charges, parkland dedication fees, or development charges (collectively the
"Levies") for the Property as imposed by the Municipality. The Vendor acknowledges and agrees
that it shall be responsible for the payment of all other fees, charges, levies, imposts, etc., whether
present or future, relating to the Project.

The Vendor acknowledges and agrees that it shall be responsible for the payment of all fees,
charges, levies, imposts, etc., including but not limited to heritage charges, parkland dedication
fees or development charges, whether present or future, relating to the Vendor’s Adjacent Project.

6. SURVEY

No later than six (6) months prior to Closing, the Vendor shall deliver to the Purchaser at the
Vendor’s expense, an up-to-date survey of the Property and the Vendor shall also be responsible
for the preparation and registration prior to closing, at the Vendor’s expense, of a reference plan
depicting the Property in a form acceptable for deposit in the Land Titles Office.
7. HERITAGE COMPONENT

The Vendor and Purchaser agree as follows with respect to the heritage component of the Project of this transaction:

a) Immediately upon execution of this Agreement, the Vendor will permit the Purchaser’s Heritage staff and Heritage Consultant to attend on the site, with the Vendor’s contractor and representative(s), to conduct a heritage condition survey, which survey shall be completed prior to the removal of any materials from the site, and in any case no later than August 1, 2008. The purpose of the heritage condition survey is to record and identify any heritage features which are to be removed, due to deterioration, and all such features which are to be left in place, for the Vendor to do test patches and take test samples, satisfactory to the Purchaser’s Heritage Consultant, of any specific heritage features as may be required, in order to assist the Vendor’s employees, contractors or agents in determining what can be removed from the building during the Vendor’s pre-construction clean-up of the site.

b) The Vendor and Purchaser agree to develop a Heritage Conservation Strategy document respecting the heritage strategy to be applied to the Project, said document to be submitted and approved by the Purchaser’s Heritage Consultant and the Purchaser’s General Manager of Planning and Economic Development, by October 15, 2008;

c) The Vendor shall have applied for and obtained a valid Heritage Permit for the construction of the Project issued by the Purchaser’s Director of Planning, in accordance with the Heritage Conservation Strategy provided for herein;

d) The Vendor shall design the rehabilitation and prepare the construction documents in accordance with the Lister Block Reports: “Lister Building, Hamilton, Ontario Heritage Report,” Julian Smith & Associates and Clinton Brown Company Architecture (September 23, 2006), and “Report of the Provincial Development Facilitator on the Lister Block, Hamilton, Ontario,” Alan Wells (September 27, 2006); and

e) During their creation, the design and construction documents will be reviewed by the Purchaser’s Heritage Consultant and the Purchaser’s General Manager, Planning and Economic Development, for compliance with the Lister Block Reports and City of Hamilton standards, scope of work and other factors required to the satisfaction of the Purchaser’s Heritage Consultant; and the Purchaser’s General Manager, Planning and Economic Development, prior to the issuance of a building permit and heritage permit;

f) The Vendor shall submit detailed architectural drawings regarding all heritage elements for review and approval, to the satisfaction of the City’s Heritage Consultant and the Purchaser’s General Manager of Planning and Economic Development, to confirm the scope of the works as per the detailed performance specifications, prior to the issuance of a heritage permit;

g) The Vendor shall ensure that Lister Block Rehabilitation shall be in compliance with the Facilitator’s Report and Heritage Reports as specified in sub-clause (e) herein, to the
satisfaction of the Purchaser’s Heritage Consultant; and Purchaser’s General Manager, Planning and Economic Development;

h) The Purchaser’s Heritage Consultant shall review any proposed changes to the treatment of heritage elements in the approved construction/permit drawings that may arise during construction.

i) Any disputes arising with respect to any heritage-related matter shall be referred to the Purchaser’s Heritage Consultant, and if necessary, referred by the Purchaser’s Heritage Consultant for resolution to the Purchaser’s General Manager of Planning and Economic Development, whose decision shall be final and binding on the parties.

j) The Vendor shall give the Site Consultants three (3) business days prior written notice of any critical phases of construction relating to heritage matters in respect to the review and approval of “test patches”, terra cotta repair, replacement windows, HVAC design as well as specifics relating to the conservation of heritage attributes such as the interior arcade. The Purchaser acknowledges that the Vendor shall be entitled to continue with its construction schedule notwithstanding that the Site Consultants are not in attendance at the Project at the time prescribed following delivery of any notice as aforesaid.

8. AUGUST 1, 2008 CONDITIONS

The Vendor and the Purchaser agree that the following conditions shall be fulfilled to the satisfaction of the Purchaser (acting reasonably) by August 1, 2008, failing which this Agreement shall be deemed null and void and the parties shall be relieved of any further obligations to one another hereunder:

a) The Vendor shall provide the Purchaser with a list of Design Team consultants (the “Design Team”), who will be retained by the Vendor to prepare the design of the Development and a description of their relevant project experience and the choice of the Design Team shall be subject to the approval of the Purchaser. The Vendor agrees that in the event that the Purchaser approves the Design Team, the Design Team will not materially change without the written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed.

b) The Purchaser shall appoint an independent third party consulting engineer (“Independent Engineer”) to resolve any subsequent dispute arising between the Vendor and the Purchaser with respect to matters relating to the design and construction of the Project, save and except for any heritage-related matters. The choice of Independent Engineer shall be subject to the approval of the Vendor.

c) Completion of the Heritage Condition Survey, described in Paragraph 7.a) above.
9. **OCTOBER 15, 2008 CONDITIONS**

The Vendor and the Purchaser agree that the following conditions shall be fulfilled by October 15, 2008, failing which this Agreement shall be deemed null and void and the parties shall be relieved of any further obligations to one another hereunder:

a) Vendor shall submit one standard utility service design, including the base building HVAC system design as a stand-alone system (the “stand-alone system”);

b) Vendor shall submit to the Purchaser an application for site plan approval for the Project, which site plan application shall include drawings at a scale of no smaller than 1:500 that illustrates: site services connections; existing and new parking areas and sidewalks; existing and new paved areas; existing and new landscaped features; location for garbage and recycled waste enclosure;

c) Vendor shall submit to the Purchaser base building floor plans for each floor, including basement, at a scale no smaller than 1:250 that illustrate: existing and new elevator lobbies; existing and new stairwell locations; existing and new washrooms; existing and new mechanical and electrical rooms; existing and new locations of any duct shafts or other non-useable areas; a calculation of the net useable square footage area for each floor and the areas in which the building will be barrier free;

d) Vendor shall submit to the Purchaser base building sections at a scale no smaller than 1:200 that illustrate: existing and new clear heights, floor-to-floor heights and relevant dimensions; all floor, wall, and roof assembly references;

e) Vendor shall submit to the Purchaser the detailed performance specifications as per the National Master Specifications Divisions 1 through 16 clearly defining the minimum building performance standards and requirements that are to be implemented in the Development. The detailed performance specifications must describe all the elements of the building renovation and indicate required results, verifiable by achieving stipulated criteria;

f) Vendor shall submit to the Purchaser the preliminary description of all Part 11 equivalencies, building classifications and occupancy requirements;

g) Vendor shall submit and shall have obtained approval of the Purchaser’s Heritage Consultant to the Heritage Conservation Strategy as provided for in the Heritage Component paragraph No. 7 of this Agreement;

h) Vendor shall submit to the Purchaser the following with respect to sustainability of the Project:

   1. Building energy computer simulations in accordance with ASHRAE 90.1 or MNECB and a calculation of the predicted energy cost created by the Development, compared to the energy cost of the ASHRAE 90.1 or MNECB reference building;
2. Written description of the sustainable design features associated with Development including a description of the life cycle features;
3. LEED scorecard, identifying the number of LEED points that would be eligible for the Development;
4. Description of the commissioning activities that the Vendor will perform prior to occupancy;

i) Vendor covenants and agrees that the Development will be in compliance with the City of Hamilton’s Barrier Free Design Standards, subject to reasonable interpretation of the heritage building features. Vendor to submit to the Purchaser a description of all proposed issues that would not be in compliance with the City of Hamilton’s Barrier Free Design Standards;

j) Vendor shall submit to the Purchaser a description, including the duration, of all post-construction warranties;

k) Vendor shall submit to the Purchaser a structural assessment report on the Lister Block Building, prepared by a licensed structural engineer, hired by the Vendor;

The Vendor and Purchaser agree to meet within thirty (30) days of the Vendor’s submissions as referred to above, to provide comments on said submissions and to facilitate the correction of any deficiencies to such submissions.

The Vendor and the Purchaser acknowledge and agree that conditions contained in this Paragraph 9 are a true precedent to the completion of the within transaction and may not be waived by either the Purchaser or the Vendor. In the event that the within transaction is deemed null and void as a consequence of the non-fulfillment of any of the conditions set out in this Paragraph 9, then the Vendor and Purchaser acknowledge and agree that they shall each be responsible for their own costs and expenses incurred to such time with respect to implementing the provisions of this Agreement and each party shall be relieved of any further obligations to the other hereunder.

10. DECEMBER 19, 2008 CONDITIONS

The Vendor and the Purchaser agree that the following conditions shall be fulfilled by December 19, 2008, failing which this Agreement shall be deemed null and void and the parties shall be relieved of any further obligations to one another hereunder (except as hereinafter provided in this Paragraph 10):

a) Vendor shall have applied for and obtained from the Purchaser site plan approval for construction of the Project in accordance with its site plan application;

b) Vendor shall have obtained from the Purchaser final and binding approval to its base building floor plans, base building sections, structural assessment report and detailed performance specifications for the Project;

c) The Purchaser shall determine, in its sole discretion, either that:
1. The Vendor shall install a stand-alone system as provided pursuant to Clause 9 a) above; or

2. The Vendor shall install a district heating and cooling supply system from Hamilton Community Energy (Thermal) and City of Hamilton (Cooling) (“the district system”);

Provided that, in the event the Purchaser decides the district system is to be installed, the Vendor and Purchaser covenant and agree to adjust the purchase price in the transaction, to the extent that the cost of the materials and installation of the district system differs from the cost of the materials and installation of the stand-alone system. To clarify, in the event that the Purchaser decides that the district system is to be installed in the Project, and the costs related to the district system are higher than the costs related to the stand-alone system, the purchase price in this transaction shall be increased by the amount of the additional costs of the district system. In the event the costs related to the stand-alone system are higher than the costs related to the district system, the purchase price in this transaction shall be decreased by the amount of the additional costs of the stand-alone system over the district system.

The Vendor and the Purchaser acknowledge and agree that conditions contained in this Paragraph 10 are a true precedent to the completion of the within transaction and may not be waived by either the Purchaser or the Vendor. In the event that the within transaction is deemed null and void as a consequence of the non-fulfillment of any of the conditions set out in this Paragraph 10, then the Vendor and Purchaser acknowledge and agree that they shall each be responsible for their own costs and expenses incurred to such time with respect to implementing the provisions of this Agreement and each party shall be relieved of any further obligations to the other hereunder.

11. JUNE 30, 2009 CONDITIONS

The Vendor and the Purchaser agree that the following conditions shall be fulfilled by June 30, 2009, failing which this Agreement shall be deemed null and void and the parties shall be relieved of any further obligations to one another hereunder (except as hereinafter provided in this Paragraph 11.):

a) The Vendor shall have applied for and obtained a valid Heritage Permit for the construction of the Project; and

b) The Vendor shall have applied for and obtained a valid Building Permit for all construction related to the Project.

The Vendor agrees to commence construction of the Project forthwith upon issuance of the aforementioned Permits.

The expiry date of the foregoing conditions contained in this Paragraph 11 may be extended by the Purchaser, at its sole discretion, acting reasonably.

In the event that the within transaction is deemed null and void as a consequence of the non-fulfilment of any of the conditions set out in this Paragraph 11, the Vendor and Purchaser
acknowledge and agree that they each shall be responsible for their own costs and expenses incurred to such time with respect to implementing the provisions of this Agreement and each party shall be relieved of any further obligations to the other hereunder.

12. GENERAL CONSTRUCTION MATTERS

The Vendor and Purchaser hereby covenant and agree with each other as follows:

   a) The Project shall proceed as per the Project Schedule attached as Schedule “C” to this Agreement (or such up-dated Project Schedule as may be agreed upon from time to time);

   b) The Vendor shall indemnify and save the Purchaser harmless from and against any losses arising from property damage or personal injury related to the Project occasioned solely by any act or omission of the Vendor or those for whom it is in law responsible (which indemnification shall survive Closing);

   c) The Vendor shall grant access to the site at any time or times, without notice, to four (4) designated representatives of the Purchaser (the “Site Consultants”), during the construction of the Development to enable the Purchaser to verify that the construction work is being carried out in accordance with the terms of this Agreement and the approved design documents. All attendances at the Project by the Site Consultants shall be at their sole risk and the Purchaser hereby indemnifies and saves the Vendor harmless from any and all liability relating thereto. The Purchaser shall not change the number of or identity of the Site Consultants without the written approval of the Vendor, which approval shall not be unreasonably withheld.

   d) The Vendor shall give the Site Consultants three (3) business days prior written notice of any critical phases of construction. The Purchaser acknowledges that the Vendor shall be entitled to continue with its construction schedule notwithstanding that the Site Consultants are not in attendance at the Project at the time prescribed following delivery of any notice as aforesaid.

   e) The Vendor and its Design Team shall consult with the Site Consultants during the design development of the Project. The Purchaser’s Site Consultants shall be invited to all the Vendor’s Site Team meetings throughout the construction process, and minutes of all such meetings shall be provided to the Purchaser’s Site Consultants.

   f) The working drawings and specifications prepared by the Design Team for the Project shall be submitted to the Purchaser at no less that 30%, 60% and 90% stages of the design development, as per the approved Project Schedule. The Purchaser must provide its comments with respect to the working drawings submitted by the Vendor at the 30%, 60% and 90% stages within ten (10) business days of their receipt, otherwise the Purchaser shall be deemed to have approved the applicable submission;

   g) The Vendor and Purchaser shall co-operate in the Purchaser arranging for City-provided services to the lot line of the subject lands;
h) The Vendor covenants and agrees to remove from title any construction liens or other liens or encumbrances registered as of or after the Closing, and the Vendor indemnifies and saves harmless the Purchaser against any and all claims, causes of action, loss and costs arising from any construction liens, liens, or encumbrances registered after closing which relate to the construction of the Project; such indemnification to survive the Closing; and

i) The Vendor agrees to maintain in force throughout the duration of this Agreement, at its sole cost and expense including the payment of all deductibles, Commercial General Liability and Property Damage Insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage or loss, including acts or omissions of the Vendor, its employees, contractors, sub-contractors, agents and invitees and in a form and with an insurance company acceptable to the Purchaser, licensed to transact business in Ontario. All such insurance policies and certificates shall name as an additional insured the Purchaser. Such policies shall also require at least thirty (30) days' written prior notice of any change to or amendment, cancellation, expiration or termination of the coverage under such policies to be given to the Purchaser herein and be in a form satisfactory to the Purchaser. All insurers shall be licensed to do business in Ontario, and such insurers and the insurance coverages shall be acceptable to the Purchaser acting reasonably and prudently. The Vendor shall deliver to the Purchaser certificates of insurance originally signed by authorized insurance representatives, or, if required by the Purchaser, certified copies of such policies prior to the execution of this Agreement and for all renewals thereafter during the Term of this Agreement no later than sixty (60) days prior to their renewal date and at any other time upon request by the Purchaser. All insurance coverages to be provided by the Vendor herein shall be primary and not call into contribution any other insurance coverages available to the Purchaser and such coverage shall preclude subrogation claims against the Purchaser and any other person insured under the policy. Insurance requirements and coverage herein shall not limit, reduce, or waive any of the Vendor’s obligations to indemnify the Purchaser pursuant to this Agreement herein or the liabilities assumed by the Vendor under this Agreement. The Vendor shall not do or omit to do anything that may breach, limit, restrict, or prejudice the terms or conditions of the insurance coverages referred to herein.

13. **PARKING**

In respect of the parking facilities to be provided to the Purchaser in the Project:

a) The Vendor shall, as part of the Development of the site, construct and provide forty (40) on site surfaced parking spaces for exclusive use by the Purchaser;

b) In the event that the parking area, which is devoted to the Purchaser’s use, is required to facilitate the development of the Adjacent Development and the forty (40) exclusive use parking spots have to be displaced, the Vendor shall ensure that the Purchaser will continue to have the use of forty (40) parking spaces at all times, at no cost to the
Purchaser, which spaces are to be located within 300 metres of the rehabilitated Lister Block Building, during the construction period of the Adjacent Development;

c) Such alternative parking shall only be situated in a Commercial, Industrial or Downtown Zone or within the same zone as the use requiring such parking; and

d) In the event that the parking area of the Development, that is devoted to the City’s use, is required for the development of the Adjacent Project and in the event that Reciprocal Agreements are required between the Purchaser and the proprietors of the Adjacent Project for new parking, the Purchaser shall not be obligated to cost share in any capital improvements, operating costs or basic rent for said minimum forty (40) parking spaces.

14. TENANT IMPROVEMENTS

Purchaser acknowledges that the Vendor is only required to install at its own expense those items specifically set out in the design drawings for the Project as the Vendor’s responsibility and for which a building permit has been issued. Any and all additional items relating to the Project that are not provided in the approved drawings for the Project as aforesaid shall be deemed tenant improvements and shall be the responsibility of the Purchaser to install at the Purchaser’s sole cost and expense. The Vendor shall provide, by March 31, 2009, electronic drawings for the Project in an acceptable format. The Vendor shall grant the Purchaser and its Site Consultants access to the Property as required (at their sole risk and without any liability therefor) to complete the design and construction of the Tenant Improvements in accordance with the dates identified in the Provincial Grant Agreement dated September 7, 2007 as amended, and in accordance with the approved Project Schedule.

The Vendor shall have completed construction of the base building by the date indicated on the approved Project Schedule, so as to enable the commencement of construction and installation of its Tenant Improvements as of that date, in accordance with the approved Project Schedule. The method and implementation of the Tenant Improvements are to be at the sole discretion of the Purchaser.

15. POST-CONSTRUCTION MATTERS

The Vendor covenants and agrees with the Purchaser to the following covenants, warranties, and conditions which shall not merge on the closing of this transaction, but shall survive Closing:

a) The Vendor shall assign all equipment and systems warranties related to the Project to the Purchaser on closing;

b) The Vendor shall submit to the Purchaser on closing, an equipment and systems warranty management plan, in a form satisfactory to the Purchaser;

c) The Vendor shall submit to the Purchaser on closing security, in an amount to be determined on receipt of and on the basis of the equipment and systems warranty management plan for the post-construction warranties;
d) The Vendor shall submit, at the time of Closing, a warranty that the Development and associated buildings and lands shall be free of all hazardous and environmental substances and the Vendor shall prepare and submit, on Closing: Environmental/Designated Substance, Record of Site Condition, and Structural Engineers report, all reports shall be at the Vendor’s expense and to the satisfaction of the Purchaser;
e) The Vendor shall submit a description of all post-construction warranties, to the satisfaction of the Purchaser;
f) The Vendor shall train the Purchaser’s staff on all building systems and maintenance, in accordance with the approved detailed performance specifications and commissioning activities;
g) The Vendor shall submit at the time of closing: three (3) hard copies and two (2) digital copies of all shop drawings, operational and maintenance manuals, “as-built” or “record” drawings, and specifications, all such materials to be to the satisfaction of the Purchaser;
h) The Vendor shall submit to the Purchaser all “as-built” drawings generated in CAD format and all other manuals and specifications shall be submitted in both MSWord and PDF format; and
i) The Vendor shall fulfill the administrative and procedural requirements for contract close-out in accordance with Masterspec Section 01170 – Closeout Procedures.

16. **EASEMENTS**

The Purchaser shall grant such easements in, over and upon the Property as may be required by the Vendor before and after Closing to facilitate the construction and the development of the Adjacent Project, which easements may include without limitation, easements for the provision of services, utilities and support, pedestrian and vehicular access and easements for maintenance, repair and replacement purposes. The obligation of the Purchaser herein to provide easements shall not merge and shall survive Closing.

17. **DISPUTE RESOLUTION**

In the event that any dispute arises between the Vendor and the Purchaser with respect to matters relating to the construction and design of the Project, during the construction of the Project, save and except any heritage-related matters as set out in Paragraph 7 herein, then either party hereto shall have the right, on delivery of three (3) business days prior notice to the other, to have any matter in dispute submitted to the Independent Engineer for determination. Any decision rendered by the Independent Engineer with respect to the foregoing shall be binding upon the parties hereto at that time, in order for the Project to proceed expeditiously. The Vendor and the Purchaser shall each be responsible for half of the fees payable to the Independent Engineer for attending to any dispute resolution and each party shall bear its own costs in respect to the submission of documents and materials to the Independent Engineer for determination.
Subsequent to the completion of construction of the Project, any decisions of the Independent Engineer may be referred by either party to arbitration, as provided for in the *Arbitration Act, 1991, S.O 1991, c. 17.*

18. **G.S.T.**

The Purchaser acknowledges that the Purchase Price is *exclusive* of Goods and Services Tax (“GST”). The Purchaser represents, warrants and agrees that:

(a) It is purchasing the Property as principal for its own account and same is not being purchased by the Purchaser as an agent, trustee or otherwise on behalf of or for another person;

(b) It will on closing be registered under Subdivision d of Division V of Part IX of the *Excise Tax Act* for the collection and remittance of GST; and such registration is in good standing and has not been revoked.

(c) It shall be liable, shall self-assess and remit to the appropriate governmental authority all GST which is payable under the Act in connection with the transfer of the Property made pursuant to this Agreement of Purchase and Sale, all in accordance with the Act;

(d) It acknowledges that the Vendor is relying upon the accuracy of the above representations and warranties in not collecting GST on closing and allowing the Purchaser to self-assess and remit GST to the Receiver-General in accordance with the Act, and that such representations and warranties shall not merge on the closing of this transaction;

(e) It shall indemnify and save harmless the Vendor from and against any and all GST, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of any inaccuracy, misstatement or misrepresentation made in connection with any matter raised in this paragraph or contained in any declaration referred to herein; and

(f) It shall tender on closing a declaration and indemnity reflecting the above-noted provisions, which declaration and indemnity shall also include the Purchaser’s GST number (the “G.S.T. Declaration & Indemnity”).

In the event the Purchaser is unable or fails to comply in any way with the foregoing provisions, then the Purchaser covenants and agrees that it shall be responsible for paying and remitting to the Vendor on Closing the applicable GST payable under the Act in connection with the transfer of the Property pursuant to this Agreement of Purchase and Sale.

The Purchaser also agrees that it shall pay on Closing in addition to GST, any land transfer tax levied in respect to this sale transaction.
19. **NOTICES**

Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement (a "Notice") shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax or other similar means of electronic communication, in each case to the applicable address set out below:

(a) in the case of the Vendor addressed to it at:

Attention:  
Facsimile:   (      )

(b) and in the case of the Purchaser addressed to it at:

**CITY OF HAMILTON**  
City Centre, 77 James Street North  
Hamilton, Ontario L8R 2K3  

Attention:  General Manager, Public Works Department

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent prior to 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

Any party may from time to time change its address as set out above by notice to the other party given in the manner hereinbefore provided.

20. **REGISTRATION AND ASSIGNMENT**

The Purchaser reserves the right to register, and the Vendor hereby consents to the registration, at the Purchaser’s expense, notice of this Agreement, Assignment thereof, Caution, Certificate of Pending Litigation, or any other instrument or reference to this Agreement of the Purchaser’s interest in this Property.

The parties covenant and agree that they will in no way directly or indirectly assign, convey, sell, transfer or encumber their respective rights under this Agreement prior to closing without the prior written consent of the other party.
21. **FORCE MAJEUER**

Subject to the provisions of the Provincial Grant (Paragraph 3) clause of this Agreement, whenever and to the extent that any party hereto is unable to fulfill or is delayed or restricted in the fulfilment of any of its obligations (other than the payment of monies) under this Agreement by reason of any of the following impediments:

1. strike;
2. lockout;
3. war or acts of military authority;
4. rebellion or civil commotion;
5. material or labour shortage not within the control of such Owner;
6. fire, explosion;
7. flood, wind, water, earthquake or other casualty;
8. any applicable lawful statute, by-law, ordinance, regulation or order; or
9. acts of God,

not caused by the default, act, or omission by such party and not avoidable or surmountable by the exercise of reasonable effort or foresight by it, then so long as any such impediment exists, such party shall be temporarily relieved from the fulfillment of such obligation and the other parties to this Agreement shall not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned and, to the extent necessitated thereby, there shall be a postponement of any deadline, compliance with which would be otherwise adversely affected by such impediment, provided that at the expiration of such temporary relief, such party shall forthwith proceed with fulfillment of such obligation, save and except as otherwise provided in this Agreement.

22. **PERMITTED ENCUMBRANCES**

The Purchaser agrees to accept title to the Property subject to all Permitted Encumbrances. For the purposes of this Agreement, “Permitted Encumbrances” means

(a) all registered agreements with the municipality or other governmental body or with any public or private utility supplier including, without limitation, registered subdivision agreements, registered development agreements and registered site plan agreements, provided the same have been complied with on the Closing Date;

(b) any registered restrictions that run with the Property, provided the same have been complied with on the Closing Date;
(c) any registered easements, rights-of-way or other rights in the nature of an easement for the supply, maintenance, repair and operation of utilities on the Property, provided the same have been complied with on the Closing Date;

(d) zoning by-laws and ordinances and municipal by-laws and regulations and land use restrictions applicable to the Property, provided the same have been complied with on the Closing Date;

(e) any encroachment, size discrepancy, boundary deviation or other matter that is reflected in any survey for the Property that has been provided by the Vendor to the Purchaser prior to any waiver by the Purchaser of any due diligence condition or that would be revealed by an up-to-date survey of the Property;

(f) any reservations and exceptions expressed in the original grant from the Crown for the Property;

(g) airport zoning regulations; and

(h) any instruments registered on title to the Property as of the date of execution of this Agreement, save and except for any registered Mortgages or Construction Liens thereon.

23. **CONFLICT**

In the event of any conflict or ambiguity between the provisions of this SCHEDULE “B” and the attached form of Agreement of Purchase and Sale, the provisions of SCHEDULE “B” shall be deemed to be the true intent of the parties and shall prevail. If any term, clause or provision of this Agreement shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, clause or provision, and such invalid term, clause or provision shall be deemed to have been deleted from this Agreement.

24. **LAWS OF THE PROVINCE OF ONTARIO**

This Agreement shall be construed in accordance with the laws of the Province of Ontario.

25. **NON-MERGER ON CLOSING**

The parties agree that this Agreement and any or all of its terms, conditions, covenants, warranties, restrictions and stipulations shall not expire or merge on the closing of this transaction or upon the registration of a transfer/deed on title, but shall survive the closing of this transaction.
LISTER BLOCK REHABILITATION
SCHEDULE “C”

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<thead>
<tr>
<th>Task Name</th>
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<th>Finish</th>
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<td>Project Duration</td>
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<td>Mar 30 ’12</td>
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<td>Execute Offer to Purchase</td>
<td>May 8 ’08</td>
<td>Jun 30 ’08</td>
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<tr>
<td>Design</td>
<td>Jul 1 ’08</td>
<td>Apr 1 ’09</td>
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<td>Heritage Conservation Strategy</td>
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<td>Building Permit Application</td>
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<td>Building Permit Submission</td>
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<td>Building Permit Review</td>
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<td>Building Permit Received</td>
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<td>Jul 29 ’11</td>
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<td>Aug 1 ’11</td>
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<td>Commissioning &amp; Occupancy</td>
<td>Jan 2 ’12</td>
<td>Mar 29 ’12</td>
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<tr>
<td>Deficiency Review &amp; Final Close Out</td>
<td>Mar 30 ’12</td>
<td>Mar 30 ’12</td>
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At the February 27, 2008 Committee of the Whole, Council directed staff to provide further information when reporting back regarding an Agreement for Purchase and Sale for the Lister Block:

   a) That the issue on the Lister Block Proposal be tabled pending further calculation information from staff on the items noted on Pages 22, 23 and 24 of the Peer Review presentation (for item details refer to Appendix “y” to Report FCS08060)/PED08168)

Page 22, 23, and 24 from the Peer Review presentation made at the February 27, 2008 Committee of the Whole:

Page 22

Should the City proceed with purchase, the following items should be included in the purchase agreement:

- compliance with Facilitator’s Report and Heritage Reports
- confirmation that the provincial contribution will not be impaired by actual schedule and/or heritage interpretations
- energy model to the satisfaction of the City to verify operating costs

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Should the City proceed with purchase, the following items should be included in the purchase agreement (cont.):

- compliance with City Barrier Free Design Standards, subject to reasonable interpretation of heritage building features
- an indemnification from the Seller to the City against any loss arising from property damage or personal injury related to rehabilitation works; indemnification to survive purchase
- an enhanced Performance Specification to augment Outline Specification already provided

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Other Items:

- City to study option for connection to power (HCE & CUP)
- City & Seller to investigate opportunity for LEED Existing Buildings standards
- Confirmation that Seller is responsible to obtain and pay for all applicable permits and fees
- City to confirm proposed property easement
Facsimile/Télécopie

Date: June 13, 2008
To/DESTinataire: Kieran C. Dickson
Office/Bureau: Evans, Philip LLP
Location/Adresse:
Tel./Téléphone:
Fax./Télécopieur 905 525 - 7897

From/Expéditeur: Catherine Axford
Tel./Téléphone: 416 314-4903

No. of pages (including this page): 16

Original to follow/L'original suivra:
yes/oui

Special Instructions/Comment/Renseignements/Remarques:

10 Adelaide Street East, Toronto, Ontario M5C 1J3 Telephone: (416) 314 - 4903 Facsimile: (416) 314 - 4930 10, rue Adelaide est, Toronto (Ontario) M5C 1J3 Téléphone: (416) 314 - 4903 Télécopieur: (416) 314 - 4930

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June 13, 2008

By Fax to: 905 525 – 7897

Mr. Kieran C. Dickson
c/o Evans, Philp LLP
Barristers and Solicitors
One King Street West, 16th Floor
Hamilton, Ontario
L8P 1A4

Dear Mr. Dickson:

Further to Order EO-2681, please find enclosed the report regarding the Lister Block, as described within the Order.

Sincerely,

[Signature]

Catherine Axford
FIPPA Co-Ordinator
June 7, 2006

The Honourable Caroline Di Cocco
Minister of Culture
Room 4320, Whitney Block
99 Wellesley Street West
Toronto, Ontario
M7A 1W3

Dear Minister:

Subject: Request for Advice from the Ontario Heritage Trust regarding the Provincial Significance of the Lister Block, Hamilton

On April 5, 2006 the Minister of Culture requested that the Ontario Heritage Trust evaluate the Lister Block in Hamilton to determine if it is of provincial significance under Ontario Regulation 10/06.

The Lister Block is a provincially significant building that is associated with provincially significant patterns of Ontario’s history and is an increasingly rare aspect of the province’s heritage. Built in 1924, it is one of the largest commercial buildings in Hamilton’s downtown core. The building was designated municipally under Part IV of the Ontario Heritage Act in 1996. It has remained vacant since 1995 and is currently subject to a redevelopment application. Hamilton City Council is expected to give consideration to a request to demolish and redevelop the Lister Block at its meeting of June 12, 2006.

Following a meeting of the Board of Directors of the Ontario Heritage Trust held today, I am pleased to convey the following resolution containing the Trust’s advice to the Minister:

1. the Ontario Heritage Trust has determined that the Lister Block (located at 28-44 James Street North / 5-21 King William Street, Hamilton) is a property of cultural heritage value or interest of provincial significance as defined under Ontario Heritage Act Regulation 10/06;

   Having determined that the property is provincially significant the Trust also advises that:

2. the Minister of Culture should encourage the City of Hamilton and the owner to stabilize, protect and conserve the Lister Block using the municipal powers that exist under the Ontario Heritage Act, Building Code Act and Planning Act;
3. the Trust is willing to hold a heritage conservation easement agreement to protect the heritage attributes of the Lister Block in perpetuity, if the owner is willing to enter into such easement agreement, and adequate resources can be secured for the taking and monitoring of the easement;

4. if the Municipality is unwilling to retain the Lister Block, the Minister should intervene and designate the Lister Block using the powers as prescribed under section 34.5 of the Ontario Heritage Act;

5. if the Municipal Council approves the demolition of the Lister Block at its meeting of June 12, 2006, or at a subsequent meeting, the Minister should intervene immediately with a stop order under section 35.2 of the Ontario Heritage Act in order to ensure that the provincial designation (recommendation 4) can be implemented;

6. The Lister Block is a significant heritage property, that would be eligible for assistance under the federally administered Commercial Heritage Property Incentive Fund (CHPIF) and should be submitted for nomination to the Canadian Register of Historic Places; and

7. these recommendations be forwarded to the Minister of Culture for her consideration.

I enclose, for your consideration, a summary of the assessment conducted by the Trust. This includes the evaluation of the Lister Block, the Statement of Heritage Value or Interest, photographs of the site, and an overview of the process used to assess this property.

As you may know, there has been considerable discussion within the community about the preservation of this building. The Trust’s Board considers this to be a significant opportunity for the province to show leadership in the preservation of Ontario’s heritage.

I would be pleased to discuss these recommendations with you further.

Sincerely,

The Honourable Lincoln M. Alexander
Chairman

Enclosures

Copy: Lucille Roch, Deputy Minister
Lister Block: Discussion Paper

BACKGROUND

On April 5, 2006 the Minister of Culture, requested the Ontario Heritage Trust to evaluate the Lister Block (Hamilton) to determine if it is of provincial significance under Ontario Regulation 10/06.

The Lister Block, built in 1924, is one of the largest commercial buildings in Hamilton’s downtown core. By the early 1990s, most of the Lister Block was vacant and eviction notices were given to the other tenants by 1995. The building was designated municipally under Part IV of the Ontario Heritage Act in 1996. It has remained vacant since 1995 and is currently subject to a redevelopment application. Hamilton City Council is expected to approve the demolition and redevelopment of the Lister Block in May 2006.

DESCRIPTION AND HISTORY OF THE LISTER BLOCK

The Lister Block was built in 1924 by Hamilton businessman Edmond Lister. An earlier commercial building, the Lister Chambers, was built by Edmond’s grandfather Joseph Lister on this site in 1859, but burned down in 1923. The Lister Block is located at the northeast corner of James Street North and King William Street in downtown Hamilton. The 6-storey (plus basement) commercial building has a total gross floor area of approximately 80,000 square feet. It extends 8.5 bays along James Street North and 6.5 bays along King William. The building was designed by Bernard H. Prack and constructed by well known Hamilton contractor Pigott Construction. The Lister Block was designed in the Renaissance Revival style, and opened in June 1924 with retail space on the lower levels and office space above. The building is constructed of reinforced concrete, and is clad with brick and terra cotta. One of the most distinguishing features of the Lister Block is the interior L-shaped arcade that more than tripled the commercial ground floor shop frontage of the building.

EVALUATION SUMMARY

In order to be considered to be of cultural heritage value or interest of provincial significance, a property must meet one or more of the eight criteria contained in Ontario Heritage Act Regulation 10/6. The Lister Block was reviewed in detail against the criteria using an evaluation model developed by the Trust. The Lister Block was found to be provincially significant for 2 of the 8 criteria:

Criterion 1 - The property represents or is important in demonstrating a theme or pattern in Ontario’s history;
The building represents urbanization and post World War I re-investment in Ontario’s major cities in the 1920s. It is also important in demonstrating changing retail patterns in urban Ontario in the first quarter of the 20th century.

**Criterion 3 - The property demonstrates an uncommon, rare, or unique aspect of Ontario’s cultural heritage.**

The building demonstrates the large multi-use, multi tenant, commercial “blocks” which were built from 1890-1930 in Ontario’s major urban centres and are becoming an increasingly uncommon aspect of Ontario’s heritage.

The results of the research and evaluation of the Lister Block are described in the Statement of Cultural Heritage Value or Interest.

**DISCUSSION**

The City of Hamilton has worked with the owner of the Lister Block and the adjacent properties for several years in an effort to develop a plan for this block that combines architectural and urban conservation with a revitalization of the City’s downtown core. Municipal heritage staff have shown due diligence by ensuring that the heritage strategy is professionally vetted by conducting a peer review process of the project by 3 recognized experts in the conservation field. Nonetheless, as this property combines planning and redevelopment with heritage, Hamilton City Council must balance several municipal mandates, including increasing the tax base of the city, improving the condition of a dilapidated section of the downtown, contributing to the local economy, and conserving the City’s heritage properties.

The current proposal for the site would see a handful of the Lister Block’s architectural details dismantled or removed from the site, the building demolished, a new larger structure erected and some of the heritage details reinstated in a new building. This is not conservation nor is it partial retention (façadism). The new building would be an emulation of the Lister block in mass and general fenestration, but would be a thoroughly new structure built with modern materials and methods. Three heritage consultants were retained by the City of Hamilton to conduct a peer review of the heritage impact assessment submitted in 2005 by the owner of the Lister Block in defense of the proposed redevelopment. All three heritage experts were highly critical of the project’s approach, lack of conservation rigour and the flawed heritage strategy proposed by the owner.

During the course of the provincial heritage evaluation it was determined that in addition to the Lister Block there are other buildings threatened with demolition by the current Lister Block redevelopment. One of these is the McKay Building (46-52 James Street North) a 4-storey commercial building built in 1855-6 and designed by the provincially significant and highly prolific architect William Thomas. The building is vacant and in 1961 modern cladding was applied to 3 of the 4 ground floor bays significantly altering the character of the building. The upper floors remain partially intact at least on the exterior. The McKay building is listed on the
Hamilton Inventory of Heritage properties. This building was not part of the Trust's review and heritage evaluation nor did Trust staff inspect the building, nonetheless the proposed demolition of this building is another potential heritage impact of the proposed redevelopment.

The Lister Block is a provincially significant building that is associated with provincially significant patterns of Ontario's history and is an increasingly rare aspect of the province's heritage. Consequently the Minister should use her influence and if necessary her powers under the Act to encourage the retention of this historic building.
Statement of Cultural Heritage Value or Interest

LISTER BLOCK, HAMILTON

Statement of Provincial Significance
The Lister Block is provincially significant as defined by two of the eight criteria contained within Ontario Heritage Act Regulation 10/6. As outlined in Criterion 1, the Lister Block is representative of two important themes in Ontario's history. First, the building represents the post-World War I reinvestment in Ontario's major cities that occurred with the booming economy of the early 1920s. Second, the building represents the changing retail patterns in urban Ontario that coincided with the development of department stores and shopping centres in the first quarter of the 20th century. As outlined in Criterion 3, the Lister Block also clearly demonstrates an uncommon aspect of Ontario's cultural heritage. The building provides an example of a large, multi-use, multi-tenant, commercial block that began to appear in urban centres in the 1890s. This form began to decline in the 1930s and is now a rare architectural form and commercial type in the urban landscape.

Description of Historic Place
The Lister Block is located at the northeast corner of James Street North and King William Streets (28-44 James Street North and 5-21 King William Street) in the City of Hamilton. The 6 storey (plus basement) brick and terra cotta building was designed by architect Bernard H. Frack in Renaissance Revival style and constructed in 1923-24. The most significant features of the building include its exterior terra cotta work and interior L-shaped arcade, which was purportedly the first to be built in Hamilton. The Lister Block was fully occupied until the 1970s, but by the early 1990s much of the building had been vacated. Eviction notices were given to the remaining tenants in 1995 and the building closed shortly thereafter. In 1996 the Lister Block was municipally designated under Part IV of the Ontario Heritage Act (City of Hamilton Bylaw 96-175).

Description of Heritage Value and Interest
Historic Value
The Lister Block is historically significant for its association with a number of significant individuals in the City of Hamilton. The original Lister Chambers, built in 1859 by Joseph Lister was destroyed by fire in February 1923. Edmund Lister, grandson of Joseph, hired Bernard H. Frack to design a new fireproof building which opened in June 1924. The construction was carried out by Pigott Construction, a successful Hamilton based company responsible for a number of landmark buildings including Hamilton's first skyscraper, the 1929 Pigott Building. The Lister Block housed a number of retail outlets on the ground level, professional offices on the upper floors, and facilities for leisure activities such as a billiards and bowling in the basement.
Architectural Value
The Lister Block is architecturally significant due to its interior arcade and its decorative use of terra cotta. The building was very large for its time, with a gross floor area of approximately 80,000 square feet. Based upon Renaissance Revival design, the Lister Block is fairly representative of commercial buildings in the 1920s and reflects many elements of the Chicago School of Architecture. The first two levels of the building are highly decorative in nature and include fluted pilasters, an entablature, and medallions all in white glazed terra cotta. The upper storeys are strongly contrasted with the lower section and are characterized by dark rug brick, tall sash windows, and copper spandrels. These contrasting sections are tied together through the presence of an upper entablature in glazed terra cotta that replicates the decorative details of the lower floors. The horizontal emphasis and large display windows of the building are reminiscent of early Canadian department stores, but are more reflective of the industrial warehouse designs practiced previously by this architect. The interior L-shaped arcade in the Lister Block had entrances on both James and King Edward Street and allowed Edmond Lister to maximize the rentable commercial space on the ground floor of the building. Arcades similar to this had been incorporated in Canadian buildings as early as the 1880s, but were still quite rare in the first quarter of the 20th century.

Contextual Value
Situated at the intersection of James Street North and King William Street, the Lister Block is located in Hamilton's historic city centre. Market Square, Old City Hall and a Zeller's store once stood adjacent to the site, and an old Eaton's Department Store formerly acted as the north anchor to this historic commercial district.

Description of Heritage Attributes:
• 6-storey reinforced concrete building;
• An architectural massing which extends south and west to the historically established street edge and street corner;
• Flat roofline defined by the parapet above the upper cornice;
• Organization of the first two floors into 8 1/2 large bays on James Street North and 6 1/2 large bays on King William;
• Truncated corner whose single narrow bay is set at 45 degrees to the south and west walls of the building;
• Renaissance Revival design elements including:
  o Tripartite vertical organization of the façade (derived from a 16th century Italian Palazzo) creating a base (ground and 2nd floor), shaft (3rd-6th floors), and capital (pronounced top cornice);
  o Façade of the lower two levels in white glazed terra cotta with fluted pilasters, lower cornice, decorative medallions, and custom lettering (i.e. "ARCADE");
  o Elaborate white glazed terra cotta top cornice with cartouches in the frieze;
  o 3rd-6th floors consisting of rug brick clad walls
  o Rug brick clad stylized pilasters that organize the upper floors into bays 3 windows wide and which serve to extenuate the underlying structure;
  o Decorative copper spandrel panels;
  o Single hung vertical wood sash windows and wood window frames;
• Large windowed storefronts on James Street North and King William;
• L-shaped interior ground floor arcade decorated with plasterwork, marble flooring, plate-glass store fronts and square skylights in the ceiling.
LISTER BLOCK,
2844 JAMES STREET NORTH, 5-21 KING WILLIAM STREET (HAMilton)
LISTER BLOCK,
2844 JAMES STREET NORTH, 5-21 KING WILLIAM STREET (HAMILTON)
LISTER BLOCK,
2544 JAMES STREET NORTH, 5-21 KING WILLIAM STREET (HAMILTON)

Lister Block: (top left) ground floor, (top right) exterior terracotta detail and interior floor detail, (left) ground floor plan.
Lister Block: Assessment Process Summary

Background

On April 5, 2006 the Minister of Culture, requested the Ontario Heritage Trust to evaluate the Lister Block (Hamilton) to determine if it is of provincial significance under Ontario Regulation 10/06. [Sean, reference consultation with Ministry staff here] On 3 May 2006 a multi-disciplinary committee (e.g. historians, architects, and planners) comprised of Trust staff met to evaluate the cultural heritage value or interest of the Lister Block.

Methodology for OHT’s assessment:

- Utilizes a comparative method
- Is conducted by a multi-disciplinary committee of specialists
- The evaluation and the consideration of options are supported by:
  - Research
  - Site visits
  - The OHA Register
  - Consultation with the Ministry of Culture
  - Consultation with other heritage jurisdictions
  - Previous Case Studies
- Applies the criteria in Ontario Regulation 10/06
- General criteria statements are distilled into a number of more objective and specific evaluations
- Based on the nature of the resource, there are an average of 50 questions in 20 tests that apply the criteria
- Heritage recognition or lack thereof by other jurisdictions is not relevant to the evaluation.
- OHT assessment model was developed with reference to other evaluation models (FHBRO, HSMBC, Kalman, ORC)

Research

Research on the Lister Block included print material, books, municipal documents, building plans, architectural reports, internet sites, and consultation with experts. See bibliography below.

Site Visit: Trust staff visited and photographed the site.

Experts consulted on the property included:
  Sharon Vattay, Cultural Heritage Planner, City of Hamilton
  Robert Hamilton, President, Hamilton Region Branch; ACO
Stephen Otto, Historian.

The comparables reviewed during the assessment process included:
- Other commercial blocks in Ottawa, Toronto and Hamilton
- Robert Simpson Store at Queen and Bay Streets,
- Eaton’s College Street Store at Yonge and College Street, and
- Toronto Arcade on Yonge Street.

This material was augmented by the training, professional knowledge and over 60 years of combined experience of the staff evaluation committee. The staff Committee evaluated the Lister Block using the model developed by the Trust, and derived from OHA Regulation 10/06, which includes 20 tests and over 50 separate questions.

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Books


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