SUBJECT: Consent to Assignment of Ground Lease of the Sheraton Hamilton Hotel, 116 King Street West, by GGS Hotel Holdings Canada Inc. to a Limited Partnership to be Formed, and Related Transactions. Approval of Various Agreements Related to the Assignment of the Ground Lease (LS06006) (City Wide)

RECOMMENDATION:

(a) That the City, as landlord of the Sheraton Hotel, 116 King Street West, (pursuant to a ground lease dated May 3, 1983, as amended, the “Ground Lease”) grant consent to each of the following transactions subject to the conditions set out in clause 2 below:

(i) the amalgamation of GGS Hotel Holdings Canada Inc. with 3197301 Canada Limited (the amalgamated corporation is hereinafter referred to as “GGS”);

(ii) the assignment of the Ground Lease by GGS to a limited partnership to be formed (“New Clocktower”);

(iii) the release and discharge of a guarantee (the “Starwood Guarantee”) by Starwood Canada Corp. (“Starwood”) of the performance of the obligations of GGS Hotel Holdings Canada Inc. under the Ground Lease and other related agreements;

(iv) the assignment or transfer of other related rights and obligations in connection with the Sheraton Hotel by GGS to New Clocktower, such as for example the assignment of the rights and obligations of GGS under an interface agreement between GGS Hotel Holdings Canada Inc., the City, Second Phase Civic Square Limited and Fourth Phase Civic Square Limited and the transfer of GGS Hotel Holdings Canada Inc.’s leasehold parcel;

(v) the transfer of GGS’s partnership interest in New Clocktower to an unlimited liability corporation to be incorporated in Nova Scotia (“NSULC 1”) in exchange for shares of NSULC 1 and a promissory note;

(vi) the redemption by NSULC 1 of the shares in its capital stock held by GGS;
(vii) the sublease of the Sheraton Hotel by New Clocktower to an unlimited liability corporation to be incorporated in Nova Scotia (“NSULC TRS”);
(viii) the termination of the existing agreements regarding the management of the hotel and the use of the Sheraton name;
(ix) the execution of a franchise agreement between NSULC TRS and GGS; and
(x) the execution of a management agreement between NSULC TRS and Sheraton Overseas Management Corporation.

(b) The City’s consent and approval of the said transactions is subject to the following conditions:

(i) the terms and conditions of the existing agreements;
(ii) the assumption by New Clocktower of all obligations of GGS under those agreements;
(iii) the completion of the requisite due diligence to the satisfaction of the City Solicitor and City Treasurer;
(iv) the receipt by the City prior to each transaction of certified resolutions of the shareholders or directors of the counterparties regarding the proposed transactions, solicitor’s opinions, third party consents and other documents, all as the City Solicitor may require;
(v) the registration on closing of all documents as may be required by the City Solicitor in a form satisfactory to the City Solicitor;
(vi) the execution by Sheraton Holding Corporation (or if such corporation is not considered by the City’s financial advisors to be financially sound and well-capitalized, such other entity as the City’s financial advisors may consider to be financially sound and well-capitalized) of a guarantee agreement with the City substantially in the form of the Starwood Guarantee guaranteeing the performance of the obligations of New Clocktower under the Ground Lease and other related agreements;
(vii) the payment on closing by New Clocktower or GGS of the costs of the City’s external legal counsel and financial advisors retained to advise the City on the proposed transactions;
(viii) the proposed sublease being in compliance with the provisions of the Ground Lease; and
(ix) the carrying out of each of the transactions listed in clause 1 as one approved transaction.

(c) That the Mayor and the City Clerk, or other staff as appropriate, be authorized to execute all documents required to implement the foregoing in a form satisfactory to the City Solicitor, including the following:

(i) an assignment of the Ground Lease;
(ii) an assumption agreement for the Ground Lease;
EXECUTIVE SUMMARY:

The City is the owner of the lands on which the Sheraton Hotel is located. These lands are leased to GGS Hotel Holdings Canada Inc. GGS Hotel Holdings Canada Inc. is seeking the City’s consent to a number of transactions that would see the assignment of the Ground Lease to an entity ultimately controlled by Host Marriott Corporation. The City is informed that these transactions are part of a much larger series of transactions involving the Sheraton Centre Hotel Toronto and Le Centre Sheraton Hotel in Montreal, as well as some 35 other properties around the world.

The transactions are scheduled to close in March of 2006.

The City is advised that although the ownership of the leasehold Sheraton Hotel lands will change, the name and management of the hotel will remain unchanged.

It is recommended that the City provide its consent.

BACKGROUND:

The City, as owner of the land in Jackson Square, leased the Sheraton Hotel lands at 116 King Street West to Lakeview Developments Ltd. by a Ground Lease dated May 3, 1983. The Ground Lease, which to date has been amended numerous times, provides that the tenant may assign the lease or sublet the premises to a new tenant, provided the City as landlord approves of the assignment or subletting.

In 1989, with the City’s consent, the Ground Lease was assigned by Lakeview Developments Ltd. to GGS Hotel Holdings Canada Inc. (“GGS”). At that time, Council required GGS’s parent company (which Council was satisfied, based on a report from
its financial advisors, had the requisite financial ability) to guarantee that GGS would perform its obligations under the Ground Lease and related agreements.

In 2000, with the City’s consent, all of the shares of GGS were transferred to Starwood Canada Corp. (“Starwood”). The guarantee of GGS’s former parent company was replaced by a guarantee from Starwood, which Council was satisfied had the requisite financial ability (again based on a report from the City’s financial advisors).

In December of 2005, the City was approached by GGS to discuss the granting of consent by the City to a number of transactions that would see the assignment of the Ground Lease to an entity ultimately controlled by Host Marriott Corporation, a company which currently owns a large number of premier lodging properties in the United States, Canada and Mexico. The City is informed that these transactions are part of a much larger series of transactions involving the Sheraton Centre Hotel Toronto and Le Centre Sheraton Hotel in Montreal, as well as some 35 other properties around the world. The City is also informed that the transactions are intended to occur simultaneously over a period of approximately 2 days.

In particular, the City is informed that under the proposed transactions:

**Amalgamation of GGS:** GGS will be amalgamated with an affiliated company, 3197301 Canada Limited to form a new company (“GGS Amalco”).

**Transfer of Ground Lease to Partnership:** GGS Amalco will transfer the Ground Lease to a new limited partnership (“New Clocktower”) to be formed by it and an unlimited liability company to be incorporated in Nova Scotia (“NSULC 2”). The shareholder of NSULC is Sheraton Holding Corporation, a US company which like GGS Amalco is a subsidiary of Starwood Hotels and Resorts Worldwide Inc., another US company.

Because New Clocktower is a limited partnership and is also a new entity, it is recommended that the assignment of the Ground Lease to New Clocktower only be approved on condition that its obligations under the Ground Lease are guaranteed under an agreement between the City and another entity which is financially sound. Host Marriott Corporation has suggested that Sheraton Holding Corporation guarantee the Ground Lease. The City has retained financial advisors to review the finances of Sheraton Holding Corporation to determine whether it is financially sound and whether therefore it can be accepted as a guarantor. If Sheraton Holding Corporation is not found to be financially sound by the City’s financial advisors, the City will request that the Ground Lease be guaranteed by an entity which is financially sound as per the determination of the City’s financial advisors.

Where a lease is assigned by one tenant to another, the new tenant requests a statement, known as an estoppel certificate, from the landlord confirming in writing that the old tenant is in compliance with the terms of the lease and any related agreements
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(or where there is non-compliance, the extent of such non-compliance). New Clocktower will request such an estoppel certificate from the City. The above recommendation authorizes the City to provide such a certificate.

**Transfer of Partnership Interest:** GGS Amalco will transfer its partnership interest in New Clocktower to another unlimited liability company to be incorporated in Nova Scotia (“NSULC 1”). The shareholders of NSULC 1 will then be GGS Amalco and NSULC 2. The partners of New Clocktower will then be NSULC 1 and NSULC 2.

**Redemption of Shares held by GGS Amalco:** NSULC 1 will redeem the shares in its capital held by GGS Amalco so that its only remaining shareholder will then be NSULC 2.

**Sale of Sheraton Holding Corporation:** Sheraton Holding Corporation will be sold to Host Marriott Corporation.

**Sublease of Sheraton Hotel:** The Sheraton Hotel will be subleased to another unlimited liability company to be incorporated in Nova Scotia (“NSULC TRS”). Like New Clocktower, Sheraton Holding Corporation, NSULC 1 and NSULC 2, NSULC TRS will also be controlled by Host Marriott Corporation.

**New Management Agreement for Sheraton Hotel:** NSULC TRS will enter into a management agreement with Sheraton Overseas Management Corporation. This agreement will replace the management agreement currently in place between GGS and Sheraton Overseas Management Corporation.

**Franchise Agreement for Sheraton Hotel:** NSULC TRS will also enter into a franchise agreement with GGS Amalco.

The City is informed that the transactions are governed by tax considerations and do not have the intent or effect of changing the management and name of the Sheraton Hotel.

**ANALYSIS/RATIONALE:**

The City’s consent as outlined above is required to permit the transfer of the Sheraton Hamilton to a new corporate entity affiliated with an upscale provider of hotel accommodation worldwide. The consents to be granted, subject to the conditions stated, will serve to protect the City’s existing interests in the various agreements affecting the property and ensure the performance of all obligations by the hotel ownership. At this point in time, the required financial and legal due diligence is still on-going and no documents will be executed by the City until staff is satisfied in this regard. All professional and other fees associated with the legal and financial review of this transaction by the City are being paid by the proponent.
ALTERNATIVES FOR CONSIDERATION:

The only other alternative is to not provide the consents requested. The result would be that the proposed transfer of the Sheraton Hamilton could not occur.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

There are no financial or legal implications associated with adoption of the recommendations proposed.

POLICIES AFFECTING PROPOSAL:

There are no policies affected by the recommendations proposed.

RELEVANT CONSULTATION:

The City Manager and the General Manager of Corporate Services have been advised of the transaction and consulted in the preparation of this Report.

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
Partnerships are promoted.

Environmental Well-Being is enhanced. ☐ Yes ☑ No

Economic Well-Being is enhanced. ☑ Yes ☐ No
The economic base is diversified.

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