SUBJECT: City of Hamilton purchase from LIUNA Local 837 (Lister) Property Corporation - Lister Block, 28 James Street North, Hamilton (the “Property”) (PW09071) - (City Wide)

RECOMMENDATION:

(a) That Council authorize the Mayor and the City Clerk to execute the Acknowledgement and Consent to the Specific Assignment of the Agreement of Purchase and Sale by the Vendor, LIUNA Local 837 (Lister) Property Corporation (“LIUNA”) to Bank of Montreal with respect to financing arranged by LIUNA for the purpose of assisting with the construction of the Project on the Property;

(b) That Council authorize the Mayor and the City Clerk to execute any further documents required to give effect to the Agreement of Purchase and Sale or otherwise to give effect to the recommendations contained in Council authorization being Item 3, Committee of the Whole Report No. 08-023, passed by Council on June 25, 2008, all such documents to be in a form satisfactory to the City Solicitor.

Gerry Davis, CMA
General Manager
Public Works

EXECUTIVE SUMMARY:

Approval of the recommendation in this report will provide necessary authorization for the City to execute the Acknowledgement and Consent to the Specific Assignment of the Agreement of Purchase and Sale by the Vendor, LIUNA Local 837 (Lister) Property
Corporation ("LIUNA") to Bank of Montreal with respect to financing arranged by LIUNA for the purpose of assisting with the construction of the Project on the Property; and will facilitate the execution of any necessary documents relating to the implementation of the Agreement of Purchase and Sale.

BACKGROUND:

Pursuant to Council authorization (Item 3, Committee of the Whole Report No. 08-023, as approved by City Council at its meeting on June 25, 2008), the City entered into an Agreement of Purchase and Sale with LIUNA to purchase the Lister Block property and building.

Item (b) of The Council authorization for the subject transaction provided that “the Mayor and Clerk be authorized to execute the Agreement of Purchase and Sale in a form satisfactory to the City Solicitor…”, however the authorization did not provide for the execution of any other documentation to implement the provisions of the Agreement.

LIUNA has arranged financing with Bank of Montreal (the “Bank”) in the principal amount of $21,000,00, in order to assist with the construction of the Project. As part of the security required by the Bank from LIUNA, the Bank has required that LIUNA assign its interest in the Agreement of Purchase and Sale for the Property to the Bank.

Clause 20 of Schedule “B” of the Agreement of Purchase and Sale provides that “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.”

LIUNA has requested that the City execute an Acknowledgement and Consent to the Specific Assignment of Agreement of Purchase and Sale in the Bank’s form, a copy of which is attached hereto as Schedule “A”. Legal Services has reviewed and approved the form of the document.

The above-noted Council authorization for execution of the Agreement of Purchase and Sale did not include the standard authorization for the Mayor and Clerk to execute any further documentation, in a form acceptable to the City Solicitor, required to implement the provisions of the Agreement of Purchase and Sale. From time to time documentation is required to implement the terms of the Agreement. If the authorization is not provided for execution of such further documentation, Council authorization will be needed for every such additional document.

ANALYSIS/RATIONALE:

The execution by the City of the Acknowledgement and Consent to the Specific Assignment of Agreement of Purchase and Sale is part of the security required to be provided by LIUNA to Bank of Montreal in order for the construction financing for the Project to proceed. The request for a general authorization for the Mayor and Clerk to execute any further documentation required to implement the Agreement of Purchase and Sale will permit the transaction to proceed without having to obtain Council authorization for every document.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

There are no financial or staffing implications arising from the recommendation.

The City Solicitor has provided an opinion that the execution of the Acknowledgement and Consent to the Specific Assignment of Agreement of Purchase and Sale does not prejudice the City’s rights under the Agreement of Purchase and Sale.

ALTERNATIVES FOR CONSIDERATION:

Council could decide not to provide authorization for execution by the Mayor and Clerk of any further documentation required for implementation of the Agreement of Purchase and Sale, and consequently require that each document be submitted for Council approval.

POLICIES AFFECTING PROPOSAL:

There are no policies affecting the proposal.

RELEVANT CONSULTATION:

Consultation was undertaken between LIUNA, the Bank of Montreal, and staff at Public Works and Legal Services.

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
APPENDIX ‘A’

SPECIFIC ASSIGNMENT OF AGREEMENT OF PURCHASE AND SALE

BETWEEN:

LIUNA LOCAL 837 LISTER PROPERTY CORPORATION
(hereinafter called the “Assignor”)

OF THE FIRST PART

- and -

BANK OF MONTREAL
(hereinafter called the “Assignee”)

OF THE SECOND PART

CITY OF HAMILTON
(hereinafter called the “Purchaser”)

OF THE THIRD PART.

WHEREAS the Assignor is the registered owner of Firstly: Part of Lots 47 and 48, Nathaniel Hughson Survey (unregistered) on the south side of Rebecca Street between James and Hughson Streets; Lots 33 and 34, Nathaniel Hughson Survey (unregistered) on the north side of King William Street between James and Hughson Streets; Part of Lots 35 and 36, Nathaniel Hughson Survey (unregistered) on the north side of King William Street between James and Hughson Streets, in the City of Hamilton, Regional Municipality of Hamilton-Wentworth, and municipally known as 28 James Street North, Hamilton, Ontario (collectively the “Property”);

AND WHEREAS by an Agreement of Purchase and Sale entered into between the Assignor as Vendor, accepted June 30, 2008, and the Purchaser, the Purchaser agreed to purchase the Property on the terms and conditions as therein more particularly set out (the “Sale Agreement”) a copy of which is annexed hereto as Schedule “A”;

AND WHEREAS the Assignee has agreed to extend financing in the total amount of $21,000,000.00 to the Assignor pursuant to an Offer of Financing dated May 20, 2009 (the “Offer of Financing”);

AND WHEREAS, as further security for the repayment of the indebtedness and liability of the Assignor to the Assignee under the Offer of Financing, the Assignor has agreed to assign all its right, title and interest as Vendor under the Sale Agreement including all deposits paid or to be paid thereunder and all mortgages taken back by the Assignor pursuant to the said Sale Agreement, to the Assignee;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of TWO ($2.00) DOLLARS, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto covenant and agree as follows:
1. The Assignor hereby conveys, assigns, transfers and sets over unto the Assignee for its benefit and for the benefit of its successors and assigns all right, title and interest enjoyed by the Assignor, as Vendor under the Sale Agreement with respect to the Property, to the Assignee.

2. Notwithstanding the assignment of the Sale Agreement, the Assignor hereby covenants and agrees with the Assignee that the Assignor shall be liable for all of the terms and conditions contained in the Sale Agreement.

3. To execute and deliver to the Assignee in registrable form, assignments of all mortgages taken back under the said Sale Agreement.

4. The Assignor hereby covenants and agrees with the Assignee to indemnify and save the Assignee harmless with respect to the provisions of the Sale Agreement.

5. The Assignor covenants, warrants and represents to the Assignee as follows:
   (a) that the Sale Agreement is a good, valid and subsisting agreement of purchase and sale, and unamended;
   (b) that neither the Assignor, as Vendor, is or will be in default nor is the Purchaser in default under the Sale Agreement;
   (c) that the Assignor has or will have the sole right, title, benefit and interest as the Vendor under the Sale Agreement;
   (d) that the Assignor has not and will not make any prior assignment of the Sale Agreement and has and will have good right, full power and absolute authority to assign to the Assignee its interest, as Vendor, under the Sale Agreement in accordance with the provisions of this agreement;
   (e) that the Assignee may hold and enjoy the said interest as Vendor under the Sale Agreement from and after the date hereof for its own use and benefit without any interruption by the Assignor or by any person whomsoever claiming through or under the Assignor;
   (f) that the Purchaser has given its consent to this assignment in the acknowledgment and consent attached hereto and no consent is required from any other party in order to effectually give this assignment to the Assignee;
   (g) that the Assignor has not waived and will not waive any of its rights as Vendor under the Sale Agreement, save with the consent of the Assignee, such consent not to be unreasonably withheld or delayed;
   (h) that the Assignor shall not agree to any material amendments to the Sale Agreement without the written consent of the Assignee, such consent not to be unreasonably withheld; and
   (i) that the Assignor has delivered true copies of the Sale Agreement to the Assignee.
6. Provided further, and it is hereby expressly agreed that nothing herein contained shall have the effect of making the Assignee, its successors or assigns, responsible for the performance of any of the covenants, obligations or provisions under or in respect of the Sale Agreement to be observed and performed by the Assignor and that the Assignee shall not, by virtue of this Assignment, become or be deemed to be a mortgagee in possession and that the Assignee shall not be under any obligation to take any action or exercise any remedy, to see to, or enforce the performance of the obligations and liabilities of any person under or in respect of the Sale Agreement.

7. The Assignor covenants and agrees to give such further or other reasonable assurances of this assignment as may be necessary or required by the Assignee from time to time.

8. The Assignee covenants and agrees that the rights and privileges granted to it herein are only exercisable upon default by the Assignor under the terms of the Offer of Financing and the security granted thereunder and provided the Assignee shall have given the Purchaser under the Sale Agreement, notice that it is exercising its rights to enforce the assignment. Upon the Assignee having given the Purchaser notice that it is exercising its rights to enforce the assignment, the Assignee shall become bound to perform the provisions of the Sale Agreement hereby assigned, including any of the covenants, obligations, provisions under or in respect of the Sale Agreement to be observed and performed by the Assignor and, so long as the Purchaser is not in default of the Sale Agreement, the Assignee covenants to complete the Sale Agreement with the Purchaser.

9. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the day of 2009.

LIUNA LOCAL 837 LISTER PROPERTY CORPORATION

Per:________________________
Name: Joseph S. Mancinelli
Title: President

Per:________________________
Name: Manuel Bastos
Title: Secretary-Treasurer
We have authority to bind the corporation.
ACKNOWLEDGEMENT AND CONSENT

The Purchaser by its signature hereto, hereby confirms as follows:

1. This agreement shall be deemed notice to the Purchaser of the assignment of the Sale Agreement.

2. That it has consented to the within assignment of the Sale Agreement.

3. That the Sale Agreement is in good standing and unamended.

4. That it will not agree to any material amendments to the Sale Agreement without the written consent of the Assignee.

Dated this day of , 2009.

CITY OF HAMILTON

Per: ________________________________
Name: ______________________________
Office: ______________________________

Per: ________________________________
Name: ______________________________
Office: ______________________________