SUBJECT: Consent to Assignment of Ground Lease of the Sheraton Hamilton Hotel, 116 King Street West, by GGS Hotel Holdings Canada Inc. to Clocktower Hotel Limited Partnership, and Related Transactions. Approval of Various Agreements related to the Assignment of the Ground Lease (LS07013) (City Wide)

RECOMMENDATION:

1. 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. (“GGS”) with Starwood Canada Corp. (the amalgamated corporation is hereinafter referred to as “Starwood”);
   (ii) the assignment of the Ground Lease by Starwood to Clocktower Hotel Limited Partnership (“Clocktower”);
   (iii) the assignment or transfer of other related rights and obligations in connection with the Sheraton Hotel by Starwood to Clocktower, such as the assignment of the rights and obligations of Starwood 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.

2. 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 Clocktower of all obligations of GGS under those agreements;
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(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, partners or directors of the counterparties regarding the proposed transactions, solicitor’s opinions, third party consents and other documents, all as the City Solicitor;
(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 payment on closing by Clocktower or Starwood of the costs of the City’s external legal counsel retained to advise the City on the proposed transactions; and
(vii) the carrying out of each of the transactions listed in clause 1 as one approved transaction.

3. 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; and
   (iii) such other agreements regarding the Sheraton Hotel as the City Solicitor may determine.

Peter A. Barkwell
City Solicitor
Legal Services & Corporate Counsel

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 certain transactions that would see the assignment of the Ground Lease to Clocktower Hotel Limited Partnership an entity controlled by GGS Hotel Holdings Canada Inc.’s parent company, Starwood Canada Corp. The City is informed that these transactions are part of an internal corporate reorganization which would see Clocktower Hotel Limited Partnership be the operator of all of the hotels operated by this corporate group. The City is informed that Clocktower Hotel Limited Partnership currently leases and operates the Sheraton Centre Hotel Toronto, owns and operates the Le Centre Sheraton Montreal and is the franchisor for Sheraton franchise operations in Canada.
The transactions are scheduled to close in October/November of 2007.

The City is advised that the name and operation 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, provided the City as landlord approves of the assignment.

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 June of 2007, the City was approached by GGS to discuss the granting of consent by the City to certain transactions that would see the assignment of the Ground Lease to Clocktower Hotel Limited Partnership (“Clocktower”), an entity controlled by Starwood. The City is informed that these transactions are part of an internal corporate reorganization which would see Clocktower Hotel Limited Partnership be the operator of all of the hotels operated by this corporate group. The City is informed that Clocktower Hotel Limited Partnership currently leases and operates the Sheraton Centre Hotel Toronto, owns and operates the Le Centre Sheraton Montreal and is the franchisor for Sheraton franchise operations in Canada.

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

**Amalgamation of GGS with Starwood:** GGS will be amalgamated with its parent Starwood to form a new company also known as Starwood Canada Corp.

**Transfer of Ground Lease to Partnership:** Starwood Amalco will transfer the Ground Lease to Clocktower. Starwood is the general partner of Clocktower. The limited partners of Clocktower are Starwood (as to a 99.99% interest) and 3197301 Canada
Inc., a wholly-owned subsidiary of Starwood (as to a 0.01% interest). The guarantee of Starwood of the tenant’s obligations under the Ground Lease will remain in place.

The City is informed that the transactions are intended to simplify the corporate structure and maintain all of the hotels in the name of the same entity (Clocktower) and do not have the intent or effect of changing the operation and name of the Sheraton Hotel.

**ANALYSIS/RATIONALE:**

The City’s consent as outlined above is required to permit the transfer of the Sheraton Hotel to a different entity within the existing corporate group which operates the Sheraton Hotel. 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 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 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 and related corporate reorganization 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.
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CITY STRATEGIC COMMITMENT:

The recommended proposal maintains the contractual obligations of all parties that were previously negotiated and is in keeping with the City’s objective of facilitating commercial transactions in a timely manner.

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

N:/DonF/Sheraton Consent A&A Report Sept 07