



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
 Economic Development Division  
 and  
**PUBLIC WORKS DEPARTMENT**  
 Energy, Fleet & Facilities Management Division

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	June 21, 2017
<b>SUBJECT/REPORT NO:</b>	Lease Amending Agreement – Lister Block, 28 James Street North, Unit #106, Hamilton (PW13026(b)/PED17106) (Ward 2)
<b>WARD(S) AFFECTED:</b>	Ward 2
<b>PREPARED BY:</b>	David McCullagh (905) 546-2424 Ext. 1647 Delfina Duarte (905) 546-2424 Ext. 6627
<b>SUBMITTED BY:</b>	Glen Norton Director, Economic Development Planning and Economic Development Department  Rom D'Angelo Director, Energy, Fleet & Facilities Management Public Works Department
<b>SIGNATURES:</b>	

Discussion of Confidential Appendix “B” to this Report in closed session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-Law and the *Ontario Municipal Act, 2001*:

- A proposed or pending acquisition or disposition of land by the City.

**RECOMMENDATION**

- (a) That a lease amendment (the “Lease Amending Agreement”) with WC Franchising Inc. and WC Hamilton Inc. (the “Lessees”) operating as Wendel Clark’s Classic Grill and Bar which revises the Lease dated the 1<sup>st</sup> day of April, 2015 pertaining to the Premises located at Unit #106, Lister Block, 28 James Street North, Hamilton, ON as shown in Appendix “A” to Report (PW13026(b)) / (PED17106), substantially in accordance with the terms and conditions contained in Confidential Appendix “B” to Report (PW13026(b)) / (PED17106), and such

- other terms and conditions deemed appropriate by the General Manager, Planning and Economic Development Department, be approved;
- (b) That the General Manager, Planning and Economic Development Department or designate, acting on behalf of the City as landlord, be authorized to provide any consents, approvals and notices related to the existing Lease and Lease Amending Agreement outlined in Report (PW13026(b)) / (PED17106);
  - (c) That any future Percentage Rent revenue pertaining to the Leased Premises received by the City be credited to Account No.46010-791550, being the same account that the current rental revenues are being deposited, and the Real Estate and Legal fees of \$1,500.00 to be funded from Account No. 54935-791550;
  - (d) The replacement of the former franchisee, Muscat-Taylor Financial Holdings Inc. (the “Original Franchisee”) on the Lease by WC Hamilton Inc., which company, together with WC Franchising Inc., shall jointly and severally assume all obligations of the Lessees under the Lease, be approved;
  - (e) That Appendix “B” to Report (PW13026(b)) / (PED17106) remain confidential and not be released as a public document; and,
  - (f) That the General Manager, Planning and Economic Development Department, be authorized and directed to negotiate, complete and execute all necessary agreements and documents on behalf of the City and in a form satisfactory to the City Solicitor.

## **EXECUTIVE SUMMARY**

The purpose of this Report is to request Council’s approval to enter into a Lease Amending Agreement with the Lessees operating as Wendel Clark’s Classic Grill and Bar (the “Restaurant”) located within the Lister Block at 28 James Street North, Unit #106 (the “Premises”).

As a result of the Original Franchisee ceasing operating from the Premises, the Franchisor has rectified outstanding financial obligations and is preparing to reopen the restaurant. To effect an orderly transition under the lease, and make improvements to the facilities several amendments to the lease are recommended.

### ***Alternatives for Consideration – See Page 5***

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** Financial defaults pursuant to the Lease have been made current, with any contingent additional rent obligation not yet assessed to the Franchisee being addressed in the Lease Amending Agreement. All costs associated with the City's needed base building improvement to better access to the public washroom has been funded from Capital Account Number 3541741532. Costs of the Washroom Access are estimated at \$25,000 to \$30,000.

**Staffing:** N/A

**Legal:** Legal Services will be required to assist in the preparation of the necessary documents required to complete the transaction(s) as set out here in.

## **HISTORICAL BACKGROUND**

On November 4, 2014, the City of Hamilton terminated a lease agreement with 28 Lister Inc. and Chris DesRoches due to default of the lease for non-payment of rents, leaving Unit #106 at 28 James Street North vacant (Premises) with a requirement to re-lease.

On December 19, 2014, the City issued a Request for Proposal (RFP) for a restaurant to occupy the Lease Premises within the Lister Block Building. As a result of this RFP process, a Lease Agreement dated the 1<sup>st</sup> day of April, 2015 was entered into with Muscat-Taylor Financial Holdings Inc. and WC Franchising Inc. operating as Wendel Clark's Classic Grill and Bar.

In December 2016, the Original Franchisee, Muscat-Taylor Financial Holdings Inc., abruptly ceased business operations from the Premises and terminated its franchise agreement with the Franchisor, WC Franchising Inc.

The Original Franchisee's outstanding financial obligations, particularly with respect to monthly rental payments and the minimum Lease Security held by the City, have now been satisfied by the Franchisor. In addition, City staff have, since restaurant closing, been working with the Franchisor towards rectification of operational and financial defaults left by the Original Franchisee including co-ordination of the Franchisor's current renovations to improve access to the public washroom.

The Franchisor, now having retrieved possession of the Premises, intends, after completing its renovations, to re-open by June 1, 2017 as a corporately (WC Hamilton Inc.) operated restaurant.

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*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

*OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.*

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The use of the Premises as a casual dining sports lounge remains consistent with the preferred use and criteria established by the Portfolio Management Committee (PMC) on March 18, 2010.

## **RELEVANT CONSULTATION**

- Energy, Fleet & Facilities Management Division, Public Works Department;
- Real Estate Section, Economic Development Division, Planning and Economic Development Department;
- Legal Services Division, Finance and Corporate Services Department;
- Financial Planning and Policy, Capital Budgets, Corporate Services Department; and,
- Ward Councillor.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

Lease default and the cessation of restaurant operations were attributed to operational and management issues on the part of the Original Franchisee. The Franchisor continues to see the potential in this location and has committed to re-opening the restaurant as a corporately run location, including making further capital investment through renovations of the Premises including improving seating and operational space efficiencies.

Given the rectification of financial defaults and the Franchisor's renewed commitment, in conjunction with the Franchisor's renovations the City is undertaking to correct a latent design and security deficiency by creating a new more direct access from the restaurant to the public washrooms.

While the Franchisor has commenced making regular monthly instalments towards Realty Taxes that have yet to be assessed on the Premises for 2017 and forward, there remains a contingent liability for the period occupied by the Original Franchisee on Realty Taxes not having yet been assessed. The Franchisor has agreed to amend the on-going financial terms of the Lease to address this outstanding matter.

The terms and conditions of this lease transaction are deemed fair, reasonable and at market value by Real Estate.

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## **ALTERNATIVES FOR CONSIDERATION**

Failure to approve these recommendations could result in the Franchisor defaulting on the Lease, potential collection activities by the City, the search for other viable tenants and an additional period of commercial inactivity at the Premises.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Healthy and Safe Communities**

*Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.*

### **Built Environment and Infrastructure**

*Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report (PW13026(b)) / (PED17106) – Location Map

Appendix “B” to Report (PW13026(b)) / (PED17016) – Lease Terms (Confidential)

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