

Clause embodied in Report No. 9 of the Administration Committee, as adopted by the Council of the City of Toronto at its meeting held on September 22, 23, 24 and 25, 2003.

27

**Lease of Child Care Centre
Located at 5176 Yonge Street
(Ward 23 - Willowdale)**

(City Council on September 22, 23, 24 and 25, 2003, adopted this Clause, without amendment.)

The Administration Committee recommends the adoption of the following joint report (August 13, 2003) from the Commissioner of Community and Neighbourhood Services and the Commissioner of Corporate Services:

Purpose:

To seek authority to enter into a lease for a child care centre at 5176 Yonge Street with Yonge Hearts Child Care Centre for a term of five years with an option to renew for a further term of five years.

Financial Implications and Impact Statement:

The City will not receive any net revenue from this lease. However, Yonge Hearts Child Care Centre will be responsible for all operating and realty tax costs. In addition, Yonge Hearts Child Care Centre will furnish and equip the facility and install three playgrounds.

Recommendations:

It is recommended that:

- (1) a lease with Yonge Hearts Child Care Centre be approved for a five-year term at a nominal rent and in accordance with the terms and conditions set out in the body of this report and in a form acceptable to the City Solicitor;
- (2) the Commissioner of Corporate Services shall administer and manage the lease agreement including the provision of any consents, approvals, notices and notices of termination provided that the Commissioner may, at any time, refer consideration of such matter (including their content) to City Council for its determination and direction;
- (3) the Commissioner of Corporate Services be authorized to complete the transaction on behalf of the City, including amending the commencement date of the lease to such earlier or later date as she considers reasonable; and

- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

The subject property is located on the west side of Yonge Street, north of Park Home Avenue. The total site area is approximately 0.338 acre. Existing on the site is a two-storey newly constructed child care centre of approximately 11,259 square feet. The site was transferred to the City as the result of the negotiations that were originated by the former City of North York over additional density in the neighbourhood of the historic Gibson House.

By the adoption of Clause No.7 of Report No. 2 of The Community Services Committee, City Council, on March 6, 7, and 8, 2001, has granted the authority to proceed with the construction of a child care centre and enter into a contract with City Centre Child Care – North York to operate a child care program and a resource centre on the subject property. City Centre Child Care – North York, also informally known as Little Hearts, has since changed its name to Yonge Hearts Child Care Centre. It is a non-profit program originally established in 1989 as a workplace child care for the employees of former City of North York and currently serves as both workplace and community child care services.

Comments:

In view of the imminent completion of the facility at 5176 Yonge Street, staff of Facilities and Real Estate has been requested by the staff of the Children's Services Division to assist in the leasing of the subject property to Yonge Hearts Child Care Centre. Negotiations have been conducted with the authorized representative of Yonge Hearts Child Care Centre and the following terms and conditions were agreed to:

- (1) Leased Premises:

Property municipally known as 5176 Yonge Street, Toronto, being a two-storey building, comprising approximately 11,259 sq. ft. of gross floor area.

- (2) Lease Term:

Five (5) years from Commencement Date.

- (3) Commencement Date:

October 1, 2003, or the first day of the week following the execution of the Lease, whichever is later.

Notwithstanding any clause contained or not contained herein, the Landlord shall have the right to terminate the Lease upon one (1) year's notice. The Landlord shall have no further obligations or liabilities to the Tenant for payment of any amounts or for any loss, cost or damages whatsoever, however caused that may be suffered by the Tenant as a result of the Landlord giving such notice or as a result of such early termination of the Term.

(4) Rent:

(i) Net Rent:

During the Term, the rent shall be \$1.00 per annum, net.

(ii) Additional Rent:

The Tenant shall, throughout the Term, at its expense, pay all applicable taxes (including but not limited to realty taxes and G.S.T.) and all operating expenses, including but not limited to cost of all utilities, services and maintenance, repair and/or replacement of any components in relation to the Leased Premises, save and except structural repairs. The Tenant shall be responsible for providing all supplies to operate the facility. The Tenant shall, at its expense, maintain, repair and replace throughout the Term and any renewal or extension of the Lease all appliances purchased and/or provided by the City or the Tenant.

Heating and cooling to the premises will be provided by a ground source heating system. The Leased Premises are equipped with electric baseboard heaters which will act as a supplementary source for heating, if required, during the winter months. The Tenant shall be responsible for the day to day maintenance of the heating and cooling system. The Landlord's Children's Services Division will be responsible for the repairs to the system during the initial Term. During any renewal or extension of the Term, repair and maintenance shall become the responsibility of the Tenant. In the event the Tenant requires additional heating and air conditioning units, they will be at the Tenant's sole cost.

Tenant may periodically be required to submit proof of payment of realty taxes as required by the Commissioner of Community and Neighbourhood Services and/or Commissioner of Corporate Services.

(5) Option to Renew:

Tenant shall have an option to renew for a term of five (5) years, subject to the operator maintaining and meeting standards for ongoing service contract with the Children's Services Division of City of Toronto. The rent will be renegotiated between the parties.

(6) Termination by Tenant:

If at any time during the Term, the Tenant desires to discontinue operating a children's non-profit daycare centre in the Leased Premises, the Tenant may give 60 days' prior written notice to the Landlord to terminate the Lease without prejudice to the Landlord's right and remedies in the event of default. If such notice is so given, then the following shall apply:

- (i) the Lease shall terminate on the Termination Date, being 60 days after the Landlord's receipt of the notice. The Tenant shall deliver vacant possession of the Leased Premises to the Landlord by the Termination Date in accordance with all applicable provisions in the Lease and without payment or compensation of any kind from the Landlord;
- (ii) the Tenant shall be responsible for the payment of all rent and charges to and including the Termination Date including without limitation all rent and other charges in respect of any period prior to the Termination Date which are subsequently billed or adjusted after the Termination Date;
- (iii) neither party shall have any further liability or obligation to the other after the Termination Date except for the Tenant's obligations under sub-clause (ii), above, and except for any default under the Lease occurring on or before the Termination Date;
- (iv) the Tenant shall execute and deliver all documents and other assurances, as are reasonably required by the Landlord in connection with this section; and
- (v) Commissioner of Community and Neighbourhood Services shall have the sole right to select the next operator in conformity with the applicable City of Toronto procedures.

(7) "As Is" Condition and Easements:

The Tenant shall accept the Leased Premises in an "as is" condition and the Tenant must satisfy itself, at its own expense, that the Tenant's intended use complies with the existing Zoning By-Law, Building Code, Ontario Fire Code and all other rules and regulations. The Tenant is to be responsible, at its expense, for any improvements required, subject to Clauses 8, 9 and 20 herein.

The Landlord is leasing the Leased Premises to the Tenant subject to all existing easements, whether registered or unregistered, and that the Tenant shall maintain and protect all easements lands.

The Tenant acknowledges that there is an existing vehicular easement maintenance agreement between Sam-Sor Enterprises Inc., Imperial Oil Limited and the City, and the Tenant shall comply with the covenants and obligations of the City with respect to the Leased Premises and to be bound by such agreement, as if the Tenant were an original party thereto with respect to the Leased Premises.

(8) Tenant's Improvement/Maintenance:

- (i) the Tenant acknowledges that it has inspected the Leased Premises and that it accepts the Leased Premises in its present condition. The Tenant, as of the Commencement Date, shall, at its sole expense, repair, improve, or renovate the Leased Premises to suit its intended use subject to the approval of the Commissioner(s) of Corporate Services and Community and Neighbourhood

Services. The Tenant shall not perform any work of repair, renovation, decoration, or re-decoration without first submitting detailed plans and specifications and construction methods/procedures to the Commissioner(s) of Corporate Services and Community and Neighbourhood Services for written approval. All work shall be performed by qualified and reputable contractors;

- (ii) during the term of the Lease or any renewal thereof, the Tenant, at its sole expense, shall be responsible for compliance with all current Municipal, Provincial and Federal laws, by-laws, rules and regulations and shall obtain all necessary permits and licenses that may be required for the use and renovation of the Leased Premises and shall save the Landlord harmless from any liability or cost suffered by the Tenant or the Landlord as a result of the Tenant's failure to so comply. At the request of the Landlord, the Tenant shall be required to submit proof of such compliances;
- (iii) the Tenant shall, at its cost, install three playgrounds. One playground shall be for infants and this shall be located on the south side of the building. The second playground is for toddlers and this shall be located on the west side of the building. The third playground is for pre-school children and this shall be located on the east side of the building on an elevated deck over a parking area;

the Tenant shall furnish and equip the facility and playgrounds, including the installation of the playgrounds at an estimated cost of \$100,000.00;

- (iv) upon expiry of the Lease or any renewal thereof, all leasehold improvements and fixtures shall become the property of the Landlord. At the sole discretion of the Landlord, the Tenant shall, at its expense, remove such fixture(s), equipment, and debris as the Landlord may require with all damages repaired all to the satisfaction of the Commissioner(s) of Corporate Services and Community and Neighbourhood Services;
- (v) upon termination of the Lease, the Tenant agrees to waive any claim for compensation and/or reimbursement for any of the improvement or maintenance cost;
- (vi) the Tenant shall during the Term of the Lease and any renewal thereof, at its own expense, keep the Leased Premises, its contents, and all leasehold improvements in a neat and tidy condition, painted and decorated and in good and substantial repair subject to normal wear and tear and be responsible for all maintenance of the yards including but not limited to landscaping, grass cutting and fences. The Tenant shall make all needed repair and replacements and perform all necessary painting, decorating, re-decorating, repairs and replacements with due diligence and dispatch. The Tenant shall not be permitted to remove any vegetation or tree without first obtaining prior written approval from the Landlord; and
- (vii) during the term of the Lease and any renewal thereof, the Tenant shall be responsible, at its expense, for the upkeep and maintenance of any yards, walkways, driveway, including clearing of obstructions and snow/ice.

(9) Existing Equipment:

- (i) the Tenant will purchase all toys and furnishings required meeting the Day Nurseries Act requirements including playground structures;
- (ii) the Landlord's Children's Services Division shall provide the lobby furniture and the following appliances: one washer, one dryer, one fridge, one stove, one commercial dishwasher, seven microwave ovens, seven mini-fridges, one freezer and one stovehood;
- (iii) the Tenant shall satisfy itself, at its own expense, with respect to the adequacy of otherwise of the Existing Equipment, if any, for its purposes, and accept the Leased Premises in the condition in which they are delivered to the Tenant on the Commencement Date. During the Term and any renewal or extension of the Lease, the Tenant shall, at its own expense, maintain, repair and replace all the Existing Equipment, if any, including but not limited to the appliances and furniture provided by the Landlord's Children's Services Division as mentioned herein. The Tenant shall acquire, maintain and replace, as necessary, and at its own expense, any additional equipment and furniture required for its purposes; and
- (iv) the Tenant releases the Landlord, its officers, employees, agents, representatives and elected and appointed officials (the "Released Parties") from every claim of every kind that the Tenant or any other person or entity may make, suffer, sustain or incur with respect to the Existing Equipment (collectively, the "Existing Equipment Claims"), and agrees to indemnify the Released Parties in respect of every Existing Equipment Claim.

(10) Janitorial Services:

The Tenant shall, at its sole expense, provide all janitorial and cleaning services to the Leased Premises.

(11) Hazardous Materials:

No storage or use of hazardous or environmentally sensitive materials will be permitted on the Leased Premises.

(12) Nuisance:

The Tenant shall ensure that nothing is done or kept at or on the Leased Premises which is or may be a nuisance, or which causes disturbance, damage to or interference with normal usage of any adjoining property and the Tenant shall not be permitted to release of (10) or more balloons within any 24-hour period.

(13) Insurance:

The Tenant shall not install any equipment or carry on any operation at the Leased Premises in such way as to increase the insurance risk.

The Tenant shall obtain adequate Insurance of all types in an amount and form satisfactory to the City Solicitor and/or Chief Financial Officer and Treasurer, with the City of Toronto shown as an additional insured and with Cross-Liability and Waiver of Subrogation clauses. Certificate(s) of such Insurance(s) shall be provided to the Landlord, upon execution of the Lease.

(14) Use:

The Leased Premises shall be solely used and continuously operated throughout the term for the purpose of a non-profit child care centre licensed under the Day Nurseries Act and family resource program.

The Tenant has to provide services in accordance with the City of Toronto Child Care Service Plan and maintain its Service Contract with the City in good standing.

(15) Indemnity:

- (i) the Tenant shall, at all times, indemnify and save harmless the City of Toronto from and against any and all manner of claims, demand, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the Workers' Compensation Act, the Environmental Protection Act or any successor legislation) made or brought against, suffered by or imposed on the Landlord, or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the Landlord, or of the Tenant) directly or indirectly arising out of, resulting from or sustained as a result of the Tenant's occupation or use of, any operation in connection with, the Leased Premises or any fixtures or chattels thereon; and
- (ii) the Tenant shall at all times indemnify and save harmless the Landlord, from and against any and all claims, demands, losses, costs, charges, actions and other proceedings whatsoever under the Construction Lien Act, or any successor legislation in connection with any work done for the Tenant at or on the Leased Premises, and shall promptly see to the removal from the registered title to the Leased Premises, of every claim for lien and certificate of action having to do with such work;

(16) Overholding:

- (a) if the Tenant remains in possession of the Leased Premises after the expiry of the Term with the written consent of the City, the Tenant shall remain as an overholding tenant on a month-to-month basis, at the same Net Rent as that payable for the month immediately preceding the expiration of the Lease and subject otherwise to all the provisions of the Lease;
- (b) if the Tenant remains in possession of the Leased Premises after the expiry of the Term without the City's consent, the City may take immediate action without notice to the Tenant, to recover possession of the Leased Premises;

- (c) if the Tenant is obliged to vacate the Leased Premises by a certain date and fails to do so at a time when the City is legally obliged to deliver possession thereof to a third party, the Tenant shall indemnify and save harmless the City fully, for all damages suffered as a result of such failure; and
- (d) the acceptance by the City of arrears of Rent or compensation for use or occupation of the Leased Premises after notice of termination of this Lease has been given shall not operate as a waiver of the notice or as a reinstatement of the Lease or as a creation of a new lease unless the parties so agree;

(17) Termination of Lease by the City:

In addition to any other rights of the City to terminate this Lease at law or hereunder, the City shall have the right at all times to terminate this Lease:

- (a) upon thirty (30) days' written notice to the Tenant, upon the Tenant losing its status as a Non-profit Organization;
 - (b) upon thirty (30) days' written notice to the Tenant following the expiry or termination for any reason of the Service Contract;
 - (c) upon thirty days written notice to the Tenant following the termination of their license to operate a day care centre; or
 - (d) upon three hundred and sixty-five (365) days' written notice to the Tenant, without cause.
- (18) the Tenant shall not change its licensed capacity as established in its licence issued under the Day Nurseries Act which shall at all times be subject to the approval of the Children's Services Division of the City;
- (19) the Tenant shall not change its business plan without approval from the Children's Services Division of the City;
- (20) the Tenant shall not enter into any lienable contracts for the supply of services and/or materials to the property without the consent of the Commissioner of Corporate Services;
- (21) the Tenant warrants its organization shall remain as a non-profit organization during the term of the Lease;
- (22) the Landlord will not pay any real estate commission associated with this transaction;
- (23) the Tenant shall not sublet or assign without the written consent from the Landlord and such consent may be arbitrarily and unreasonably withheld;
- (24) the Commissioner of Corporate Services shall administer and manage the lease agreement including the provision of any consents, approvals, notices and notices of termination provided that the Commissioner of Corporate Services may, at any time, refer

consideration of such matter (including their content) to City Council for its determination and direction;

- (25) the Tenant shall pay administration fees as set by City Council from time to time for amendments, assignments or renewals of leasing documentation; and
- (26) all documentation shall be in the Landlord's standard form and notwithstanding any terms and conditions contained or not contained in this proposal, shall be in a form and content satisfactory to the City Solicitor.

Conclusion:

Yonge Hearts Child Care Centre, formerly City Centre Child Care – North York, is a non-profit centre serving both the community and employees of the City since 1989. It is currently operating in a temporary leased facility at 95 Sheppard Avenue West under a purchase of service contract and an operating grant, which includes rent expenses, from the Children's Services Division. In order to preserve the financial viability of this community program, a nominal rent lease is critical.

As a permanent City-owned child care facility will be available at the end of September 2003 it is appropriate that Yonge Hearts Child Care Centre be provided with a five-year lease of the facility in accordance with the terms and conditions set out in the body of the report.

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List of Attachments:

Location Map and Site Map.

(A copy of the Location Map and Site Map attached to the foregoing report was forwarded to all Members of Council with the September 4, 2003, agenda of the Administration Committee and a copy thereof is also on file in the office of the City Clerk, City Hall.)