

Clause embodied in Report No. 8 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on May 21, 22 and 23, 2002.

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**Lease of No. 1 Front Street East to Privatize Hummingbird
Performing Arts Centre Corporation (HPACC) and
Transfer of the Stabilization Reserve Fund and
the Hummingbird Donation
(Ward 28 - Toronto Centre-Rosedale)**

(City Council on May 21, 22 and 23, 2002, amended this Clause by adding thereto the following:

“It is further recommended that the local Ward Councillor be invited to attend any meetings of the Board of Directors of the Hummingbird Centre for the Performing Arts at which the future site is discussed.”)

The Policy and Finance Committee recommends:

- (I) the adoption of the report (April 25, 2002) from the Chief Administrative Officer wherein it is recommended that:**
- (1) authority be granted for the execution of a lease with HPACC for the Property as well as for such other ancillary documentation as may be deemed by City staff to be necessary or desirable, all to be generally on the terms and conditions outlined in this report and on such other terms and conditions otherwise satisfactory to the Chief Administrative Officer in a form satisfactory to the City Solicitor;**
 - (2) the Chief Financial Officer and Treasurer transfer the current balance of the Hummingbird Centre Stabilization Reserve Fund of \$323,239.00, plus interest earned to the date of the actual transfer from the City of Toronto to HPACC to fund the Council approved 2002 Operating Budget, as soon as the lease between the City of Toronto and the HPACC has been executed or as soon thereafter as is practical;**
 - (3) the Chief Financial Officer and Treasurer transfer the remaining portion of the Hummingbird Communications Limited corporate donation, in the amount of \$3,425,548.00, from the CIRRF of the City of Toronto to HPACC and any future contributions made directly to HPACC;**
 - (4) the balance of the CIRRF and all future ticket surcharges plus interest be retained by the City to contribute to future capital maintenance requirements;**

- (5) the Chief Administrative Officer report on the progress and possible outcomes of the review of outstanding potential liabilities from possible OMERS past service costs arising at the Hummingbird Centre;
 - (6) any redevelopment proposal for the Hummingbird Centre which HPACC may wish to make shall be submitted to the Chief Administrative Officer no later than 18 months from the date of execution of the lease;
 - (7) prior to the expiration of the lease between the City of Toronto and HPACC, the Chief Administrative Officer report back to Council through the Policy and Finance Committee on the future options for the Hummingbird Centre and its operation; and
 - (8) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto; and
- (II) the adoption of the following Notice of Motion by Councillor Anne Johnston:

“Hummingbird Centre for the Performing Arts Corporation, Human Resources Issues:

Whereas the Hummingbird Centre for the Performance Arts Corporation will be an independent and arm’s length Corporation from the City of Toronto for the period of the two year lease; and

Whereas the HPACC Board of Directors will be the employer of all staff at the Hummingbird Centre for the two year lease period; and

Whereas the HPACC Board of Directors may cease to exist after the two year lease period, should City Council not accept HPACC’s potential redevelopment plan and enter into any long-term arrangements with HPACC;

Now therefore be it resolved that the City will ensure that any emerging human resources management issues be dealt with fairly and sensitively at the completion of the short-term lease between the City and HPACC.

Negotiations of long-term arrangements:

Whereas the City of Toronto and the Hummingbird Performing Arts Centre Corporation are proposing to enter into a 24 month lease arrangement; and

Whereas the HPACC Board of Directors has the intention of preparing a business plan and a redevelopment plan for the

Hummingbird Centre to be presented to City Council in the 18th month of the short-term lease; and

Whereas the HPACC Board of Directors is committed to seek sponsorship funds to finance the proposed redevelopment of the Hummingbird Centre;

Now therefore be it resolved that if the HPACC redevelopment proposal is accepted by City Council, a long term arrangement be negotiated with the Board of HPACC.

Discussion about the future disposition of the Hummingbird Centre:

Whereas Members of Council have discussed numerous scenarios for the long-term disposition of the Hummingbird Centre; and

Whereas there is no definite decision about the development of a new Opera House; and

Whereas a decision on a new Opera House may be made in the foreseeable future, both the Canadian Opera Company and the National Ballet of Canada will require a performance venue of several years to come;

Whereas the HPACC Board of Directors will spend significant financial resources on the development of a business plan and redevelopment plan for the Hummingbird Centre;

Now therefore be it resolved that the Board of HPACC be included in any discussions which focus on the long-term future disposition of the Hummingbird Performing Arts Centre.

The Policy and Finance Committee submits the following report (April 25, 2002) from the Chief Administrative Officer:

Purpose:

The purpose of this report is threefold:

- (1) to authorize a lease with the privatized Hummingbird Performing Arts Centre Corporation (“HPACC”) for the City-owned premises at No. 1 Front Street East (the “Property”);
- (2) to seek Council authority to transfer the current balance of the Hummingbird Centre Stabilization Reserve Fund and the Hummingbird Corporation donation currently forming part of the Capital Improvement and Rehabilitation Reserve Fund (CIRRF) from the City of Toronto to HPACC once the lease is finalized; and

- (3) to discuss policy issues associated with a restructured business relationship between the City of Toronto and the Hummingbird Performing Arts Centre Corporation (HPACC).

Financial Implications and Impact Statement:

- (1) Lease:

The lease of the Property for \$1.00 per annum (plus operating costs and all taxes) constitutes a municipal grant to HPACC.

- (2) Transfer of the Reserve Accounts:

The transfer of certain reserve fund balances supports both the current operation of the Hummingbird and the preparation of a redevelopment proposal and business plan, which are the key objectives for the Hummingbird Centre for the duration of the two-year lease.

During consideration of the 2002 budget, Council approved a net zero budget for the Hummingbird Centre that included the application of the balance of the Stabilization Reserve Fund, which has a current balance of \$323,239.00 plus interest earned since the 2001 year-end. This budgeted contribution from the Stabilization Reserve Fund towards 2002 Hummingbird operations will bring this reserve fund balance to zero.

The CIRRF has two components, each of which includes accumulated interest: funds contributed from ticket surcharges and funds contributed from the corporate donations of the Hummingbird Communications Limited. Transfer of the Hummingbird corporate donation, plus proportionate interest, will provide the funding necessary to prepare the detailed plan for the redevelopment of the Centre which is the key objective of HPACC during the lease term. Such a plan will be brought forward to Council for consideration.

Over the past several years, the Hummingbird capital maintenance program has been substantively covered by ticket surcharge deposits, plus accrued interest, each year. The plan is to continue this level of capital spending during the two-year lease. The capital maintenance requirements will therefore be funded without any other major draw from the CIRRF other than the ticket surcharge. However, any other unforeseen major capital requirements will have no available funding source. HPACC, however, has agreed within the terms of the lease to cover all capital requirements and therefore there should be no draw on other City resources.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial implications associated with the transfer as proposed.

Recommendations:

It is recommended that:

- (1) authority be granted for the execution of a lease with HPACC for the Property as well as for such other ancillary documentation as may be deemed by City staff to be necessary or

- desirable, all to be generally on the terms and conditions outlined in this report and on such other terms and conditions otherwise satisfactory to the Chief Administrative Officer in a form satisfactory to the City Solicitor;
- (2) the Chief Financial Officer and Treasurer transfer the current balance of the Hummingbird Centre Stabilization Reserve Fund of \$323,239.00, plus interest earned to the date of the actual transfer from the City of Toronto to HPACC to fund the Council approved 2002 Operating Budget, as soon as the lease between the City of Toronto and the HPACC has been executed or as soon thereafter as is practical;
 - (3) the Chief Financial Officer and Treasurer transfer the remaining portion of the Hummingbird Communications Limited corporate donation, in the amount of \$3,425,548.00, from the CIRRF of the City of Toronto to HPACC and any future contributions made directly to HPACC;
 - (4) the balance of the CIRRF and all future ticket surcharges plus interest be retained by the City to contribute to future capital maintenance requirements;
 - (5) the Chief Administrative Officer report on the progress and possible outcomes of the review of outstanding potential liabilities from possible OMERS past service costs arising at the Hummingbird Centre;
 - (6) any redevelopment proposal for the Hummingbird Centre which HPACC may wish to make shall be submitted to the Chief Administrative Officer no later than 18 months from the date of execution of the lease;
 - (7) prior to the expiration of the lease between the City of Toronto and HPACC, the Chief Administrative Officer report back to Council through the Policy and Finance Committee on the future options for the Hummingbird Centre and its operation; and
 - (8) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

Historical Developments:

The lands and performing arts facility located at No. 1 Front Street East (the "Property") was acquired on September 2, 1977 by The (former) Municipality of Metropolitan Toronto upon the payment of an amount equivalent to that which had been paid by the Carling O'Keefe Breweries for the land alone some ten years earlier, namely, \$2,750,000.00. Accordingly, the premises (both land and building) are currently in the ownership of the City. The Property has been managed by a statutory Board, the rights and responsibilities of which were formerly delineated in the *Municipality of Metropolitan Toronto Act* and are now embodied in the *City of Toronto Act, 1997 (No. 2)*. Except for the purposes of OMERS and, more recently, the section of the *Municipal Act* related to the provision of municipal capital facilities, the Board is not a local board of the City. The current statutory regime does provide, however, that the City is entitled

to: establish the size and composition of the Board, receive any surplus resulting from the Board's activities, and establish general policies to be followed by the Board. The Board's accounts and transactions are to be audited by the City Auditor, and the City is responsible for any Board deficits.

By its adoption of Clause No. (1) of Report No. 6 of the Environment and Public Space Committee at its meeting held on April 24, 1996, the Council of the former Municipality of Metropolitan Toronto approved of the restructuring of the relationship between the (then) Metropolitan Corporation and the (then) Board of Management of the O'Keefe Centre as set out in the document entitled "Report and Business Plan for the Board of Management of the O'Keefe Centre for the Performing Arts (December, 1995)" attached to the report (January 2, 1996) of the General Manager of the O'Keefe Centre, as amended by the transitional steps outlined in the body of such report, to be implemented substantially in accordance with the model described in the draft legislation attached as Appendix "B" to that report; and, further, granted authority for a request to be made to the Province of Ontario to enact legislation to give effect to such recommendation, substantially in the form of the relevant Appendix to such report; and, further, authorized the Metropolitan Solicitor, upon receipt of favourable written indication from Provincial officials relating to the request for such legislation to commence preparation of a draft Lease to the restructured Board for the premises at 1 Front Street East, Toronto, the details of which were to form a future report to Council for its consideration. It is that report relating to the proposed lease which is before you now.

As an interim restructuring step (i.e. while efforts to secure provincial legislation were underway), by its adoption of Clause No (4) of Report No. 15 of the Environment and Public Space Committee entitled "O'Keefe Board: Revisions to Name and Composition" at its meeting held on October 9 and 10, 1996, the former Municipality of Metropolitan Toronto changed the name of The Board of Management of the O'Keefe Centre to "The Board of Directors of the Hummingbird Centre for the Performing Arts" and, pursuant to Ontario Regulation 214/96, increased the number of members on the Board from 7 to 12, as well as revised the composition of the Board, such that one member may be appointed from each of the National Ballet of Canada ("NBC") and from the Canadian Opera Company ("COC") so long as NBC and COC, respectively, continued to be in residence in the Centre, with the ten remaining appointments to the Board to continue to be made by Council (with up to three to be from the Community). Metro By-law No. 133-96 as amended implementing the changes to the Board name and composition was enacted accordingly. If NBC or COC fails to make the two appointments, Council may do so, either from among its members or from the Community.

By its adoption of Clause No (1) of Report No. 27 of the Strategic Policies and Priorities Committee at its meeting held on December 16 and 17, 1998 entitled "Future of the Hummingbird Centre - Enactment of the Proposed Hummingbird Legislation", the (new) City of Toronto granted authority to continue to pursue the process then engaged in by the City and the Board staff with the Province which would lead to the enactment of the proposed Hummingbird Centre legislation, based on the proposed model of legislation previously approved by the Council of the former Municipality of Metropolitan Toronto, and subject to the modifications outlined in the report (December 10, 1998) from the City Solicitor.

Ultimately, the *Hummingbird Performing Arts Centre Corporation Act, 1998*, (the “Act”) was enacted by the Province of Ontario, effective as at December 18, 1998, a copy of which is attached as Appendix 1. This statute establishes a non-share capital corporation named “Hummingbird Performing Arts Centre Corporation” (“HPACC”), being a legal entity completely independent from the City, both legally and financially. The Board will be composed of 12 Directors, who are to serve without remuneration (except for the payment of reasonable expenses). The City will now have entitlement to appoint only 3 out of 12 Directors. The statute is structured in such a way that should Council authorize the entering into of a lease, then HPACC would, as a result, become the operator of the Property. Until that time, or should Council determine not to approve a lease, then the current statutory Board under the *City of Toronto Act, 1997 (No. 2)* continues to be the operator/manager of the Property.

In addition, by Order in Council No. 368/99 dated February 24, 1999, the Province has designated HPACC as an “associated employer” within the meaning of the *Ontario Municipal Employees Retirement System Act*, thereby allowing HPACC employees to participate in OMERS.

At its meeting of November 20, 1999, the Administration Committee had before it the report (November 19, 1999) from the Acting Commissioner of Corporate Services entitled “Lease of No. 1 Front Street East to Privatized Hummingbird Performing Arts Centre Corporation” which report provided staff recommendations for a lease between the City and HPACC. At the request of a Member of Council, the report was referred back to the Acting Commissioner of Corporate Services.

Council Reference for this Report:

By its adoption of Clause No (2) of Report No. 11 of the Policy and Finance Committee at its meeting of July 24, 25 and 26, 2001, Council authorized the Chief Administrative Officer and Commissioner of Economic Development, Culture and Tourism to conclude negotiations of a lease with HPACC and report back on the outcome of such negotiations.

By its adoption of Motion J(10), moved by Councillor Johnston and seconded by Councillor Augimeri at its meeting of December 4, 5 and 6, 2001, Council authorized the Chief Administrative Officer to execute an agreement with HPACC to take responsibility for the operation of the Centre.

Since that time, staff have been in discussions with representatives of HPACC negotiating the basic principles, terms and conditions for a lease.

Comments:

(1.0) Lease Provisions:

The proposed provisions for the short-term lease between the City of Toronto and HPACC have been set out in Appendix 2 of this document. Council deems the grant to be in the interests of the municipality.

(2.0) Transfer of Reserve Funds:

The transfer of the balance of the Stabilization Reserve Fund and the remaining money, plus interest, which HPACC solicited from its major sponsor, is a vital and necessary step which needs to accompany the execution of the short-term lease. Access to the Stabilization Reserve Fund for this purpose was approved by Council during the 2002 budget process, and permits HPACC to proceed with the preparation of a new business plan and the required redevelopment proposal.

(2.1) Stabilization Reserve Fund:

The Stabilization Reserve Fund was initially set up for the purpose of evening out fluctuations in operating earnings and deficits from year to year. The final audited 2001 financial results for the Hummingbird reported a deficit of \$448,586.00, which will be offset by funding withdrawn from the Stabilization Reserve Fund. Its 2002 Operating Budget was submitted requesting that the balance of the Stabilization Reserve Fund, estimated at \$368,300.00 at that time, be applied to fund the budget and reduce the projected requirement for City funding to \$118,000.00. During the review of the budget, the HPACC Board indicated that it will be able to cover the net deficit of \$118,000.00, if the short-term lease between the City of Toronto and the Hummingbird Centre is executed early in 2002. The 2002 operating budget was approved based on this assumption; that the balance of the Stabilization Reserve Fund would be applied to the 2002 budget but there would be no other funding from the City. The original business plan called for the transfer of the Stabilization Reserve to the new Corporation.

HPACC is an independent Corporation which is responsible for its own financial management and business planning for the duration of the lease. As such, HPACC assumes responsibility for effective and sound financial management during the lease period. HPACC will be fully responsible for all operating surpluses and deficits and, as an independent Corporation, will not submit its budget for City of Toronto approval, except as it requests withdrawals from the Capital Improvement and Rehabilitation Reserve Fund to support capital maintenance requirements.

It is recommended that the Chief Financial Officer and Treasurer transfer the current balance of the Hummingbird Centre Stabilization Reserve Fund of \$323,239.00, plus interest earned to the date of the actual transfer from the City of Toronto to the Hummingbird Performing Arts Centre Corporation (HPACC) to cover the 2002 planned deficit, as soon as the short-term lease between the City of Toronto and the Hummingbird Centre has been executed or as soon thereafter as is practical.

(2.2) Capital Improvement and Rehabilitation Reserve:

Contributions to the City of Toronto's Capital Improvement and Rehabilitation Reserve Fund (CIRRF) are made from a per ticket surcharge from performance sales throughout the year. This fund is used to finance capital maintenance projects for the Hummingbird Centre.

In addition, the Hummingbird Centre was successful in soliciting a major corporate sponsor contribution from Hummingbird Communications Limited in 1996. This donation was intended to allow Metro to bring its asset up to standard. According to the donor, any future donations are to be applied to the planning and implementation of the redevelopment of the Hummingbird Centre. The sponsor's contribution was set aside in the City of Toronto's Capital Improvement and Rehabilitation Reserve Fund and mixed with the ticket surcharge funds. To date, a small portion of this donation has been used in preparing plans for the redevelopment of the Centre. The remainder of the donation has been accumulating interest and now totals \$3,425,548.00. It is anticipated that Hummingbird Communications Ltd. will continue to make periodic payments to honour its total pledge of \$5 million. These monies will be deposited with HPACC directly.

In the future, the ticket surcharge will continue to be deposited into the City's CIRRF for the Hummingbird. Over the past several years, the capital maintenance program has been covered by these ticket surcharge contributions and it is the intention to continue this practice during the two-year lease period. In accordance with the lease, these requests will be reviewed by the Commissioner of Corporate Services, who has also received a copy of a physical condition assessment of the building which was completed in February 2002.

The attached Appendix 3 demonstrates the allocation of the CIRRF between the corporate contributions and the ticket surcharge funds which will be retained by the City of Toronto.

It is recommended that the Chief Financial Officer and Treasurer transfer the remaining portion of the Hummingbird Communications Limited corporate donation in the amount of \$3,425,548.00, from the Capital Improvement and Rehabilitation Reserve Fund (CIRRF) of the City of Toronto to the Hummingbird Performing Arts Corporation (HPACC) and that the balance of the Capital Improvement and Rehabilitation Reserve Fund (CIRRF) and all future ticket surcharges plus interest be retained by the City to contribute to future capital maintenance requirements.

(3.0) Revised Business Relationship between HPACC and the City of Toronto – Policy Issues:

There are a number of policy issues that need to be addressed in conjunction with the short-term lease between the City of Toronto and HPACC. These policy issues deal with human resource management at HPACC and the options for the long-term disposition of the Hummingbird Centre.

(3.1) Human Resource Management:

Once the short-term lease has been signed, all current staff members of the Hummingbird Centre will be considered employees of the new HPACC Corporation. It will be the HPACC Board of Directors who will have full responsibility for all aspects of HR management. Should HPACC cease to operate after the completion of the short-term lease, HPACC will also be responsible for the termination of staff and the provision of any required exit packages, where necessary.

The City of Toronto and the Hummingbird Centre are reviewing the potential liabilities for OMERS past service costs at the Centre. This involves Legal, Finance and Chief Administrative Officer's staff and will be the subject of a separate report to Council at a later date. Any ongoing benefit costs related to this issue will be the responsibility of HPACC.

(3.2) Long-term Disposition of the Centre:

The current Board of the Hummingbird Centre has expressed a wish to prepare a redevelopment plan for the Centre and to solicit sponsor revenues for the implementation of a redevelopment plan.

The Canadian Opera Company and the National Ballet use the Hummingbird Centre as their primary performance venue. Even if a purpose-built new Opera House is developed, these two major companies will require the Hummingbird Centre as a performance venue until such time as a possible Opera House is completed.

In order for the Hummingbird Centre to adequately plan and implement its performance season, there has to be some assurance that the Centre will be in operation, even after the two year short-term lease expires. Otherwise, it will be difficult for HPACC to enter into future contracts with any performing arts company. Given these business realities, the City of Toronto may likely have to prepare some contingency plans for the operation of the Hummingbird Centre, if HPACC is not successful in preparing a business plan and redevelopment plan acceptable to City Council.

In order for City Council to make informed choices about the long-term disposition of the Hummingbird Centre, it is recommended that any redevelopment proposal for the Hummingbird Centre which HPACC may wish to make, must be submitted to the Chief Administrative Officer for Council's consideration no later than 18 months following the execution of the lease.

It is also recommended that the Chief Administrative Officer report back to Council on the future options for the Hummingbird Centre and its operation prior to the expiration of the lease between the City of Toronto and HPACC.

Conclusions:

This report recommends the terms and conditions for a lease between the City of Toronto and HPACC.

This report recommends that the City of Toronto transfer the current balance of the Stabilization Reserve Fund, plus interest, and the remaining sponsor's donation provided by the Hummingbird Communications Ltd. from the City of Toronto to HPACC, as soon as the lease between the City of Toronto and HPACC has been executed or as soon as practical thereafter. The balance of the Capital Improvement and Rehabilitation Reserve fund and future ticket surcharges will be retained by the City.

The report also recommends that the Chief Administrative Officer report back to Council on the future disposition of the Hummingbird Centre prior to the expiration of the lease.

This report has been prepared in consultation with the Culture Division of the Economic Development, Culture and Tourism Department, the Finance Department, Corporate Services and the Legal Division.

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Appendix 1: Bill 97 – An act to establish the Hummingbird Performing Arts Centre Corporation

Hummingbird Performing Arts Centre Corporation Act, 1998

S.O. 1998, Chap. 37; s.1 to 21 in force December 18, 1998; s. 22 in force on proclamation

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions -- s. 1

1. In this Act,

“appointed directors” means the directors mentioned in clause 9(1)(b);

“board” means the board of directors of the corporation;

“Centre” means the land and building vested in the City of Toronto and known as the Hummingbird Centre;

“council” means the council of the City of Toronto;

“corporation” means the Hummingbird Performing Arts Centre Corporation established by subsection 2(1);

“effective date” means the first date on which a lease of the Centre between the City of Toronto and the corporation comes into force;

“elected directors” means the directors mentioned in clause 9(1)(a); and

“old board” means The Board of Directors of the Hummingbird Centre for the Performing Arts continued by subsection 66(2) of the *City of Toronto Act, 1997* (No. 2).

Corporation established -- s. 2(1)

2. (1) A corporation without share capital is established under the name of Hummingbird Performing Arts Centre Corporation in English and Société du Centre Hummingbird des arts d'interprétation in French.

Non-application of Corporations Act -- s. 2(2)

(2) The *Corporations Act* does not apply to the corporation.

Management and supervision by board -- s. 2(3)

(3) The corporation's affairs shall be managed and supervised by the board.

Members -- s. 2(4)

(4) The directors are the members of the corporation.

Objects -- s. 3(1)

3. (1) The objects of the corporation are, for purposes that are charitable at law,

- (a) to advance knowledge and appreciation of the performing arts and the arts in general, and to stimulate interest in them;
- (b) to advance the development of the performing arts; and
- (c) to operate and maintain, in the City of Toronto, theatrical facilities for performances, exhibitions, educational activities, meetings and receptions.

(2) The corporation has the capacity and the rights, powers and privileges of a natural person.

(3) Without limiting the generality of subsection (2), the corporation has power, for the objects set out in subsection (1),

- (a) to enter into a lease of the Centre with the City of Toronto;
- (b) to operate, or to grant leases or licences for the operation of, theatres, retail shops, restaurants, snack bars, parking facilities, exhibition facilities, meeting rooms and any other facilities incidental or necessary to the operation of the Centre;
- (c) to enter into occupancy licence agreements with one or more performing arts companies;
- (d) to enter into agreements for the establishment or operation of works and services in connection with the operation and maintenance of the Centre;

- (e) to acquire, hold, deal with, manage, develop or dispose of any real or personal property and any right or privilege as, in the board's opinion, is necessary or convenient for the corporation's purposes;
- (f) to accept gifts of real or personal property;
- (g) to invest temporarily any money not immediately required for the corporation's objects, in investments authorized by the board, which are not limited to investments authorized for trustees under the *Trustees Act*;
- (h) to borrow on the corporation's credit;
- (i) to issue, sell or pledge securities of the corporation;
- (j) to create a security interest in real or personal property currently owned or subsequently acquired by the corporation, including book debts, rights, powers, franchises and undertakings, in order to secure any debt, obligation or liability of the corporation;
- (k) to delegate by resolution of the board the powers referred to in clauses (h), (i) and (j) to a director or officer of the corporation, as the board considers appropriate; and
- (l) to do anything incidental to the attainment of the corporation's objects.

Seal -- s. 4

4. The corporation shall have a seal, which shall be adopted by a resolution or by-law of the board.

Staff -- s. 5

5. The corporation may engage such persons as are considered necessary for the proper conduct of its affairs.

Use of government facilities -- s. 6

6. The corporation may make use of services and facilities, including the services of a public servant on secondment, that are provided to it by a ministry, agency or department of the Government of Ontario or of the City of Toronto.

Tax exemption -- s. 7

7. For the purposes of paragraph 27 of *subsection 3(1) of the Assessment Act* (large non-profit theatres), real property that is leased to the corporation and is used and occupied for its purposes is deemed to be owned by the corporation.

Application of earnings -- s. 8

8. The corporation's earnings, including any annual surplus, shall be applied only to the furtherance of its objects.

Board -- s. 9(1)

9. (1) The board shall consist of 12 directors, of whom,
 - (a) nine shall be chosen in accordance with the nomination and election process set out in the corporation's by-laws; and
 - (b) three shall be appointed by the council.
- (2) Each director shall hold office for a term of three years, or until a successor is appointed, and may be reappointed so as to serve not more than three consecutive terms.
- (3) Despite subsection (2), the elected directors may be chosen and retired in rotation for staggered terms as set out in the corporation's by-laws.
- (4) A vacancy that arises among the appointed directors shall be filled, for the unexpired portion of the term, by the council.
- (5) A vacancy that arises among the elected directors shall be filled, for the unexpired portion of the term, by a quorum of all the directors in office.
- (6) The directors shall serve without remuneration, but may be paid reasonable expenses incurred in the performance of their duties, in the amount the board approves.
- (7) Section 132 and *subsection 134(1) of the Business Corporations Act* apply to the directors, with necessary modifications.

Chair -- s. 10(1)

10. (1) The board shall have a chair, chosen in accordance with the nomination and election process set out in the corporation's by-laws.
- (2) The chair shall preside at the meetings of the board.
- (3) In the chair's absence, a director chosen from among those present at the meeting has all the chair's powers and duties.

Committees -- s. 11

11. The board may,
 - (a) appoint a committee or committees from among its members; and
 - (b) delegate to such a committee any power of the board.

Quorum -- s. 12(1)

12. (1) A majority of the directors in office is a quorum for the transaction of business at meetings.

(2) If a by-law of the corporation authorizes it, meetings of the board or of its committees may be held by means of telephone or other electronic communication facilities that permit the persons participating in the meeting to communicate with each other simultaneously and instantaneously; a person who participates in such a meeting is deemed to be present at the meeting.

(3) A by-law or resolution that is consented to by the signatures of all the directors of the board or of all the members of a committee, as the case may be, has the same effect as if it had been passed at a meeting of the board or committee held for that purpose.

By-laws -- s. 13(1)

13. (1) The board may, by resolution, make by-laws as it considers necessary to conduct the affairs and carry out the objects of the corporation.

- (2) Without limiting the generality of subsection (1), the corporation's by-laws may,
- (a) provide for the qualifications of the elected directors;
 - (b) regulate the proceedings of the board;
 - (c) regulate the conduct of the corporation's affairs;
 - (d) specify the powers and duties of the corporation's officers and employees.

Dissolution of old board -- s. 14

14. On the effective date,
- (a) the corporation stands in the place of the old board for all purposes;
 - (b) without limiting the generality of clause (a), all the assets and liabilities that the old board had on the day before the effective date are vested in and become assets and liabilities of the corporation; and
 - (c) the old board is dissolved.

Employees -- s. 15(1)

15. (1) Every person who is, on the day before the effective date, a permanent employee of the old board in connection with the operation, management and maintenance of the Centre is an employee of the corporation on the effective date.

(2) A person described in subsection (1) is entitled to receive, for the one-year period following the effective date, compensation that is at least equal to what he or she was receiving on the day before the effective date.

(3) Any sick leave credits standing to the credit of a person described in subsection (1) on the day before the effective date shall be placed to his or her credit in any sick leave plan established by the corporation.

(4) *Section 69 of the Labour Relations Act, 1995* applies, with necessary modifications, as if the corporation were the purchaser of the old board's business.

(5) Nothing in this section prevents the corporation from terminating a person's employment for cause.

Indemnification of directors and officers -- s. 16(1)

16. (1) The corporation shall indemnify any director or officer of the corporation,
(a) against any liability incurred in a proceeding proposed or commenced against him or her for anything done or permitted to be done in the execution of his or her duties; and
(b) against any other liability incurred in respect of the corporation's affairs.

(2) Subsection (1) applies only if the director or officer acted honestly and in good faith with a view to the corporation's best interests.

(3) The corporation may purchase and maintain insurance for the benefit of a director or officer against any liability referred to in subsection (1).

Fiscal year -- s. 17(1)

17. (1) The corporation's fiscal year begins on September 1 in each year and ends on August 31 in the following year.

(2) The board may change the corporation's fiscal year by by-law.

Audit -- s. 18(1)

18. (1) The board shall annually appoint an auditor licensed under the *Public Accountancy Act* to audit the corporation's accounts and transactions.

(2) The board may fix the auditor's remuneration by by-law.

Change of name -- s. 19(1)

19. (1) The council may, at the corporation's request, pass a by-law establishing new names for the Centre and for the corporation.

(2) On the date the by-law comes into force, the new names replace the former names for all purposes.

Dissolution -- s. 20

20. If the corporation is dissolved and all debts and liabilities have been paid, its remaining property shall be distributed to qualified donees as defined in *the Income Tax Act (Canada)*, as the board designates.

Transition -- s.21

21. The members of the old board who are in office on the day before this Act receives Royal Assent are the first directors of the corporation and shall remain in office until their successors are appointed or elected.

Repeal -- s.22

22. The following provisions of the *City of Toronto Act, 1997* (No. 2) are repealed:

1. Section 66.
2. Subsection 67(2).

Commencement -- s.23(1)

23. (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

(2) Section 22 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short Title -- s.24

24. The short title of this Act is the *Hummingbird Performing Arts Centre Corporation Act, 1998*.

Appendix 2: Provisions of the Short-term Lease

- (1) Premises: Property located at 1 Front Street East, together with use of chattels.
- (2) Chattels/Inventory: City and HPPAC staff will prepare an inventory of the items to remain as City property, which will be included as part of the lease, to be used by HPACC.
- (3) Term: Twenty-four (24) months, with no right of renewal. Upon expiry or early termination of the Term, neither party shall have any further obligation to the other.
- (4) Rent: One Dollar (\$1.00) per year, with HPACC responsible for payment of all costs.
- (5) Realty Taxes: HPACC shall be responsible for all taxes.
- (6) Use: The Property shall be continuously used solely for the purposes of: furthering objects under the *Hummingbird Performing Arts Centre Corporation Act*; providing a performance venue for COC/NBC; and providing community, cultural and general theatrical programming, to contribute to the cultural and entertainment opportunities for residents and visitors to the Toronto area. In addition, in order to fall within the realty tax

exemption in section 3(27) of *Assessment Act*, the theatre is not to be used other than by charitable or non-profit organizations, on a total of at least 183 days in the year to present live performances with the intention of generating a profit. HPACC shall comply with the requirements of “eligible theatre”, to fall within the exemption from school taxes, in accordance with section 257.6(4) of the *Education Act*.

- (7) Mural: HPACC shall protect the mural entitled “The Seven Lively Arts” by R. York Wilson from damage, and will not make any alterations thereto.
- (8) HPACC Revenues: The restructured relationship results in HPACC being financially independent of the City, so that the City is no longer entitled to any of HPACC’s surplus, nor is it responsible for any deficits. Accordingly, any revenues generated by HPACC (except for the ticket surcharge described below) belong to HPACC, as do all of its liabilities and debts.

In the future, the City will not be involved in HPACC’s budgetary process, except to the extent of its minority representation on the Board. Due to the fact that the proposed lease is to be granted on the basis of nominal rent payments only, in the event of default by HPACC in its maintenance/repair obligations, the City would not be in a position to step in and make those repairs with the funds it had notionally accumulated as a result of the payment of rent. Accordingly, as a prudent landlord, the City should ensure that there is an ongoing requirement imposed on HPACC to continue to impose the current ongoing ticket surcharge, in at least the same amount charged as at the commencement date of the lease, and to remit the same to the City for deposit into the CIRFF, and that any change from the current amount of the ticket surcharge is subject to the approval of both HPACC and City Council.

- (9) Building Maintenance: HPACC shall be responsible at its sole expense for repair and maintenance, both operating and capital. HPACC will submit a capital plan for the approval of the Commissioner of Corporate Services at the outset of each year during the Term; and, as the plan is implemented in each year, any structural repair, or repair relating to a building system (e.g. mechanical, electrical, etc), or which could impact on either the structure or one or more building systems, requires the Commissioner of Corporate Services prior approval of plans and specifications. Other types of work require approval of the Commissioner of Corporate Services only where the estimated cost exceeds \$100,000.00. HPACC is not to be required to comply with the City’s Fair Wage policies or tendering/capital practices. City staff shall have access to the Property during normal business hours, upon 48 hours’ notice, to review work being done or to determine the state of repair. In the event of an emergency, no notice is required.
- (10) Naming: By its adoption of Clause No (2) of Report No. 3 of the Financial Priorities Committee at its meeting held on January 31, February 1 and 2, 1996, the former Metro Council, in recognition of the donation from Hummingbird Communications Ltd., authorized the renaming of the facility, for a twenty year period, to “Hummingbird Centre for the Performing Arts”. Upon request of HPACC, the Act allows the City, by by-law, to change the name of the Centre and the Corporation, thereby obviating the need for amending provincial legislation in the future.

- (11) Audited Statements: HPACC to provide audited statements annually, including a report on the capital reserve fund. City staff shall have access to HPACC financial records, to ensure that lease obligations may be met.
 - (12) Indemnity and Insurance: HPACC shall provide a full indemnity with respect to its occupation and use of the Property and shall provide its own Commercial General Liability insurance (\$10,000,000.00 coverage), Non-Profit Directors & Officers Liability insurance (\$1,000,000.00 coverage), property insurance for contents/chattels, etc, as well as certain other coverages (e.g. crime). The City may carry property coverage for the building and charge the cost back to HPACC, on condition that HPACC be responsible for the actual, full and expeditious payment for all losses below the City's deductible, in whatever amount same may be from time to time.
 - (13) Signage/Sponsorship/Advertising: Rather than adherence to City policies, HPACC shall comply with industry standards, including the Canadian Code of Advertising.
 - (14) Performance Venue for NBC/COC: During the term of the lease, HPACC shall make the Property available for use by COC and NBC pursuant to licence agreements, and may grant licences to COC/NBC to sell merchandise and to provide food/beverage services.
 - (15) Non-Assignment: Assignment of the lease and/or granting of a leasehold mortgage by HPACC shall not be permitted.
 - (16) Development Rights: The City as owner of the Property, retains all development rights.
 - (17) Future Use: Upon expiration or earlier termination of the term, the future use of the Property is within the sole and absolute discretion of the City.
 - (18) Non-Applicability of City Administrative Policies: Due to complete legal and financial separation of HPACC from the City, the City's administrative policies (i.e. Human Resources) should not be applicable.
 - (19) General:
 - (i) HPACC to obtain all necessary licences;
 - (ii) HPACC to abide by all applicable laws;
 - (iii) Damage and destruction clauses;
 - (iv) Default and enforcement provisions; and
 - (v) Acknowledgement Re: Historical/Heritage Significance.
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Appendix 3 - Allocation of CIRRF between Corporate Contributions and Ticket Surcharge Funds Hummingbird Centre Capital Improvement and Rehabilitation Reserve Fund Statement of Continuity (based on Audited Financial Statements)					
	Total CIRRF		Corporate Contribution		Ticket Surcharge Funds
Closing Balance: December 31, 1995	\$ 4,138,741		\$ -		\$ 4,138,741
1996					
Capital Surcharge received	526,408				526,408
Corporate contributions received (net) Note 1	635,999		635,999		-
Investment Income	352,652		38,120		314,532
Special Item Improvements	(3,908,913)				(3,908,913)
Closing Balance: December 31, 1996	<u>\$1,744,887</u>		<u>\$674,119</u>		<u>\$1,070,768</u>
1997					
Capital Surcharge received	628,350				628,350
Corporate contributions received (net) Note 1	585,000		585,000		-
Investment Income	252,562		118,922		133,640
Special Item Improvements Note 2	(1,084,317)		(17,057)		(1,067,260)
Closing Balance: December 31, 1997	<u>\$2,126,482</u>		<u>\$1,360,984</u>		<u>\$765,498</u>
1998					
Capital Surcharge received	689,141				689,141
Corporate contributions received (net) Note 1	585,000		585,000		-
Investment Income	166,948		113,431		53,517
Special Item Improvements Note 2	(1,324,442)		(12,000)		(1,312,442)
Closing Balance: December 31, 1998	<u>\$2,243,129</u>		<u>\$2,047,415</u>		<u>\$195,714</u>

Appendix 3 - Allocation of CIRRF between Corporate Contributions and Ticket Surcharge Funds				
Hummingbird Centre Capital Improvement and Rehabilitation Reserve Fund Statement of Continuity (based on Audited Financial Statements)				
	Total CIRRF		Corporate Contribution	Ticket Surcharge Funds
1999				
Capital Surcharge received	514,233			514,233
Corporate contributions received (net) Note 1	585,000		585,000	-
Investment Income	126,367		103,180	23,187
Special Item Improvements Note 2	(761,985)		(48,628)	(713,357)
Closing Balance: December 31, 1999	\$2,706,744		\$2,686,967	\$19,777
2000				
Capital Surcharge received	547,005			547,005
Corporate contributions received (net) Note 1	585,000		585,000	-
Investment Income	174,229		142,882	31,347
Special Item Improvements Note 2	(624,377)		(106,477)	(517,900)
Closing Balance: December 31, 2000	\$3,388,601		\$3,308,372	\$80,229
2001				
Capital Surcharge received	565,760			565,760
Corporate contributions received (net) Note 1	-		-	-
Investment Income	196,911		158,287	38,624
Special Item Improvements Note 2	(600,271)		(41,111)	(559,160)
Closing Balance: December 31, 2001	\$3,551,001		\$3,425,548	\$125,453

Councillor Anne Johnston, Eglinton-Lawrence, appeared before the Policy and Finance Committee in connection with the foregoing matter.