

Casa Loma Transition

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| Date: | May 9, 2011 |
| To: | Executive Committee |
| From: | General Manager of Economic Development and Culture |
| Wards: | All |
| Reference Number: | |

SUMMARY

The City owns Casa Loma, but it was managed since 1937 by the Kiwanis Club of Casa Loma (KCCL). The 1997 Casa Loma Restoration Master Plan to restore the exterior of the main building at Casa Loma cost \$20 million and is nearing completion. In July 2007, Council approved the Strategic Vision and in July 2008 the City entered into a Management Agreement to manage Casa Loma through a joint board model. In July 2010 it became obvious that the model was not working as anticipated and a downturn in the economy and a number of financial challenges created a situation where implementation of the Vision was at risk. Council directed that the General Manager of Economic Development and Culture attempt to resolve the situation.

Through a number of discussions, City staff and KCCL mutually agreed that the Management Agreement should be terminated. This report summarizes the terms for a termination and transition process secured in a new agreement that provides to KCCL payment for artefacts and trademarks in their ownership and all outstanding payments due to KCCL under the Management Agreement. KCCL has agreed to assist the City in a smooth transition.

The General Manager will undertake a process to engage the public in determining the future direction for Casa Loma that will be brought forward to Council for approval. In the interim, it is proposed in this report that the City establish a new corporation, the Casa Loma Corporation, to take over operations during the transition period until a new strategy for Casa Loma is approved. The Corporation will assume employment contracts from KCCL and honour all existing contracts with service providers.

RECOMMENDATIONS

The General Manager of Economic Development and Culture recommends that:

1. As mutually agreed between the City of Toronto and the Kiwanis Club of Casa Loma (KCCL), Council terminate the management agreement between the two parties and create a city services corporation to stabilize and operate Casa Loma until City Council considers a long term strategy for Casa Loma.
2. City Council authorize the City Solicitor to execute a Termination and Transition Agreement between the City and KCCL to implement the transition based substantially on the terms outlined below and further described in this report:
 - a. KCCL to assist the City in the transition for a period of 120 days;
 - b. The new city services corporation to assume from KCCL employment contracts and other existing service contracts for the continued operation of Casa Loma;
 - c. The City to pay KCCL \$1.45 million for artefacts with an estimated value of \$1.414 million plus the value of 9 trademarks owned by KCCL including "Casa Loma" and "Toronto's Majestic Castle", to be drawn from the City's Casa Loma Capital Maintenance Reserve Fund;
 - d. KCCL to receive payment of unpaid management fees for 2010 and 2011 valued at \$300,000 with interest on the overdue amount as per the existing agreement, to be paid out of the 2011 Casa Loma operating revenues and the City will guarantee payment by December 31, 2011;
 - e. KCCL to continue to hold weekly meetings free of charge and up to 5 charitable events annually for incremental costs at the Castle to support the work of Kiwanis and to retain an administration office through a license agreement, for nil rent and subject to a 6-month cancellation clause;
 - f. KCCL to pay the market cost of all catering and parking for events only where in the past they received free parking and a discount on catering;
 - g. Upon expiry or termination of the license agreement and provided that the City or a future owner, manager or operator does not wish to use all the Hunting Lodge, KCCL to license space within the Hunting Lodge for its weekly meetings provided that Kiwanis pays for any incremental operating costs associated with this use and that any such license may be terminated upon six months notice.

- h. The City to host an event and erect a plaque commemorating the Kiwanis Club of Casa Loma's longstanding service and contribution to Casa Loma;
3. City Council adopt the business case in Attachment 1 of this report and authorize the City Solicitor to incorporate a new city services corporation named the Casa Loma Corporation, pursuant to Section 148 of the *City of Toronto Act, 2006* and Ontario Regulation 609/06 (City Services Corporation Regulation) and the *Business Corporations Act (Ontario)*, to manage and stabilize the operations of Casa Loma.
4. Despite the standard composition established by Council under item 2011.EX4.7, City Council establish the board composition of the Casa Loma Corporation and appoint the board consisting of the:
 - a. General Manager of Economic Development and Culture or his designate as the Chair of the Board;
 - b. Chief Corporate Officer or his designate;
 - c. Deputy City Manager and Chief Financial Officer or his designate;
 - d. Executive Director of Culture or her designate; and
 - e. Chief Executive Officer of Exhibition Place.
5. In order to protect the directors of the corporation, the City indemnify and save harmless the directors and officers of the corporation from time to time against any claims they may incur in their roles as board directors and officers;
6. As the sole shareholder, City Council approve the Unanimous Shareholder Declaration as set out in Attachment 2 and the By-law No. 1 for the Casa Loma Corporation as set out in Attachment 3.
7. The General Manager of Economic Development and Culture undertake a public process to develop a long term strategy for Casa Loma for Council approval.

Implementation Points

City staff are recommending that Council establish a new city services corporation to act as an operating entity to manage day-to-day operations of Casa Loma upon the termination of the management agreement with the current operator, KCCL. KCCL will work cooperatively with the new corporation to implement the transition over a 120 day period. Existing Casa Loma staff will be transitioned to the new corporation and all service contracts honoured. The key objective of the Casa Loma Corporation will be to stabilize operations during an interim period while the City establishes a long term strategy for Casa Loma.

Financial Impact

The existing Management Agreement between the City and KCCL sets out the terms for purchasing over a 20 year period the artefacts owned by KCCL that form part of the inventory of Casa Loma. As part of the Transition Agreement, the City will acquire the entire inventory of Casa Loma artefacts for a one-time payment of \$1.45 million. This payment will acquire the inventory valued in 2008 at \$1.414 million plus nine trademarks required for the ongoing operation of Casa Loma including "Casa Loma" and "Toronto's Majestic Castle". Funding for this acquisition will be drawn from the City of Toronto Casa Loma Capital Maintenance Reserve Fund that has a current balance of \$2.494 million. The \$1.0 million balance in the Reserve Fund is sufficient for the completion of Phase 7 of the restoration by 2013.

With the termination of the Management Agreement, the City will no longer receive \$800,000 from the operation of Casa Loma to deposit into the City Reserve Fund to assist with future capital maintenance. After completion of the Phase 7 restoration in 2013, City staff will evaluate the on-going capital maintenance costs of Casa Loma as it reviews the options for the long-term operation of the facilities.

City staff have reviewed the revenue and cost projections for Casa Loma and are confident that the financial obligations for 2011 will be covered by the operation.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

In June 2008, Council approved a 20 year agreement with the KCCL for the operation of Casa Loma as a tourism and event venue. The management agreement provided for a new board structure comprised of an equal number of KCCL and City appointed citizens.

In July 2010, Council considered a staff report that outlined a number of issues with the management agreement related to operations and completion of the Strategic Vision for Casa Loma. Council directed that a number of corrective actions be taken and an audit conducted and requested the General Manager of Economic Development and Culture to engage in a dispute resolution process with Kiwanis to resolve the issues. He was asked to report back if the issues under dispute were not resolved and advise on how to proceed.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX45.54>

<http://www.toronto.ca/legdocs/mmis/2010/ex/bgrd/backgroundfile-31435.pdf>.

COMMENTS

Discussions between City Staff and KCCL

As a result of City Council's decision, senior City staff including the City Manager and the General Manager of Economic Development and Culture met a number of times with representatives of KCCL through the summer and fall of 2010 in an effort to resolve issues regarding the Management Agreement and progress on implementing the Strategic Vision. The requested audit was undertaken by the City in the fall of 2010. The audit concluded that certain required capital expenditures required by the Management Agreement were under-spent and that some administrative issues existed.

It was determined jointly by the parties that the best course of action is for the City and KCCL to cooperatively end their longstanding business relationship respecting the management of Casa Loma. As a result, the terms of a proposed Termination and Transition Agreement have been negotiated between the General Manager and KCCL. The agreement will facilitate a smooth and cooperative exit from the current situation with the operations being transferred to a city services corporation for temporary period until City Council determines the future direction for Casa Loma.

The Termination and Transition Agreement

The General Manager of Economic Development is recommending that a termination and transition agreement be entered into between the City and KCCL. The key features of the agreement are:

- The Casa Loma Corporation will assume employment contracts and will honour existing service contracts.
- The Casa Loma artefacts will be purchased by the City for \$1.45 million and funded out of the City's Casa Loma Capital Maintenance Reserve Fund. In accordance with the current management agreement the City was to pay \$1 million plus interest for the artefacts valued at \$1.414 million in 2008 through annual payments over the life of the 20 year agreement, and to date still owes \$950,000 plus some interest. The remaining payments will now be made up front with the termination of the management agreement. The payment of \$1.45million includes the value of the artefacts estimated at \$1.414 million plus the value of 9 trademarks, including "Casa Loma" and "Toronto's Majestic Castle".
- The outstanding management fees payable to KCCL for 2010 and for a full 2011 valued at \$300,000 will be paid out of the 2011 Casa Loma operating revenues and do not impact the City's budget. However, the City will guarantee payment of this amount by December 31, 2011.
- The City will hold an event thanking the KCCL for their longstanding service (since 1937) in operating Casa Loma and shall provide a plaque on the site recognizing their service.

- In accordance with the provisions of a license agreement to be entered into between KCCL and the Casa Loma Corporation, KCCL will have the right, at no rent charge, to hold weekly meetings and up to 5 charitable events at the Castle annually to support the work of KCCL and will retain an administration office through a license agreement that will include a cancellation clause if the City no longer controls operations.
- KCCL will pay the full cost of catering and parking for special events where in the past they received free parking and a discount on catering.
- Upon expiry or termination of the license agreement, provided that the City or a future owner, manager or operator does not wish to use all the Hunting Lodge, the City will agree to license some space within the Hunting Lodge to KCCL for purposes of holding its weekly meeting and have its office provided that KCCL pays for any incremental operating costs associated with this use and that any such license may be terminated upon six months notice.
- KCCL will work co-operatively with the new corporation to ensure an open and seamless transition for a period of 120 days.
- The City and the KCCL will work jointly on the communications to the public and media regarding the ongoing transition.

The current Management Agreement provides for an annual payment of \$800,000 to the City which is deposited in the City's Reserve Fund and used to offset the cost of capital projects for Casa Loma. With the termination of the Management Agreement there is no longer an obligation for such payment. It is anticipated that the Casa Loma Corporation will need to reinvest all of its revenues in stabilizing operations and to assist with planning for a new long-term strategy.

Since the City is guaranteeing the management fees for 2011, there is a very small chance that some of these fees will need to be covered by the City, but given the reduced obligation to pay the City, there is likely to be no impact on the City's operating budgets. In the worst case scenario, Economic Development & Culture Division will revise its budget to absorb the fees in order for there to be no net negative consequence to the City.

In the best case scenario, if the Casa Loma operation is profitable after such costs, the Casa Loma Corporation could pay a dividend, rent or similar fee to the City. Such payments will be determined by the Board in accordance with the financial results of the Corporation. These payments would be used by the City to continue the planned state of good repair expenditures staying within the parameters as set out by the City's Capital Budget process.

Casa Loma Corporation

It is proposed that a new corporation, the Casa Loma Corporation, be established pursuant to the *City of Toronto Act* and the *Ontario Business Corporations Act* to act as the interim operator of Casa Loma. The mandate of the corporation will be to manage day-to-day operations and ensure operations are stabilized so a future direction for Casa Loma can be established effectively by the City. It is proposed that 4 senior City staff and the Chief Executive Officer of Exhibition Place serve as the directors of the Casa Loma Corporation. Casa Loma staff will become employees of the Casa Loma Corporation. The corporation will assume the contractual obligations associated with operating the facility for contracts for catering, janitorial services, security and parking. The Unanimous Shareholder Declaration and the Corporation's Procedure By-Law are attached to this report as Attachments 2 and 3.

Future Direction for Casa Loma

The 1997 Casa Loma Restoration Master Plan costing \$20 million to restore the exterior of the main building at Casa Loma is almost complete. In 2006, Lord Cultural Resources conducted a public process to develop a Strategic Vision for Casa Loma. Due to downturns in the economy and a number of financial challenges for Casa Loma, this Vision has not been implemented to any significant extent.

The objective of the Casa Loma Corporation will be to stabilize operations and ensure financial sustainability. During this transition period, the General Manager of Economic Development and Culture will engage the public in planning for the future of Casa Loma. All viable options will be considered. The General Manager will report to Council with recommendations on a future strategy for Casa Loma.

CONTACT

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SIGNATURE

Michael H. Williams
General Manager
Economic Development and Culture

ATTACHMENTS

Attachment 1: Business Case Study: Interim Operation and Stabilization of Casa Loma
Attachment 2: Unanimous Shareholder Declaration – Casa Loma Corporation
Attachment 3: By-law No 1 of the Casa Loma Corporation

Attachment 1: Business Case Study: Interim Operation and Stabilization of Casa Loma

1. The Importance of Casa Loma

Casa Loma has operated as a City-owned tourism and event facility operated by Kiwanis since 1937. It is well known as a landmark and one of the key tourist attractions in Toronto, especially to international visitors. Its history reveals the early years of Toronto's development. The City has invested approximately \$20 million to restore and improve the exterior of Casa Loma. The facility is the site of movie and television filming and is a well recognized visual symbol of Toronto. Casa Loma is an important City owned asset as it fosters the City's positive identity to citizens and visitors to Toronto.

2. The Reason for Change

In recent years Casa Loma has experienced financial difficulty. The tourism market in Toronto has been challenged by external factors in the last decade: the SARS epidemic, a severe global recession which still is in recovery, and most recently, a high Canadian dollar. Casa Loma has lagged in adapting to these challenges relative to other tourist and event venues largely because it lacked the financial and operational resources to adapt. Despite extensive investment by the City in exterior restoration of Casa Loma, the majority of the facility has not remained current due to a lack of net revenue for reinvestment.

The City and the Kiwanis Club of Casa Loma have mutually agreed to terminate the management agreement put in place to manage Casa Loma. However, the venue must continue to operate and honour its commitments to existing customers and to reinvest in the interior and programming to attract new customers.

A change is required to ensure Casa Loma operations are stabilized and to provide time to examine and determine a new future for this important physical asset.

3. The Rationale for a City Services Corporation

Casa Loma is operated as a tourist and event facility on a commercial for-profit basis. It offers programs outside the core mandate and expertise of the City in an entrepreneurial and competitive environment.

A corporate model that the staff, customers, and service providers understand will make this transition period as smooth as possible. It is anticipated that operations could continue with little disruption because there would be no need to change the status of employees, the accounting methods, banking processes, budget process, systems and procedures. In a corporate model all of the existing systems could continue. Since this is a temporary situation, continuation with minimal administrative change is desirable.

4. Business Model: The Casa Loma Corporation

The proposed City Services Corporation's mandate will include:

- Management of the day to day operations of Casa Loma;
- Marketing;
- Financial administration including budgeting;
- Management of third party contracts for matters such as catering, security, parking and caretaking;
- Retention and hiring of staff, including senior staff;
- Stabilization and incremental improvements to the interior features and programming.

The property and assets of Casa Loma will remain under the ownership and control of the City, and during the interim management period, the General Manager of Economic Development and Culture will undertake an investigation of the future direction for Casa Loma.

Attachment 2: Unanimous Shareholder Declaration – Casa Loma Corporation

WHEREAS the City of Toronto owns Casa Loma including the real property and has purchased the artefacts and trademarks;

AND WHEREAS the Kiwanis Club of Casa Loma and the City have agreed to terminate the management agreement for the operation of Casa Loma;

AND WHEREAS the City of Toronto and the Kiwanis Club of Casa Loma have entered into a termination and transition agreement governing the wind down of the management agreement;

AND WHEREAS the Shareholder, the City of Toronto, has determined that, in the public interest, it will establish an OBCA corporation pursuant to paragraph 1 of subsection 148(1) of *the City of Toronto Act, 2006* and the City Services Corporations regulations of *the City of Toronto Act, 2006*, with the operating name of the Casa Loma Corporation;

AND WHEREAS pursuant to subsection 108(3) of the OBCA, this declaration shall be, and is deemed to be, a unanimous shareholder declaration restricting, to the extent provided herein, the powers of the directors of the Casa Loma Corporation to manage or supervise the management of the business and affairs of the Corporation;

IT IS DECLARED THAT EFFECTIVE IMMEDIATELY THE CASA LOMA CORPORATION SHALL:

1. Assume responsibility from the date of this declaration for:
 - (a) prudent management of the operations of Casa Loma as a tourism and event venue including its marketing, sales, catering, parking, routine maintenance, security, caretaking and cleaning, financial administration, and general administration.
 - (b) existing contractual obligations affecting the operations of Casa Loma, excluding any contracts issued by the City of Toronto for capital works or maintenance of the physical plant or systems or grounds;
 - (c) retention, hiring, disciplining or removal of staff; and
 - (d) retention and management of consultants.
2. Work to stabilize and improve the operations of Casa Loma to make it more attractive as a City asset and a viable tourism and event venue;

APPROVED AS TO FORM

3. Produce an annual report on its progress for transmittal to the City through the General Manager of Economic Development and Culture for the information of City Council.
4. Work cooperatively with the Shareholder to help it determine the long run future of Casa Loma and in doing so share information with the Shareholder as requested through the General Manager of Economic Development and Culture, all to assist the City in making its decision regarding the future of Casa Loma.
5. Develop appropriate corporate policies to be approved by the board for procurement, conflict of interest, expense reimbursement, and financial delegation to staff.

Further, given the City of Toronto is making a unanimous shareholder's declaration to the Casa Loma Corporation, the City shall indemnify and hold harmless the directors and officers against any liabilities or expenses they may incur as a result of any legal action brought against them arising from compliance with the unanimous shareholder's declaration, such indemnity to be in a form satisfactory to the City Solicitor and the Deputy City Manager and Chief Financial Officer.

Dated this - day of 2011.

For Anna Kinastowski
City Solicitor

CITY OF TORONTO

By: _____
City Clerk

Deputy City Manager and Chief Financial
Officer

Attachment No. 3 – By-law No 1

BY-LAW 1

OF

CASA LOMA CORPORATION

A by-law relating generally to the transaction of the business and affairs of the
CASA LOMA CORPORATION

(herein called the “corporation”)

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BE IT ENACTED as a by-law of the corporation as follows:

Section One

INTERPRETATION

1.1 DEFINITIONS. In this By-law, unless the context otherwise requires:

- (i) words importing the singular include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders;
- (ii) “Act” means the *Business Corporations Act* (Ontario) as from time to time amended, and includes the regulations made pursuant thereto;
- (iii) “appoint” means “elect” and vice versa;
- (iv) “articles” means the articles of incorporation of the corporation filed - 2011, as from time to time amended, supplemented or restated;
- (v) “board” means the board of directors of the corporation and “director” means a member of the board;

- (vi) “by-laws” means this By-law and all other by-laws of the corporation from time to time in force and effect;
- (vii) “chair” means the chair of the board;
- (viii) “City” means the City of Toronto;
- (ix) “City Services Corporation Regulation” means Ontario Regulation 609/06 to the *City of Toronto Act, 2006*, as that regulation may be amended or supplemented from time to time, or any successor Regulation;
- (x) “corporation” means the corporation incorporated by articles of incorporation and named Casa Loma Corporation;
- (xi) “number of directors” means the number of directors provided for in the articles or, where a minimum and maximum number of directors is provided for in the articles, the number of directors determined by the shareholder from time to time;
- (xii) “shareholder” means the City of Toronto, the sole shareholder of the corporation; and
- (xiii) words and expressions defined in the Act shall have the same meanings when used herein.

Section Two

ACTIONS OF THE CORPORATION

2.1 REGULATION. The Corporation and its directors and officers shall comply with the City Services Corporation Regulation, and without limiting the foregoing shall have regard to s. 22 of that regulation which provides that the corporation’s non-compliance with that regulation may be considered sufficient cause to cancel the certificate of incorporation of the corporation.

Section Three

ADMINISTRATION OF THE CORPORATION

3.1 FINANCIAL YEAR. The financial year of the corporation shall end on the last day of December in each year.

3.2 EXECUTION OF INSTRUMENTS. Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the corporation in accordance with the delegation of authority approved by the board, which delegation shall set out the names of the individuals with signing authority, and any specific information relating to that authority.

3.3 **BANKING ARRANGEMENTS.** The banking business of the corporation shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the board may from time to time prescribe or authorize.

Section Four
DIRECTORS

4.1 **NUMBER OF DIRECTORS.** The Directors shall consist of:

- a) General Manager of Economic Development and Culture or his designate;
- b) Chief Corporate Officer or his designate;
- c) Deputy City Manager and Chief Financial Officer or his designate;
- d) Executive Director of Culture or her designate; and
- e) Chief Executive Officer of Exhibition Place.

The number of directors may be altered by the shareholder from time to time.

4.2 **QUORUM.** The quorum for the transaction of business at any meeting of the board shall consist of a majority of the number of directors to be on the board, as determined in accordance with section 4.1. Where there are one or more vacancies on the board, the remaining directors may exercise all the powers of the board as long as a quorum of the board remains in office.

4.3 **TERM.** Directors serve at the pleasure of the shareholder and the term of a director shall be three years. The office holders specified in section 4.1 serving on the board at the end of any term will be automatically re-appointed for another term.

4.4 **DIRECTORS CONTINUE.** Unless a director vacates the office for any reason, an incumbent director shall continue in office until a successor is appointed by the shareholder.

4.5 **REMOVAL OF DIRECTORS.** Subject to the provisions of the Act, the shareholder may remove any director from office and may appoint any person in his or her stead for the remainder of the term.

4.6 **VACATION OF OFFICE.** A director ceases to hold office when he or she dies; when he or she is removed from office by the shareholder or a successor is appointed by the shareholder; when he or she ceases to be qualified for election as a director; when he or she is deemed to have submitted his or her written resignation to the corporation pursuant to section 4.3; or when his or her written resignation is received by the corporation or, if a time is specified in such resignation at the time so specified, whichever is later.

4.7 VACANCIES. If a vacancy occurs in the board, the board immediately shall notify the shareholder and request that the shareholder fill the vacancy for the remainder of the term. A vacancy will occur upon a director ceasing to hold office, upon the number of directors being increased without the election of the requisite number of additional directors, or upon the failure to appoint the number of directors required to be appointed.

4.8 ACTION BY THE BOARD. Subject to any unanimous shareholder declaration the board shall manage or supervise the management of the business and affairs of the corporation. The powers of the board may be exercised at a meeting at which a quorum is present.

4.9 PLACE OF MEETING. Meetings of the board shall be held at any place within the Province of Ontario as long as a majority of meetings are held within the City of Toronto.

4.10 CALLING OF MEETINGS. Meetings of the board shall be held from time to time at such time and at such place, subject to section 4.9, as the board, the chair, the Chief Executive Officer of the corporation or any two directors of the corporation may determine, as long as the required notice is given in the manner provided in section 9.1 so that it shall be received not less than three business days before the day on which the meeting is to be held.

4.11 LACK OF QUORUM. If there is no quorum within fifteen (15) minutes after the time appointed for any meeting of the board, the chair shall call the roll and take down the names of the members then present, and the meeting shall then be adjourned until the next day scheduled for the meeting.

4.12 ADJOURNED MEETING. Notice of an adjourned meeting of the board is not required if the time and place of the adjourned meeting is announced at the original meeting.

4.13 REGULAR MEETINGS. The board by resolution may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named in that resolution. A copy of any resolution of the board fixing the date, place and time of such regular meetings shall be sent forthwith after being passed to each director and to other officials to whom such notice is required be given.

4.14 SPECIAL MEETINGS. Meetings of the Board other than regular meetings may be called in accordance with this By-law. A notice of such a meeting shall specify the purpose of or the business to be transacted at the meeting and no other business may be considered except with the approval of the Chair and at least 2 of the other directors present and voting. If the special meeting is for the express purpose of engaging the public, the Board shall give notice of that special meeting to the public at least ten calendar days in advance of the meeting and that notice shall set out the place and time of the meeting and the agenda items to be discussed in public at the meeting. The meeting shall be held in a publicly accessible place with a majority of directors present.

4.15 MEETINGS OPEN TO THE PUBLIC.

(i) Except for meetings described in subsection (ii), all meetings of the board and committees of the board are open to the public, and no person is excluded from a meeting except for conduct that the chair of the board or the committee of the board or the person acting as chair of the board or the committee of the board determines is improper conduct.

(ii) The board or a committee of the board may close a meeting to the public to discuss the following:

(A) Security of the corporation's property, or property owned by the City or any agency, board or commission of the City;

(B) Personal matters about an identifiable individual, including the corporation's employees;

(C) A proposed or pending acquisition or disposition of land by the corporation or for the corporation's purposes, or by the City or for the City's purposes;

(D) Labour relations or employee negotiations;

(E) Litigation or potential litigation, including matters before administrative tribunals, affecting the corporation or the City;

(F) Receiving advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

(G) A meeting held for the purposes of educating or training the board members, provided that at the meeting no board member discusses or otherwise deals with any matter in a way that materially advances the business or decision of the board or the committee of the board;

(H) A matter for which the board or a committee of the board has authorized a meeting to be closed under another act; or

(I) A request under the *Municipal freedom of Information and Protection Privacy Act*.

(iii) A meeting begins and ends in public.

(iv) Before holding a closed meeting, the board or the committee of the board shall pass a motion to hold a closed meeting. The motion shall state:

(A) That the meeting is a closed meeting;

(B) The general nature of the matter the board or committee is considering at the closed meeting; and

(C)The reasons the matter requires a closed meeting under subsection (ii) of this section.

(v) If the matter the board or a committee of the board is considering at a closed meeting no longer falls into one of the categories set out in subsection (ii) of this section, the meeting no longer is a closed meeting and continues in public.

Exception

(vi) Despite subsection 194 (2) of *City of Toronto Act, 2006*, a meeting may be closed to the public during a vote if,

- (A) subsection (ii) of this section 4.15 permits or requires the meeting to be closed to the public; and
- (B) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the City, to officers, employees or agents of a local board or of a committee of either of them or to persons retained by or under a contract with the City or local board.

4.16 CHAIR. The board will designate the General Manager of Economic Development and Culture or his designate to serve as chair of the board in accordance with the designation of the shareholder acting through City Council. The chair of the board shall preside at all board meetings. If the chair is not present at a meeting, then the directors present shall choose one of them to be chair for that meeting. The chair shall be charged with determining procedural questions that may arise in the course of meetings of the board.

4.17 VOTES TO GOVERN. At all meetings of the board every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes the chair of the meeting shall not be entitled to a second or casting vote. On a tie vote the motion fails.

4.18 MEETING BY TELEPHONE.

(a) Subject to the provisions of subsection (b) of this section, if all the directors present at or participating in a meeting consent, a meeting of the board or a committee of the board may be held by means of telephone facilities that permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates.

(b) If the Board wishes to meet by telephone, or with one or more Board members participating by telephone, it shall comply with the following requirements:

- (i) The Board shall give notice of the meeting and the time and place of that meeting in the manner required under this By-law;

- (ii) At least one member of the Board shall be physically present at the location of the meeting as identified in the notice of the meeting;
- (iii) The meeting shall be held either at a location within the City of Toronto or a room at Casa Loma that is equipped with a speaker phone;
- (iv) The meeting shall be open to the public, except when the Board is discussing matters that may be discussed at a closed portion of the meeting under the terms of this By-law, and
- (v) Minutes of the meeting are taken in the same manner as if all of the participating directors were physically present;

Directors should use all reasonable efforts to attend meetings of the Board or committees of the Board in person.

4.19 REMUNERATION. The directors shall not receive remuneration for their work as Directors. Expenses may be reimbursed in accordance with the City's policy for expense reimbursement for agencies, boards, commissions, and corporations.

4.20 SHAREHOLDER COMMUNICATIONS. The board generally shall communicate with its shareholder through the City Manager.

4.21 PERSONS ENTITLED TO BE PRESENT AT MEETINGS. The only persons entitled to be present at a meeting or a portion of a meeting of the board that is closed to the public shall be the directors of the corporation and others who, although not entitled to vote, are entitled or required to be present at the meeting under any provision of the Act, the articles or by-laws of the corporation, or a shareholder direction. Staff from the City Clerk's office or any other person providing secretarial services at meetings of the board or any committee of the board are entitled to be present at meetings or portions of meetings that are closed to the public. The City Auditor General or his or her designate also is entitled to attend any board meeting or meeting of any committee of the board. Any other person may be admitted to a closed meeting only on the invitation of the chair of the meeting, or with the consent of a majority of the number of directors appointed to the board.

4.22 CITY STAFF ATTENDANCE AT MEETINGS. Notwithstanding section 4.21, staff of the Mayor's Office, the City Manager or his designates, the City Chief Financial Officer or his designates or any other City official designated by the shareholder from time to time, or his or her designate shall be entitled to receive notice of and to attend all meetings of the board including the portions of those meetings that are not open to the public.

Section Five COMMITTEES

5.1 COMMITTEES. The board in its discretion may appoint such committees of the board as it deems appropriate. A Committee may only recommend to the board and may not stand in its place. The board shall not delegate to a committee the power to commit resources of the corporation.

5.2 TRANSACTION OF BUSINESS. The powers of a committee of the board may be exercised in a meeting at which at least 2 Directors are present.

5.3 PROCEDURE. Unless otherwise determined by the board, each committee shall have the power (i) to fix its quorum, provided that the quorum shall not be less than 2 members, (ii) to elect its chair, and (iii) to regulate its procedure.

5.4 REPORTING. Each committee of directors shall report to the board regularly. Major decisions of a committee shall be reported for information to the board at its next meeting. The board has the power to reject, amend or approve recommendations of a committee by resolution.

Section Six OFFICERS

6.1 APPOINTMENT. The board from time to time shall appoint such officers as the board may determine.

6.2 POWERS AND DUTIES OF OFFICERS. The powers and duties of officers of the corporation shall be such as the terms of their engagement call for or as the board may specify.

6.3 TERM OF OFFICE. The board, in its discretion, may remove any officer of the corporation.

Section Seven PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

7.1 LIMITATION OF LIABILITY. Every director and officer of the corporation in exercising his or her powers and discharging his or her duties shall (i) act honestly and in good faith with a view to the best interests of the corporation, or in accordance with any unanimous shareholder declaration from the shareholder to the board, and (ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no director or officer shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee, or for any loss, damage or expense incurred by the corporation through the insufficiency or deficiency of title to any property acquired by order of the board for or on behalf of the corporation, or for the insufficiency or deficiency of any securities in or upon which any of the moneys of the corporation shall be invested, or for any loss or damage arising from

the bankruptcy, insolvency or tortious acts of any person with whom any of the moneys, securities or effects of the corporation are deposited, or for any loss occasioned by any error in judgment or oversight on his or her part, or for any other loss, damage or misfortune whatsoever which happens in the execution of the duties of his or her office or in relation thereto, provided however, that nothing herein shall relieve any director or officer from the duty to act in accordance with the Act, the regulations under the Act, the Regulation, or other applicable laws and regulations, or from liability for any breach thereof.

7.2 INDEMNITY. Subject to the Act, the corporation shall indemnify each director or officer, each former director or officer and each individual who acts or acted at the corporation's request as a director or officer or in a similar capacity of another entity and his or her heirs and legal representatives (each, an "Indemnified Person"), against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal, administrative, investigative or other proceeding in which he or she is involved because of that association with the corporation or entity, if:

- (i) he or she acted honestly and in good faith with a view to the best interests of the corporation or, as the case may be, to the best interests of the other entity for which he or she acted as a director or officer or in a similar capacity at the corporation's request, or in accordance with any unanimous shareholder declaration made with respect to the corporation or such other entity; and
- (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

Subject to the Act, the corporation may advance money to each Indemnified Person for the reasonable costs, charges and expenses of any civil, criminal, administrative, investigative or other proceeding in which he or she is involved because of his or her association with the corporation or other entity, provided that such Indemnified Person shall repay the money if he or she did not act honestly and in good faith with a view to the best interests of the corporation or, as the case may be, to the best interests of the other entity for which he or she acted as a director or officer or in a similar capacity at the corporation's request.

Nothing in this by-law limits the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law.

7.3 INSURANCE. Subject to the Act, the corporation may purchase and maintain such insurance for the persons referred to in section 7.2 hereof as the board may from time to time determine.

Section Eight
SHAREHOLDER'S RESOLUTION

8.1 Subject to the Act, all resolutions regarding the corporation passed at a shareholder meeting or, in lieu of passage at a shareholder meeting, resolutions in writing and signed on behalf of the shareholder, shall be binding on the corporation.

Section Nine
NOTICES

9.1 **METHOD OF GIVING NOTICE.** Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served) pursuant to the Act, the regulations under the Act, other applicable laws and regulations, the articles, the by-laws or otherwise to the shareholder, or a director, officer, auditor or member of a committee of the board shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to that person's recorded address or if mailed to that recorded address by prepaid ordinary or air mail or if sent to that address by any means of transmitted or recorded communication or if sent by facsimile to the latest facsimile number of the person to whom it is to be given, as shown in the records of the corporation. A notice so delivered shall be deemed to have been received when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been received on the fifth day after mailing; a notice so transmitted shall be deemed to have been received when it is transmitted; and a notice sent by facsimile shall be deemed to have been received at the time of successful transmission. The recorded address of a director shall be his or her latest address as shown in the records of the corporation or in the most recent notice filed under the *Corporations Information Act*, whichever is the more current. The secretary may change or cause to be changed the recorded address of the shareholder, a director, officer, auditor or member of a committee of the board in accordance with any information believed by him or her to be reliable.

9.2 **COMPUTATION OF TIME.** In computing the date when notice must be given under any provision requiring a specified number of days notice of any meeting or other event, the day of giving the notice shall be excluded and the day of the meeting or other event shall be excluded. If the last day of a notice period falls on a Sunday or a holiday the period shall terminate at midnight of the day next following the said Sunday or holiday.

9.3 **OMISSIONS AND ERRORS.** The accidental omission to give any notice to the shareholder, a director, officer, auditor or member of a committee of the board or other persons or the non-receipt of any notice by any that person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to that notice or otherwise founded thereon.

9.4 **WAIVER OF NOTICE.** The shareholder or its representatives, a director, an officer, an auditor or a member of a committee of the board may at any time waive any notice, or waive or abridge the time for any notice required to be given to him or her under any provisions of the Act, the regulations there-under, the articles, the by-laws or

otherwise and that waiver, whether given before or after the time of the conduct of the business of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be.

Section Ten
EFFECTIVE DATE

10.1 EFFECTIVE DATE. Subject to the Act, this by-law shall come into force immediately upon its approval by the board and it shall be delivered to the shareholder for approval. The initial approval by the shareholder and any amendments made by the shareholder will come into effect at the date of approval of such amendments by the shareholder.

ENACTED as of ____ day of