SUBJECT: Lease Agreement – Dundas Little Theatre Inc., 37 Market Street, Dundas (PED10019) (Ward 13)

RECOMMENDATION:

(a) That Council approve the City of Hamilton entering into a new lease agreement with Dundas Little Theatre Inc. (DLT) for the property known as 37 Market Street, Dundas, subject to the following terms:

(i) Term:

The Term of the Lease shall be for a period of ten (10) years, commencing on the 1st day of July 2009.

(ii) Property:

37 Market Street, Dundas, with a total rentable area of 669 square metres (7,202 square feet) more or less as shown on Appendix "A" attached to Report PED10019;

(iii) Rental Rate:

Annual rent of $2.00 to be paid in advance on the first day of each year during the Term and any renewal term, payable to Account No. 46110-792187 (Special Agreement Account).
(iv) **Additional Rent:**

The Tenant will be responsible for any taxes, operating costs, or other additional costs imposed on or incurred by the Landlord or the Leased Premises as a result of the grant of this Lease or as a result of the use by the Tenant of the Leased Premises. It is intended that this Lease and rent are to be completely net and carefree to the Landlord, that the Landlord is not responsible during the term or any renewal term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the use of the Leased Premises.

(v) **Maintenance and Repairs:**

The Tenant shall at its sole cost and expense and at all times throughout the term or any renewal term, keep and maintain the whole of the Leased Premises (including all equipment, machinery and fixtures therein) including repairs or replacements which are interior and exterior, and the Landlord shall not during the term or any renewal of this Lease be called upon to make any repairs or replacements of any nature or kind whatsoever.

(vi) The Tenant shall, at its sole cost and expense and at all times throughout the term or any renewal term, be responsible for:

1. providing janitorial services for the Leased Premises including the provision of all the cleaning materials;
2. maintain the landscaped grounds of the building, adjoining parking area, adjoining walkways and common areas in good repair and clean condition when DLT is operating or conducting business;
3. effecting prompt removal of snow and ice from the sidewalks, steps, roads and parking areas serving the Leased Premises;
4. paying all charges for water and electricity supplied to the Leased Premises;
5. heating the Leased Premises;
6. maintaining a ventilation and air conditioning system for the building;
7. cleaning the windows in the Leased Premises;
8. performing all Tenants’ Work outlined in Schedule “F” of the Lease.

(vii) **Tenant’s Work - Schedule “F”:**

The Tenant shall be responsible at its sole cost for completing all additional work required to the Leased Premises as outlined in the Condition Assessment, with all capital works and repairs being carried out during “dark” hours, when the theatre is not in session. Prior to each and every renewal period, the Leased Premises shall undergo an updated
Condition Assessment, and the Tenant shall be responsible at its sole cost for completing all additional work required to the Leased Premises as outlined in the updated Condition Assessment(s). The Landlord shall allow a six (6) month period of grace for the Tenant to complete capital improvements, and the Tenant shall provide the Landlord with a clear inspection report upon the completion of each project or item undertaken. The Tenant shall also provide for annual inspections (fire safety and electrical components) of the building.

(viii) **Use of Premises:**

The Leased Premises shall be used only for the purpose of operating a centre for the performing and visual arts open to the public, and for no other purpose.

(ix) **Option to Renew:**

Upon six (6) months written notice before expiry of the initial ten (10) year term, the Tenant will have the option to renew the lease for two (2) additional five (5) year terms, on the same terms and conditions as stated herein.

(b) That the Mayor and City Clerk be authorized and directed to execute the Lease in a form satisfactory to the City Solicitor and subject to all taxes being paid in full unless otherwise directed by the General Manager of Finance and Corporate Services.

---

Tim McCabe  
General Manager  
Planning and Economic Development Department

**EXECUTIVE SUMMARY:**

This report provides staff direction to enter into a long term lease with Dundas Little Theatre Inc. This will support the Lessee’s application for Trillium funding from the Province which will enable it to continue to operate, maintain and make capital improvements to the building at 37 Market Street in Dundas, commonly known as the Garstain Centre for the Performing Arts.

**BACKGROUND:**

The theatre, situated between Grightmire Arena and the Dundas Community Pool, was constructed in 1980 using funds raised by members of The Dundas Little Theatre (DLT)
and matched by Wintario to a total of $352,000. Since its construction, the Centre has been managed and operated exclusively by DLT, which is solely responsible for operating the facility and covering its day to day maintenance costs.

DLT provides accessible and affordable entertainment to the City of Hamilton. Efficient stewardship allows the Centre to offer low ticket prices compared with other theatre venues in this region and special price points for seniors and students. Aside from its continuing list of productions throughout the year, the Centre offers a not-for-profit drama program for youth aged 9 to 14 during the summer months.

Designed solely as theatre performance space, its interior configuration is somewhat limited. DLT wishes to upgrade and modernize this facility at its own cost, with funding from the Province by way of a Trillium grant together with funds to be raised by DLT.

Tenancy of this facility has remained uninterrupted since 1979 when the original pool's change room building was demolished and rebuilt by DLT. Over the years, each succeeding lease was renewed in five year terms, with the latest term having ended on April 6, 2006. Since that time, DLT has remained on the premises on an overhold basis, continuing to pay for maintenance, repairs and capital improvements.

Over the next five (5) years, there are several major capital replacements needing to be addressed by DLT, including but not limited to:

- Deteriorated Structural Framing
- Exterior Walls (Wood Siding)
- Floor Finishes
- Structural Framing – Deteriorated Concrete Roof Deck
- Exterior Doors
- Interior Lighting
- Fire Alarm System
- Rooftop Condensers

The cost of these and minor replacements amount to an estimated $131,338, based on capital cost renewal estimates provided by Brook & Brook Building Consultants, dated January 2008. DLT is prepared to carry out the foregoing along with its own building improvements, if the City approves a long term lease for an initial term of ten (10) years and two five (5) year renewal periods at the nominal consideration of $2.00 per annum.

Trillium funding requires proponents to demonstrate stability. While DLT’s history will speak for itself in terms of its viability, support from the Province to fund renovations will require DLT’s confirmation that a stable tenure exists. In this instance, a long term lease with the City of Hamilton is required to secure Provincial funding.

In its original lease agreement with the City, DLT was mandated to maintain and operate the Centre on behalf of the community as a cultural centre for the performance of visual and creative arts, and to carry on other activities in support thereof. DLT has
fulfilled this mandate and continues to do so, to a growing audience. Being a successful enterprise over its thirty (30) years of productions, DLT is considered to be a cultural asset to the City.

**ANALYSIS OF ALTERNATIVES:**

This facility is considered a non-core City asset, surplus to municipal requirements; there are no City programs in this building. In managing the City’s real estate portfolio, staff must consider alternatives including the cost of “doing nothing”, that is, continuing to own this facility and extending the leasehold at nominal value on a net and carefree basis to the City.

Given its location, situated between the Grightmire Arena and the Dundas Community Pool amidst City parkland, with no significant frontage of its own and having to share parking, it would not be appropriate to sever and sell the Centre separately.

On February 17, 2005, Portfolio Management Committee recommended that a long term (10 year) lease of the land and building be granted with DLT assuming responsibility for all maintenance and capital costs associated with the building.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** If Council elects to continue the lease with DLT on the proposed terms, the City will be relieved of the financial burden, long term capital costs and liabilities associated with managing this asset.

**Staffing:** There are no staffing implications arising out of this recommendation.

**Legal:** Legal Services has been involved in the development of the Lease Agreement as to form, and will continue its involvement until the lease transaction is completed.

**POLICIES AFFECTING PROPOSAL:**

This recommendation is consistent with the Real Estate Management Portfolio Strategy Plan, as approved by Council on November 24, 2004, to lease property for other than market value if such an arrangement is deemed by Council to be in the public interest.

A ten (10) year business plan outlining DLT’s plans for continuing to meet operating costs while assuming responsibility for the Centre’s major capital costs under the terms of the proposed long term lease was being submitted to the City. Based on the business case presented and DLT’s history with this property, it is evident that DLT could assume responsibility for the cost of capital improvements to the Centre, maintain and refurbish the Centre to the City’s current standards.
There is no likelihood this building will be required for program needs over the next ten (10) years and if there were a need, the lease provides for early termination upon notice to the Tenant of not less than one year.

**CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:**

- Legal Services Division, Corporate Services Department
- Risk Management Section, Corporate Services Department
- Recreation Division, Community Services Department
- Portfolio Management Committee

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- Community Well-Being is enhanced.  ☑ Yes  ☐ No
  Adds to the vitality and development of local theatre arts.

- Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
  Provides a cultural forum where artists, craftspeople and the community can enjoy fine arts.

- Economic Well-Being is enhanced.  ☑ Yes  ☐ No
  Stimulates jobs, education, tourism and tax revenue.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☐ Yes  ☑ No

DC/sd
Attach. (1)
Appendix “A” to Report PED10019

Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number: 2009-101
Date: December 2, 2009
Scale: N.T.S.

Appendix “A”

Subject Property

Tenant: Dundas Little Theatre Inc.
37 Market Street, Dundas
(Garstin Centre for the Performing Arts)
Leased Premises: (Sq. Ft) 7, 202

Ward 13 Key Map

N.T.S.