

ADDENDUM

The Mayor's Benevolent Activities

The Terms of Reference directed me to make findings as to the relationship among the named parties, including the mayor and World Class Developments (WCD). Accordingly, Commission counsel led evidence about the extent to which WCD, as well as other parties, had contributed to the mayor's gala and other benevolent activities to which the mayor had lent her name. I had understood (or perhaps assumed) that events such as the mayor's gala garnered proceeds which were then administered by registered charities.

Some months after the close of evidence and final submissions, it became apparent from media reports that my understanding was not correct. I believed it to be important that the record be complete and accurate and directed Commission counsel to conduct some further inquiries and seek production of documents concerning the way in which the mayor and the city organized and administered the mayor's gala and related events.

The mayor and city provided an extensive volume of materials, and I am grateful to them for their assistance. Commission counsel interviewed a number of witnesses, including the mayor. The mayor and city agreed that the record might be supplemented by the following agreed statement of facts. I believe this statement provides an important clarification of the record.

I have not made recommendations about the participation of the mayor and city in charitable events. To do so would have required that I reopen hearings to allow for contextual and expert evidence concerning an area that is far from central to the

work of the Inquiry. Given the importance of these issues, however, city council may wish to examine them in its process, perhaps with the involvement of the integrity commissioner.

Agreed Statement of Facts

The Mayor's Gala

A group of citizens approached the Mayor in 1987 about organizing an annual evening event to promote Mississauga and allow citizens to enjoy themselves at a fine dinner featuring excellent entertainment. The event was expected to promote community spirit, and would raise funds for the Living Arts Centre.

The Mayor agreed to lend her name to the event which became known as the Mayor's Gala. The Mississauga business community supported the Gala generously in the years since 1987, both in the purchase of tables and in the donation of auction items. It was understood by all those involved that the purpose of the Gala was the promotion of arts in Mississauga through the holding of a premier event and through the distribution of profits to the arts community.

The City was heavily involved in the organization and administration of the Mayor's Gala until 2008. At the Mayor's insistence, the City always recovered any cost associated with municipal resources or staff time employed in the Gala.

Each year the Gala had an organizing committee which sought out sponsors and donations, selling tickets and arranging for entertainment at the event. The Organizing Committee consulted with the Mayor on many of the details. City staff were involved in the administration of the Mayor's Gala including the handling of all proceeds and distribution of funds. The City was reimbursed, on a cost-recovery basis, from the proceeds of such Gala for the time spent by City staff.

The Gala has been consistently profitable. During the time that the Gala Fund was administered by the City, the Mayor exercised sole authority over grants from the Gala Fund. Grants were provided to a number of local arts groups as sustaining funding. Members of Council were aware and accepted that the Mayor made the final decision on the distribution of funds. Over and above the funds which had been initially contributed to building the Living

Arts Centre, the City administered fund distributed approximately \$750,000 to the arts community. By 2007, the fund had accumulated a surplus of some \$2.8 million which was held by the City in an interest-bearing account (“the Gala Fund”).

From 1987 to 2006, donors to the Gala were given tax receipts by the City, upon request. Tax receipts for donations to the Gala were not provided by the City after 2006. The Mayor had no involvement in the issuance of tax receipts. In 2011, it was determined by the City that the tax receipts provided to donors to the Gala between 1997 and 2006 did not comply with the *Income Tax Act*, RSC 1985 c.1; however, there do not appear to have been any adverse consequences to donors.

The Hazel McCallion Fund for Arts, Culture and Heritage

In 2005, Mayor McCallion created a Mississauga Arts Review Task Force, which was to consider ways to improve arts funding in Mississauga. On December 14, 2005, the Mississauga Arts Review Task Force reported to the Mayor and City Council. It recommended in part that,

“The Mayor’s Gala Fund be named “The Hazel McCallion Endowment for the Arts’ and investment responsibility be transferred to the Community Foundation of Mississauga and the interest be allocated annually by the Office of the Arts based on input by the Mayor.”

On May 24, 2006, the City Manager was directed by City Council to work with the Mayor to implement this and other recommendations on the terms and conditions set out in the Task Force report.

Following negotiations between the City and the Community Foundation of Mississauga, the Community Foundation of Mississauga Donor Advised Fund Agreement (“the Agreement”) between the Mayor and the Community Foundation of Mississauga was signed on March 1, 2007.

The Agreement has been designated Exhibit 724.*

Under the terms of the Agreement, Mayor McCallion was described as having “made a gift of \$2,340,000 to the Foundation to establish a donor-advised fund” which was to be known as The Hazel McCallion Fund for Arts, Culture

* See Appendix I at the end of this Addendum.

and Heritage (“the Fund”). Given that the Gala Fund had been created by public and corporate ticket purchases from 1987 to 2007, the Mayor acted as a trustee in making this donation. The gift was made in perpetuity. The Mayor did not receive a tax receipt for this donation.

The Mayor and the City Manager of Mississauga were named advisors of the Fund. The advisors were and are to remain in office until either of them dies or becomes incapable of managing her affairs, or resigns. Under the terms of the Agreement Mayor McCallion has ongoing rights regarding the naming of advisors. (Paragraph 2):

Mayor McCallion shall be entitled to appoint additional individuals as Advisors of the Fund and replace resigning Advisors and name substituted Advisors in the event an Advisor ceases to qualify as an Advisor hereunder during her lifetime. Mayor McCallion shall notify the Foundation in writing of all appointments of Advisors. In the event Mayor McCallion is unable or unwilling to appoint an Advisor to fill a vacancy ... the then City Manager for the Corporation of the City of Mississauga shall be entitled to appoint Advisors to the Fund. (Exhibit 724, paragraph 2)

On the face of the document, the advisors, currently the City Manager and the Mayor, also retained advisory powers over distributions from the Fund: At paragraph 7 of Exhibit 724, the Agreement, provides that:

Notwithstanding that the Directors of the Foundation retain absolute discretion in making grants from the Fund, the intention shall be for the Foundation to make grants, at least annually, in accordance with the Foundation’s policy in effect from time to time, based on recommendations and direction to the Foundation from the Advisor(s). All such recommendations shall be in writing to the Foundation for approval by the Board of Directors. [emphasis added]

When distributions are required by the Foundation and when no such recommendations are received by the Foundation, or if made are not acceptable to the Board of Directors of the Foundation, distributions will be made at the discretion of the Board of Directors of the Foundation but shall be in keeping with the arts, culture and heritage purposes for which the Fund was established.

The Policies of the Community Foundation referred to in this language and appended to the agreement require that:

Grants from a Fund may be issued to Canadian registered charities; a Canada Revenue Agency approved University, a municipality, etc. Granting may only occur when the major portion of the donated Funds has been received. The Foundation is subject to disbursement quota requirements made under the *Income Tax Act* (Canada) and the Foundation retains the right at all times to grant in accordance with these requirements.

The language must also be read in conjunction with the Community Foundation’s own governing documents (below).

Decisions as to grants from the Fund will ultimately fall to be made by the Community Foundation of Mississauga. The Community Foundation has certified to the Community Foundations of Canada (its national affiliate body) that:

2. Our Community Foundation acts independently of governments, families/ donors, corporations, associations and other groups. [See Exhibit 725, Criteria for continuing membership in Community Foundations of Canada (CFC) (2011)].

The relevant portion of the agreement between the Community Foundation of Mississauga and the Community Foundation of Canada is attached as Exhibit 725.*

Given this certification, the Community Foundation takes the view, as it must, that it has absolute independent authority to make granting decisions. The Mayor does not disagree with this view.

To the date of this Report, questions about authority to make grants have been moot. The Hazel McCallion Endowment for the Arts, Culture and Heritage may make distributions only from investment income, and the Endowment has had no investment income from which to make grants, given market conditions, in 2008 and 2009.

* See Appendix 2 at the end of this Addendum.

The Hazel McCallion Foundation for the Arts, Culture and Heritage

Each year the Mayor's Gala continues to have an organizing committee which is responsible for seeking out sponsors and donations, selling tickets and arranging for entertainment at the event. The organizing committee continues to consult with the Mayor on many of these details. However, since 2008, the Mayor's Gala has been administered by the Hazel McCallion Foundation for the Arts, Culture and Heritage ("the HMFACH") and has incorporated Gala profits into its accounts. As well, the HMFACH received approximately \$325,000 held back from the Mayor's "donation" of \$2.3-million to the Community Foundation of Mississauga. This amount has been supplemented by donations and proceeds from the Mayor's Gala in 2009 and 2010, so that in its August 31, 2010 financial statement the HMFACH showed operating funds of \$982,417.

The HMFACH is operated by a volunteer Board of Directors led by its President, Jim Murray. The secretary-treasurer is Douglas Fowles. Mr. Murray and Mr. Fowles have long been involved on the organizing committee for the Mayor's Gala. The board also includes Duncan Hobbs, David O'Brien, Peter Smith and Joe Watson. Peter McCallion was a member of the Board of the HMFACH until early 2011, when he tendered his resignation. The HMFACH was incorporated by Letters Patent on June 13, 2008. The Board had established a grants program for "projects that will raise the pulse of arts culture and heritage in the City of Mississauga, or that showcases the art and ingenuity of Mississauga citizens to the rest of the world" (website). Mayor McCallion is not involved in decisions as to grants from the HMFACH.

The Hazel McCallion Charitable Fund

Since 1992, Mayor McCallion has agreed to associate her name with a charity golf tournament. More than \$2,000,000 has been distributed by the golf tournament's Charitable Fund to more than 300 charities in Mississauga with an emphasis on charities which benefit children and youth in Mississauga. The Mayor Hazel McCallion Charitable Fund is a registered charity pursuant to the *Income Tax Act*, RSC 1985 c.I.

The Charity Golf Tournament is organized annually by the Mayor's Charity Golf Committee which includes Ron Lenyk (chair), former City employee Shalini Alleluia, Doug Fowles (who is also a member of the HMFACH), Peter McCallion, Jim Murray, Michael Parsons, John Rogers, Ron Starr and Gerry

Townsend. The Mayor is *ex officio* a member of the Charity Golf Committee.

The Golf Tournament is administered by a volunteer Board of Directors which makes the decisions regarding the distribution of funds based on a publicized grant application process which gives priority to charities with a youth orientation. The Board includes John Rogers (President), Ron Lenyk (Vice-President), Shalini Alleluia (Secretary), Gerry Townsend (Treasurer), Peter McCallion, Michael Parsons and Ron Starr. The Mayor is *ex officio* a member of the Board of Directors.

The Mayor has the authority to distribute up to \$1,000 to applicants in cases of emergencies. She is also consulted by the Board on grant applications. The City has no role in the administration or distribution of the funds.

ADDENDUM APPENDIX 1

The Community Foundation of Mississauga¹ Donor Advised Fund Agreement

THIS AGREEMENT MADE the 1st day of March, 2007

BETWEEN:

Hazel McCallion of the City of
Mississauga, in the Province of Ontario.

(hereinafter referred to as "Mayor McCallion")

- and -

The Community Foundation of Mississauga, a
corporation without share capital, incorporated
under the *Corporations Act* (Ontario) and
registered as a charity under the *Income Tax Act*
(Canada).

(hereinafter referred to as the "Foundation")

1. Mayor McCallion has made a gift of \$2,340,000.00 (the "Donation") to the Foundation to establish a donor advised fund, which shall be known as the Hazel McCallion Fund for Arts, Culture and Heritage (the "Fund"). It is understood and agreed between the parties that no tax receipt shall issue from the Foundation in respect of the establishment of the Fund.
2. The initial advisors of the Fund are Mayor McCallion and the City Manager for the Corporation of the City of Mississauga (the "Advisors"). An individual shall cease to be an Advisor when he/she dies or becomes incapable of managing his/her affairs or advises the Foundation in writing that he/she no longer wishes to act as an Advisor. Mayor McCallion shall be entitled to appoint additional individuals as Advisors of the Fund and to replace resigning Advisors or name substituted Advisors in the event an Advisor ceases to qualify as an Advisor hereunder during her lifetime. Mayor McCallion shall notify the Foundation in writing of all appointments of Advisors. In the event Mayor McCallion is unable or unwilling to appoint an Advisor to fill a vacancy for any reason whatsoever, the then City Manager for the Corporation of the City of Mississauga shall be entitled to appoint Advisors to the Fund.

¹ Operates and publicly known as Community Foundation of Mississauga

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DIRECTION TO HOLD FUND IN PERPETUITY

3. Mayor McCallion hereby directs that the value of the Donation shall be held permanently by the Foundation. Any subsequent donations shall be held on the same terms and conditions as set out in this agreement unless otherwise specified by the person who has made such subsequent donation.

INVESTMENT OF THE FUND

4. The Fund will be invested in accordance with the investment policies and guidelines of the Foundation in effect from time to time. The Foundation shall determine its policies and practices in a manner consistent with its letters patent, applicable corporate law and this Agreement and shall advise the Advisors thirty (30) days in advance of any public announcement of major changes to its established policies or practices, including its Investment Policy and Spending Policy. For the purpose of this section “major change” includes but is not limited to a change with respect to the Foundation’s management of its organization, programs, Investment Policy and Spending Policy.

The assets in the Fund may be pooled for investment purposes with other endowment funds held by the Foundation (the “Pooled Fund”). The Pooled Fund is managed by professional investment counselors and is monitored by the directors of the Foundation. By investing the Fund in the Pooled Fund, the Foundation is able to maximize the return on investment while minimizing operating costs.

The Foundation shall ensure that the Fund will, for accounting purposes, retain its separate identity and be named the Hazel McCallion Endowment Fund for Arts, Culture, and Heritage.

The Foundation shall ensure that income from the pooled funds is calculated on a yearly basis and that income earned on the pooled funds is distributed on a pro-rata basis based on the amount of the Fund in relation to the total value of the pooled funds. Interest income shall be distributed in accordance with the Foundation’s Spending Policy, which may be amended from time to time.

The Foundation shall establish and maintain financial and administrative procedures and records which ensure the accurate recording and reporting of its operations and which maintain adequate administrative and financial control and shall maintain accounting procedures consistent with sound operating practices in accordance with generally accepted accounting principles.

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The Foundation shall provide the Advisors with yearly reports on the investment performance of the pooled funds.

The report shall, at a minimum, describe:

- (a) investment performance for the year and the amount of interest income available for use for arts related purposes as determined annually by the Advisors; and
- (b) an outline of the investment return for the pooled funds held by the Foundation;

The Foundation shall provide the Advisors with such additional financial information with respect to its investments or its Investment Policy as requested or required by the Donor.

The Foundation shall in each year of the Term provide, within six (6) months of its fiscal year end, annual audited financial statements to the Advisors for review if requested by the Advisors. The form and content of the annual audited financial statements shall be in accordance with Canadian generally accepted accounting principles applicable to not-for-profit charitable organizations.

ADMINISTRATION FEE

- 5 The Foundation may charge an annual administration fee in the amount of two (2.0) per cent of the Fund in respect of administration of the Fund, calculated from the date of receipt of the Fund from the Donor. Such administration fee shall cover both administrative services and any investment management fee. In the event that the withdrawal date does not coincide with the anniversary date of the herein agreement, the amount withdrawn shall be an amount pro-rated on a monthly basis but shall not exceed the two (2.0) per cent agreed upon by the Donor and the Foundation.

DISTRIBUTIONS FROM THE FUND

6. The directors of the Foundation will determine the amount available for distribution from the Fund in accordance with applicable legislation and the Foundation's Spending Policy. Please see Schedule (A) attached which shows the percentage of the Fund value, which is available for distribution in accordance with the Foundation's current spending policy. This spending policy is subject to change at the discretion of the directors of the Foundation.

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7. Notwithstanding that the directors of the Foundation retain absolute discretion in making grants from the Fund, the intention shall be for the Foundation to make grants, at least annually in accordance with the Foundation’s policy in effect from time to time, based on recommendations and direction to the Foundation from the Advisor(s). All such recommendations shall be made in writing to the Foundation for approval by the Board of Directors.

When distributions are required by the Foundation and when no such recommendations are received by the Foundation, or if made are not acceptable to the Board of Directors of the Foundation, distributions will be made at the discretion of the Board of Directors of the Foundation but shall in keeping with arts, culture, and heritage purposes for which the Fund was established.

ESTABLISHMENT OF THE FUND

8. Confirmation of the terms of the Fund, approval by an authorized signing authority of the Foundation, and receipt of the Donation by the Foundation shall constitute establishment of the Fund.

RECEIPTS

9. The Foundation will issue receipts in respect of all future donations to the Fund, unless the Donor does not require or is not entitled to a receipt for income tax purposes.

INSURANCE

10. The Foundation shall commencing upon the execution of this Agreement, maintain or cause to be maintained, with an insurance company registered to conduct business in the Province of Ontario the following types of insurance:
 - a) Comprehensive General Liability; insurance in respect of the operations of the Foundation against claims for personal injury including death, property damage or loss indemnifying and protecting the Corporation of the City of Mississauga (the “City”), its elected officials, officers, employees, or agents, to the inclusive limit of not less than Two Million Dollars (\$2,000,000). Such insurance shall specifically state by its wording or endorsement that:
 - i. the City is added as an additional insured under the policy;

- ii. the policy shall have provisions for cross liability and severability of interests as between the City and the Foundation; and
 - iii. it includes tenants legal liability.
- b) Property insurance coverage to adequately cover the Foundation's property, equipment and other such property in the care, custody and control of the Foundation, which policy contains a waiver of rights of subrogation against the City.
 - c) Directors and Officers liability coverage including corporate indemnification coverage in all respects and with deductible levels satisfactory to the Advisors and containing a One Million (\$1,000,000) each occurrence limit of coverage, subject to a policy aggregate limit.
 - d) Crime Insurance coverage covering the loss and/or damage to Money and Securities by actual destruction, disappearance or wrongful abstraction inside and outside the premises, through depositor's forgery and third party computer and funds transfer fraud and including coverage for employee dishonesty under a primary commercial blanket bond, Form A, and containing a One hundred thousand (\$100,000) each occurrence limit of coverage.

The insurance policies required pursuant to this section shall be primary and shall not call into contribution any insurance available to the Corporation of the City of Mississauga.

GENERAL OBLIGATIONS OF THE FOUNDATION

- 11. The Foundation shall provide the Advisor(s) with signed copies of minutes of the Annual General Meeting of the Foundation after their approval by the Board.
- 12. The Foundation shall permit Mayor McCallion and/or the Advisors to attend, on a non-voting basis, the Annual General Meeting
- 13. The Foundation shall notify the Donor, in writing, immediately upon any of the following acts occurring:
 - (a) the bankruptcy or insolvency of the Foundation, the filing against the Foundation of a petition in bankruptcy, the making of an assignment or proposal for the benefit of creditors by the Foundation, the appointment of a receiver or trustee for the Foundation or for any assets of the Foundation, or the institution by

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or against the Foundation of any other type of insolvency proceeding under the *Bankruptcy Act* or otherwise;

- (b) the institution by or against the Foundation of any formal or informal proceeding for the dissolution or liquidation of the Foundation, or the winding up of the affairs of the Foundation;
- (c) the Foundation ceases to be a non-share capital non-profit corporation incorporated under the Canada Corporations Act, accorded charitable status by the Canada Revenue Agency - Charities Directorate.

IN WITNESS WHEREOF Mayor McCallion and the Foundation have executed the Agreement as of the date set out above.

SIGNED AND DELIVERED

In the presence of:




Witness

) 

Hazel McCallion

The Community Foundation of
Mississauga



Eileen MacKenzie, Executive
Director



Ray Lessard, Vice President,
Board of Directors

We have authority to bind the
Corporation.

Schedule A

Community Foundation of Mississauga Policies

As of January 1, 2007 (Fiscal 2007)

The Foundation's policies are designed to create a balance between current spending and preservation of capital over the long term.

Spending policies are established or revised by the Board of Directors of the Community Foundation from time to time. The spending policy for a particular fiscal year may be adjusted based on a range of factors, including but not limited to, investment returns for the previous year and/or overall market conditions. Spending is comprised of two components; granting to charities and investment and administrative fees.

Granting:

Grants from a Fund may be issued to Canadian registered charities; a Canada Revenue Agency approved University, a municipality, etc. Granting may only occur when the major portion of the donated Funds has been received. The Foundation is subject to disbursement quota requirements made under the *Income Tax Act* (Canada) and the Foundation retains the right at all times to grant in accordance with these requirements.

Grants will be based on the Annual Net Income realized during the prior fiscal year, with a target pay-out of 4.5% of the Average Weighted Capital.

Investment and Administration Fees:

A percentage fee to cover investment management expenses and Foundation administrative costs is charged to the Fund each month. The fee rate depends on the type of Fund established. Some Funds may require a set-up fee or a minimum fee charge for the year.

Donor Advised Fund

Total Fee
2.00%

The fee structure for the Fund may be revised by the Foundation from time to time upon the prior written approval of Mayor McCallion and/or the Advisors.

ACKNOWLEDGEMENT OF RECEIPT OF FUNDS

TO: Hazel McCallion

AND TO: The Corporation of the City of Mississauga

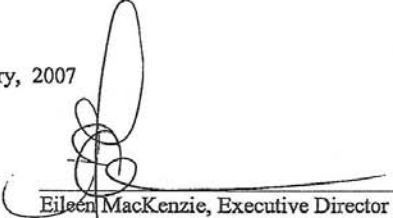
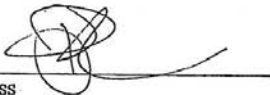
FROM: The Community Foundation of Mississauga

RE: Donor Advised Fund Agreement – Hazel McCallion Fund for Arts, Culture and Heritage

I hereby acknowledge receipt of the sum of TWO MILLION, THREE HUNDRED AND FOURTY THOUSAND DOLLARS (\$2,340,000.00) in respect of the establishment of the Hazel McCallion Fund for Arts, Culture and Heritage.

Dated at Mississauga on this 28th day of February, 2007

Witness
Print Name:



Eileen MacKenzie, Executive Director

ADDENDUM APPENDIX 2



COMMUNITY FOUNDATIONS
OF CANADA FONDATIONS COMMUNAUTAIRES
DU CANADA

Criteria for continuing membership in Community Foundations of Canada (CFC) (2011)

It is essential that criteria 1- 7 are met in order to maintain status as a member in CFC. Should any of these criteria not be met at the time of completing this form, CFC will support you as you work toward meeting the criteria within a mutually agreed upon time frame.

	(check mark ☑)	YES	NO
1. Our community foundation is officially registered as a charity and is in good standing with CRA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.a Charitable Business Number <u> #892395112 RR0001 </u>			
1.b T3010 for most recent fiscal year has been filed with CRA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Our community foundation acts independently of governments, families/donors, corporations, associations and other groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Our community foundation is led by a volunteer board of directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Our Board has the following in place:			
3.a A nominations process for selecting new Directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.b A Board orientation when new Directors join the Board	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.c A description of the role of the Board of Directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.d A description of individual Director's roles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.e Human resource policies (if your foundation has volunteer or paid staff)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.f A process for ongoing review of these descriptions/policies	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.g A process for reviewing its own performance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Our community foundation is structured primarily as a growing collection of funds that serve the varied interests of many donors, promote the community foundation as a champion of philanthropy and include a significant portion of permanent funds for the long term benefit of the community	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.a Our donor agreements are in place	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>