

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING OF NOVEMBER 15, 2016
FROM:	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES & CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	SUBORDINATION AGREEMENT REQUEST: LIBRO CREDIT UNION AND LONDON COMMUNITY PLAYERS

RECOMMENDATION

That on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the attached proposed By-law (Appendix “A”) **BE INTRODUCED** at the Municipal Council meeting of November 22, 2016: the following action be taken:

- a) **TO APPROVE** the Subordination Agreement between Libro Credit Union Limited (Libro), The Corporation of the City of London (City) and London Community Players (LCP), placing the City’s security interest in the LCP second to that of Libro, attached as Schedule “1” of the By-law;
- b) **TO AMEND** the Loan Agreement between the City and the LCP to reference the revised Libro mortgage security value (\$350,000); and,
- c) **TO AUTHORIZE** the Mayor and City Clerk to execute the Agreement substantially in the form in a) above and to the satisfaction of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer and the City Solicitor.

It being noted that the subordination was previously agreed to in the September 2015 loan agreement between the City and the LCP.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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“Interest-Free Loan – London Community Players (Palace Theatre),” Corporate Services Committee, July 21, 2015.

BACKGROUND

The Managing Director, Corporate Services and City Treasurer, Chief Financial Officer has received a request from Libro Credit Union (Libro) for the City of London to enter into a joint agreement with Libro and the London Community Players (LCP) regarding the subordination of the City’s security interest associated with the \$100,000 loan to the LCP.

LCP has concluded mortgage renewal negotiations with Libro, securing better rates for the Palace Theatre mortgage as well as the LCP’s working line of credit.

In September 2015, the City entered into an agreement with the LCP to provide a 20 year interest-free loan to help fund needed repairs and renovations to the Palace Theatre. The \$100,000 loan was secured as an interest against the property, meaning that the City would be able to recover its loan amount in the event that the LCP was unable to satisfy its repayment commitments.

Section 4.2 of the agreement commits the City to having its security ranked second behind Libro, given that the Libro mortgage pre-existed the City’s loan to the LCP. Although S.4.2 references a maximum amount of \$400,000 for the Libro security, the submitted subordination agreement provides \$350,000 due to Libro’s mortgage repayment since 2010.

DISCUSSION

Financial Review

Finance staff conducted a review of the LCP financial statements, Palace Theatre property appraisal and the LCP/Libro mortgage proposal. The due diligence financial review examined the LCP's ability to meet its future obligations to both the City and Libro (liquidity and solvency) and available equity in the property in the event that the LCP was in default with its repayment to both the City and Libro.

LCP has promptly provided all requested information to assist with the financial review and Finance staff have met with the LCP board chair and executive director to discuss the proposal. The meeting was a productive opportunity to learn more about the promising efforts by the LCP to secure additional grant funding, revitalize its youth theatre program, increase concessions revenue, expand fundraising, and generate a higher number of facility rentals for 2017. Satisfactory explanations were also provided for questions asked by Staff based on a review of the LCP's financial statements.

To date, the LCP is in good standing with its loan obligations to the City (both for the \$100,000 loan as well as Community Improvement Plan façade loans administered by Planning Services).

Legal Review

The subordination agreement has been reviewed by Legal staff. No concerns have been identified.

Subordination Request

In order to assess the subordination request, Staff has reviewed the proposed changes to LCP's mortgage and line of credit with Libro. The \$350,000 subordination amount reflects a mortgage ceiling of \$300,000 and a working line of credit amount of \$50,000. LCP has not sought additional funds beyond the security amount provided with the 2010 mortgage, and the new subordination amount reduces the borrowing ceiling from that identified in the City's loan agreement with the LCP.

Staff are of the opinion that the subordination request is consistent with what the City agreed to with its loan agreement with the LCP. The recommendation to approve the subordination agreement is informed by the following:

- the financial analysis confirmed that the LCP's performance is not significantly different from the review conducted by Finance staff when the City entered into the loan agreement, and trends for improved revenues and cost containment are promising;
- there is sufficient equity in the property owned by LCP to realize on the security interests for both Libro and the City in the event that the LCP was in default;
- the LCP has consistently made timely loan payments and their loans with the City are in good standing; and,
- the revised subordination amount is lower than that presently provided in the City's loan agreement with the LCP.

CONCLUSION

Staff recommend that the subordination agreement requested by Libro be approved. The subordination is consistent with what the City has previously agreed to. Staff do not have concerns about the financial performance of the LCP and its ability to meet its loan obligations. In the event that the LCP were to become insolvent or bankrupt, the City should be able to recover the outstanding principal amount for the loan, even with agreeing to rank second behind Libro.

PREPARED BY:
PAUL YEOMAN BUSINESS PLANNING PROCESS MANAGER FINANCE AND CORPORATE SERVICES
REVIEWED AND RECOMMENDED BY:
MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

cc. Anna Lisa Barbon, Director, Financial Services
Sharon Swance, Manager, Accounting
Dave Munteer, Solicitor

- Appendix ‘A’: By-law to authorize and approve the Subordination Agreement (Schedule 1) and amendments to the Loan Agreement Between the City of London and the London Community Players**
- Appendix ‘B’: Loan Agreement Between the City of London and the London Community Players (2015)**

Appendix 'A'

Bill No.
2016

By-law No. A.-

A by-law to authorize and approve a Subordination Agreement with respect to the Loan Agreement Between the City of London and the London Community Players and to authorize the Mayor and the City Clerk to execute the Subordination Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS in 2015, The Corporation of the City of London and the London Community Players jointly agreed to a loan agreement to support capital upgrades to the Palace Theatre;

AND WHEREAS Section 4.2 of the 2015 loan agreement provides for the City's subordination to the pre-existing London Community Players mortgage with Libro Credit Union Limited;

AND WHEREAS Libro Credit Union has requested that the City enter into a subordination agreement to the London Community Players mortgage and line of credit;

AND WHEREAS a financial and legal review of the proposed subordination agreement has not identified any concerns with the request;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Subordination Agreement between The Corporation of the City of London, Libro Credit Union and the London Community Players, with respect to the London Community Players' mortgage and line of credit with Libro, attached hereto as Schedule "1", is hereby authorized and approved.
2. Section 4.2 and Schedule "B" of the Loan Agreement Between the City of London and the London Community Players be amended to replace all mortgage references of "\$400,000.00" with "\$350,000.00".
3. The Mayor and the City Clerk are hereby authorized to execute the Subordination Agreement, authorized and approved in section 1, above and the amendments to the Loan Agreement Between the City of London and the London Community Players, authorized and approved in section 2, above.
4. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on November 22, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – November 22, 2016
Second Reading – November 22, 2016
Third Reading – November 22, 2016

Schedule "1"

SUBORDINATION AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 2016, between **Libro Credit Union Limited** ("Libro") and **The Corporation of the City of London** ("the Subordinating Party") and **London Community Players** (the "Borrower").

WHEREAS the Borrower is or may in the future be indebted to the Subordinating Party and to Libro from time to time and the Subordinating Party has agreed to subordinate all such indebtedness whenever incurred, and the Borrower has acknowledged and hereby consents to such subordination;

AND WHEREAS Libro has a mortgage on property known as **Pt Lt 4 Blk L Plan 304 (3rd) as in 880354; T/W 880357 London** registered on **November 26, 2010** as instrument **ER740263** (the "Libro Security") to secure the obligations of the Borrower to Libro;

AND WHEREAS the Subordinating Party has taken and/or may in the future take a security interest in assets of the Borrower (the "Subordinated Security") to secure the obligations of Borrower to the Subordinating Party;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby acknowledge and agree as follows:

1. The Subordinated Security is hereby postponed and subordinated in all respects to the Libro Security to the extent of \$350,000.00 (Three Hundred and Fifty Thousand dollars) as well as accrued interest and all reasonable costs and expenses of enforcement and realization of the Subordinated Security.
2. The Subordinating Party shall not, during the continuance of this Agreement sell, assign or transfer the Subordinated Security, or any part thereof, without the prior written consent of Libro and, if such consent is given, the proposed purchaser, assignee or transferee shall have entered into a subordination agreement on the same or substantially the same terms to those herein contained.
3. The priorities, postponements and subordinations herein contained shall apply in all events and circumstances whatsoever and particularly notwithstanding:
 - (1) the date or dates of execution, delivery, attachment, registration, perfection or re-perfection of all or any portion of any agreement, document or instrument creating the Subordinated Security or Libro Security;
 - (2) the date or dates of any loan or loans or any advance or advances made to Borrower by the Subordinating Party or Libro;
 - (3) the date or dates of any default by Borrower under any agreement, document or instrument creating the Subordinated Security or the Libro Security or the date or dates of crystallization of any floating charge contained therein or the date of commencement of any proceedings to enforce any of the Subordinated Security or the Libro Security or the exercise of any other right or remedy provided for under the Libro Security or the Subordinated Security or at law;
 - (4) the place or jurisdiction of execution, delivery, attachment, registration, perfection or re-perfection of all or any portion of the Subordinated Security or the Libro Security, or any agreement, document or instrument creating same; or
 - (5) any other matter which may affect the relative priorities of the Subordinated Security and the Libro Security.
4. Any insurance proceeds received by Borrower, Libro or the Subordinating Party in respect of the collateral charged by the Subordinated Security and/or the Libro Security shall be dealt with according to the preceding provisions hereof as though such insurance proceeds were paid or payable as proceeds of realization of such collateral for which they compensate.

5. The parties shall, from time to time and upon the request of the other execute all statements and other documents and assurances and do all matters and things which may be necessary or advisable to carry this Agreement into effect and to more fully effectuate its purpose.
6. This Agreement shall constitute a continuing agreement of subordination and postponement and shall continue in force and cover all the debts and claims which Borrower may incur or come under so long as any of the Libro Security remains in place, notwithstanding any payments from time to time made to Libro or any settlement of account or any other thing whatsoever. In addition, this Agreement shall continue and apply notwithstanding any change in the name or amalgamation by Borrower with one or more other corporations and shall enure to the benefit of Libro and be binding upon the Subordinating Party and their successors and assigns.
7. Nothing contained in this Agreement is intended to or shall impair the obligations of the Borrower to pay to any of the other parties hereto the debts and liabilities secured by any of the security referred to herein as and when the same shall become due and payable in accordance with the terms of such debts and liabilities.
8. Nothing contained in this Agreement is intended to or shall prevent either of Libro or the Subordinating Party from enforcing or exercising any rights or remedies permitted on the terms of their respective security subject only to the distribution of any proceeds or realization in accordance with the priorities set forth in this Agreement.
9. This Agreement is in addition to and not in substitution for any prior understandings and agreements between the parties hereto with respect to the subject matter hereof provided that it is agreed that to the extent that any term, condition, representation, covenant or other provision contained in any other such prior understanding or agreement is at any time inconsistent or conflicts with any term, condition, representation, covenant or other provision contained in this Agreement, then this Agreement shall govern.
10. This Agreement is governed by the laws of the Province of Ontario.

DATED as of the date first written above.

The Corporation of the City of London

Libro Credit Union Limited

Per: _____

Name: **Matt Brown**

Title: **Mayor**

I/We have authority to bind the Corporation

Per: _____

Name: **Ed Boere**

Title: **VP Credit**

I/We have authority to bind the Corporation

Per: _____

Name: **Catherine Saunders**

Title: **Clerk**

I/We have authority to bind the Corporation

London Community Players

Per: _____

Name: **David A. Long**

Title: **Past President**

I/We have authority to bind the Corporation

Per: _____

Name: **Barry L. Tepperman**

Title: **President**

I/We have authority to bind the Corporation

Appendix 'B': Loan Agreement Between the City of London and the London Community Players (2015)

SCHEDULE "A"

THIS LOAN AGREEMENT effective as of the first day of September, 2015
BETWEEN:

THE CORPORATION OF THE CITY OF LONDON

(the "City")

and

LONDON COMMUNITY PLAYERS

(the "Borrower")

IN CONSIDERATION of the mutual covenants and other terms and conditions in this Agreement, the parties covenant, promise and agree each with the other as follows:

1.0 Definitions

1.1 In this Agreement the following definitions apply:

"Agreement" means this Agreement and any amendments made to it;

"Borrower's Activities" means theatrical arts programming including without limitation, theatre, entertainment, drama, ballet, dance and music;

"Building" means all buildings and structures located on the Property described in Schedule "A";

"City Treasurer" means the person appointed by by-law of the City who has all the powers and duties of a treasurer of a municipality as are prescribed by the *Municipal Act, 2001* and any other applicable statute and as may be prescribed by by-law or resolution of the City;

"Loan" means the loan given by the City to the Borrower as set out in Part 3 of this Agreement;

"Loan Documents" means the charge set out in Part 4 of this Agreement, any other documents related to it that may be reasonably required by the City Treasurer and any other documents required to be executed and / or delivered to the City by the Borrower under this Agreement;

"Property" means the property described in Schedule "A";

"Work" means re-cladding of the exterior walls of the Building.

2.0 Term

2.1 This Agreement shall start on September 1, 2015 and end on August 31, 2035.

3.0 Loan

3.1 The City agrees to lend to the Borrower and the Borrower agrees to borrow from the City the sum of One Hundred Thousand Dollars (\$100,000.00) on the terms and conditions set out in this Agreement ("the Loan").

3.2 The City agrees that no interest shall be paid on the Loan.

3.3 The Borrower agrees to repay the Loan in equal monthly installments of Four hundred and sixteen dollars and sixty-seven cents (\$416.67) payable on the 30th day of each month during the term of this Agreement, commencing in September, 2015.

3.4 The Borrower may prepay any amount of the Loan owing at any time without any penalty.

4.0 Security

4.1 As collateral security for the advance of the Loan and the performance of the obligations of the Borrower in this Agreement, the Borrower charges and mortgages to the City the Borrower's property rights and interests in the Property and the Building.

4.2 The Borrower agrees to execute and register at its expense and deliver to the City a charge in favour of the City and in form and content satisfactory to the City Treasurer, to secure the Borrower's obligations in this Agreement against the title to the Property. The City agrees that its charge shall rank second behind a charge in favour of Libro Credit Union Limited registered on November 28, 2010 as Instrument Number ER740283 securing a principal amount not to exceed \$400,000.00. During the term of this Agreement, the City agrees that it may, in its sole discretion but acting reasonably, postpone its charge to or agree to register its charge in priority behind an institutional lender on such terms and conditions as the City Treasurer, acting reasonably, may require.

5.0 Borrower's Covenants

5.1 The Borrower covenants and agrees with the City as follows:

- (a) the Building shall be used solely by the Borrower for the purpose of providing programs consistent with the Borrower's Activities;
- (b) the Borrower shall use the Loan solely for the purpose of paying for the Work and for no other purpose;
- (c) the Borrower shall be responsible for obtaining, at its own expense all approvals, permits and licences required for the Work;
- (d) the Borrower shall establish and maintain financial and administrative procedures 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;
- (e) the Borrower shall immediately notify the City in writing upon any of the following acts occurring:
 - (i) the bankruptcy or insolvency of the Borrower;
 - (ii) the filing against the Borrower of a petition in bankruptcy;
 - (iii) the making of an authorized assignment or proposal for the benefit of creditors by the Borrower;
 - (iv) the appointment of a receiver or trustee for the Borrower or for any assets of the Borrower or the institution by or against the Borrower of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, or otherwise;
 - (v) the institution by or against the Borrower of any formal or informal proceeding for the dissolution or liquidation of the Borrower, or the winding up of the affairs of the Borrower;
 - (vi) the Borrower ceases or threatens to cease to carry on operations or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
 - (vii) the Borrower ceases to be a non-share capital, non-profit Ontario corporation accorded charitable status by the Canada Revenue Agency;
- (f) the Borrower shall immediately notify the City Treasurer in writing of each Board of Directors' meeting at which any of the matters set out in section 5.1(e) will be discussed and shall permit the City Treasurer or his or her designate to attend any such meeting;
- (g) the Borrower shall immediately notify the City in writing if any certificate, statement, representation, warranty or audit report furnished before or after the date of this Agreement, by or on its behalf pursuant to or in connection with this Agreement, or any Inducement to the City to enter into this or any other agreement with the Borrower.

- (i) proves to have been false or inaccurate in any material respect at the time as of which the facts set forth therein were stated or certified; or
- (ii) If after the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty or audit report, which change shall not have been disclosed to the City at or prior to the time of such execution;
- (h) the Borrower shall, in each year during the term of this Agreement, pay all realty taxes on the Property; and
- (i) If, at any time the Borrower becomes aware that it is or may be in default of any provision of this Agreement, the Borrower shall immediately notify the City Treasurer in writing of the actual or possible default. Such notice shall contain the detailed reasons and justification for the actual or possible default.

6.0 Records and Reporting

6.1 The Borrower shall keep and maintain during the term of this Agreement and for a period of seven (7) years following expiration or termination of this Agreement:

- (a) all financial records in accordance with generally accepted accounting principles related to all of its operations and the Loan; and
- (b) all non-financial documents and records relating to the Loan.

6.2 In the event that the Borrower ceases operation, the Borrower shall not dispose of any records related to the Loan without the prior written consent of the City Treasurer and shall immediately return all records to the City upon request.

6.3 The City Treasurer or an auditor identified by the City Treasurer may, at the City's expense, upon 2 business days' notice to the Borrower and during normal business hours, enter upon the Borrower's premises to review the Borrower's records under section 6.1, and for these purposes, the City Treasurer or an auditor identified by the City Treasurer may take one or more of the following actions:

- (a) inspect and copy the records and documents referred to in section 6.1;
- (b) remove any copies made pursuant to this section 6.3 from the Borrower's premises; and
- (c) conduct any type of audit or investigation of the Borrower in respect of any of its obligations under this Agreement.

6.4 The Borrower agrees that during any inspection, audit or investigation conducted under section 6.3 it shall cooperate fully with the City Treasurer or an auditor identified by the City Treasurer and shall make available all facilities, physical and otherwise, for such inspection, audit or investigation and shall furnish the City Treasurer and its auditor with all such information as it or they may from time to time require.

6.5 The Borrower shall file with the City, no later than September 30th in each year, financial statements and an auditor's report for the immediately preceding year, fairly representing the financial position of the Borrower and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

7.0 Acknowledgment of City

7.1 The Borrower shall, at the request of and in a manner as directed by the City Treasurer, install at an appropriate location and maintain during the term of this Agreement, and for a period of 7 years following expiration or termination of this Agreement, one or more signs or a plaque, indicating the City's financial support for the Work.

8.0 Representations and Warranties

8.1 The Borrower represents and warrants to the City as follows, and acknowledges and confirms that the City is relying on such representations and warranties:

- (a) the Borrower was incorporated under the laws of the Province of Ontario and has not been dissolved;

- (b) the Borrower has the full power and authority to own the Property, to carry on its business, to enter into this Agreement and the Loan Documents and to complete the transaction provided for in this Agreement and the Loan Documents;
- (c) the Borrower has taken all necessary actions to authorize the execution of this Agreement and the Loan Documents;
- (d) the execution of this Agreement and the Loan Documents and the performance by the Borrower of its obligations thereunder will not result in the violation of any agreement, written or oral, to which the Borrower is a party or by which it is bound; and
- (e) the Property is beneficially owned by the Borrower, with good and marketable title thereto, free and clear of any mortgages, charges, pledges, assignments, liens, restrictions or encumbrances whatsoever other than those set out in Schedule "B" attached which are permitted encumbrances.

8.2 The Borrower represents warrants and covenants that it has and shall maintain, in writing, for the term of this Agreement:

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Borrower's organization;
- (b) procedures to ensure the ongoing effective functioning of the Borrower;
- (c) decision-making mechanisms for the Borrower;
- (d) procedures to enable the Borrower to manage the Loan prudently and effectively; and
- (e) procedures to enable the preparation and delivery of all reports required pursuant to this Agreement.

8.3 Upon request, the Borrower shall provide the City with proof of the matters referred to in section 8.1 and 8.2.

9.0 Conditions of Advance of the Loan

9.1 The Borrower agrees that the City shall not be required to advance the Loan until the following conditions precedent have been fulfilled by the Borrower which conditions precedent are for the sole benefit of the City and may be waived in writing by the City Treasurer at his or her sole discretion:

- (a) the Borrower has provided to the City Treasurer documentation to the satisfaction of the City Treasurer showing that the Borrower has incurred costs associated with the Work. The Borrower agrees that any amount of the Loan advanced to the Borrower shall be subject to the City's obligations to retain any holdbacks as required under the *Construction Lien Act*, R.S.O. 1990 c. 30 or any other applicable law;
- (b) the Borrower has delivered the signed Loan Documents to the City;
- (c) the City has received from the Borrower's lawyer a legal opinion that:
 - (i) the Loan Documents have been properly executed and delivered and are enforceable against the Borrower in accordance with their terms;
 - (ii) the charge as required under section 4.2 has been registered as a second charge on the Property; and
 - (iii) the Property is beneficially owned by the Borrower, with good and marketable title thereto, free and clear of any mortgages, charges, pledges, assignments, liens, security interests or encumbrances whatsoever other than those set out in Schedule "B" attached which are permitted encumbrances.

10.0 Default

10.1 Events of Default. The following constitute events of default, the proof of which to the contrary lies upon the Borrower:

- (a) the Borrower becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- (b) an order is made or resolution passed for winding up or for the dissolution of the Borrower or it is dissolved;
- (c) the Borrower ceases actual bona fide operation for a period of thirty (30) days;

- (d) the Borrower has knowingly submitted false or misleading information to the City;
- (e) the Borrower is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under this Agreement;
- (f) the Borrower refuses or neglects to comply with any reasonable requirement from the City Treasurer which he or she is entitled to stipulate under this Agreement;
- (g) the Borrower assigns or transfers or attempts to assign or transfer this Agreement;
- (h) the Borrower transfers, sells, leases, mortgages or otherwise disposes of the Property or its interest in the Property; or
- (i) the Borrower ceases to be a non-share capital, non-profit Ontario Corporation accorded charitable status by the Canada Revenue Agency.

10.2 Remedies on Default/Termination on Default. If an event of default occurs, the City may, at any time, take one or more of the following actions in addition to any other remedy that may be available to it:

- (a) provide the Borrower with an opportunity to remedy the event of default;
- (b) proceed to enforce the security provided under section 4.2;
- (c) terminate this Agreement at any time, including immediately, upon giving notice to the Borrower.

10.3 If under section 10.2 the City has provided the Borrower with an opportunity to remedy the event of default and the Borrower does not remedy the event of default within the time specified by the City in the notice, the City may in its sole discretion extend the notice period or terminate this Agreement.

10.4 If under section 10.2 the City has terminated this Agreement, the City shall have no further responsibility or liability with regard to this Agreement and the Borrower shall forthwith repay to the City the balance of the Loan.

10.5 It is understood and agreed by the Borrower that the provisions in this part are for the sole benefit of the City and may be waived in whole or in part by the City Treasurer at any time.

11.0 Insurance

11.1 The Borrower shall keep and maintain in force during the currency of this Agreement:

- (a) Commercial third party general liability insurance with limits of not less than two million Dollars (\$2,000,000.00) per person for each occurrence of property damage or loss or personal injury or death. Such coverage shall include any person or body whose interests may be affected by the Work or the use of the Building for the purposes of the Borrower's Activities as an additional named insured, and shall contain provisions for:
 - (i) cross-liability/severability of interest as between the Insured and the City;
 - (ii) blanket contractual liability;
 - (iii) owner's and contractor's protective liability;
 - (iv) products or completed operations liability;
 - (v) contingent employers liability, and
 - (vi) contractor's contingent liability;
- (b) Employee dishonesty insurance (fidelity insurance) in an amount not less than \$100,000.00. The City shall be shown on the Policy as a Named Obligor, with respect to loss of funds or assets related the Loan; and
- (c) Standard all risk property insurance covering the Building and all contents owned or leased by the Borrower in an amount meeting the requirements of a 90% co-insurance clause and with a deductible of no more than \$5,000.00.

11.2 Where the City Treasurer, acting reasonably, requires the amount of insurance coverage increased, or requires the Borrower to obtain other special insurance or requires any policy to be

extended, then the Borrower shall obtain, at its expense, such extended, increased or special insurance.

11.3 The Borrower further agrees that the coverage provided by the policies specified in this Agreement will not be cancelled or permitted to expire by the Borrower until thirty (30) days after written notice of expiry or cancellation has been delivered to the City Treasurer either personally or by registered letter and such change or amendment has been approved by him or her.

11.4 The Borrower shall ensure that:

- (a) any professionally designated consultant retained by it, with respect to the Work or any subsequent maintenance or repairs relating to the Building, purchases and maintains in force a policy of professional liability insurance in an amount not less than two million (\$2,000,000.00) dollars in the aggregate for each occurrence of damage, loss, injury or death to persons or property;
- (b) a true copy of the certificate of the Ontario Association of Architects Indemnity Plan, in respect of the Architect, is delivered to the City; and
- (c) any contractor retained by it with respect to the Work or any subsequent maintenance or repairs relating to the Building shall keep and maintain in force during the completion of the Work or any subsequent maintenance or repairs builder's risk property insurance or all-risk installation floater insurance, as appropriate, covering the Work or any subsequent maintenance or repairs on an all-risks basis, including resultant damage from error or design and faulty workmanship and covering all mobile equipment and equipment to be installed on the Property and in the Building, to the full replacement cost of the Building and including all contractors as additional insureds and a waiver of subrogation in favour of the City and the Borrower.

11.5 The Borrower shall furnish to the City, prior to receipt of funds from the City, evidence of the policies of insurance, described above on City form no. 0788 or such other form acceptable to the City Treasurer and renewal of such form upon each insurance renewal until expiry of this Agreement.

11.6 The Borrower covenants and agrees to promptly implement all the recommendations of any liability or fire insurance company by which the Borrower may be insured, which recommendations may be necessary to maintain such insurance.

12.0 Indemnity

12.1 The Borrower hereby agrees that it shall, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify the City from and against any and all actions, claims and demands whatsoever which may be brought against or made upon the City and against any and all loss, liability, claims, judgments, costs, demands or expenses whatsoever which the City may sustain, suffer or be put to resulting from or arising out of:

- (a) this Agreement;
- (b) the obligations of the Borrower under this Agreement;
- (c) the failure of the Borrower, its consultants, contractors, agents or employees to exercise reasonable care, skill or diligence in carrying out any renovation work to the Building; or
- (d) any act or omission of the Borrower, its agents, servants, consultants, contractors, employees or by anyone for whom the Borrower is at law responsible relating to any Work required to be performed or rendered under this Agreement by the Borrower.

12.2 The Borrower shall indemnify and save the City harmless from and against any and all losses, expenses and damages of every kind and nature whatsoever which it may now or hereafter incur relating to all insured and uninsured damage to property installed, property in transit and contractors' tools and equipment during the course of the Work to the Building.

13.0 General

13.1 Assignment. The Borrower shall not assign or in any way transfer this Agreement or any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the City which consent may be unreasonably withheld or delayed.

13.2 Enurement. This Agreement shall enure to the benefit of and be binding upon the Borrower, its successors and permitted assigns. This Agreement shall enure to the benefit of and be binding upon the City and its assigns.

13.3 Notice

(a) Any notice or consent (including any invoice, statement, request or other communication) required or permitted to be given by any party to this Agreement to any other party shall be in writing and shall be delivered or sent by registered mail or facsimile transmission to the applicable address set forth below:

(i) In the case of the City to:

The Corporation of the City of London
300 Dufferin Ave, PO Box 5035
London ON N6A 4L9
Attention: City Clerk
Fax: (519) 681-4892

(ii) In the case of The Borrower to:

London Community Players
710 Dundas Street
LONDON, ON N5W 2Z4
Attention: Barry Tepperman, Board President
Fax: (519) 432-7828

(b) Any notice delivered personally shall be deemed to have been validly and effectively given and received on the date of such delivery provided same is on a business day (Monday to Friday, other than a statutory holiday).

(c) Any notice sent by registered mail shall be deemed to have been validly and effectively given and received on the third business day following the date of mailing.

(d) Any notice sent by facsimile transmission shall be deemed to have been validly and effectively given and received on the business day next following the date on which it was sent (with confirmation of transmittal received).

(e) Either party to this Agreement may, from time to time by notice given to the other party, change its address for service under this Agreement.

13.4 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between the parties, which supersedes all proposals, oral or written, and all other communications or representations between the parties, relating to the subject matter of this Agreement.

13.5 Severability. If any part of this Agreement is rendered invalid, the remainder of the Agreement continues to apply.

13.6 Amendment. This Agreement may be changed only by a written amendment signed and sealed by authorized representatives of the parties.

13.7 Gender Number. Words importing the masculine gender shall include the feminine and neuter, and the singular shall include the plural where the meaning or context so requires.

13.8 Headings. The article numbers, article headings, clause numbers and clause headings contained in this Agreement are inserted for convenience of reference only and are not to be considered when interpreting this Agreement.

13.9 Covenants. Each obligation of the City or of the Borrower expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

13.10 Governing Law. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

13.11 Currency. Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

13.12 Time of Essence. Time shall be of the essence of this Agreement and every part of this Agreement.

13.13 Further Assurances. The City and the Borrower shall, at their sole expense, promptly execute such further documentation to give effect to this Agreement as the City or the Borrower, as the case may be, may reasonably require from time to time.

13.14 The following provisions and any applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven (7) years from the date of expiry or other termination of this Agreement: Part 1 and any other applicable definitions; Part 6; section 7.1; and Part 13. Part 12 and any applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of two (2) years from the date of expiry or other termination of this Agreement.

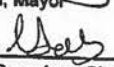
13.15 The Borrower acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.


SIGNED, SEALED, AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

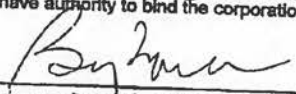

Matt Brown, Mayor


Catharine Saunders, City Clerk


LONDON COMMUNITY PLAYERS


Name: COLIN FOSTER

Title: EXECUTIVE DIRECTOR
I have authority to bind the corporation


Name: BARRY TEPERMAN

Title: PRESIDENT
I have authority to bind the corporation

CITY SOLICITORS OFFICE CITY OF LONDON	
DATE: <u>June 14, 2015</u>	
APPROVED AS TO FORM ONLY	

Schedule "A"
Legal Description and Municipal Address of the Property

Firstly:

Part of Lot 4
Block L
Plan 304(3rd)
As in Instrument Number 880357
City of London
County of Middlesex
Being the whole of PIN 08281-0140

Secondly:

Part of Lot 4
Block L
Plan 304(3rd)
Designated as Part 1 on Reference Plan 33R-17467
City of London
County of Middlesex
Being the whole of PIN 08281-0251

Municipal Address:

708, 710 and 712 Dundas Street, London, Ontario

Schedule "B"
Permitted Encumbrances

1. A Charge registered as Instrument Number ER740283 on November 26, 2010 in favour of Libro Credit Union Limited securing a principal amount of \$400,000.00.
2. Any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties.
3. Any minor easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the Property.
4. Any registered municipal agreements and registered agreement with publicly regulated utilities providing such have been complied with.
5. Any registered restrictions that run with the land providing such are complied with.
6. Any restrictions, liens or encumbrances against the Property acceptable to the City Treasurer in his or her sole discretion.