

<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON NOVEMBER 21, 2016</b>
<b>FROM:</b>	<b>SANDRA DATARS BERE MANAGING DIRECTOR, HOUSING, SOCIAL SERVICES, AND DEARNESS HOME</b>
<b>SUBJECT:</b>	<b>HOUSING DEVELOPMENT CORPORATION, LONDON (HDC) SHAREHOLDER DECLARATION</b>

<b>RECOMMENDATION</b>
-----------------------

That on the recommendation of the Managing Director, Housing, Social Services, and Dearness Home and with the concurrence of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the attached by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting to be held November 22, 2016 to:

- a) TO RATIFY AND CONFIRM the Resolution of the Shareholder of Housing Development Corporation, London (HDC), approving the Shareholder Declaration for HDC attached to the By-law as Schedule "1";
- b) TO AUTHORIZE the Mayor and City Clerk to execute the Resolution of the Shareholder; and
- c) TO AUTHORIZE the Mayor and City Clerk to execute the Shareholder Declaration attached to the Resolution of the Shareholder as Schedule "A".

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
--

July 25, 2016	Strategic Priorities and Policy Committee (SPPC)	Item #5 - HDC Number and Composition of Directors Item #6 - HDC 2015 Annual Meeting of the Shareholder
June 9, 2016	SPPC	Item #4 - Request for Shareholder Meeting
Sept. 22, 2015	Community and Protective Services Committee (CPSC)	Item #7 – Assignment of Administrations Agreements to HDC
October 26, 2015	SPPC	Item #8 - HDC Incorporation and Initial Corporate Organization
August 27, 2014	SPPC	Item #5 – Proposed Establishment of a HDC

<b>BACKGROUND</b>
-------------------

**Purpose of this Report:**  
The attached Shareholder Declaration outlines the expectations of the Corporation of the City of London as the sole shareholder of Housing Development Corporation, London (HDC), a share capital corporation under the *Business Corporations Act* (OBCA), R.S.O. 1990 c. B16.

**Overview of Housing Development Corporation, London**  
HDC was created as a mechanism to engage in a range of services and strategies outlined in the HDC Business Plan as approved by Council on September 2, 2014. HDC services include direct development, construction, new financial instruments, land acquisition and sale, affordable housing consultation and promotion with all partners and sectors. These activities support the

HDC mandate to stimulate the development and sustainability of affordable housing throughout London and Middlesex. HDC supports the need for revitalized and strengthened neighbourhoods, and diverse and inclusive communities and collaborates with all sectors to create and sustain affordable housing and stimulate economic growth.

HDC was incorporated in 2015 with an incorporating Board of Directors comprised of senior City of London administrative staff to oversee the initial business of the corporation. On July 26, 2016, Council selected a first public Board of Directors for HDC to start in December 2016. Board members owe fiduciary duties to HDC. In exercising their powers and duties they must act in good faith with a view to the best interest of HDC and exercise the diligence and skills that a reasonably prudent person would exercise in comparable circumstances.

### **HDC Relationship to the City:**

As the sole shareholder of HDC, the City of London:

- Appoints and/or changes the composition of the Board of Directors;
- Can receive and direct dividends declared by the Board of Directors;
- Determines appropriate governance, by-laws and share structure; and
- Approves special actions such as changes in ownership (acquisitions, mergers or sale), subject to any related regulations or criteria (such as affordable housing program and funding agreement rules).

The City of London's role with HDC is defined within the approved HDC Business Plan (SPPC: August 27, 2014) and the Incorporation of HDC (SPPC: October 26, 2016) to include:

1. Activities related to being the City as the Service Manager for provincial housing programs under the Housing Services Act, 2011.

Note: The activities associated with the Service Management role are separate from the City's role as shareholder and are addressed below under *"Items Not Included in Proposed Declaration"*.

2. Issues related to the provision of shared services provided to HDC by Civic Administration to HDC. These are not address in this report.
3. The requirements for a sole Shareholder Declaration as addressed within this report.

### **What is a Shareholder Declaration?**

The directors of business corporations are mandated to make decisions in the best interest of the Corporation and its shareholders. The *Business Corporations Act, 1990* (OBCA) allows a sole shareholder to issue a "Shareholder Declaration" which takes back powers of the board and vests them in the shareholder. Along with the responsibility, the shareholder assumes the liabilities of the directors in respect to the authorities which are re allocated to the shareholder. (OBCA, S. 108(3)).

The purpose of establishing a Shareholder Declaration in this way is generally to outline the expectations of the shareholder relating to the principles of governance and other fundamental principles and policies of the corporation and any subsidiaries to provide a greater level of detail and specificity for some of the governance matters addressed in the operating by-laws, business plan, and any applicable legislation.

In the absence of a sole Shareholder Declaration, a corporation would only be limited by its incorporating articles, its by-laws (which could be amended by the directors), and the obligations of the directors to act in the best interests of the Corporation (noting that a municipally owned corporation has other limitations, but do not impact this analysis).

The Shareholder Declaration expands the standard form incorporating by-laws of HDC and includes conditions and restrictions on the powers of the directors to manage the Corporation.

The City has similar declarations in place for London Hydro Inc. and London & Middlesex Housing Corporation – both business corporations under the OBCA with the City as sole shareholder.

**Overview of the HDC Shareholder Declaration:**

Pursuant to the direction of Council (Council: September 2, 2014), the attached Shareholder Declaration is intended to maximize the business capacity and minimizes shareholder liabilities related to HDC governance and business actions. The attached HDC Shareholder Declaration addresses the following areas of business:

**Contents of Shareholder Declaration:**

Article 1:	<i>Interpretation</i>	General definitions and the purpose of the document.
Article 2:	<i>Permitted Business Activities</i>	The mandate and goals of HDC, it's business activities, and the associated authorities.
Article 3:	<i>Standards of Governance</i>	A statement of care and diligence expectations to the HDC Board.
Article 4:	<i>Board of Directors</i>	HDC Board size, composition, terms, qualifications, and meeting considerations. It reiterates requirements of the HDC Articles of Incorporation and City By-law but providing greater detail in the exercising of their processes.
Article 5:	<i>Financial Policies, Risk Management, Multi-Year Budget, and Business Planning</i>	Details related to the capital structure of HDC, a dividend policy, and accounting and budget planning, management and reporting considerations to both Civic Administration and Council.
Article 6:	<i>Annual Resolutions and Meetings</i>	Processes and expectations related to the formal reporting requirements to the shareholder.
Article 7:	<i>Shareholder Approvals and Communications</i>	Processes related to communications for governance, finance, and other liaison activities with the City as well as the process for the City as shareholder to formally communicate with HDC.
Article 8:	<i>Matters Requiring Shareholder Approval</i>	Activities which require the approval of the shareholder either by legislative requirement or my standards of practice. This includes limitations related to risk, debt and borrowing restrictions, and other activities that can impact the City.
Article 9:	<i>Revisions to this Declaration</i>	Processes required to modify the declaration including notifications.
Article 10:	<i>Confidentiality</i>	Considerations related to the HDC as a corporation created under the Municipal Act and subject to the rules of the Municipal Freedom of Information and Protection of Privacy Act.
Article 11:	<i>Notices</i>	Contact information and related communication protocols related to transactions and communications defined within the declaration.

**What is a Unanimous Shareholder Declaration?**

HDC operates under the *Business Corporations Act*, S.O. 1990. While the City is the sole shareholder, it is not the manager of the corporation. The directors manage and supervise the business, affairs and operations of HDC. Directors owe a fiduciary duty solely to the corporation. In exercising their powers and duties they must act honestly and in good faith with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Section 1.2 of the Shareholder Declaration states:

*1.2 Purpose. This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation. Except as and to the extent provided in Section 5.2 and Article 8, this Shareholder Declaration is not intended to constitute a unanimous shareholder agreement under the OBC or to formally restrict the exercise of the powers of the Board.*

Section 108 of the Business Corporations Act provides as follows:

*Unanimous shareholder agreement*

*108 (3) Where a person who is the registered holder of all the issued shares of a Corporation makes a written declaration that restricts in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of a corporation, the declaration shall be deemed to be a unanimous shareholder agreement.*

*Where shareholder has power, etc., of director*

*108 (5) A shareholder who is a party to a unanimous shareholder agreement has all the rights, powers, duties and liabilities of a director of a corporation, whether arising under this Act or otherwise, including any defences available to the directors, to which the agreement relates to the extent that the agreement restricts the discretion or powers of the directors to manage or supervise the management of the business and affairs of the corporation and the directors are relieved of their duties and liabilities, including any liabilities under section 131, to the same extent.*

To the extent that section 5.2 and Article 8 of the Shareholder Declaration restrict the discretion or powers of the directors to manage or supervise the management of the business and affairs of HDC, the directors will be relieved of their duties and liabilities, including any liability to employees for wages, and the City, as shareholder, will acquire all of the rights, powers, duties and liabilities of the directors as it relates to these matters. In such instance, the City as the shareholder will be subject to the same liabilities and obligations as are imposed on directors under the Business Corporations Act and the common law including fiduciary obligations, standard of care, the duty to disclose interest in material contracts and liability for tortious conduct.

Article 8 includes significant issues which the Council would want to control including issuance, redemption and purchase of shares, joint ventures or partnerships, borrowing in the amount of \$5,000,000 (five million dollars) or more, sale or transfer of all or substantially all of its assets and assuming financial obligations that would increase the ratio of debt to equity on a consolidated basis above 25:75.

**Other Considerations:**

The HDC Shareholder Declaration is structured based on the HDC Business Case, the HDC Incorporation articles and bylaws, prior reports, and the recommendations of Civic Administration - including Legal Services, Finance and Corporate Services, and the incorporating HDC Board. This Declaration will be subject to future modification based on the interests of Council as the sole shareholder and the future business activities of HDC.

**Items Not Included in the Shareholder Declaration:**

This declaration does not address the HDC delivery of housing programs and related funding, including affordable housing programs formerly delivered by the City and those delivered on behalf of the provincial (or federal) government.

The assignment of the City's Service Manager activities related to the administration and delivery of provincial (or federal/provincial) affordable housing programs and funding (such as the Investment in Affordable Housing and the Social Infrastructure Fund) are being separately addressed as directed by Council (Council: September 29, 2015).

**Relationship Between the City and HDC:**

The HDC relationship with the City for the delivery of housing programs and services is addressed within the Business Plan. The above noted assignments of provincial programs will not impact the City of London's role either as the sole shareholder or as the overall designated Service Manager, as defined in the Housing Services Act, 2011, (HSA); noting that this legislation does

provide that certain Service Manager functions (such as the delivery of affordable housing programs) may be delegated (HSA, S. 17).

Civic Administration continues working with HDC in the provision of shared services as defined in the HDC Business Plan.

RECOMMENDED BY:	CONCURRED BY:
SANDRA DATARS BERE MANAGING DIRECTOR, HOUSING SOCIAL SERVICES AND DEARNESS HOME	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

- c.
- HDC Board Members

Stephen Giustizia, HDC CEO

Jennifer Smout, Solicitor, City of London

Attachment:   Appendix “A” – By-law to ratify and confirm the Resolution of the Shareholder

## APPENDIX “A”

Bill No.  
2016

By-law No. A.-

A by-law to ratify and confirm the Resolution of the Shareholder of Housing Development Corporation, London approving a Shareholder Declaration

WHEREAS Housing Development Corporation, London. is a corporation incorporated under the *Business Corporations Act* R.S.O. 1990, c.B.16;

AND WHEREAS subsection 104(1)(b) of the *Business Corporations Act* provides that a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders or their attorney authorized in writing entitled to vote at the meeting, satisfies all the requirements of this Act relating to that meeting of shareholders;

AND WHEREAS the Corporation of the City of London is the sole shareholder of Housing Development Corporation, London;

AND WHEREAS Subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS Subsection 9 of the *Municipal Act, 2001* 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;

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

1. The Resolution of the Shareholder of Housing Development Corporation, London approving the Shareholder Declaration for Housing Development Corporation, London attached as Schedule “1” is ratified and confirmed.
2. The Mayor and City Clerk are authorized to execute the Resolution of the Shareholder ratified and confirmed under section 1 of this by-law.
3. The Mayor and City Clerk are authorized to execute the Shareholder Declaration attached as Schedule “A” to the Resolution of the Shareholder.
4. This by-law comes into force on the day it is passed.

PASSED in Open Council on the            day of            , 2016.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First reading -  
Second reading –  
Third reading -

**SCHEDULE “1”**

**HOUSING DEVELOPMENT CORPORATION, LONDON**  
(the “Corporation”)

**WHEREAS** subsection 104(1)(b) of the *Business Corporations Act (Ontario)* (the “Act”) provides that a resolution in writing dealing with all matters required by the Act to be dealt with at a meeting of shareholders and signed by all the shareholders or their attorney authorized in writing entitled to vote at the meeting, satisfies all the requirements of the Act relating to that meeting of shareholders;

**AND WHEREAS**

The following resolution signed by the sole shareholder of the Corporation entitled to vote thereon, is hereby passed pursuant to the provisions of the Act:

**SHAREHOLDER DECLARATION**

**NOW THEREFORE BE IT RESOLVED THAT** the undersigned, being the sole shareholder of the Corporation, hereby approves the Shareholder Declaration for Housing Development Corporation, London. As set out in the attached Schedule “A”

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**The Corporation of the City of London**

By: \_\_\_\_\_  
Name: Matt Brown  
Title: Mayor

By: \_\_\_\_\_  
Name: Catharine Saunders  
Title: City Clerk

**SCHEDULE “A” – SHAREHOLDER DECLARATION**



## HOUSING DEVELOPMENT CORPORATION, LONDON

### SHAREHOLDER DECLARATION

#### ARTICLE 1 INTERPRETATION

1.1 Defined Terms. For the purposes of this Declaration, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

**“Annual Budget Update”** means an annual budget update for the Corporation’s Multi-Year Budget prepared in accordance with Section 5.5:

**“Auditor”** means the auditor appointed by the Shareholder pursuant to the OBCA;

**“Board”** means the board of directors of the Corporation;

**“Business Day”** means any day other than a Saturday, Sunday or holiday in the Province of Ontario;

**“Business Plan”** means business plan for the Corporation prepared in accordance with Section 5.7

**“CEO”** means the chief executive officer of the Corporation;

**“Chair”** means the chair of the Board;

**“City’s Auditor”** means an auditor appointed by by-law of the Shareholder who has all the powers and duties of auditor of a municipality as are prescribed by the Municipal Act and any other applicable statute and as may be prescribed by by-law or resolution of the Shareholder and includes a designate of that person;

**“City Manager”** means the Shareholder’s City Manager or their designate;

**“City Treasurer”** means the person appointed by by-law of the Shareholder who has all the powers and duties of a treasurer of a municipality as are prescribed by the Municipal Act and any other applicable statute and as may be prescribed by by-law or resolution of the Shareholder and includes a designate of that person;

**“Corporation”** means Housing Development Corporation, London;

**“Council”** means the municipal council of the Shareholder;

**“Financial Statements”** means, for any particular period, audited or unaudited, comprehensive financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, statement of cash flows, a report or opinion of the Corporation’s auditor (in the case of audited financial statements), and such other statements, reports, notes and information as are required in accordance with any applicable Law, all prepared in accordance with generally accepted accounting principles consistently applied;

**“Laws”** means laws, regulations, codes, rules and applicable decisions of courts and regulatory, administrative or other governmental or public agencies, boards, tribunals and other bodies;

**“Multi-Year Budget”** means a multi-year budget for the Corporation prepared in accordance with Section 5.4;

**“Municipal Act”** means the *Municipal Act, 2001* (Ontario) as amended from time to time;

**“OBCA”** means the *Business Corporations Act* (Ontario) as amended from time to time;

**“ordinary course of business”** means any act, conduct, matter or thing required to be done by the Corporation to fulfill the core mandate and undertake the enumerated activities as set out in Section 2.2 and 2.3;

**“Shareholder”** means The Corporation of the City of London; and

**“Shareholder Declaration”** means this shareholder declaration.

1.2 Purpose. This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation. Except as and to the extent provided in Section 5.2 and Article 8, this Shareholder Declaration is not intended to constitute a unanimous shareholder agreement under the OBCA or to formally restrict the exercise of the powers of the Board.

## **ARTICLE 2 PERMITTED BUSINESS ACTIVITIES**

2.1 General Authority. Subject to the restrictions in Article 8 of this Shareholder Declaration, the Corporation may engage in the business activities which are permitted by any Law applicable to the Corporation from time to time, including without limitation the Municipal Act and any regulations thereunder, as the Shareholder may authorize. In so doing, the Corporation shall conform to Laws and, in particular, to all requirements of the Municipal Act and any regulations thereunder including without limitation O. Reg. 599/06 and all other relevant regulatory or governmental authorities.

2.2 Core Mandate. The core and supporting mandates of the Corporation are:

(a) Core Mandate:

(i) to stimulate the development and sustainability of affordable housing throughout London and Middlesex.

(b) Supporting Mandates:

(i) Support the local need for revitalized and strengthened neighbourhoods, and diverse and inclusive communities;

- (ii) Collaborate with the public, private and not for profit sectors to create and sustain affordable housing and stimulate economic growth;
- (iii) Co-ordinate and leverage the deployment of federal, provincial, and municipal funding;
- (iv) Enhance and better utilize municipal incentives;
- (v) Develop affordable housing and establish revenue generating activities; and
- (vi) Explore and initiate innovative finance and investment tools.

2.3 Enumerated Activities. The Corporation may engage in any one or more of the following business activities to fulfill its core and supporting mandates:

- (a) the development, redevelopment, operation, and management of affordable housing projects, including without limitation to:
  - (i) acquisition and disposal of land, and buildings;
  - (ii) leasing of land and buildings;
  - (iii) construction and renovation of buildings;
  - (iv) obtaining and/ or providing financing and/ or grants;
  - (v) participation in joint ventures, strategic alliances and/ or partnerships;
- (b) business activities that enhance or develop the ability of the Corporation to carry on any of the activities described in paragraph(a) above;
- (c) business activities the principal purpose of which is to use more effectively the assets of the Corporation;
- (d) such other business activities, powers, duties or responsibilities delegated to the Corporation by the Shareholder.

### **ARTICLE 3 STANDARDS OF GOVERNANCE**

3.1 General Standard. As required by the OBCA, the Board shall supervise the management of the business and affairs of the Corporation and, in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

## **ARTICLE 4 BOARD OF DIRECTORS**

4.1           Number of Directors. The Corporation shall be governed by the Board which shall consist of five (5) directors.

4.2           Composition of Board. The Board shall be composed of five “citizen at-large” members.

4.3           Qualification of Directors. In addition to qualifications and requirements for directors as set out in the OBCA and the by-laws of the Corporation, and while it is not necessary that each director possess each of the following qualifications, the Board, as a whole, should possess most or all of the following:

- (a) Business, financial, and legal knowledge;
- (b) A reasonable understanding of accounting and tax matters;
- (c) Comprehensive understanding of the core business and objectives of the Corporation including social housing and community development;
- (d) Strategic planning, including labour relations, resource planning, and organizational development;
- (e) Corporate stewardship and governance activities;
- (f) Risk management and controls;
- (g) Regulatory knowledge;
- (h) Experience in a competitive business environment;
- (i) Awareness of the needs of those requiring and residing in social housing;
- (j) Awareness of municipal government and local issues;
- (k) Leadership and integrity;
- (l) Experience and knowledge of housing including landlord and tenant and related social and other support services; and
- (m) Experience and expertise in community based business and service partnership initiatives.

4.4           Election and Term. The Board shall be divided into three classes, each of the first two of which shall consist of two directors and the third of which shall consist of one director. The term of office for members of the first class shall expire at the annual meeting of shareholders every third year, commencing at the annual meeting to be held during 2019; the term for members of the second class shall expire at the annual meeting of shareholders every third year commencing at the annual meeting to be held during 2018; and the term for members

of the third class shall expire every third year, commencing at the annual meeting to be held during 2017. At the expiration of each succeeding term of each class, the directors of each class shall, subject to the re-election of any such director, be elected to serve for a three year term. A director shall hold office until the annual meeting of shareholders for the year in which term expires and until their successor is elected and qualified. Notwithstanding the foregoing, a director may be elected for a term of less than three years. The election of directors shall be by resolution and shall take place at each annual meeting of shareholders and any directors who retire at such meeting shall, if qualified, be eligible for re-election. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

4.5 Board Committees. The Board may establish committees of the Board in the Board's discretion. Such committees may include the following:

- (a) Governance Committee/Committee of the Whole for matters related to strategic planning, corporate policy development and organizational governance;
- (b) Finance and Administration Committee for matters related to budget monitoring, audit, compliance, support services, procurement and shared services; and
- (c) Development Committee for overseeing activities related to operations, development projects and general business activities of the Corporation.

4.6 Directors' Compensation. Directors shall serve without remuneration or compensation, including the Chair and any other directors who are officers of the Corporation. The Board shall establish an expense reimbursement policy consistent with that of the Shareholder to provide for the reimbursement of expenses for directors while conducting Board business. Such policy shall require that the Board pre-approve the amount and reasons for all major business expenses for directors.

4.7 Compensation of Officers of the Corporation. The Board shall set the compensation for the officers of the Corporation, other than the Chair and any other officers that are directors.

4.8 Vacancies. The Board shall promptly provide notice to the Shareholder of a vacancy among the directors, other than a vacancy arising due to expiry of a term of a director. The Shareholder shall appoint a director to fill such vacancy.

4.9 Place of Meetings. Meetings of the Board may be held at the registered office of the Corporation or at any other place within the City of London, Ontario.

4.10 Calling of Meetings. Meetings of the board shall be held from time to time at such place, on such day and at such time as the Board, the Chair, the CEO, the secretary or any two directors may determine.

4.11 Notice of Meetings. Notice of the time and place of each meeting of the Board shall be given to each director not less than 48 hours before the time when the meeting is to be held and need not be in writing.

4.12 First Meeting of New Board. Provided a quorum of directors is present, each newly elected Board may without notice hold its first meeting following the annual shareholder meeting at which such Board is elected.

4.13 Adjourned Meeting. Notice of an adjourned meeting of the directors is not required if the time and place of the adjourned meeting is announced at the original meeting.

4.14 Regular Meetings. The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution by the Board fixing the time and place of regular meetings of the Board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting.

4.15 Votes to Govern. Any question at a meeting of the board shall be decided by a show of hands unless a ballot is required or demanded.

4.16 Chair of the Meetings. The Chair or, in the absence of the Chair, the Vice Chair, shall be chair of any meeting of the Board. In the absence of both the Chair and the Vice Chair, the directors present shall choose one of their number to be chair of the meeting.

4.17 Secretary of the Meetings. The secretary, when in attendance, shall be the secretary of all meetings of the Board, shareholders and committees of the board and, whether or not he or she attends, the secretary shall enter or cause to be entered in the Corporation's minute book, minutes of all proceedings at such meetings. The secretary shall give, or cause to be given, as and when instructed, notices to shareholders, directors, auditors and members of committees. The secretary shall be the custodian of the corporate seal as well as all books, papers, records, documents and other instruments belonging to the Corporation. Nothing in this section prevents the Board from appointing an assistant secretary who may perform all of the duties of the secretary in their absence or from appointing in an ex officio capacity a recording secretary who may assist from time to time as necessary the Board and the secretary in the performance of their duties.

4.18 Meetings Open Subject to Exceptions. Meetings of the Board shall be open to the public subject to the following exceptions:

(1) A meeting or part of a meeting may be closed to the public if the subject matter being considered is:

- (a) the security of the property of the Corporation;
- (b) personal matters about an identifiable individual, including Corporation employees;
- (c) a proposed or pending acquisition or disposition of land by the Corporation;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the Corporation;

- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which the Corporation may under any legislation hold a closed meeting;
- (h) trade secrets or financial, commercial, scientific or technical Information that belongs to the Corporation and has monetary value or potential monetary value;
- (i) information whose disclosure could reasonably be expected to prejudice the economic interests of the Corporation or the competitive position of the Corporation;
- (j) information whose disclosure could reasonably be expected to be injurious to the financial interests of the Corporation;
- (k) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of the Corporation;
- (l) plans relating to the management of personnel or the administration of the Corporation that have not yet been put into operation or made public; or
- (m) information including the proposed plans, policies or projects of the Corporation if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

(2) A meeting or part of a meeting shall be closed to the public if the subject matter being considered:

- (a) may reveal a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to:
  - (i) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;
  - (ii) result in similar information no longer being supplied to the Corporation where it is in the public interest that similar information continue to be so supplied;
  - (iii) result in undue loss or gain to any person, group, committee or financial institution or agency; or

- (iv) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute; or
- (b) is a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the Corporation is the head of an institution for the purposes of that Act.

## **ARTICLE 5 FINANCIAL POLICIES, RISK MANAGEMENT, MULTI-YEAR BUDGET AND BUSINESS PLANNING**

5.1 Capital Structure. The Board shall develop and maintain a prudent financial and capitalization structure for the Corporation consistent with industry norms and sound financial principles and established on the basis that the Corporation is intended to be self-financing.

5.2 Dividend Policy. The Board shall use its best efforts to declare and pay a regular dividend to the Shareholder. The payment of any dividend shall be subject to the following:

- (a) Where annual net earnings of the Corporation exceed normal net earnings, the Board shall consider declaring a special payment in an amount equal to such excess net earnings; and
- (b) No dividend is to be declared where to do so would, in the Board's reasonable opinion, impair the Corporation's ability to carry out its business.

5.3 Risk Management. The Board shall manage all risks related to the business conducted by the Corporation through the adoption of appropriate risk management strategies and internal controls consistent with industry norms.

5.4 Multi-Year Budget. The Board shall approve a Multi-Year Budget in such detail and form and in accordance with timelines and term as prescribed by the City Treasurer. Such Multi-Year Budget shall provide the resources required by the Corporation to implement the objectives, priorities, and business initiatives set out in the Business Plan that the Corporation will undertake over the course of the period covered by such Multi-Year Budget. Any Shareholder investment requested through the Multi-Year Budget submission shall be subject to the approval of Shareholder. The Multi-Year Budget requirements may include (but not necessarily be limited to):

- (a) Detailed breakdown of the operating budget revenues and expenditures for each year of the Multi-Year Budget period;
- (b) Detailed breakdown of the capital budget expenditures for each year of the Multi-Year Budget plus a six (6) year forecast;
- (c) An overview of the human resources required to implement the Corporation's mandate;
- (d) Information pertaining to the management of reserve funds as requested by the Shareholder; and



- (e) Such explanations, notes and information as is required to explain and account for the resources requested through the Multi-Year Budget submission.

5.5 Annual Budget Update. In years subsequent to the approval of the Multi-Year Budget, but prior to approval of the next Multi-Year Budget, the Board shall approve an Annual Budget Update in such detail and form and in accordance with timelines prescribed by the City Treasurer. Any Shareholder investment requested or any amendments to investment previously approved by the Shareholder shall be subject to the approval of Shareholder. Any amendments to investment previously approved by the Shareholder requested through the Annual Budget Update should be limited to matters pertaining to new or changed legislation, new Board or Shareholder direction, or unanticipated cost pressures that have transpired after the approval of the Multi-Year Budget.

5.6 Financial Impact on the City. At a date prescribed by the Shareholder that is prior to the submission of the Multi-Year Budget or subsequent Annual Budget Update to the Shareholder, the CEO shall consult with the City Treasurer on the draft Multi-Year Budget or Annual Budget Update and any potential financial consequences for the Shareholder.

5.7 Business Plan. The Board shall approve a Business Plan annually in a format and in accordance with timelines prescribed by the City Treasurer and the Corporation shall carry on its business and operations in accordance with the Business Plan which may include (but not necessarily be limited to), in respect of the period covered by such plan:

- (a) The key objectives, priorities, and business initiatives that the Corporation will undertake over the course of the current Multi-Year Budget period;
- (b) An explanation of how the key objectives, priorities and business initiatives noted in (a) above contribute to the accomplishment of the Shareholder's Strategic Plan;
- (c) Key metrics for monitoring accomplishments and financial performance;
- (d) Anticipated risks, challenges and pressure points expected to be faced by the Corporation and an overview of how such matters will be mitigated; and
- (e) Any additional information that the Shareholder or the City Treasurer may specify from time to time.

5.8 Quarterly Reports. Within 14 calendar days after the end of each fiscal quarter, the Corporation shall have prepared (on a consistent basis with the previous fiscal quarter) and shall submit to the City Treasurer a quarterly report in a format prescribed by the City Treasurer. The quarterly report will include, in respect of the immediately preceding fiscal quarter:

- (a) Quarterly unaudited financial results detailing actual revenues and expenditures for the fiscal year to date;
- (b) Forecasted revenues and expenditures to fiscal year end, including a variance to budgeted amounts;
- (c) Such explanations, notes and information as is required to explain and account for any variances between the actual and forecasted results from operations and the budgeted amounts set forth in the current budget, including any material

variances in the projected ability of any business activity to meet or continue to meet the Corporation's objectives;

- (d) Information on existing or emerging issues that is likely to materially affect the Shareholder; and
- (e) Information regarding any matter, occurrence or other event which is a material breach or violation of any law.

5.9 Access to Records. The duly appointed representatives of the Shareholder shall have unrestricted access to the Corporation's books and records during normal business hours. Such representatives shall treat all information of the Corporation with the same level of care and confidentiality as any confidential information of the Shareholder. The City Manager, the City Treasurer and the City's Auditor and or their designates are deemed duly appointed representatives of the Shareholder and any other person or persons appointed by the Shareholder from time to time.

5.10 Audit. The Corporation's Financial Statements shall be audited annually by a licensed public accountant under the *Public Accounting Act, 2004*. The City's Auditor or an auditor designated by the City Treasurer also may conduct periodic operational or financial audits or reviews. Any recommendations resulting from such audits or reviews will be presented to the Board for operational matters and to the Shareholder, with a copy to the Board, for any shareholder issues.

5.11 Accounting. The Corporation shall keep detailed records of its transactions and, in consultation with its Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures shall be in accordance with generally accepted accounting principles and applicable regulatory requirements.

## **ARTICLE 6 ANNUAL RESOLUTION AND MEETINGS**

6.1 Annual Report to Shareholder. The Board shall, not less often than annually and within six months following the end of the fiscal year of the Corporation, report to the Shareholder on matters to be addressed at an annual general meeting of the Corporation as provided in subsection 154(1) of the OBCA including:

- (a) the Corporation's audited Financial Statements for the previous fiscal year;
- (b) the report of the Auditor, if any, to the Corporation;
- (c) an annual report setting out the Corporation's accomplishments during the previous fiscal year along with explanations, notes and information as is required to explain and account for any variances between the actual results and the Business Plan and Multi-Year Budget in effect for the year;
- (d) any further information respecting the financial position of the Corporation and the results of its operations required by Shareholder.

6.2 Annual Meeting or Resolution in Lieu: Within six months after the end of each fiscal year of the Corporation the Shareholder shall, as appropriate pursuant to this Shareholder

Declaration, the by-laws of the Corporation and the OBCA, at an annual meeting or by resolution in lieu of such annual meeting:

- (a) elect or re-elect directors of the Corporation to fill any vacancy;
- (b) appoint auditors of the Corporation;
- (c) receive the audited Financial Statements of the Corporation for the last completed fiscal year; and
- (d) complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA.

## **ARTICLE 7 SHAREHOLDER APPROVALS AND COMMUNICATIONS**

7.1 Communications. Approvals or decisions of the Shareholder required pursuant to this Shareholder Declaration or the OBCA shall require a by-law of the Shareholder passed at a meeting of Council and, in the case of resolutions under Section 104 of the OBCA, shall be communicated in writing and executed by the Shareholder.

7.2 Decisions of the City. Each time the Corporation wishes to seek an approval or decision from the Shareholder, the Corporation shall make a written request for the approval which includes all information necessary for the Shareholder to make an informed decision. The Corporation shall submit its request and supporting information in a timely manner to the appropriate Shareholder liaison.

7.3 Governance Liaison. For matters requiring Shareholder approval or other action regarding governance matters set out in Article 4, Article 6, Sections 8.1 – 8.7 inclusive and Section 9.1, the designated Shareholder liaison is the City Manager.

7.4 Financial Liaison. For matters set out in Article 5 and Section 8.9 – 8.15 inclusive, the designated Shareholder liaison is the City Treasurer.

7.5 Notwithstanding Section 7.1, approvals of the Shareholder required under Section 8.11, 8.12 and 8.14 are delegated to the City Treasurer who is also the authorized signatory for the Shareholder for such matters.

## **ARTICLE 8 MATTERS REQUIRING SHAREHOLDER APPROVAL**

Without Shareholder approval given in accordance with Section 7.1 of this Shareholder Declaration, the Corporation respectively shall not:

### Statutory Approval Rights.

8.1 change the name of the Corporation or a Subsidiary; add, change or remove any restriction on the business of the Corporation; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any by-law;

8.2 amalgamate with any other corporation(s) other than amalgamations;

- 8.3 take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation;
- 8.4 apply to continue the Corporation under the laws of another jurisdiction;
- 8.5 make any changes to the number of directors comprising the Board;
- 8.6 Sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- 8.7 Enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA;

Additional Approval Rights.

- 8.8 issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation;
- 8.9 redeem or purchase any of the Corporation's outstanding shares;
- 8.10 enter into any joint venture, partnership, strategic alliance or other venture if the exposure to the Corporation is \$5,000,000 (five million dollars) or more in the aggregate;
- 8.11 borrow money or give security on the assets of the Corporation if the exposure to the Corporation is \$5,000,000 (five million dollars) or more in the aggregate; or if such borrowing or giving of such security will, in the opinion of the City Treasurer, have a negative impact on the City's credit rating;
- 8.12 assume any financial obligation that would increase the ratio of debt to equity of the Corporation, on a consolidated basis, above 25:75;
- 8.13 make any decision or take any action that could reasonably be expected to, in the opinion of the City Treasurer, have a negative impact on the City's credit rating; and
- 8.14 enter into any agreement or arrangement to dispose of, by way of sale, transfer, exchange or lease, any real property, except in the ordinary course of business;
- 8.15 incur any expenditure or liability except in accordance with its Business Plan or Multi-Year Budget.

**ARTICLE 9  
REVISIONS TO THIS DECLARATION**

- 9.1 Required Consultation. The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the Shareholder will consult with the Board and the CEO prior to completing any revisions and will promptly provide the Board and the CEO with copies of such revisions.

## **ARTICLE 10 CONFIDENTIALITY**

10.1 Dealing with Information. Subject to applicable Laws, including without limitation the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the Municipal Act, the Shareholder shall keep confidential all confidential and/or proprietary information obtained by it relating to the business and affairs of the Corporation.

## **ARTICLE 11 NOTICES**

11.1 Delivery. Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered to the Shareholder by the Corporation or Board or to the Corporation or Board by the Shareholder shall be in writing and shall be sufficiently given or sent or delivered if it is

- (a) delivered personally,
- (b) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or
- (c) sent by telecopy machine

Notices shall be sent to the following addresses or telecopy numbers:

- (i) in the case of the Corporation or Board,  
  
Housing Development Corporation, London  
267 Dundas Street  
P.O. Box 5035  
LONDON, ON N6A 4L9  
Attention: Chief Executive Officer

Facsimile: (519) 661-5804

- (ii) in the case of the Shareholder,  
  
The Corporation of the City of London  
300 Dufferin Avenue  
London, Ontario  
N6A 4L9  
Attention: City Clerk

Facsimile: (519) 661-4892

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall:

- (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and
- (c) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

**IN WITNESS WHEREOF** the undersigned has executed this declaration this \_\_\_\_ day of \_\_\_\_\_, 2016.

THE CORPORATION OF THE CITY OF LONDON

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

ACKNOWLEDGED this \_\_\_\_ day of \_\_\_\_\_, 2016.

HOUSING DEVELOPMENT CORPORATION, LONDON

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title: