

Bill No. 413
2016

By-law No. A.-_____

A by-law to authorize and approve a Subordination Agreement with respect to the Loan Agreement between The Corporation of 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. The Mayor and the City Clerk are hereby authorized to execute the Subordination Agreement, authorized and approved in section 1, above.
3. 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