

--	--

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON January 21, 2013
FROM:	L. STEVENS DIRECTOR OF MUNICIPAL HOUSING HOUSING AND SOCIAL SERVICES
SUBJECT:	REPEAL OF PREVIOUS BY-LAW FOR DELEGATION OF SIGNING AUTHORITY FOR AFFORDABLE HOMEOWNERSHIP LOAN AGREEMENT UNDER THE INVESTMENT IN AFFORDABLE HOUSING PROGRAM

RECOMMENDATION

That, on the recommendation of the Director of Municipal Housing, the attached proposed By-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting of January 29, 2013 being "A by-law to repeal By-law No. A.-6722-44 and replace it with a new by-law to approve the standard form Homeownership Loan Agreement and to delegate authority to the Director of Municipal Housing to execute Home Ownership Loan Agreements on behalf of The Corporation of the City of London under the Investing in Affordable Housing Program".

PREVIOUS REPORTS PERTINENT TO THIS MATTER
--

Community & Protective Services Committee – February 26, 2007 - Canada-Ontario Affordable Housing Program – Homeownership Component, Administration Agreement and By-Law

Community Services Committee – January 23, 2012 - Investment in Affordable Housing Program Homeownership Loan Agreement

BACKGROUND

Affordable Homeownership Loan Agreement


The Homeownership Loan Agreement was developed with the assistance of D. Mounter of the City Solicitor's Office. The Loan Agreement will be registered on title by the Borrower(s) solicitor. Proof of registration must be forwarded to the City Solicitor as a condition of the loan.

Under the previous iterations of the Affordable Homeownership Program, authority to sign the Loan Agreement was delegated to the General Manager of Planning and Development, and under the city structure last spring, to the Executive Director of Community Services. Under the latest structure, it is recommended that the authority to sign the Loan Agreement be delegated to the Director of Municipal Housing.

--	--

FINANCIAL IMPACT

There is no municipal funding allocated to this program.

RECOMMENDED BY:

LOUISE STEVENS DIRECTOR OF MUNICIPAL HOUSING

- C. D. Munteer, Assistant City Solicitor
- A.L. Barbon, Manager, C/S Financial & Business Services
- M. Gascon, Affordable Housing Development Coordinator

Appendix "A"

Bill No.
2013

By-law No. A.- _____

A by-law to repeal By-law No. A.-6722-44 and replace it with a new by-law to approve the standard form Homeownership Loan Agreement and to delegate authority to the Director of Municipal Housing to execute Home Ownership Loan Agreements on behalf of The Corporation of the City of London under the Investing in Affordable Housing Program.

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* 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 section 23.1(1) of the *Municipal Act, 2001* authorizes the municipality to delegate its powers and duties to a person;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to delegate authority to the Director of Municipal Housing to execute Homeownership Loan Agreements, substantially in the form of agreement attached to this by-law, on behalf of the City of London under the Investing in Affordable Housing Program;

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

1. The standard form Homeownership Loan Agreement to be entered into between The Corporation of the City of London and successful borrower(s), substantially in the form of agreement attached as Schedule "A" to this by-law and to the satisfaction of the City Solicitor, is hereby approved.
2. The Director of Municipal Housing is hereby authorized to execute Homeownership Loan Agreements approved in Section 1, above, on behalf of The Corporation of the City of London, under the Investing in Affordable Housing Program.
3. By-law No. A.-6722-44, as passed on January 31, 2012 is hereby repealed.

PASSED in Open Council on January 29, 2013

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - January 29, 2013
Second reading - January 29, 2013
Third reading - January 29, 2013

Schedule A to By-law No. _____

HOMEOWNERSHIP LOAN AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2013.

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

(the "City")

- and -

(the "Borrower")

(the "Borrower")

(herein collectively called "the Borrower")

1. Loan

Subject to Section 5, the City agrees to lend to the Borrower and the Borrower agrees to borrow from the City the sum of *****(\$*****) of lawful money of Canada (the "IAH Loan").

2. Purpose

The Borrower shall use the IAH Loan only to finance the Borrower's purchase of the approved Investment in Affordable Housing Program (IAH) Unit as their sole principal residence located at

(the "IAH Unit")

The City shall advance the IAH Loan to the Borrower's Solicitor on behalf of the Borrower on the closing of the purchase by the Borrower of the IAH Unit (the "Closing").

3. Repayment

The Borrower agrees to repay the IAH Loan to the City on the twentieth (20th) anniversary of the date of advance of the IAH Loan (the "Anniversary Date"), at 267 Dundas Street, 3rd Floor, London, Ontario or at any other place in Canada that the City may direct; provided, however, that if no Event of Default or other event giving rise to the acceleration of the obligation to repay the IAH Loan has occurred and is continuing on such Anniversary Date, the IAH Loan shall be automatically forgiven.

4. Security

As continuing collateral security for the advance of the IAH Loan and any amount payable in respect of capital appreciation, the Borrower shall execute and deliver to the City a Mortgage/Charge of Land, in form and content satisfactory to the City, which shall be registered against title to the IAH Unit (the "Mortgage"). In addition, all monies that the City expends recovering mortgage monies shall be added to the amount secured.

5. Preconditions to Advance

The obligation of the City to advance the IAH Loan under this Agreement is subject to and conditional upon:

- (a) receipt by the City of a copy of the executed Agreement of Purchase and Sale for the IAH Unit in accordance with section 21.
- (b) each representation, statement, declaration and all information provided to the City by the Borrower in connection with this credit facility being true and accurate as of the date of closing;
- (c) approval by the City of the Charge/Mortgage to be registered against title to the IAH Unit on closing; and
- (d) there being no restrictions, liens or encumbrances against the IAH Unit at the time of the advance of the IAH Loan other than (i) one first mortgage/charge of land securing financing obtained solely for the purchase of the IAH Unit; (ii) a declaration and description under the *Condominium Act*; (iii) any minor easements for the supply of domestic utility or telephone services to the IAH Unit or adjacent properties; (iv) 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 as a residential dwelling; (v) any registered municipal agreement and registered agreement with publicly regulated utilities providing such have been complied with; and (vi) any registered restrictions that run with the land providing such are complied with.

6. First Mortgage Refinancing

If during the term of the Agreement the Borrower seeks registration of a new first mortgage for the purpose of refinancing the primary financing secured by the IAH Unit, the Borrower shall notify the City of a request for postponement of the City's mortgage securing the IAH Loan not less than thirty (30) days prior to such intended refinancing transaction. Provided the Borrower remains in good standing under the Loan Agreement and the City is satisfied that the terms of such refinancing do not substantially differ from the first mortgage financing obtained solely for the purchase of the IAH Unit and that the IAH Unit will, following registration of the new first mortgage and the advance of funds thereunder, provide adequate security, the City shall not unreasonably refuse the request for postponement of the City's mortgage.

7. Events of Default

The occurrence of any one or more of the following events (each, an "Event of Default") shall constitute a default under this Agreement:

- (a) the death of the last of the Borrowers;
- (b) use of the IAH Loan for a purpose other than that specified in Section 2;
- (c) a Borrower becomes bankrupt or insolvent or a Borrower becomes subject to the provisions of the *Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-13* or any other Act for the benefit of creditors or a Borrower makes a general assignment for the benefit of its creditors or otherwise acknowledges insolvency;
- (d) a writ of execution against a Borrower is or becomes binding against the IAH Unit;
- (e) a disposal by the Borrower of the IAH Unit or a part thereof;
- (f) any representation, statement, declaration or information provided to the City by the Borrower in connection with this credit facility is false or erroneous in any material respect as of the time it was made or given;
- (g) a lease of the IAH Unit;

- (h) the Borrower ceasing to occupy the IAH Unit as the Borrower's sole and principal residence.

8. Effect of Default

If, during the period in which the IAH Loan is outstanding, the IAH Unit is resold for more than the price at which it was acquired by the Borrower, the principal shall be repayable. In addition, the Borrower shall pay to the City an amount that is equal to the percentage that the IAH Loan is of the original purchase price of the IAH Unit as applied to the differential between the current fair market value of the IAH Unit and the original purchase price of the IAH Unit. The fair market value of the IAH Unit shall be determined by the City, based on (i) the price at which the IAH Unit was resold, if such transaction was an arm's length transaction or (ii) an independent appraisal commissioned by the City, if such transaction was not an arm's length transaction.

If, during the period in which the IAH Loan is outstanding, the IAH Unit is resold for less than the price at which it was acquired by the Borrower and the sale of the IAH Unit was an arm's length transaction, the difference between the IAH Loan amount and the depreciated amount shall be repayable. If the depreciated amount is greater than the IAH Loan amount, the principal shall be forgiven.

If, during the period in which the IAH Loan is outstanding, the IAH Unit is resold for less than the price at which it was acquired by the Borrower and the sale of the IAH Unit was not an arm's length transaction, the principal shall be repayable. In addition, the Borrower shall pay to the City an amount that is equal to the percentage that the IAH Loan is of the original purchase price of the IAH Unit as applied to any positive differential between the current fair market value of the IAH Unit and the original purchase price of the IAH Unit. The fair market value of the IAH Unit shall be determined by the City based on an independent appraisal commissioned by the City.

If, during the period in which the IAH Loan is outstanding, the Borrower leases the IAH Unit, ceases to occupy the IAH Unit as the Borrower's sole and principal residence, a writ of execution against the Borrower is or becomes binding against the IAH Unit, the Borrower becomes bankrupt or insolvent, the Borrower misrepresents his or her eligibility, or the Borrower uses the proceeds of the IAH Loan for a purpose other than the acquisition of the IAH Unit, the Borrower shall pay to the City an amount that is equal to the percentage that the IAH Loan is of the original purchase price of the IAH Unit as applied to any positive differential between the current fair market value of the IAH Unit and the original purchase price of the IAH Unit. The fair market value of the IAH Unit shall be determined by the City based on an independent appraisal commissioned by the City.

9. Prepayment

The Borrower may repay all of the IAH Loan at anytime, provided the Borrower shall also pay an amount that is equal to the percentage that the IAH Loan is of the original purchase price of the IAH Unit as applied to any positive differential between the current fair market value of the IAH Unit and the original purchase price of the IAH Unit. The fair market value of the IAH Unit shall be determined by the City, at the City's discretion, based on either an independent appraisal commissioned by the City at the City's expense or the current municipally assessed value of the IAH Unit. The Borrower shall not be permitted to prepay only part of the IAH Loan.

10. Calculations

Notwithstanding anything to the contrary contained in this Agreement, amounts payable under this Agreement with respect to capital appreciation shall not exceed the maximum amount of interest that does not violate applicable laws.

Where an amount payable in respect of capital appreciation is considered interest, the rate of interest in respect of a period less than one year shall be the applicable annual rate of interest

multiplied by the number of days in the calendar year in respect of which the calculation is made divided by 365.

11. Insurance

The Borrower agrees to purchase and maintain, during the term of this Agreement:

- (a) property insurance covering the cost of replacing the structure of the IAH Unit and its contents;
- (b) third party liability insurance covering bodily injury, loss or property damage;
- (c) CMHC Mortgage Loan Insurance for high-ratio mortgage;

The Borrower shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this section.

12. Notice

Any notice or other communication required, desired or permitted under this Agreement shall be in writing and shall be effectively given if:

- (a) delivered personally;
- (b) sent by prepaid courier service;
- (c) sent by registered mail; or
- (d) sent by facsimile

to the following address:

- (i) in the case of the City to:

**The City of London
Housing Division
267 Dundas St. 3rd Floor,
P.O. Box 5035
London, ON N6A 4L9**

Attention: Director of Municipal Housing

- (ii) In the case of the Borrower to:

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving the same in the manner provided in this section. Any notice or other communication shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day such notice or other communication shall be deemed to have been given and received on the next following business day. Any notice or other communication transmitted by facsimile shall be deemed to have been given and received on the day of its transmission, provided that such day is a business day and such transmission is completed before 4:30 pm on such day, failing which such notice or other communication shall be deemed to have been given and received on the first business day after its transmission.

13. Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions of this Agreement and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

14. Whole Agreement

This Agreement constitutes the whole agreement between the City and the Borrower relating to the subject matter of this Agreement, and cancels and supersedes any prior agreements, undertakings, declarations, commitments and representations, written or oral, in respect thereof.

15. Amendment

This Agreement may only be amended by written agreement between the City and the Borrower.

16. Further Assurances

The Borrower shall promptly execute and deliver to the City, all such other and further documents, agreements and other instruments, and do such other and further things, as the City may require to give effect to this Agreement.

17. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

18. Time

Time shall be of the essence in this Agreement.

19. Gender and Number

This Agreement shall be read with all changes of gender and number required by the context.

20. Successors and Assigns

This Agreement shall be binding upon and shall enure to the benefit of the City and the Borrower and their respective successors and assigns. The Borrower may not assign or transfer its rights and obligations under this Agreement without the prior written consent of the City. The City may assign or transfer its rights and obligations under this Agreement without the Borrower's consent.

21. Governing Law

This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of Canada and the laws of Ontario applicable therein.

22. Collection of Information

Any personal information collected by or on behalf of the City under this provision is collected for the purpose of Section 4 of the Ministry of Municipal Affairs and Housing Act, R.S.Q. 1990, c.M. 30. The information in the agreement of purchase and sale will be used to confirm certain information provided in the Borrower's application for this credit facility and in preparing the Mortgage. The Borrower consents to such collection and use of the information. The Borrower acknowledges that the information contained in the agreement of purchase and sale may become public and consents to the release of that information. Any questions regarding the collection, use, or disclosure of the information should be directed to the Director of Municipal Housing, 3rd Floor, 267 Dundas Street, P.O. Box 5035, London, Ontario N6A 4L9.

23. Borrower's Solicitor

The Borrower confirms the solicitor representing him/her on the purchase of the IAH Unit is:

Name:

Address:

Telephone:

Fax:

And hereby authorizes and directs the said solicitor to release to the City or its solicitor upon request, any information and copies of documents required to complete this agreement and the security required by Section 5.

24. Notice of Closing

The Borrower will provide the City with thirty (30) days advance written notice of the Closing.

25. Joint and Several Liability

The obligations of each of the Borrowers under this Agreement shall be joint and several.

IN WITNESS WHEREOF **the parties hereby agree to the within Agreement.**

**THE CORPORATION OF
THE CITY OF LONDON**

by: *Signature*

Title: Director of Municipal Housing

Date of Signature: _____

I have the authority to bind the Corporation.

THE BORROWER(S)

Witness Signature

Borrower Signature

Witness Name (printed)

Borrower Name (printed)

Date

Date

Witness Signature

Borrower Signature

Witness Name (printed)

Borrower Name (printed)

Date

Date