

Bill No. 139  
2021

By-Law No. C.P.-\_\_\_\_\_ - \_\_\_\_

A by-law to approve and authorize the use of the Affordable Housing Development Loan Agreement template between The Corporation of the City of London (the "City") and Registered Owner of a property providing affordable rental units (the "Borrower") to provide for a loan for the creation of new affordable rental housing units and to delegate the authority to enter into such Agreements to the City Planner or delegate.

WHEREAS subsection 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 sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorize a municipality to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraph 3 of subsection 10(2) authorizes by-laws respecting the financial management of the municipality;

AND WHEREAS section 23.1 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate its authority;

AND WHEREAS subsection 23.2(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes a municipality to delegate quasi-judicial powers under the Municipal Act, 2001 to an individual who is an officer, employee, or agent of the municipality;

AND WHEREAS the Municipal Council of The Corporation of the City of London adopted By-law C.P.-1543-38 to designate the Affordable Housing Community Improvement Project Area;

AND WHEREAS the Municipal Council of The Corporation of the City of London adopted By-law C.P.-1544-40 to adopt the Affordable Housing Community Improvement Plan;

AND WHEREAS the Municipal Council of The Corporation of the City of London adopted By-law C.P.-1545-41 to establish financial incentives for the Affordable Housing Community Improvement Project Area;

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

1. The Affordable Housing Development Loan Agreement template to provide a loan for the creation of new affordable rental housing units, attached as Schedule "1" to this by-law is hereby authorized and approved.
2. The City Planner, or delegate, is hereby authorized to enter into and execute the Affordable Housing Development Loan Agreement substantially in the form approved in section 1 above.
3. This by-law comes into force on the day it is passed.

PASSED in Open Council on April 13, 2021.

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First Reading – April 13, 2021  
Second Reading – April 13, 2021  
Third Reading – April 13, 2021

Schedule "1"

**AFFORDABLE HOUSING DEVELOPMENT LOAN AGREEMENT**

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This Agreement made in triplicate this xx day of xxxxx, 20xx.

BETWEEN:

**THE CORPORATION OF THE CITY OF LONDON,**  
hereinafter called "the City" OF THE FIRST PART;

- and -

**Xxxxxxxx**

hereinafter called "the Borrower" OF THE SECOND PART;

WHEREAS the Borrower represents that they are the registered owner of the property, known municipally as **xxxxxxx**, located in the City of London, in the County of Middlesex and more particularly described in **Schedule "A"** attached hereto (the "Land");

AND WHEREAS section 28(7) of the Planning Act, R.S.O. 1990, c. P.13 authorizes a municipality to make grants or loans in conformity with a community improvement plan to registered owners within a community improvement project area;

AND WHEREAS the City has established the Affordable Housing Development Loan Program within the Affordable Housing Community Improvement Plan to encourage the creation of new affordable rental housing units by off-setting up-front costs associated with developing new affordable rental housing;

AND WHEREAS the Borrower has applied to the Affordable Housing Development Loan Program and the City has provisionally accepted the application pursuant to the City's Commitment Letter dated **xxxxxx**, in **Schedule "B"** attached hereto;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto covenant and agree each with the other to comply with, keep, perform and be bound by each and every term, condition and covenant herein set out to the extent that the same are expressed to be respectively binding upon them, and the same shall enure to the benefit of and shall be binding upon their respective heirs, executors, administrators, successors and assigns.

1. **Affordable Rental Housing Units:** In consideration of the Loan, the Borrower shall provide **XX (XX)** Affordable Rental Housing Units (the "Units") in accordance with the following terms:
  - i. **XX (XX) one-two-three-bedroom** Units that will not exceed **XX%** of the CMHC Average Market Rent (the "AMR") as calculated on **<insert Commitment Letter date/date of application here>** for the term of the Agreement. At initial occupancy, the rent for a **XX-** bedroom Unit will be **\$XXX monthly**, inclusive of heat and water **(repeat for each type of unit)**;

- ii. The Borrower may increase rent with respect to a Unit only if at least twelve (12) months have elapsed:
  - a. Since the day of the last rent increase respecting the Unit, or
  - b. If there has been no increase, since the day the Unit was first rented for the first rental period following the project completion.

No additional increase is permitted when a Unit becomes vacant within twelve (12) months of the annual rent increase.

- ii. The Borrower may increase the rent in accordance with the prevailing rent increase guideline established pursuant to the *Residential Tenancies Act, 2006*, as amended, under the condition that the rent does not exceed **XX%** of the CMHC AMR for that Unit **(repeat if different %)**.
- iii. Gross household income from all sources of tenants of the Units shall be no greater than five (5) times the monthly rent. The Borrower is required to check income of prospective tenant(s) of the Units to ensure compliance. This shall be verified through an Initial Occupancy Report and thereafter, Annual Occupancy Reports, which shall be produced to the City upon request.

2. Affordability Period: The Borrower shall maintain the Units for a period not less than twenty (20) years (the "Affordability Period"). The Affordability Period shall commence upon the City's receipt and approval of the submitted Initial Occupancy Report for all of the Units, in the form to be provided by the City.

3. Loan Amount: The City shall loan to the Borrower, the total amount of **XXXXXXXXXX**, (the "Loan") by way of a single lump-sum payment to be provided subsequent to the City's issuance of a building permit for the construction of the Units.

4. Repayment of Loan: The Borrower shall repay the Loan in accordance with **Schedule "C"** - Loan Repayment Schedule attached hereto. Failure to render any payment owing once due and payable shall constitute a default under this Agreement.

5. Interest: Interest shall accrue on the principal amount of the Loan at a rate of eight percent (8%) per annum, compounded and calculated every 30 days, commencing from the advance date of the Loan. The accrued interest shall become payable upon the expiry of the Affordability Period, subject to the default provisions in this Agreement. Notwithstanding, the City may waive payment of all accrued interest payable in accordance with the repayment terms and conditions contained in **Schedule "C"**.

6. Charge Registered on Land: The Borrower acknowledges and agrees that the City shall register a charge upon the Land in the amount of the Loan, as security. The registered charge shall be discharged upon full repayment of the Loan, including interest. The Borrower warrants that the cumulative balance owing on all mortgages and charges, including the Loan, shall not exceed 90% of the post-rehabilitation appraised value of the Land at any time, prior to the full repayment of the Loan. The discharge of the charge shall not affect the Borrower's obligation to maintain the Units in accordance with this Agreement, which shall continue until the expiry of the Affordability Period.

7. Agreement Registered on Land: The Borrower acknowledges and agrees that the City

shall register this Agreement upon the Land pursuant to Subsection 28 (11) of the *Planning Act*, R.S.O. 1990, c. P. 13. This Agreement shall be discharged upon the expiry of the Affordability Period.

8. Insurance: Fire and liability insurance shall be maintained by the Borrower at all material times indicating the City as a mortgagee and loss payee with minimum coverage representing guaranteed replacement cost or full replacement value of the development and shall be produced on the City template, to the City, upon request. The Borrower acknowledges that any non-payment, default, cancellation, or reduction below the minimum amount of the insurance policy shall constitute a default under this Agreement.

9. Representations and Warranties of the Borrower: The Borrower represents and warrants that they have never defaulted on a City loan or grant program, including by way of individual affiliation with any company or group of people authorized to act as a single entity such as a corporation; that property taxes are paid in full and there are no City of London Orders or by-law infractions currently outstanding in relation to the Land.

10. Assignment, Transfer and Postponement: In the event the Borrower transfers any interest in the Land, in whole or in part, to any person other than the Borrower, the outstanding balance of the Loan, including any interest or penalties accrued, shall become immediately due and payable. Notwithstanding, the City may, at its sole discretion, consent to the assignment of the Loan to a transferee prior to a transfer being completed. An assignment of the Loan shall require as a condition, that the transferee enter into a new Loan Agreement with the City in relation to the remainder of the Affordability Period and the balance of the Loan at the time of transfer of the Land and require the Assignor and Assignee to enter into an Assignment and Assumption Agreement in a form satisfactory to the City. The City may, at its sole discretion, consent to the postponement of the charge registered on title to the Land in favour of another encumbrance, on the condition that the total value of all registered mortgages and charges continues to not exceed 90% of the post-rehabilitation appraised value of the Land. The Borrower's obligation to maintain the Units until the expiry of the Affordability Period will be unaffected by any approved or unapproved transfer, assignment or postponement completed in the relation to the Land.

11. Termination: The parties acknowledge and agree that this Agreement and all obligations of the parties hereunder, shall be terminated upon the full repayment of the Loan, together with any interest or penalties accrued, if applicable, and the expiry of the Affordability Period. This Agreement may also be terminated upon the written agreement of the parties to same.

12. Subsequent Owners Bound: Subject to the provisions of the *Registry Act* and the *Land Titles Act*, the covenants, agreements, conditions and understandings herein contained on the part of the Borrower shall be conditions running with the Land and shall be binding upon it, its heirs, executors, administrators, successors and assigns, as the case may be, as subsequent owners and occupiers of the Land from time to time (and "Borrower", wherever used in this Agreement, is intended and shall be construed to include such subsequent owners and occupiers) in accordance with Subsection 28 (11) of the *Planning Act*, R.S.O. 1990, c. P. 13.

13. Default: Time shall be of the essence in this Agreement. Upon breach by the Borrower

of any covenant, term, condition or requirement of this Agreement, or upon the Borrower becoming insolvent or making an assignment for the benefit of creditors, the Borrower shall be in default under this Agreement. Notice of such default shall be given in accordance with this Agreement and if the Borrower has not remedied such default within such time, as provided in the notice, the City may direct that the balance owing on the Loan together with interest and penalties be immediately due and payable.

14. Enforcing Performance of Requirements: In addition to any remedy authorized or permitted by this Agreement or by law, the City may, in the event of a default by the Borrower under this Agreement, do such matter or thing at the Borrowers' expense to correct the default, and the City may recover the expense incurred in doing it by action, from any security posted by the Borrower, or by recovery in like manner as municipal taxes. No proceeding by the City under this clause and no waiver under any provision of this Agreement shall prejudice the rights of the City in respect of any subsequent default by the Borrower under this Agreement. The rights of the City may be enforced by any remedy authorized or permitted by this Agreement or by law, and no such remedy shall be exclusive of or dependent on any other remedy.

15. Notice: Any notice required or permitted to be given pursuant to the terms of this Agreement, shall be given in writing, sent by prepaid registered post, addressed in the case of notice given by the City to the Borrower at the municipal address of the Land, and in the case of notice given by the Borrower to the City addressed to: The City Clerk, P.O. 5035, London, Ontario N6A 4L9. Notice shall conclusively be deemed to have been given on the day that the same is posted.

16. Separate Covenants: All of the provisions of this Agreement are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate clause hereof. Should any provision of this Agreement be adjudged unlawful or not enforceable, it shall be considered separate and severable from the Agreement and its remaining provisions as though the unlawful or unenforceable provision had never been included.

17. Entire Agreement: This Agreement (including any Schedules, Exhibits and Attachments) shall constitute the entire Agreement of the parties with respect to, and supersedes all prior written and oral agreements, understandings and negotiation with respect to the subject matter hereof.

18. Number and Gender: This Agreement shall be read with all changes to gender required by the context.

IN WITNESS WHEREOF the City has executed this Agreement by its authorized officers and the Borrower has hereunto set its hand and seal, or hereunto affixed its corporate seal attested by the hands of its duly authorized officers.

**THE CORPORATION OF THE CITY OF LONDON**  
by its authorized officers:

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We have the authority to bind the Corporation

**XXXXXXXXXX**

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(seal)

**SCHEDULE "A"**  
**DESCRIPTION OF LAND**

Property Address:                      Street Address  
Legal Description:                      [Lot/Part Lot/33R Plan/ etc.]  
Place Type:                              [Name of Place Type, from London Plan]  
Zoning:                                      [Zone from Zoning By-law]

Geographic Category (check one):

- Downtown, Transit Villages or Rapid Transit Corridor: \_\_\_\_
- Primary Transit Area or Closed School Site: \_\_\_\_
- Other Site: \_\_\_\_

CMHC Rental Market Zone:

- Zone Name: \_\_\_\_\_
- Zone Number: \_\_\_\_\_

**Current Property Indebtedness**

**Owed To**

**Amount To**

1<sup>st</sup> Mortgage:    [Bank Name]    [ \$\_\_\_\_\_ ]

2<sup>nd</sup> Mortgage:

Other encumbrances:

**SCHEDULE "C"**  
**LOAN REPAYMENT SCHEDULE**

Loan Amount: \$ \_\_\_\_\_

First Repayment Amount: \$ \_\_\_\_\_.

First Repayment Due (60 days after building permit issued): \_\_\_\_/\_\_\_\_/\_\_\_\_\_

1. The original Loan advance, not including accrued interest, shall be repaid in three (3) equal installments of \$\_\_\_\_\_ payable as follows:
  - a. First (1<sup>st</sup>) payment shall be due and payable sixty (60) days after building permit issuance;
  - b. Second (2<sup>nd</sup>) payment shall be due and payable sixty (60) days after structural framing is complete, as confirmed by a Payment Certifier Certificate from a qualified professional; and
  - c. Third (3<sup>rd</sup>) payment shall be due and payable sixty (60) days after the earlier of: the initial occupancy date of the building or the date of issuance of an occupancy permit.
2. Notwithstanding the repayment terms above, any portion of the original Loan advance not yet due and payable by the tenth (10<sup>th</sup>) anniversary of the date of building permit issuance shall become immediately due and payable.
3. Interest shall accrue on the principal amount of the Loan at a rate of eight percent (8%) per annum, compounded and calculated every 30 days commencing from the Loan advance date.
4. The total remaining amount of the Loan, including accrued interest and penalties, shall become immediately due and payable upon the expiry of the Affordability Period. Notwithstanding, the City shall agree to waive payment of the remaining Loan amount owing upon the expiry of the Affordability Period and shall release the Borrower from their obligation to pay same under the following conditions:
  - a. The Borrower has made all previous payments owing under this Schedule within the prescribed due dates, including full repayment of the original Loan advance; and
  - b. The Borrower has not defaulted under this Agreement in any manner prior to the expiry of the Affordability Period.
5. Full repayment of the Loan may be made at any time without penalty.
6. Failure to render any Loan payment owing under this Schedule once due and payable, shall constitute a default under this Agreement.
7. The parties may agree to vary the payment schedule of this Loan through mutual agreement, in writing.