DOWNTOWN & BARTON / KENILWORTH HOUSING OPPORTUNITIES PROGRAM

The Downtown and Barton/Kenilworth Housing Opportunities Program is intended to provide financial assistance in the form of a 0% interest Loan to promote the development of multiple dwelling units that will create new housing opportunities and support robust local commercial district and commercial corridor populations that add vibrancy and demand for local commercial businesses/services.

A. Program Description/Overview

1. For the purposes of this Program:

   a. **"Approval Authority"** has the meaning ascribed to it in Section E;

   b. **"Director"** means the City's Director of the Economic Development Division;

   c. **"Dwelling Unit"** has the meaning ascribed to it in Zoning By-law No. 05-200, as amended;

   d. **"General Manager"** means the City's General Manager of the Planning and Economic Development Department;

   e. **"Hard Costs"** means the direct costs of construction of the Project, including labour and materials, but excluding soft costs such as professional fees, financing costs, and application fees;

   f. **"Holdback"** means the statutory basic holdback, finishing holdback, and any applicable notice holdbacks provided for under the Construction Act, R.S.O. 1990, c. C.30;

   g. **"Loan"** shall mean a loan under the Program;

   h. **"Manager"** means the City's Manager of Commercial Districts and Small Business;

   i. **"Owner"** means the owner registered on title of the property that is the subject of a Program application;

   j. **"Program"** means the Downtown and Barton/Kenilworth Housing Opportunities Program;

   k. **"Project"** means the improvement/development of dwelling units that will create new/improved housing opportunities that is the subject of an application under the Program;

l. **"Project Monitor"** means an architect, engineer or quantity cost surveyor acceptable to the Director in their sole, absolute and unfettered discretion;

m. **"RHCD CIP"** means the Revitalizing Hamilton's Commercial Districts Community Improvement Plan;

n. **"RHCD CIPA"** means Revitalizing Hamilton's Commercial Districts Community Improvement Project Area; and,

o. **"Site"** means all properties/parcels of land associated with the building that is subject to an application under this Program.

2. Activities supported by this Program include:

    a. the creation of at least 10 new dwelling units through the development of a multiple dwelling on vacant land, surface parking areas or the redevelopment of existing Sites;

    b. a building addition containing at least 10 new dwelling units; and/or,

    c. the conversion of existing non-residential space into housing consisting of at least 10 new dwelling units.

3. Loans provided under this Program shall be provided to the Applicant, who is the Owner.

4. This Program applies to properties within the following Community Improvement Project Areas: Barton Village and Downtown Hamilton Commercial Districts, the Barton Street East Strategic Commercial Corridor (east of the Barton Village Commercial District) and the Kenilworth Avenue North Strategic Commercial Corridor as collectively defined through the RHCD CIPA By-law.

5. The maximum loan amount is the lesser of $4,000,000 or 25% of the Hard Costs of the Project per Site, confirmed through the cost to construct budget, acceptable to the Director.

B. Program Eligibility and Criteria

6. Applications to this Program must meet the goals of the RHCD CIP.

7. Only residential units comprising the necessary facilities to meet the definition of a Dwelling Unit shall be eligible under this Program.

8. Notwithstanding Section A, Paragraph 4, this Program shall not apply to:

a. a currently operating or proposed adult entertainment parlour, body rub establishment, correctional facility, corrections residence, emergency shelter, lodging house or residential care facility as defined in the applicable Zoning By-law; and,

b. a property where a designated heritage building has been demolished, or any designated part thereof, has been demolished in contravention of the *Ontario Heritage Act* or any applicable City by-law or Official Plan policy respecting designated heritage buildings, or parts thereof.

9. Costs associated with a Project commenced prior to submitting a Program application are ineligible for funding under this Program. Costs associated with the improvement/developments commenced after submitting a Program application but prior to approval may be eligible for funding under the Program with eligibility determined by the Manager in their sole, absolute and unfettered discretion. An Applicant shall assume the risk of any costs incurred after an application has been submitted but prior to approval under this Program having been received.

10. A complete Program application shall be submitted to the Economic Development Division prior to:

    a. The commencing of any eligible Project on the Site; and/or,

    b. The issuance of Building Permit for above-grade construction on the Site.

11. A minimum of 50% of the total Loan amount must be spent on costs associated with developing / improving Dwelling Units. The remaining 50% may cover the cost of common elements of the Site (e.g. roofing, HVAC, central air conditioning, fire escapes, foundations, furnaces, entranceways or other improvements deemed eligible by the Manager and necessary for the completion of the Project). Improvement of common elements shall not be funded in the absence of the creation or improvement to Dwelling Units.

12. Loans shall not be permitted for any portion of a Site consisting of demolition, conversion or renovations to residential rental units, which are not in compliance with applicable law and City by-laws, including but not limited to the Renovation Licence and Relocation By-law No. 24-055, as amended, the Rental Housing Protection By-law No. 24-109, and the Residential Tenancies Act, 2006.

13. Any portion of a project involving renovations to rental residential units shall only be eligible under this Program in accordance with Section B, Paragraph 12 herein.

14. Applicants shall disclose if any residential units are occupied at the time a Program application has been submitted to the City and, if so, identify the specific units occupied. For additional clarity, the City is not requesting or requiring the disclosure of tenant names or any other personal contact information.

15. Where this Program will provide a financial incentive to facilitate the undertaking of

external and/or internal project improvements which are not for the sole benefit of a non-residential use, and where the Site contains occupied unit(s) at the time of application to the City, the occupied unit(s) shall not be the subject of an approved Above Guideline Increase (AGI) request (also referred to as an L5 request) to the Landlord and Tenant Board (LTB) for a period beginning from the date the application is received by the City and ending upon completion of the prescribed term of the incentive to be provided, or five years from the date of the initial financial disbursement, whichever is greater. This condition will continue to apply whether or not the tenancy of the unit(s) changes during this period. Exceptions to this condition may be provided where it can be demonstrated, to the City's satisfaction, that:

a. The affected tenant(s) have consented to the proposed AGI. Where there is more than one occupied unit in the building at the time of application to the City, this exception only applies where all affected tenants have consented to the proposed AGI request;

b. That the requested AGI is a result of improvements or other matters not related to the Project facilitated by the City's Loan; and

c. Notwithstanding the provision of the Loan by the City, an AGI request would be required to facilitate the Site improvements due to site or building specific circumstances.

In the event an AGI request is approved by the LTB and determined to be in contravention of the City's condition, and this approval occurs after the City's approval under this incentive program but prior to the entering into any agreement required by this program, the application approval will be deemed to be rescinded, no incentive will be provided, and no agreement will be entered into by the City. Where the AGI approval occurs after the City's approval and after the execution of any agreement required by this program, any remaining incentive yet to be provided over the remaining term of the program will be cancelled , the loan amounts advance shall be repayable by the applicant and where necessary enforcement action will be initiated to recoup the loan advances made.

This condition shall not apply to units registered as a condominium.

16. Notwithstanding Section A, Paragraph 5, the maximum Loan amount outstanding (advances less amounts that have been repaid) under the Program to a single developer or related group will not exceed $10 million at one time. Unless waived by the GM, the amount equivalent to the remaining Loan commitment on partially advanced loans will reduce the maximum Loan amount available. At the discretion of the GM, the aggregate of the loans approved to a single developer or related group at one time can exceed $10 million.

17. Applicants shall have no less than 15% equity based upon the as-complete appraised value of the Site as developed with the Project. All mortgages registered on title, including collateral mortgages and non-registered debt, to the Manager's

satisfaction, will be included in the equity calculation.

18. The appraisal must be prepared by an accredited member of the Appraisal Institute of Canada (AIC). The appraisal shall be submitted with the Program application and be addressed to the City, dated within six months of the date of the Program application, and shall be prepared to the Manager's satisfaction. An appraisal may be waived or be accepted if dated beyond 6 months from the date of the Program application at the Manager's discretion.

19. Notwithstanding Section B, Paragraph 17, for Applicants who have loans insured by Canada Mortgage Housing Corporation, equity requirements will be reduced to 5% based upon the as-complete appraised value of the Site as developed with the Project.

C. Loan Structure, Repayment and Documentation

20. The maximum Loan term is five years and six months (subject to prior termination on default) commencing from the date of the final advance. No extension or renewal shall be granted.

21. The Loan interest rate will be at 0% interest for the first five years of the loan term. Interest on arrears will be charged per annum at the then prevailing rate established by City Council.

22. The Loan shall be secured through a mortgage registered on title upon the Site in a position no less than second in priority prior to the first advance of funds.

23. The City will request additional security, satisfactory to the Director, which may include the following personal property security; and / or personal guarantees; and / or corporate guarantees; and / or letter of credit in lieu of a second mortgage charge on the property (subject to City's minimum equity requirements); and / or such other security which may be appropriate or available in the circumstance. In the instance where a personal guarantee is required a personal net-worth statement will also be required.

24. The City's funding will be advanced in three stages, upon completion of 60%, 80% and substantial completion of the Project. Advances will be issued upon:

    - Proof of equity injections, satisfactory to the Director;
    - Certification from a Project Monitor confirming the value of completed work, at the Director's discretion;
    - Confirmation that there are no outstanding building code, fire code or property standards orders or any other order applicable to the Site or the Project by any

governmental authority; and,

- Confirmation that all property taxes as billed are paid current and in good standing throughout the development stage as well as during the term of the Loan for any portion of the development retained by the Applicant upon Project completion, including condominium units. Any tax arrears on the Site as well as tax arrears on other properties owned by the Applicant within the City shall be paid.

The advances will be released as follows:

a. At the 60% completion stage of the Project, 60% of the Loan commitment will be advanced less any Holdback as required pursuant to Section C, Paragraph 27 herein and the per unit administration fee;

b. At the 80% completion stage of the Project, 20% of the Loan commitment will be advanced less any Holdback as required pursuant to Section C, Paragraph 27 herein;

c. At substantial completion of the Project, another 20% of the Loan commitment will be advanced less the Holdback as required pursuant to Section C, Paragraph 27 herein.

Notwithstanding the foregoing the City shall retain from all advance a minimum Holdback of 10%.

25. Unless waived by the Director, the Applicant must provide supervision of the Project by a third-party Project Monitor at their expense. The Project Monitor, prior to each advance, will provide proof that the structural, mechanical and electrical work complies with the approved plans and specifications and all applicable law to the satisfaction of the Director.

26. For Loans of $1 million or more, a letter addressed to the City from a third-party quantity surveyor approving the cost to construct budget must accompany the Program application unless waived by the Manager.

27. Unless waived at the sole, absolute and unfettered discretion of the Director, confirmation of publication of the Certificate of Substantial Performance will be required. Where the requirement for confirmation of publication of the Certificate of Substantial Performance has been waived by the Director, the Contractors must supply a Declaration of Last Supply. Holdbacks will be released 60 days following the date of publication of substantial completion or, where the Director has waived the requirement for the publication of the Certificate of Substantial Performance, the Holdbacks will be released 60 days following the Declaration of Last Supply from the Contractors and following receipt of a written report to the City satisfactory to the Director that will include but not be limited to an updated statement of project

costs, confirmation that all of the Units in the Project can be occupied, receipt of statutory declaration(s) in a form satisfactory to the Director and sworn to by the Contractor(s) that states: “All accounts for labour, contracts, subcontracts, products, services, machinery and equipment which have been incurred in the Project, have been paid in full" and there are no notices of liens and lien rights have expired.

28. Repayment of the Loan shall occur as follows:

    a. If the development is a condominium, the repayment regime is as follows: upon sale of individual condominium units, the City will be repaid upon closing 25% of the sale price of the unit until the total Loan amount has been paid in full. In addition to repayment upon sale of individual condominium units, any remaining funds outstanding shall be repaid in full at the expiry of the Loan term. This single payment as well as applicable discharge and registration fee (plus applicable taxes) can be made up to six months from the last day of the fifth year following the date of the final advance. Interest shall be charged and payable on the single payment if made after the last day of the fifth year following the date of the substantial completion advance. Interest shall be calculated monthly, not in advance.

    b. If the development is not a condominium, the repayment regime is as follows: principal is repayable in annual amounts of five percent (5%), in 12 equal monthly payments, of the principal Loan amount. Payments will commence one year following the final advance, exclusive of any required holdback. The balance outstanding will be paid by a balloon payment at the end of the Five Year and Six-Month Term. Monthly principal payments will continue during the last six months of the repayment term with interest calculated and payable monthly, not in advance, if not paid earlier and including applicable discharge and registration fees (plus applicable taxes).

29. A per unit administration fee is to be charged to the borrower and will be paid out of the first Loan advance. All fees will be authorized through a user-fee by-law passed by City Council. The rate of the fees may be changed from time to time as approved by City Council.

30. The Loan may be prepaid at any time without notice, bonus or penalty. Discharge and registration fees (plus applicable taxes) will be required to be paid by the applicant at such time as the prepayment occurs.

31. Work on the Project shall commence no longer than two years following the date the Loan is approved or the Loan will be cancelled. The two-year period may be extended by the Director at their absolute discretion. Deadlines for the submission and approval of building permits and construction start dates shall be established following the report to the Approval Authority for approved Program applications.

32. The City will require, at its sole discretion, specific insurance terms to be met to protect the City’s interest.

D. Ownership Change

33. Where a Program application has been submitted by an Owner and accepted by the Manager but not yet approved, and the Site is transferred to a new property owner, the City may permit the transfer or assignment of the Program application to the new owner at the sole, absolute and unfettered discretion of the GM. The future owner who has been requested to become the Applicant and receive financial assistance under this Program shall be subject to appropriate due diligence set out in this Program. An assignment or transfer may require the assignee or transferee to submit an application, assignment or transfer agreement and/or such other documents as determined by the Director in their sole, absolute and unfettered discretion.

34. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property all monies secured by the mortgage to the City shall forthwith become due and payable.

35. In the event of the final advance not being issued within one year of the first advance, all monies secured by the mortgage to the City shall forthwith become due and payable unless extended by the Director in their sole, absolute and unfettered discretion.

36. In the event of a Change of Corporate Control where the Owner is a corporation, the Owner covenants and agrees that in the event that:

    a. the Owner fails to supply the City, in a form satisfactory to Director such information relating to the ownership of its shares as the City may from time to time require or;

    b. without the written consent of the Director first had and obtained:

        i. the Owner issues or redeems any of its shares or transfers any of its shares;

        ii. there is a sale or sales of the shares of the Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner; or

        iii. the Owner amalgamates, merges or consolidates with any other corporation; and

    the result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Owner, or the requested information is not provided, then all monies secured by the mortgage together with accrued interest thereon shall forthwith become due and payable at the option of the City and the City's powers of sale hereby given and all other remedies for enforcement shall be exercisable.

E. Approval Authority

37. Applications under this Program are subject to the availability of funds, and the

approval or denial by the person identified in the approval authority by-law applicable to the Program (the “Approval Authority”).

38. Without limiting the discretion as set out in Section E, Paragraph 37 herein, the Approval Authority, whether or not an Applicant satisfies the requirements of the Program, may, in its sole discretion, reject any application received from an Applicant where, in the opinion of Approval Authority, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the Applicant being involved in litigation with the City.

For the purposes of this section “Applicants” shall include, but not be limited to, the following, jointly and severally:

a. the Applicant identified on the application form;

b. If the Applicant is a corporation, any person or entity with an interest in the corporation, any shareholder of the corporation, or any officer or director of the corporation, as determined by the Approval Authority in their sole, absolute, and unfettered discretion;

c. If the Applicant is a partnership or limited partnership, any partner or limited partner ,and if any such partner or limited partner is a corporation, any person or entity with an interest in the corporation, any shareholder of that corporation, or any officer or director of that corporation, as determined by the Approval Authority in their sole, absolute, and unfettered discretion.

39. Without limiting the discretion as set out in Section E, Paragraph 37 herein, the Approval Authority, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application without further consideration where due diligence undertaken by the City identifies property tax arrears owed on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, non-compliance with respect to Zoning By-law regulations or there exist outstanding property standards, building code or fire code orders on the subject property(s).

40. Without limiting the discretion as set out in Section E, Paragraph 37 herein, the Approval Authority, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application where the City determines in its sole discretion that there is a financial risk to the City in terms of the financial capabilities of the Applicant to complete the improvement/development subject to the Program application.

41. Without limiting the discretion as set out in Section E, Paragraph 37, herein, the Approval Authority, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where there is credible information that the Applicant has been involved recently or

repeatedly in illegal activity supporting the conclusion that they will not conduct themselves with honestly and integrity in undertaking the activity, operation or business for which a Loan under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this Section E, Paragraph 41 will be considered to be the corporation, the officers and directors of the corporation and the shareholders and this Section E, Paragraph 41 shall apply jointly and severally to each of them.

42. Building uses and the Project shall conform to the City's Official Plan(s), applicable Secondary Plan(s), Zoning By-Laws(s), Site Plan approval and any other applicable and approved municipal policies, by-laws or guidelines (e.g. urban design guidelines) and any other laws applicable to the improvement/development.

43. A Program application may be denied by the Approval Authority if the improvement/development is not supported by Council notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to the Ontario Land Tribunal or the Minister of Municipal Affairs and Housing, and that City Council's decision on the Program application will not fetter its discretion on *Planning Act* applications.

44. The approval of a Program application can provide for a reduced Loan amount so that no Loan is provided in respect of any portion of the improvement/development which is not supported notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council's decision on the application will not fetter its discretion on *Planning Act* applications. In such cases, the Applicant shall be required to provide additional supporting documentation, at the Applicant's own expense, to support the providing of financial assistance in accordance with City Council's approval/direction.

F. Program Administration

45. Required documents and information forming a complete application shall be identified within the Program's application form. The application date for the purposes of the Program will be the date on which the Manager has deemed the application complete in their sole discretion.

46. An application fee is payable upon submission of application and forms part of a complete Program application. The fee will be authorized through a user-fee by-law passed by City Council. The rate of the fee may be changed from time to time as approved by City Council and will be identified on the Program's application form.

47. Economic Development Division staff will review Program applications for eligibility in accordance with the RHCD CIP, RHCD CIPA, the Program terms contained herein and in collaboration with other City staff as required. Acceptance of the

application by the City in no way implies Program application approval.

48. The subject Site and Applicant will be the subject of due diligence undertaken to confirm compliance with the Program requirements prior to approval and prior to payment.

49. Applications shall include plans, estimates, contracts and other details as may be required to satisfy the Manager as to the cost of the Project and conformity with the objectives of the RHCD CIP. Applicants shall also be required to submit information to assist with determining the financial capabilities of the Applicant to complete the Project subject to the Program application and to identify any potential financial risks to the City. Information required to be submitted is at the discretion of the Manager and may include but may not be limited to, a financial risk assessment, personal/corporate net worth statements and/or business plan.

50. Where the Project requires approval of a Site Plan, a conditional Site Plan approval shall have been obtained from the City prior to Approval Authority consideration of an application under this Program. Where a conditional Site Plan approval contains conditions which, until satisfied, may impact a post-development assessment of the project including but not limited, requirements to obtain Minor Variances through the Committee of Adjustment, the Commercial District and Small Business staff may require these conditions to be satisfied prior to consideration of the application for approval..

51. Approved Applicants shall be required to enter into a Loan Agreement with the City containing (but not limited to) the terms and conditions set out in this Program description and such additional conditions as determined by the Approval Authority.

52. Applications to this Program not yet approved by the Approval Authority shall be subject to any changes to the terms of this Program which are approved prior to the Program application being approved.

53. If a Program application is approved, the Applicant will be provided an approval letter that outlines the terms and conditions of the Loan. If a Program application is denied, the applicant will be notified in writing with rationale for the decision.

54. Approval and the receiving of financial assistance under this Program shall not preclude eligibility, approval and the receiving of financial assistance for the same Site under any other available municipal program except for the Commercial Districts Housing Opportunities Program.

    Notwithstanding the above, where Hard Costs are subject to financial assistance from the City, the Loan under this Program shall be determined having regard for the net Hard Costs incurred by the Applicant, being the total Hard Costs less any other financial assistance received or to be received from the City for those same Hard Costs. In no instance shall the combined total of all financial assistance in the form of a Loan provided by the City, exceed the amount required to maintain the minimum equity contribution required under this Program.

55. Where this Program refers to a City staff title, such reference shall be deemed to include any new, amended, replaced, substituted or successor title assigned to the position from time to time.

56. City Council may discontinue this Program at any time. However, Applicants with approved Program applications will still continue to receive the Loan subject to meeting the Program terms contained herein.

57. The City is not responsible for any costs incurred by the Applicant in any way relating to the Program, including without limitation, costs incurred in anticipation of an application approval or Loan being provided.