

CURVE LAKE FIRST NATION

SECTION 10 NEW HOUSE POLICY

WHEREAS Council sees the need to use all housing program options available to help alleviate the shelter needs of its members on Curve Lake First Nation territory; and

WHEREAS Council has used the *Loan Insurance Program On-Reserve Lending with Ministerial Loan Guarantee (Section 10)* to assist some members in achieving ownership of single family housing units on Curve Lake First Nation territory; and

WHEREAS Council sees the continued use of the *Loan Insurance Program On-Reserve Lending with Ministerial Loan Guarantee (Section 10)* to construct single family housing units on Curve Lake First Nation territory as one viable option to help meet the shelter needs;

NOW THEREFORE Council adopts the following as the **CURVE LAKE FIRST NATION SECTION 10 NEW HOUSE POLICY** effective as of the date herein.

1.0 DEFINITIONS

“**Applicant**” means the member of the First Nation applying to Council for a Guarantee BCR or, in the case of a joint Application, means each Applicant jointly and severally.

“**Application**” means INAC form 80-34 (3-87) or any other form prescribed by Council from time to time;

“**BCR**” is an INAC-approved administrative form required of the First Nation to transmit a record of a Council decision resulting from a duly constituted Council Meeting. The First Nation now refers to the form as a First Nation Council Resolution (FNCR);

“**Borrower**” means the successful Applicant to whom a loan has been made by a Lender which loan is guaranteed by the Minister or, in the case of a joint Application, means each successful Applicant jointly and severally.

“**Certificate of Possession**” or “**CP**” means a certificate issued by the Minister as evidence of a right to possession of land on First Nation territory described therein

“**Construct**” or “**Construction**” means to build, erect, assemble or install a new single family housing unit on First Nation territory and without limitation, includes the installation of a new single family unit fabricated elsewhere and relocated to the First Nation territory.

“**Coordinator**” means the Curve Lake First Nation Capital Works Coordinator or other Council designate.

“**Council**” means Council as defined in the *Indian Act* but specifically the Curve Lake First Nation Council as selected by the members of the First Nation from time to time.

“**Environmental Site Assessment**” or “**ESA**” means a site assessment which has been carried out on the subject property as shown in Section 2(b) of the Terms and Conditions for Ministerial Guarantees, as approved by Privy Council, either individually or as part of a subdivision or community assessment, in accordance with the Canadian Standards Association (CSA) standard Z768-94 for Environmental Site Assessment (or as may be revised from time to time), and that such an assessment confirms that there is no evidence of contamination that may, upon exposure, constitute an identifiable risk to human health or the natural environment.

“**First Nation**” or “**CLFN**” means the Curve Lake Band as defined in the *Indian Act* and as represented by Council.

“**First Nation territory**” means the mainland portion of Curve Lake Indian Reserve #35 which constitutes “lands reserved for Indians” under class 24 of section 91 of the *Constitution Act, 1867*, the legal title to which is vested in Her Majesty, that has been set aside for the use and benefit of the First Nation under subsection 2(1) of the *Indian Act*.

“**Guarantee BCR**” means the First Nation resolution or other authorizing document approved by Council to provide the assurances or certifications required to request the house loan guarantee (MLG) from the Minister.

“**Incentive Mortgage**” means a house loan funding agreement the Applicant may be eligible for as an incentive from the First Nation that would reduce the required loan amount from the Lender.

“**INAC**” means the Department of Indian and Northern Affairs Canada as represented by Her Majesty the Queen in Right of Canada.

“**Lender**” means a Lender in Ontario approved by Canada Mortgage and Housing Corporation (CMHC) pursuant to the *National Housing Act* for the purpose of making house construction or purchase loans.

“**Loan Agreement**” is the agreement between the Lender and the Borrower that replaces a house mortgage document.

“**Maximum Loan Amount**” means the maximum loan amount that Council sets from time to time that Council will support by way of a MLG-supported loan agreement.

“**Member**” means a person whose name appears on the First Nation Band List or is entitled to appear on the First Nation Band List as defined by the *Indian Act*.

“**Minister**” means the Minister of INAC as defined in the *Indian Act* or the Minister’s delegate.

“**Ministerial Loan Guarantee**” or “**MLG**” means a written guarantee agreement by the Minister to pay the Lender the balance of the Borrower’s principal and interest of a house loan in the case of default by the Borrower in accordance with the terms and conditions of Order-in-Council P.C. 1999-2000 as may be amended from time to time. This Order-in-Council also authorizes the Minister to collect the amount of that payment made on behalf of the Borrower from First Nation funds.

“**Policy**” means this *Curve Lake First Nation Section 10 New House Policy* as may be amended from time to time.

“**Purchase**” means, through a financial agreement, to acquire legal possession of a building lot and a new single family housing unit built, erected, assembled or installed on that building lot on First Nation territory and without limitation, includes the installation of a new single family unit fabricated elsewhere and relocated to the First Nation territory.

2.0 APPLICATION FOR AND MINISTERIAL LOAN GUARANTEE PROCESS

In other than exceptional circumstances, in order for the Applicant to successfully conclude the requirements for a Ministerial Loan Guarantee (MLG) new house loan in a timely fashion, the following is the recommended approvals process:

- 2.1 The Applicant will attend a personal interview with and present a completed Application to the Coordinator, thus initiating the process to get Council support for an MLG for a housing loan to be used for the construction or the purchase of a new house on First Nation territory.
- 2.2 The Coordinator shall review the Application and this policy document with the Applicant, have the Applicant execute a copy of this policy document confirming review and check First Nation records and policies to be satisfied that the Applicant:
 - 2.2.1 is a First Nation member eighteen years of age or older;
 - 2.2.2 does not currently, or has not had, a loan default with the First Nation;

- 2.2.3 holds a surveyed, unencumbered, road accessible, hydro and telephone serviced building lot by way of a CP or, alternately, by way of a fully executed agreement of purchase of sale with a CP holder or the First Nation that confirms a CP transfer is currently in process or will be processed prior to construction of a new house or on the purchase of a new house and property;
 - 2.2.4 is not currently the owner or co-owner of a house, whether or not it is on or off First Nation territory and whether or not the Applicant is an occupant thereof,
 - 2.2.5 is aware that the best interests of the Applicant will be served if a lawyer, other than the lawyer representing Curve Lake First Nation in this transaction, is representing the Applicant, and
 - 2.2.6 is or is not eligible for other supporting First Nation program benefits such as an incentive mortgage, a drilled well, septic system or culvert, etc.
- 2.3 The Coordinator shall ensure the ESA requirements, including reporting prescribed by INAC, are met. In the event the ESA results in the findings of contamination, proper remedial action shall be completed by the Applicant prior to the Coordinator proceeding further with the Application process.
- 2.4 Where the Coordinator is satisfied that the conditions in 2.2 and 2.3 above have been met, the Coordinator shall provide the Applicant with a First Nation conditional approval document in a form prescribed by Council from time to time that may be used as a support document with a Lender and that, among other things:
- 2.4.1 confirms any maximum Council house loan approval level under this policy;
 - 2.4.2 confirms any First Nation incentive mortgage eligibility which shall be discounted from the amount in 2.4.1 above; and
 - 2.4.3 confirms any other First Nation program policy financial or in-kind support available to the Applicant and the approximate dollar amount of that support.
 - 2.4.4 directs the Lender to use due diligence in assessing the financial ability of the Applicant to carry the full costs of construction or purchase of a new house and the ongoing costs associated with the maintenance of the MLG loan.

- 2.5 The Applicant, following the receipt of a First Nation conditional approval document and having been counseled by the Coordinator on the terms and conditions of Council support for the MLG, shall provide the Coordinator with:
 - 2.5.1 copies of the house plans and specifications to ensure they meet the Ontario Building Code standards and have a BCIN number, a site plan and detailed estimate of the new house construction or acquisition costs; and
 - 2.5.2 a signed “Undertaking” pledging the First Nation’s right of possession of the building lot on default of the loan.
- 2.6 The Applicant shall then approach a Lender to apply for a MLG new house loan providing the Lender with copies of:
 - 2.6.1 the First Nation conditional approval document;
 - 2.6.2 the CP or the agreement through which the property is being acquired;
 - 2.6.3 a site inspection report provided by a technical services Specialist accountable to the First Nation;
 - 2.6.4 the house plans and specifications;
 - 2.6.5 a detailed estimate of the cost of construction or purchase;
 - 2.6.6 information required for credit purposes such as employment history and verification of income;
 - 2.6.7 proof of builder’s risk insurance and homeowner fire and liability insurance; and
 - 2.6.8 any other documentation requested by the Lender.
- 2.7 Upon receiving a conditional loan approval document from the Lender together with a CMHC Undertaking to Insure, the Applicant shall provide copies of both to the Coordinator.
- 2.8 The Coordinator, having received the documents per 2.7 above, shall prepare a Guarantee BCR and submit it to Council for approval.
- 2.9 Upon approval of the Guarantee BCR by Council, the Coordinator shall prepare the MLG Application package and submit it to INAC, Ontario Region South. The package at a minimum will include:

- 2.9.1 a Guarantee BCR, in form prescribed by INAC;
 - 2.9.2 a “Certificate of Insurance” from CMHC;
 - 2.9.3 a conditional loan approval document from a Lender in whatever form the Lender may choose to use; and
 - 2.9.4 a confirmation of unencumbered land letter from the First Nation.
- 2.10 Having completed the action required of 2.9, the Coordinator shall prepare and have executed any First Nation incentive mortgage documentation in content and format as prescribed by Council from time to time.
- 2.11 Upon approval of the MLG, INAC will forward the following documents to the Coordinator for action as follows:
- 2.11.1 two certified true copies of the approved Guarantee BCR, one for the First Nation file and one for forward to the Lender;
 - 2.11.2 three originals of the Guarantee Agreement signed by a designate of the Minister for the Lender to sign and distribute to the First Nation, INAC and CMHC, having retained a copy for file;
 - 2.11.3 two copies of the Guarantee Commitment Certificate for forward to the Lender and CMHC; and

3.0 LOAN AGREEMENT WITH THE LENDER

- 3.1 Upon receipt of a copy of the approved Application, the Applicant shall meet with the Lender to sign the Loan Agreement within six (6) months from the date of the project approval by the Minister. Should the Borrower not accept and execute the Loan Agreement within thirty (30) days of the Lender executing and sealing it, the Lender at its sole discretion may cease and terminate its loan obligation.

4.0 REGISTRATION OF ANY FIRST NATION INCENTIVE MORTGAGE

- 4.1 In the event an incentive mortgage was executed per 2.10 above, the Coordinator shall register the incentive mortgage with Indian Affairs, having confirmed there is in the appropriate First Nation file, for action as may be required, a signed land transfer document transferring the land from the Borrower to Curve Lake First Nation.

5.0 HOUSE CONSTRUCTION OR PURCHASE

- 5.1 Once the Loan Agreement has been executed, the Borrower shall begin the new house construction or, in case of acquisition, conclude the purchase.

6.0 BUILDING CODE COMPLIANCE

- 6.1 The Coordinator shall arrange for code compliance inspections during construction or, in the case of purchase, require the Borrower to provide code compliance inspection reports or documents for the already constructed house.

7.0 OCCUPANCY OF THE HOUSE

- 7.1 When the house is certified no less than 97% complete through inspection and where there are no outstanding health and safety issues, the Borrower may move into the house.

8.0 LENDER NOTICE OF DEFAULT

- 8.1 The Borrower is required to make good the obligations agreed to under the Loan Agreement with the Lender and the Guarantee Agreement with the Minister. The Borrower shall be deemed to be in default of the loan by the Lender for a matter such as, but not limited to, breach of payment. The Lender shall immediately make Council aware that the Borrower is in default through a copy of the Notice of Loan Default to the Borrower and shall inform the Minister of such default by way of a Notification of Loan Default.

9.0 COUNCIL ACTION ON DEFAULT

- 9.1 In the event of Borrower default with the Lender, Council shall endeavor to have the Borrower bring the loan to a current position. On Council receipt of any notice of default from the Lender to the Borrower, Council shall notify the Borrower that if the default situation reaches the point whereby the Minister makes a payout to the Lender using First Nation funds, Council will immediately take necessary action to secure vacant possession of the house and property.
- 9.2 Where notice is received by Council that the Minister has fulfilled the obligation of the Borrower by paying the Lender the unpaid balance of principal, interest to the date of payment, any additional costs such as fire insurance or any other loan-related expenses plus interest, the Council shall action the "Undertaking" and take whatever steps it finds necessary to secure vacant possession of the house and property immediately.

- 9.3 In the event of default in any First Nation incentive mortgage, Council shall endeavor to have the Borrower bring the loan to a current position. If Council is unsuccessful and actions the land transfer, Council shall notify the Lender of the action and reason for the action so that the Lender may take whatever action it deems necessary.

10.0 COUNCIL DISPOSITION ON VACANT POSSESSION

On taking vacant possession, Council may:

- 10.1 dispose of the house and property; or
- 10.2 choose to add the house to its rental inventory and rent or lease the property.

11.0 REPLENISHING THE FIRST NATION TRUST OR OTHER ACCOUNT

- 11.1 In the event the Minister has made payment per clause 10.0, Council shall direct that the proceeds from 10.1 and/or 10.2 be collected and may, upon receipt, direct that the proceeds be deposited to replenish the trust or other account from which the Minister's payment was made.

12.0 GENERAL

- 12.1 This Policy shall apply to all Ministerial Loan Guaranteed housing loans and associated Curve Lake First Nation incentive mortgages made after the date of this Policy being approved by Motion of Council.
- 12.2 Amendments to this Policy may be made by Motion of Council and any such amendments shall be added to this Policy with identification of when the change was made so that Curve Lake First Nation always has a current copy of this Policy.
- 12.3 No waiver of any provision of this Policy shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Policy constitute a continuing waiver unless otherwise expressly provided.
- 12.4 Each provision of this Policy shall be severable. If any provision is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder of this Policy.
- 12.5 This Policy shall be governed by and construed in accordance with the laws of Canada.

- 12.6 Where Notice is required, Notice shall be deemed to effectively been given if Curve Lake First Nation provides written notice:
- 12.6.1 by registered mail to the Lender;
 - 12.6.2 by registered mail to Indian Affairs; or
 - 12.6.3 with an apparently adult person at the Borrower's house, if occupied or, at the option of Curve Lake First Nation, by sending written notice by registered mail addressed to the Borrower at the house or at the last address as indicated in the records of Curve Lake First Nation, and
 - 12.6.4 Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day, on the next following business day) or, if mailed, on the third business day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.
- 12.7 In this Policy, unless the context otherwise requires, any reference to gender shall include both genders and words importing the singular number shall include the plural and vice-versa.
- 12.8 The division of this Policy into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Policy.
- 12.9 This Policy shall enure to the benefit of and be binding on the Applicant, his personal representatives, attorney for property, Estate Trustees, heirs, beneficiaries, administrators and assigns.
- 12.10 Each of the provisions contained in this Policy is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

Passed by Curve Lake First Nation Council, this 24th day of August, 2009 at Curve Lake First Nation, Ontario.

Chief

Councillor

Councillor