

WENTWORTH COMMON ELEMENTS CONDOMINIUM CORPORATION NO. 538

BY-LAW NO. 1

CONDOMINIUM ACT, 1998

CERTIFICATE IN RESPECT OF A BY-LAW
(under subsection 56(9) of the *Condominium Act, 1998*)

Wentworth Common Elements Condominium Corporation No. 538 (known as the "Corporation") certifies that:

1. The copy of By-law Number 1, attached as Schedule A, is a true copy of the By-law.
2. The By-law was made in accordance with the Condominium Act 1998.
3. The owners of a majority of owners of the POTLS of the Corporation have voted in favour of confirming the By-law.

Dated this 30th day of June, 2016

**WENTWORTH COMMON ELEMENTS CONDOMINIUM
CORPORATION NO. 538**

Per: 
JEFFREY PAIKIN, President

Per: 
JOSEPH GIACOMODONATO, Secretary

We have the authority to bind the Corporation

WENTWORTH COMMON ELEMENTS CONDOMINIUM CORPORATION NO. 538

BY-LAW NO. 1

BE IT ENACTED as a By-Law of Wentworth Common Elements Condominium Corporation No. 538 (hereinafter referred to as the "Corporation") as follows:

ARTICLE I - DEFINITIONS

1.1 In addition to those words, terms and/or phrases specifically defined in this By-Law, the words, terms and/or phrases used herein which are defined in the *Condominium Act, 1998, S.O. 1998 c.19*, as amended (which Act and the regulations thereunder are herein referred to as the "Act"), and in the declaration of the Corporation (hereinafter referred to as the "Declaration") shall have ascribed to them the meanings set out in the Act or the Declaration, unless the context requires otherwise.

ARTICLE II - SEAL

2.1 The corporate seal of the Corporation shall be in the form impressed hereon. Notwithstanding that the Corporation has a seal, any document that would otherwise require a seal need not be executed under seal, provided the statement, "I/We have authority to bind the Corporation", is noted below the signature(s) of the person(s) duly authorized to sign the document and such a document has the same effect for all purposes as if executed under seal.

ARTICLE III - RECORDS

3.1 The Corporation shall keep and maintain all records required by Section 55 of the Act, including the following records (hereinafter called the "Records"):

- (a) the financial records of the Corporation for at least six (6) years from the end of the last fiscal period to which they relate;
- (b) a minute book containing the minutes of owners' meeting and the minutes of Board meetings;
- (c) a copy of the registered Declaration, registered By-Laws and current Rules;
- (d) a copy of all applications made under Section 109 of the Act to amend the Declaration, if applicable;
- (e) the seal of the Corporation;
- (f) copies of all agreements entered into by the Corporation or by the Declarant or the Declarant's representatives on behalf of the Corporation, including all management contracts, deeds, leases, licenses, easements and any agreements entered into pursuant to Section 98 of the Act;
- (g) copies of all policies of insurance and the related certificates or memoranda of insurance and all insurance trust agreements;
- (h) bills of sale or transfers for all items that are assets of the Corporation, but not part of the Property;
- (i) the names and addresses for service of each owner and mortgagee that the Corporation receives, in writing, from owners and mortgagees in accordance with subsection 47(1) of the Act;
- (j) all written notices received by the Corporation from owners that their Potts have been leased, together with the lessee's name, the owner's address, a copy of the lease or renewal or a summary of same, pursuant to subsection 83(1) of the Act;
- (k) all written notices received by the Corporation from owners that a lease of the owner's Pott has terminated and has not been renewed pursuant to subsection 83(2) of the Act;
- (l) all records that the Corporation has related to employees of the Corporation;
- (m) all existing warranties and guarantees for all equipment, fixtures and chattels including in the common elements;
- (n) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

- (o) the as-built specifications indicating all substantive changes, if any, from the original specifications;
- (p) all existing plans for underground site services, site grading, drainage and landscaping and television, radio or other communication services;
- (q) all other existing plans and information that are relevant to the repair or maintenance of the Property;
- (r) a table that the Declarant has delivered pursuant to clause 43(5)(g) of the Act setting out the responsibilities for repair after damage and maintenance, and indicating whether the Corporation or the owners are responsible;
- (s) all reserve fund studies and all plans to increase the reserve fund;
- (t) a copy of the most current disclosure statement delivered by the Declarant to a purchaser prior to the turnover meeting;
- (u) a copy of the written performance audit report received by the Corporation;
- (v) a copy of any order appointing an inspector or administrator, if applicable, pursuant to Section 130 or 131 of the Act, together with any report that the Corporation receives from an inspector in accordance with subsection 130(4) of the Act;
- (w) a copy of all status certificates issued within the previous ten (10) years;
- (x) a copy of all notices of meetings sent by or on behalf of the Corporation within the previous ten (10) years;
- (y) all proxies, for not more than ninety (90) days from the date of the meeting at which the proxies were utilized;
- (z) a copy of all notices of lien issued by the Corporation to delinquent owners pursuant to subsection 86(4) of the Act, in respect of which the corresponding certificates of lien have not been discharged or vacated by court order;
- (aa) all records relating to actual or pending litigation (or insurance investigations) involving the Corporation (as contemplated by clause 65(4)(b) of the Act), together with copies of all outstanding judgments against the Corporation (as contemplated in clause 76(1)(h) of the Act);
- (bb) a copy of the budget of the Corporation for the current fiscal year, together with the last annual audited financial statements and auditor's report on such statements;
- (cc) a copy of all minutes of settlement and/or written decisions made by any mediator or arbitrator appointed pursuant to Section 132 of the Act, regarding any issue(s) in dispute involving the Corporation (or to which the Corporation is a party), together with copies of all court orders issued in those circumstances where the Corporation was a party to the proceeding or otherwise directly affected thereby; and,
- (dd) all other records as may be prescribed or specified in any other By-Laws of the Corporation, together with copies of all other materials received by the Corporation that the regulations to the Act may hereafter require the Declarant to deliver on or shortly after the turnover meeting (as contemplated in clause 43(5)(m) of the Act).

ARTICLE IV - THE CORPORATION

4.1 Duties of the Corporation

The duties of the Corporation shall include, but shall not be limited to the following:

- (a) the operation, care, upkeep, maintenance and repair of the common elements as provided for in the Act and in the Declaration;
- (b) the collection of contributions toward Common Expenses from the owners;
- (c) the arranging or the supply of all requisite utility services to the common elements (unless separately metered) except where prevented from carrying out such duty by reason of any event beyond the reasonable control of the Corporation. The Corporation shall not be liable for indirect or consequential damage or for damages for personal discomfort or illness by reason of the breach of such duty;

- (d) obtaining and maintaining insurance for the Property as may be required by the Act, the Declaration or the By-Laws;
- (e) the retention of legal counsel to prepare, register and discharge, following payment, certificates of lien for arrears of Common Expenses;
- (f) the preparation and delivery of status certificates as required by the Act;
- (g) the preparation of a yearly budget;
- (h) the supervision of all public or private service companies which enter upon the Property for the purpose of supplying, installing, replacing and servicing their systems;
- (i) the obtaining and maintaining of fidelity bonds for any person dealing with Corporation monies and in such amounts as the Board may deem reasonable;
- (j) the purchase and maintenance of insurance for the benefit of all directors and officers in respect of anything done or permitted to be done by them in respect of the execution of the duties of their offices except insurance against a liability, cost, charge or expense of such directors or officers incurred as a result of a contravention of any of the duties imposed upon them pursuant to the Act;
- (k) the preparation and maintenance of the records to be kept by the Corporation in accordance with Article III hereof;
- (l) the calling and holding of meetings and the delivery of notices, as required;
- (m) the consistent and timely enforcement of the provisions of the Act, the Declaration, the By-Laws and the Rules of the Corporation; and
- (n) establishing and maintaining adequate reserve funds for the major repair or replacement of the common elements and of the assets of the Corporation in accordance with the Act.

4.2 Powers of the Corporation

The powers of the Corporation shall include, but shall not be limited to the following:

- (a) the employment and dismissal of personnel necessary for the maintenance and operation of the common elements;
- (b) the investment of reserve monies held by the Corporation in accordance with the Act;
- (c) the settling, adjusting or referring to mediation and/or arbitration of any claim or claims which may be made upon or which may be asserted on behalf of the Corporation;
- (d) entering into the following agreements as required from time to time:
 - i. a management agreement with an individual or corporation to manage the affairs and assets of the Corporation at such compensation and upon such terms as the Board may determine in its sole discretion;
 - ii. an insurance trust agreement;
 - iii. an agreement required by the supplier of any utility or service to the Corporation upon such terms as the Board may determine in its sole discretion; and,
 - iv. any other agreements which may be permitted by the Act and the Declaration and which are deemed advisable, desirable or necessary by the Board,
- (e) the authority to appeal to assessments under the Assessment Act on behalf of owners if it gives notice of the objections to the owners and to authorize the defraying of costs of objections out of the Common Expenses;
- (f) the borrowing of such amounts in any fiscal year as the Board determines are necessary or desirable in order to protect, maintain, preserve or ensure the due and continued operation of the Property in accordance with the Act, Declaration and By-Laws of the Corporation and the securing of any loan of any amount by mortgage, pledge or charge of an asset (other than the reserve fund) of the Corporation, subject in each case to approval of each such borrowing, loan or security by a majority vote of the owners at a meeting duly called for that purpose or as required by the Act, provided however, the Board may maintain overdraft protection in its general account, in an amount not exceeding one-twelfth (1/12) of the Corporation's current budget without requiring the approval of the owners;

- (g) leasing any part of the non-exclusive use common elements, or granting or transferring any easement, right-of-way or license over, upon, under or through (or otherwise affecting) any part or parts of the common elements, and/or releasing and abandoning any appurtenant easement(s) or right(s)-of-way heretofore or hereafter granted to (or created in favour of) the Corporation, in respect of any servient tenement burdened or encumbered thereby, on the express understanding that to the extent that subsection 21(1) of the Act requires a by-law to authorize such a lease, license, easement or right-of-way, or such a release and abandonment of easement, then this By-Law shall accordingly be deemed and construed for all such purposes to be (and constitute) the By-Law providing the Board with the requisite authority to enter into any such lease, license, easement or right-of-way or any such release and abandonment of easement, and any such lease, license, easement, right-of-way or release of easement may be executed on behalf of the Corporation by the authorized signing officers of the Corporation, with or without the seal of the Corporation affixed thereto, and same shall be valid and binding on the Corporation without requiring the consent or concurrence of (or the written authorization or signature of) any owner(s) thereto.

ARTICLE V – MEETINGS OF OWNERS

5.1 Annual Meeting

The annual meeting of owners shall be held within six (6) months following the Corporation's fiscal year end at such place and on such day and time in each year as the Board may from time to time determine, for the purpose of receiving reports and statements required by the Act, the Declaration and By-Laws of the Corporation, electing directors, appointing the auditor and fixing or authorizing the Board to fix the auditor's remuneration, and for the transaction of such other business as may be set out in the notice of meeting.

5.2 The First Annual General Meeting

Pursuant to subsection 45(2) of the Act, the Board shall hold the first annual general meeting of owners not more than three (3) months after the registration of the Declaration, and subsequently within six (6) months of the end of each fiscal year of the Corporation. The owners shall, at such first meeting, appoint one or more auditors to hold office until the close of the next annual meeting, and if the owners fail to do so, the Board shall forthwith make such appointment. The remuneration of an auditor shall be fixed by the owners (if the auditor is appointed by the owners), or fixed by the Board (if authorized to do so by the owners, or if the auditor is appointed directly by the Board). The Corporation shall then give notice in writing to an auditor of his or her appointment forthwith after such appointment is made.

5.3 Special Meetings

The Board shall, upon receipt of a requisition in writing made by owners who together own not less than fifteen (15%) percent of the Polls, call and hold a meeting of the owners within thirty-five (35) days of the receipt of the requisition or if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the requisitioned meeting to the agenda for the next annual general meeting. If the meeting is not called and held within thirty-five (35) days of receipt of the requisition, any of the requisitionists may call the meeting, which meeting shall be held within forty-five (45) days of the day on which the meeting is called. The Board may at any time call a special meeting of the owners for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.

5.4 Notices

At least fifteen (15) days written notice of every meeting specifying the place, the date, the hour and the nature of the business to be presented shall be given to the auditor of the Corporation and to each owner and mortgagee entitled to vote and entered on the records twenty (20) days before the date of the meeting in accordance with subsection 47(5) and 70(2) of the Act. The Corporation shall not be obligated to give notice to any owner who has not notified the Corporation that he/she has become an owner nor give notice to any mortgagee who has not notified the Corporation of his/her entitlement to vote and address for service.

5.5 Reports

A copy of the financial statement and a copy of the auditor's report shall be furnished to every owner and mortgagee entered on the record at least twenty (20) days before the date of any annual general meeting of owners. A copy of the minutes of meetings of owner and of the Board shall be furnished to any owner or mortgagee who has requested same, within thirty (30) days of such request upon payment to the Corporation of a reasonable charge for labour and photocopying.

5.6 Persons Entitled to Be Present

The only persons entitled to attend a meeting of owners shall be the owners and mortgagees entered on the Record, and any others entitled to vote thereat, the auditor of the Corporation, the directors and officers of the Corporation, a representative of the property manager, and others who, although not entitled to vote, are entitled or required under the provisions of the Act or the Declaration and By-Laws of

the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chairperson of the meeting or with the consent of the meeting.

5.7 Quorum

At any meeting of owners, a quorum shall be constituted when persons entitled to vote and owning not less than twenty-five (25%) percent of the Pottis are present in person or represented by proxy. If thirty (30) minutes after the time appointed for the holding of any meeting of owners, a quorum is not present, the meeting shall stand adjourned and if the meeting was an annual general meeting, the Board shall call a further meeting of the owners in accordance with the Act.

5.8 Right to Vote

Subject to the restrictions in paragraphs 5.11 and 5.13 of this Article V, every owner of a Pottis who has the right to vote in accordance with the Act, who is entered on the Record as an owner or who has given notice to the Corporation, in a form satisfactory to the Chairperson of the meeting that he is an owner, shall be entitled to vote. If a Pottis has been mortgaged, and the person who mortgaged such Pottis (or his proxy) has expressly authorized or empowered the mortgagee to vote and exercise the right of the owner to vote in respect of such Pottis and such mortgagee has, at least four (4) days before the date specified in the notice of meeting, notified the owner and the Corporation of his intention to exercise such right, such mortgagee shall be entitled to vote upon filing with the Secretary of the meeting, sufficient proof of same. Any dispute over the right to vote shall be resolved by the Chairperson of the meeting upon such evidence as the Chairperson may deem sufficient. Each owner or mortgagee shall be entitled to only one (1) vote per Pottis.

5.9 Conduct of Meetings and Method of Voting

At any meeting of owners, the President of the Corporation (or to whomsoever the President may delegate the responsibility) or failing him, the Vice-President, or failing him, some other person appointed by the Board or failing such appointment, such other person elected at the meeting shall act as chairperson of the meeting and the secretary of the Corporation shall act as secretary of the meeting or, failing him, the chairperson shall appoint a secretary. Any questions shall be decided by a show of hands unless a poll is required by the chairperson or is demanded by an owner or mortgagee present in person or by proxy and entitled to vote, and unless a poll is so required or demanded, a declaration by the chairperson that the vote upon the question has been carried, or carried by a particular majority, or not carried, is prime facie proof of the fact without proof of the number of votes recorded in favour of or against such question; provided, however, that voting for the election of directors shall be by ballot only, other than in the case of acclamation. A demand for a poll may be withdrawn. If a poll is so required or demanded and the demand is not withdrawn, a poll upon the question shall be taken in such manner as the chairperson shall direct.

5.10 Representatives

An estate trustee, committee of a mentally incompetent person, or the guardian or trustee of an owner or mortgagee (and where a corporation acts in such capacity, any person duly appointed a proxy for such corporation), upon filing with the Secretary sufficient proof of his/her appointment, shall represent the owner or mortgagee at all meetings of the owners and may vote in the same manner and to the same extent as such owner or mortgagee. If there be more than one (1) estate trustee, committee, guardian or trustee, the provision of paragraph 5.11 of this Article V shall apply.

5.11 Co-owners

If a Pottis or a mortgage on a Pottis is owned by two (2) or more persons, any one of them present or represented by proxy may in the absence of the other or others vote, but if more than one of them are present or represented by proxy, the majority of the owners of the Pottis shall decide how the vote is exercised.

5.12 Votes to Govern

At all meetings of owners, every question shall, unless otherwise required by the Act, Declaration or By-Laws, be decided by a majority of the votes duly cast on the question.

5.13 Entitlement to Vote

Save and except in those instances where the Act provides or stipulates that the unanimous vote of all owners is required on any matter, issue, resolution or motion, an owner or mortgagee is not entitled to vote at any meeting if any Common Expenses or other monetary contributions payable in respect of the owner's or mortgagee's Pottis are in arrears for more than thirty (30) days prior to the meeting, provided however that such an owner or mortgagee may nevertheless vote if the Corporation receives payment, by way of a certified cheque, of all the arrears (and all other costs and expenses owing to the Corporation) before the meeting is held.

5.14 Proxies

Every owner or mortgagee entitled to vote at a meeting of the owners may, by instrument in writing,

appoint a proxy, who need not be an owner or mortgagee, to attend and act at the meeting in the same manner, to the same extent and with the same power, as if the owner or mortgagee was present at the meeting. The instrument appointing a proxy shall be in writing signed by the appointer or his attorney authorized in writing, and shall be effective for a particular meeting only. The instrument appointing a proxy shall be deposited with the secretary prior to the start of the meeting.

ARTICLE VI -- BOARD OF DIRECTORS

6.1 The Corporation

The affairs of the Corporation shall be managed by a Board of Directors.

6.2 Number of Directors and Quorum

The number of directors shall be three (3) of whom a majority shall constitute a quorum for the transaction of business at any meeting of the Board. Notwithstanding vacancies, the remaining directors may exercise all the powers of the Board so long as a quorum of the Board remains in office.

6.3 Qualifications

Each director shall be eighteen (18) or more years of age and need not be an owner of a Pott in the Corporation. No undischarged bankrupt or mentally incompetent person shall be a director and if a director becomes a bankrupt or mentally incompetent person he/she thereupon ceases to be a director. A director immediately ceases to be a director if a certificate of lien has been registered against a Pott owned by the director and the director does not obtain a discharge of the lien within ninety (90) days of the registration of the lien.

Further provided that, if a director does not attend three (3) regularly constituted meetings; or, if a director is a party to an action against the Condominium Corporation or is involved in litigation which relates to the Condominium Corporation, or if a director does not comply with the 'Directors' Code of Conduct' (to be established by the Board), the Board shall be entitled to call for the resignation of such director.

6.4 Consent

No election or appointment of a person as a director shall be effective unless:

- (a) he consents in writing to act as a director before his election or appointment or within ten (10) days thereafter; or
- (b) he was present at the meeting when he was elected or appointed and did not refuse at that meeting to act as a director.

6.5 Election and Term

- (a) The directors of the Corporation shall be elected in rotation and shall be eligible for re-election. At the first meeting of the owners held to elect Directors, one (1) director shall be elected to hold office for a term of one (1) year; one (1) director shall be elected to hold office for a term of two (2) years; and one (1) director shall be elected to hold office for a term of three (3) years. If more than one (1) of such directors whose terms are not of equal duration shall resign from the Board prior to the expiration of their respective terms, and shall be replaced at a meeting of owners called for that purpose, the director or directors receiving the greater number of votes shall complete the longest remaining terms of the resigning directors. At each annual meeting thereafter, a number of directors equal to the number of directors retiring in such year shall be elected for a term of three (3) years.
- (b) If at least fifteen percent (15%) of the Potts are owner occupied (as defined in subsection 51(5) of the Act), no persons other than the owners of owner-occupied Potts may elect a person to one of the positions on the Board. If fifteen percent (15%) of the Potts are owner-occupied at the turnover meeting, the position on the Board to be elected by owners of owner-occupied Potts shall be the director elected for the one (1) year term and thereafter when that position becomes vacant (either because of resignation or the term has expired) the director for that position shall be voted upon only by the owner of non-occupied Potts. If at least fifteen percent (15%) of the Potts are not owner-occupied at the turnover meeting, but in any subsequent year more than fifteen percent (15%) of the Potts becomes owner-occupied, the position of a director whose term expires in that year shall be designated the director to be elected by owners of owner-occupied Potts and thereafter when the position becomes vacant (either because of resignation or the term has expired), the director for that position shall be voted upon only by the owners of owner-occupied Potts.

6.6 Filling of Vacancies and Removal of Directors

- (a) If a vacancy in the membership of the Board occurs, other than by way of removal by the owners or as a result of the number of directors being increased, subject to subparagraph (c) of this paragraph 6.6, the majority of the remaining members of the Board may appoint

any person qualified to be a member of the Board to fill the vacancy until the next annual meeting at which time the vacancy shall be filled by election of the owners.

- (b) Where the number of directors is increased, the vacancies resulting from such increase shall be filled only by election at such meeting of the owners and the director(s) so elected shall not act until the by-law increasing the number of directors is registered.
- (c) When there is not a quorum of directors in office, the director(s) then in office shall forthwith call a meeting of owners to fill the vacancies and, in default or if there are no directors then in office, the meeting may be called by an owner.
- (d) Any director may be removed before the expiration of his term by a vote of owners who together own a majority of the Pools and the owners may elect, in accordance with the By-Laws dealing with the election of directors, any person qualified to be a member of the Board for the remainder of the term of the director removed, provided the director elected by the owners of owner-occupied Pools may only be removed by a vote of the owners of owner-occupied Pools in accordance with the Act.

6.7 Calling of Meetings

Meetings of the Board shall be held from time to time at such place and at such time and on such day as the President or any two (2) directors may determine, and the Secretary shall call meetings when authorized by them. Notice of any meeting so called shall be delivered personally, by prepaid mail, courier delivery or electronic communication to each director addressed to him at his latest address entered on the Record of the Corporation not less than forty-eight (48) hours (excluding any part of a Sunday or of a holiday as defined by the Interpretation Act, R.S.C. 1986, c. I-21, for the time being in force) before the time when the meeting is to be held, save that no notice of a meeting shall be necessary if all the directors are present and consent to the holding of such meeting, or if those absent have waived notice of or otherwise signified in writing their consent to the holding of such meeting.

6.8 Regular Meetings

The Board may appoint a day or days in any month or months for regular meetings at a place and hour to be named. A copy of any resolution of the Board fixing a place and time of regular meetings of the Board shall be given to each director forthwith after being passed, but no other notice shall be required for any such regular meeting.

6.9 Teleconference

A meeting of the Board may be held or convened by way of teleconference, or any other form of communication system that allows all of the directors to participate concurrently and to communicate with each other simultaneously and instantaneously, provided that all of the directors participating in a meeting held or convened by such means have consented thereto, and a director so participating in any such meeting held or conveyed by such means shall be deemed (for the purposes of subsection 35(5) of the Act and this By-Law) to be present at such meeting. The Board may, by resolution signed by all the directors, provide its consent, in advance, to have meetings of the Board conducted in the manner contemplated herein, without the necessity of requiring new consents prior to each and every meeting, provided that such resolution (and the standing consent referred to therein) shall be automatically rendered ineffective from and after (but not prior to) the delivery to the Board by any director of a written notice revoking his or her consent to such resolution.

6.10 First Meeting of New Board

The Board may without notice hold its first meeting for the purpose of organization and the election and appointment of officers immediately following the appointment of the directors of the first Board, provided a quorum of directors be present.

6.11 Conflict of Interest

A director shall not be disqualified by reason of his office from contracting with the Corporation. Subject to the provisions of the Act, a director shall not by reason only of his office be accountable to the Corporation or to its owners for any profit or gain realized from a contract or transaction in which he has an interest, and such contract or transaction shall not be voidable by reason only of such interest, provided that the provisions in the Act relating to a declaration of interest have been followed.

6.12 Protection of Directors and Officers

No director or officer of the Corporation shall be liable for any acts, neglect or default of any other director or officer or for any loss or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the Board for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the monies, securities or effects of the Corporation shall be deposited or for any loss occasioned by an error of judgment or oversight on his part or for any other loss, damage or misfortune

whatsoever which shall happen in the execution of the duties of his office or in relation thereto, unless the same shall happen through his own dishonest or fraudulent act or acts.

6.13 Indemnity of Directors and Officers

Every director and officer of the Corporation and their respective heirs, estate trustees, successors, and other legal personal representatives shall at all times be indemnified and saved harmless by the Corporation from and against:

- (a) any liability and all costs, charges and expenses that the director or officer sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done, permitted to be done, or omitted to be done, by him, in respect of the execution of the duties of his office; and
- (b) all other costs, charges and expenses that such director or officer sustains or incurs in respect of the affairs of the Corporation,

excluding, however, all costs, charges and expenses incurred directly or indirectly as a result of such director's or officer's own dishonest or fraudulent act or acts, or through or by such director's or officer's gross negligence, recklessness, willful blindness or intentional misconduct (with all of the liabilities and costs for which each director and officer shall be indemnified being hereinafter collectively referred to as the "Liabilities"), unless the Act or the By-Laws of the Corporation provide otherwise, on the express understanding that:

- i) no director or officer shall be indemnified by the Corporation in respect of any liabilities, costs, charges and/or expenses that he or she sustains or incurs arising from any action, suit or other proceeding in which such director or officer is adjudged to be in breach of his or her duty to act honestly and in good faith;
- ii) the Corporation is advised of any such action, suit or other proceeding (and of all liabilities, costs, charges and expenses in connection therewith) forthwith after the director or officer receives notice thereof or otherwise becomes aware of same; and,
- iii) the Corporation is given the right to join in the defense of any such action, suit or proceeding.

6.14 Insurance

Subject to the limitations contained in the Act, the Corporation shall purchase and maintain such insurance for the benefit of the directors and officers as the Board may from time to time determine.

6.15 Standard of Care

Every director and officer shall exercise the powers and discharge the duties of his or her office honestly and in good faith, and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

6.16 Consent of Director at Meeting

A director who is present at a meeting of directors or committee of directors, is deemed to have consented to any resolution passed at such meeting or to any action taken thereat, unless such director:

- (a) requests that his or her dissent be entered in the minutes of the meeting; or,
- (b) delivers a written dissent to the secretary of the meeting before the meeting is terminated.

A director who votes for (or consents to) a resolution is not entitled to dissent under or pursuant to the foregoing provisions hereof.

6.17 Deemed Consent of a Director

A director who was not present at a meeting at which a resolution was passed or any action taken is deemed to have consented thereto unless within seven (7) days after becoming aware of the resolution, the director:

- (a) causes his or her dissent to be entered into (or annexed to) the minutes of the meeting; or,
- (b) delivers a written dissent to the Corporation personally or by registered mail.

ARTICLE VII – OFFICERS

7.1 Elected President

At the first meeting of the Board, after each election of directors and whenever a vacancy in the

office occurs, the Board shall elect from among its members, a President. Until such elections, the then incumbent (if a member of the Board) shall hold office.

7.2 Other Elections and Appointments

The Board shall appoint or elect a secretary, a treasurer and such other officers as the Board may determine, including one or more assistants to any such officers. The officers so elected may, but need not be, members of the Board. One person may hold more than one office.

7.2 Term of Office

The Board may by resolution remove at its pleasure, any officer of the Corporation.

7.3 President

The President shall, when present unless he has delegated the responsibility, preside at all meetings of the owners and of the Board, and shall be charged with the general supervision of the business and affairs of the Corporation. Except when the Board has appointed a General Manager or Managing Director, the President shall also have the powers and be charged with the duties of that office.

7.4 Vice-President

During the absence of the President, his duties may be performed and his powers may be exercised by the Vice-President, or if there are more than one, the Vice-Presidents, in order of seniority as determined by the Board. If a Vice-President exercises any such duty or power, the absence of the President shall be presumed with reference thereto. A Vice-President shall also perform such duties and exercise such powers as the Board may prescribe.

7.6 General Manager

The General Manager, if one be appointed, shall have the general management and direction, subject to the authority of the Board and the supervision of the President, of the Corporation's business and affairs and the power to appoint and remove any and all employees and agents of the Corporation not elected or appointed directly by the Board, and to settle the terms of their employment and remuneration. The terms of employment and remuneration of the General Manager appointed by the Board shall be settled from time to time by the Board.

7.7 Secretary

The Secretary shall give or cause to be given all notices required to be given to the owners, directors, auditors, mortgagees and all others entitled thereto; he shall attend all meetings of the directors and owners and shall enter or cause to be entered in records kept for that purpose, minutes of all proceedings at such meetings; he shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation, and he shall perform such other duties as may from time to time be prescribed by the Board.

7.8 Treasurer

The Treasurer shall keep or cause to be kept full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation and under the direction of the Board shall control the deposit of money, the safekeeping of securities and the disbursement of funds of the Corporation; he shall render to the Board whenever required of him an account of all his transactions as Treasurer, and of the financial position of the Corporation; and he shall perform such other duties as may from time to time be prescribed by the Board. The offices of Secretary and Treasurer may be combined.

7.9 Other Officers

The duties of all other officers of the Corporation shall be as set out in the terms of their employment or as the Board further declares. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant unless the Board otherwise directs.

7.10 Agents and Attorneys

The Board shall have power from time to time to appoint agents or attorneys for the Corporation with such power of management or otherwise (including the power to sub delegate) as may be thought fit.

7.11 Committees

In order to assist the Board in managing the affairs of the Corporation, the Board may from time to time establish or constitute such advisor committees to advise and make recommendations to the Board in connection with any activities undertaken (or under consideration) by the Board, including those related to management, budgets, Rules and/or any other matters related to the common elements or any facilities, services or amenities (or any portion thereof). The members of such committees shall be appointed by the Board to hold office, and may be removed at any time by resolution of the Board.

ARTICLE VIII - BANKING ARRANGEMENTS AND CONTRACTS

8.1 Arrangements

The banking business of the Corporation or any part thereof shall be transacted with such bank or trust company as the Board may designate or appoint from time to time by resolution, and all such banking business, or any part thereof, shall be transacted on the Corporation's behalf by such one or more officers or other persons as the Board may designate, direct or authorize from time to time by resolution and, to the extent herein provided, including without restricting the generality of the foregoing: the operation of the Corporation's accounts; the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders relating to any property of the Corporation; the execution of any agreement relating to any such banking business and defining the rights and powers of the parties hereto; and the authorizing of any officer of such bank to do any act or thing on the Corporation's behalf to facilitate such banking business.

8.2 Execution of Instruments

Subject to the provisions of the Act, and to the provisions of any other By-Law(s) of the Corporation specifically designating the person or persons authorized to execute any type or class of documents on behalf of the Corporation, all deeds, transfers, assignments, contracts and obligations on behalf of the Corporation may be signed by any two (2) directors of the Corporation. Any contract or obligation within the scope of any management agreement entered into by the Corporation may be executed on behalf of the Corporation in accordance with the provisions of such management agreement. The manager of the Corporation, any two (2) members of the Board or the Corporation's solicitor may execute a certificate of lien or discharge thereof. Subject to the provisions of the Act and the Declaration, but notwithstanding any provisions to the contrary contained herein or in any other By-Laws of the Corporation, the Board may at any time (and from time to time) by resolution direct the manner in which, and the person or persons by whom, any particular deed, transfer, assignment, contract, cheque or obligation, or any class of deeds, transfers, assignments, contracts, cheques or obligations of the Corporation may or shall be signed.

8.3 No Seal

Despite anything contained in this By-Law to the contrary, any document or instrument that would otherwise require a seal need not be executed under the seal of the Corporation, provided that same has been duly executed by the person or persons expressly authorized and empowered to execute same on behalf of the Corporation, nor shall any such document or instrument be duly witnessed in order to be valid, effective and binding upon the Corporation, provided that the name of the signatory, his or her office in the Corporation and the phrase, "I/We have authority to bind the Corporation" are clearly set out below the signature(s) of the person(s) expressly authorized and empowered to execute same on behalf of the Corporation and any such duly executed document or instrument shall have the same validity and binding effect on the Corporation (for all purposes) as if same has been duly executed under the seal of the Corporation.

8.4 Execution of Status Certificates

Status certificates may be signed by any officer or any director of the Corporation provided that the Board may by resolution direct the manner in which, and the person by whom, such certificates may or shall be signed from time to time.

ARTICLE IX - FINANCIAL YEAR END

9.1 Financial Year End

The financial year end of the Corporation shall end on the last day of the month in which the Declaration and Description creating the Corporation were registered, in each year, or on such other day as the Board may by resolution determine.

ARTICLE X - NOTICE

10.1 Method of Giving Notices

Except as otherwise specifically provided in the Act, the Declaration, this By-Law, or any other By-Law(s) of the Corporation hereafter enacted, any notice(s), communication(s) or other document(s), including budgets and notices of assessment required to be given, served or delivered shall be sufficiently given or served if given in accordance with the following provisions:

- (a) to an owner: (who has notified the Corporation in writing of his or her ownership interest in any Poll, and of his or her name and address for service), by giving same to such owner (or to any director or officer of such owner if the owner is a corporation), either:
 - (i) personally, by courier, or by ordinary mail, postage prepaid, addressed to such owner at the address for service given by such owner to the Corporation; or

- (ii) by facsimile transmission, electronic mail, or by any other method of electronic communication (if the owner agrees in writing that the party giving the notice may do so in this manner); or
- (iii) by delivery at the owner's Potl or at the mail box for the owner's Potl, unless:
 1. the party giving the notice has received a written request from the owner that the notice not be given in this manner; or
 2. the address for service that appears in the Records is not the address of the Potl of the owner.
- (b) to a mortgagee: (who has notified the Corporation in writing of his or her interest as mortgagee in any Potl, and of his or her name and address for service, and of his or her right under the terms of the mortgage to vote at a meeting of owners (or to consent in writing) in the place and stead of the mortgagor/owner), by giving same to such mortgagee (or to any director or officer of such mortgagee, if the mortgagee is a corporation), either:
 - (i) personally, by courier, or by ordinary mail, postage prepaid, addressed to such mortgagee at the address for service given by such mortgagee to the Corporation; or
 - (ii) by facsimile transmission, electronic mail, or by any other method of electronic communication (if the mortgagee agrees in writing that the party giving the notice may do so in this manner).
- (c) to the Corporation: by giving same personally to any director or officer of the Corporation, or by courier or by registered mail, postage prepaid, addressed to the Corporation at its address for service as set out in the Declaration or as changed in accordance with the requirements of the Act.

10.2 Receipt of Notice

If any notice is delivered personally, by courier, or by facsimile transmission or by any other method of electronic communication, then such notice shall be deemed to have been received (and to be effective) on the next day following the day on which same was personally delivered, couriered, telefaxed, or sent by any other method of electronic communication, as the case may be.

10.3 Omissions and Errors

Except as may otherwise be provided in accordance with the Act, the accidental omission to give any notice to anyone entitled thereto, or the non-receipt of such notice, or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting of owners or directors held pursuant to such notice or otherwise founded thereon.

ARTICLE XI – ASSESSMENT AND COLLECTION OF COMMON EXPENSES

11.1 Duties of the Board

All expenses, charges and costs of maintenance of the common elements and any other expenses, charges or costs which the Board may incur or expend pursuant hereto shall be assessed by the Board and levied against the owners in the proportions in which they are required to contribute to the common expenses as set forth in the Declaration. The Board shall from time to time, and at least annually, prepare a budget for the Property and determine by estimate, the amount of common expenses for the next ensuing fiscal year or remainder of the current fiscal year, as the case may be, which shall include provision for a reserve fund as required by the Act. The Board shall advise all owners promptly in writing of the amount of common expenses payable by each of them respectively determined as aforesaid, and shall deliver copies of each budget on which common expenses are based to all owners and mortgagees entered in the Record.

11.2 Owner's Obligations

Each owner shall pay to the Corporation the amount of such assessment in equal monthly payments on the first day of each and every month next following notice of such assessment by way of twelve (12) postdated cheques or execution of a pre-authorized payment plan, until such time as a new assessment has been provided to such owner.

11.3 Extraordinary Expenditures

In addition to the annual assessment, extraordinary expenditures not contemplated in the foregoing budget and for which the Board shall not have sufficient funds, may be assessed at any time during the year by the Board serving notice of such assessment on all owners, as an additional common expense. The notice shall include a written statement setting out the reasons for the assessment. The assessment shall be payable by each owner within ten (10) days after the delivery thereof to him or within such further

period of time or in such instalments as the Board may determine.

11.4 Default in Payment of Assessment

- (a) Arrears of payments required to be made under the provisions of this Article 11 shall bear interest at a rate determined by the Board from time to time and in default of such determination shall bear interest at the rate of eighteen percent (18%) per annum and shall be compounded monthly until paid.
- (b) In addition to any remedies or liens provided by the Act, if any owner is in default in payment of an assessment levied against him/her for a period of fifteen (15) days, the Board may retain a solicitor on behalf of the Corporation to enforce collection and there shall be added to any amount due all costs of such solicitor as between a solicitor and his own client and such costs may be collectible against the defaulting owner in the same manner as common expenses.
- (c) The Board when giving notice of default in payment of common expenses or any other default to the owner of the Potl shall concurrently send a copy of such notice to each mortgagee of such Potl who has requested that such notices be sent to him/her.

ARTICLE XII – LIABILITY FOR COSTS

12.1 Abatement and Restraint of Violations by Owners and Liability for Costs

The owner of a Potl is responsible for any cost incurred by repair:

- (a) damage to the common elements or other Potls that may have been caused by either the owner's use or his residents' or their visitors' use of same; and
- (b) damage to the common elements that has been caused by the deliberate or negligent conduct of any owner, resident or their invited guests.

In those cases where it has been determined that the responsibility for payment of the cost to repair is that of an owner, or where an owner requests to repair a common element himself/herself, the Board of Directors shall approve the selection of the contractor and/or the method of repair. This decision, at the discretion of the Board, shall be based on a minimum of two (2) bids, the method of repair, the meeting of standards of uniformity and consideration of the convenience of the owner(s) involved.

12.2 Additional Rights of Corporation

The violation of any provisions of the Act, the Declaration, the By-Laws, and/or the Rules adopted by the Board of Directors, shall give the Board the right, in addition to any other rights set forth in these By-Laws to:

- (a) enter the Potl in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or
- (b) enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, including without limiting the generality of the foregoing, an application for an order for compliance by implementing such proceedings as provided for in Part IX of the Act.

12.3 Insurance Deductible

Pursuant to subsections 105(2) and (3) of the Act, where any insurance policy obtained or maintained by the Corporation contains a deductible clause that limits the amount payable by the insurer, then the portion of any loss that is excluded from coverage shall be deemed a common expense, provided however that if an owner, tenant or any other person residing in the owner's Potl with the permission or knowledge of the owner, by or through any act or omission causes damage to such owner's Potl, or to any other Potls, or to any portion of the common elements, in those circumstances where such damage was not caused or contributed by any act or omission of the Corporation (or any of its directors, officers, agents or employees), then the amount which is equivalent to the lesser of the cost of repairing the damage and the deductible limit of the Corporation's insurance policy shall be added to the common expenses payable in respect of such owner's Potl, together with all costs and expenses incurred by the Corporation (either directly or indirectly) in resolving such claim and/or having such damage fully rectified (including the increase in insurance premiums, if any, charged or levied against the Corporation by its insurer as a result of such claim or damage, together with all legal costs incurred by the Corporation on a solicitor and client basis), and shall be recoverable from such owner in the same manner (and upon the same terms) as unpaid common expenses.

ARTICLE XIII – PROCEDURES FOR MEDIATING DISPUTES

13.1 Mediation Procedures

For the purposes of complying with Sections 125 and 132 of the Act (if and where applicable), the procedure with respect to the mediation of disputes or disagreements between the Corporation and any owner(s) shall be conducted in accordance with the rules of procedure for the conduct of mediation attached hereto as Appendix "A".

ARTICLE XIV – MISCELLANEOUS

14.1 Invalidity

The invalidity of any part of this By-Law shall not impair or affect in any manner the validity, enforceability or effect of the balance thereof.

14.2 Gender

The use of the masculine gender in this By-Law shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include plural wherever the context so requires, and vice versa.

14.3 Waiver

No restriction, condition, obligation or provision contained in this By-Law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

14.4 Headings

The headings in the body of this By-Law form no part thereof but shall be deemed to be inserted for convenience and reference only.

14.5 Alterations

This By-Law or any part thereof may be varied, altered or repealed by a By-Law passed in accordance with the provisions of the Act and the Declaration.

14.6 Conflicts

In the case of a conflict between the provisions of the Act and any provision in the Declaration, By-Law or Rules, the Act shall prevail. In the case of a conflict between the provisions in the Declaration and any provision in the By-Laws or Rules, the Declaration shall prevail. In the event the provisions of the Act or in the Declaration are silent, the provisions of the By-Laws shall prevail.

(intentionally left blank)

The foregoing By-Law No. 1 is hereby passed by the Directors of the Corporation pursuant to the *Condominium Act, 1998*, as evidenced by the respective signatures hereto of all the Directors.

DATED at Hamilton, this 30th day of June, 2016


JEFFREY PAIKIN


JOSEPH GIACOMODONATO


RYAN KETT

The undersigned, which owns one hundred percent (100%) of the Potts, hereby confirms, pursuant to the provisions of the *Condominium Act, 1998*, the foregoing By-Law No. 1 of the By-Laws of the said Corporation signed by all the Directors of the said Corporation as a By-Law thereof pursuant to the provisions of the *Condominium Act, 1998*, on the 30th day of June, 2016

NEW HORIZON DEVELOPMENT GROUP (WATERFRONT TRAILS) INC.

Per:



Name: Jeffrey Paikin

Title: President

I have authority to bind the Corporation.

APPENDIX "A" TO BY-LAW NO. 1

ARTICLE 1- PRE-MEDIATION PROCEEDINGS

Prior to submitting a dispute on any question or matter to a mediator appointed by the parties in accordance with Section 132 of the Condominium Act, 1998 as set forth below, and within fourteen (14) days of the dispute first arising, the owner (or owners) and the Board of Directors shall meet on at least one (1) occasion, and shall use their best efforts to resolve the question or matter in dispute through good faith negotiations conducted at such meeting and, if the parties are able to agree upon the selection of (a) neutral person(s) who may be and include the Corporation's property manager and/or a highly regarded member of the community, the meeting shall include such neutral person(s), all acting with a view to securing a resolution of the question or matter in dispute without further proceedings, including the conduct of mediation with the assistance of an outside mediator.

If one of the parties to the question or matter in dispute is unable or unwilling to participate in the initial meeting described in the preceding paragraph, then either party to the dispute may within five (5) business days give written notice to the other that it is submitting the question or matter in dispute to the mediation and arbitration procedures set forth below.

If the parties having met and used their best efforts to resolve the question or matter in dispute through good faith negotiation and have been unable to resolve the question or matter in dispute, then either party may, thereafter, give notice to the other that it is submitting the question or matter in dispute to mediation.

ARTICLE 2 - MEDIATION

Within thirty (30) days following the giving of notice by one party to the other party or parties as set forth above, the question or matter in dispute shall be settled, initially, by mediation proceedings in accordance with Section 132 of the Condominium Act, 1998.

Selection and Role of the Mediator

The party serving notice of mediation shall set forth in the notice to the other party the names, qualification and experience of two (2) or more mediators from whom the other party may select one, or alternatively, may furnish to the first party its own list of two (2) or more persons qualified to act as a mediator, and within seven (7) days thereafter, the parties shall communicate directly with one another to select a mediator. If the parties are unable to agree upon the selection of a mediator within seven (7) days, or within such longer period of time as may be agreeable to the parties, then the appointment of a mediator shall be conducted by any one of the founding members or by the executive director of the Condominium Dispute Resolution Centre (the "CDRC") whose decision in the appointment of a qualified mediator for this purpose shall be final and binding upon the parties.

The mediator selected by the parties or, failing their agreement, appointed by the CDRC, shall not have had any current or past relationship of any kind with any of the parties that might otherwise give rise to justifiable doubts as to his or her impartiality or independence in assuming a neutral role as a mediator to assist the parties in the resolution of their dispute.

The mediator's role is to assist the parties to negotiate a resolution of their dispute. The mediator will not make decisions for the parties about how the matter should or must be resolved.

Party Confidentiality

The parties to the question or matter in dispute acknowledge that mediation is a confidential settlement process, and that they are participating in the process with the understanding that anything discussed in the mediation cannot be used in any other proceeding.

Pre-mediation Information

Each of the parties shall provide to the mediator a brief description of the dispute in writing in order to facilitate a more complete understanding of the controversy and the issues to be mediated not less than two (2) days prior to the first mediation session, which date the mediator shall have authority to establish at the earliest possible and convenient date to the parties.

Authority to Settle

The parties or those representing them at the mediation shall have full, unqualified authority to settle the controversy.

Mediator Confidentiality

The mediator shall not disclose to anyone who is not a party to the mediation anything said or any materials submitted to the mediator except when ordered to do so by judicial authority or where required to do so by law.

Legal Representation

The parties may seek legal representation or advice prior to or during the mediation. They may have lawyers present at the mediation, if they so desire. If the mediator selected by the parties is a qualified lawyer, he or she will not provide legal representation or legal advice to any party at any time, and the mediator has no duty to assert or protect the legal rights and responsibilities of any party, or to raise any issue not raised by the parties themselves, or to determine who should participate in the mediation.

Right to Withdraw

In accordance with Section 132 of the Condominium Act, 1998, it is mandatory that each party to the dispute attend the initial mediation session. Prior to such attendance, each party shall provide the mediator with a brief description of the dispute in writing. Subject to the foregoing requirements, each party shall be entitled to withdraw at and from the initial mediation session.

Costs of the Mediation

In accordance with Section 132 of the Condominium Act, 1998, each party shall pay the share of the mediator's fees and expenses that the settlement specifies, if a settlement is obtained, or the mediator specifies in the notice stating that the mediation has failed, if the mediation fails.

Notice and Report

In the event that the parties are unable, with the assistance of the mediator, to settle their dispute, the mediator shall deliver a notice to the parties stating that the mediation has failed, and the parties shall thereafter resolve their dispute by arbitration under the *Arbitration Act, 1991*, S.O. 1991, c. 17, and in the manner set forth below.

Settlement

In accordance with Section 132 of the Condominium Act, 1998, upon obtaining a settlement between the parties with respect to the disagreement submitted to mediation, the mediator shall make a written report of the settlement which shall form part of the agreement or matter that was the subject of the mediation.