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YORK REGION CONDOMINIUM CORPORATION NO. 616

BY-LAW NO. 5

A By-law governing the establishment of a procedure with respect to the mediation and arbitration of disputes or disagreements between the corporation and the owners for the purposes of Section 125 or 132 of the *Condominium Act*, Chapter 19, Statutes of Ontario, 1998 (hereinafter referred to as the "**Act**")"

Be it enacted as a by-law of the Corporation as follows:

ARTICLE I – DEFINITIONS

(i) The terms used herein shall have ascribed to them the definitions contained in the Act, as amended.

(ii) The term "parties" as used herein shall refer to the parties to agreements described in Section 132 (2) of the Act and, with respect to disagreements concerning the declaration, the by-laws or rules, shall mean the Corporation and unit owners.

ARTICLE II – INITIAL NEGOTIATION OF DISPUTES

The parties agree to use their best efforts to resolve any disputes or matters which may arise between them in respect of disagreements concerning the matters referred to in Subsections 132 (2), (3), and (4) of the Act and further agree that they shall resort to mediation and arbitration as provided for by Section 132 of the Act only if their best efforts to resolve such disputes fail.

ARTICLE III – PROCEDURE FOR MEDIATION

(i) If the parties are unable to resolve the question or matter in dispute through good faith negotiations, the parties, on written notice by either party submitting the disagreement to mediation, shall select a mediator qualified by education, training and experience to assist the parties in dealing with the particular question or matter in dispute, and the parties shall attempt to mediate their differences, and the mediator shall confer with the parties and endeavour to obtain a settlement with respect to the disagreements submitted to mediation. The parties shall initially share equally in the costs of the mediator, however, if a settlement is obtained, the settlement shall specify the share of the mediator's fees and expenses that each party is required to pay. Upon obtaining a settlement between the parties with respect to the agreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation.

(ii) Subject always to the parties agreeing to any modifications thereto, the mediation shall be conducted generally in accordance with the rules of procedure attached hereto as Schedule "A".

ARTICLE IV- SELECTION OF MEDIATOR

Selection of a mediator for the purposes of subsection 132(1)(b)(i) of the Act occurs when:

(a) all parties have signed a mediation agreement; and

(b) the parties have paid the deposit required by the mediator.

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ARTICLE V – ARBITRATION

(i) The parties shall forthwith submit the disagreement or matter in dispute to arbitration under the *Arbitration Act, 1991* in the event that:

(a) 60 days after the parties submit the disagreement to mediation the parties have not selected a mediator or;

(b) 30 days after the mediator selected delivers a notice stating that the mediation has failed.

(ii) Such arbitration shall be by a single arbitrator whose appointment is agreed upon by the parties, and the decision of the arbitrator shall be binding upon the parties, and no legal recourse shall be exercised by either party with respect to the question or matter in dispute until the arbitration has been completed.

(iii) Notwithstanding that the decision of the arbitrator is binding, to the extent that a party fails to obtain compliance, that party shall be at liberty to apply to the Superior Court of Justice for a compliance order, pursuant to subsections 134(1) and (2) of the Act.

ARTICLE VI – PROCEDURE FOR ARBITRATION

(i) The parties shall meet and attempt to appoint a single arbitrator whose education and training makes him or her well qualified to determine the particular question or matter in dispute. In the event that the parties are unable to agree upon a single arbitrator, each party shall appoint one arbitrator within seven (7) days of the meeting and notify the other party. The arbitrators so appointed shall, within seven (7) days of the appointment of the last arbitrator so appointed, choose an arbitrator who will serve as the sole arbitrator to determine the particular question or matter in dispute. If either party neglects or refuses to name an arbitrator within seven (7) days of being requested to do so by the other party, the arbitrator named by the other party shall proceed to resolve the dispute in accordance with the *Arbitration Act, 1991* (Ontario) and the parties agree that the arbitrator's decision shall be binding and shall not be subject to appeal by either party other than on a question of law in accordance with Section 45 (2) of the *Arbitration Act, 1991* or pursuant to a specific ground for appeal or for setting aside the arbitrator's award pursuant to Section 46 of the Arbitration Act, 1991.

(ii) The decision and reasons of the arbitrator shall be made within thirty (30) days after the hearing of the question or matter in dispute, and the decision and reasons shall be drawn up in writing and signed by the arbitrator who shall also be entitled to award costs in the arbitration. The compensation and the expenses of the arbitrator shall initially be paid in equal proportions by each party subject to the final outcome and any award being made as to costs of the arbitration.

(iii) Subject always to the parties agreeing to any modifications thereto, the arbitration shall be conducted generally in accordance with the rules of procedure, attached hereto as Schedule "B", and also in accordance with the provisions of the Arbitration Act, 1991 (Ontario).

ARTICLE VII – MISCELLANEOUS

(i) **Invalidity**
The invalidity of any part of this by-law shall not impair or affect in any manner the validity and enforceability or effect of the balance thereof.

(ii) **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.

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(iii) **Headings**
The headings in the body of this by-law form no part thereof but shall be deemed to be inserted for convenience of reference only.

(iv) **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.

The foregoing By-Law is hereby passed by the Directors and confirmed by the owners pursuant to the Act.

PASSED by the Board of Directors of YORK REGION CONDOMINIUM CORPORATION NO. 616 on the 18th day of February, 2012.

Steffen Herrnsdorf, President

Lois Kay, Secretary

We have authority to bind the Corporation

CONFIRMED by a vote of the majority of owners in accordance with the *Condominium Act, 1998* on the 22nd day of May, 2012.

Lois Kay, Secretary

I have authority to bind the Corporation

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Schedule "A"

RULES OF PROCEDURE FOR THE CONDUCT OF MEDIATIONS

INTRODUCTION
Mediation is not arbitration. Mediation is the use, by disputing parties, of a neutral third party to facilitate their own resolution of their dispute.

MEDIATION AGREEMENT
The parties to a proposed mediation shall sign a mediation agreement stating that they have agreed:

1. to submit the dispute to mediation;
2. to try to resolve their dispute with the aid of the mediator, and
3. that these Rules shall apply to the mediation.

The mediation agreement shall contain a brief description of the nature of the dispute and shall enclose the text of any relevant mediation clause in any document.

CONDUCT OF THE MEDIATION
Each party to the mediation shall inform the mediator, of the following matters (where applicable):

1. what issues are in dispute and which matters, if any, have be agreed upon;
2. the identification of any documents, correspondence, books or records that the party wishes to produce to the other party and to the mediator in advance of the mediation;
3. whether "on site" inspections and/or interviews should, in the opinion of the party, be part of the mediation proceeding;
4. whether any experts or consultant of the party will be attending the mediation;

Prior to the mediation, and by conference call, the mediator will advise the parties of the basis upon which the mediator's fee shall be calculated, secured and paid, including any deposit to be paid in advance. The mediator shall disclose any personal interest in the dispute, or any previous relationship with any of the parties, or any specific bias regarding any of the issues, and the parties and the mediator shall reach agreement on dealing with it, prior to the mediation.

GENERAL
The address for service shall be the last address given by each of the parties and service to this address shall be deemed good and sufficient.

The mediator shall schedule the date, time and location for a mediation conference with the agreement of the parties.
A mediation conference shall be held in private. The only persons entitled to be present without the consent of the mediator, shall be the parties and/or their representatives.

CONFIDENTIALITY
The mediator shall keep confidential any information provided to her/him in the course of the mediation. However, the mediator may disclose to any party or to her or his counsel any information provided by the other party which the mediator and the party believe to be relevant to the issues being mediated, unless a party or her/his counsel has specifically requested the mediator to keep certain information confidential.

It is agreed that mediation sessions are settlement negotiations and disclosures are inadmissible in any further litigation or arbitration to the extent allowed by law. The parties will not subpoena or otherwise require the mediator to testify or produce records or notes in any future proceedings. No transcripts will be kept of the mediation conference.

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It is agreed that the parties shall not rely on or introduce as evidence in subsequent arbitral or judicial proceedings:

1. any views expressed, or suggestions made, by the other party in respect of the possible settlement of the dispute;
2. any admissions made by the other party in the course of the mediation;
3. the fact that the other party had indicated a willingness to accept a proposal or recommendation for settlement made by the mediator;
4. proposals made or views expressed by the mediator.

REPRESENTATION

Unless the parties otherwise agree, a party may be represented by a lawyer or agent if prior notice, including the lawyer's or agent's name and address, is given to the mediator and other parties at least 5 (five) days prior to the mediation conference.

Each party's representative must have authority to settle the dispute at the mediation conference, unless otherwise agreed.

Where a party fails to attend or be represented at a mediation conference despite proper notice, the mediator may adjourn the mediation conference to a later date with 14 days notice to all parties, and costs may be assessed against the defaulting party.

The mediation conference may be terminated at any time by any party, her or his counsel or the mediator for any reason.

REPORT

The mediator shall prepare a report for the parties, within 14 days following completion of the mediation, which states:

1. the names of the parties;
2. the date and place of the mediation;
3. the resolution particulars of any issues that have been resolved, and/or that the mediation has failed on some or all issues, as the case may be.

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Schedule "B"

RULES OF PROCEDURE FOR THE CONDUCT OF ARBITRATIONS

Sites of Arbitration
The place of arbitration may be in the town of Richmond Hill, Ontario, or such other locale as the parties may agree, but the arbitrator or arbitral tribunal may meet at any other place they consider necessary for meetings to hear evidence or for the inspection of documents or property related to the issues in the dispute.

Preliminary meeting with the Arbitrator
The parties to the arbitration and/or their respective representatives shall meet with the arbitrator(s) in a preliminary meeting before the formal hearing to determine procedural matters, including the following, which, in the absence of agreement of the parties, shall be determined by the arbitrator(s):

1. what issues are in dispute and which matters, if any, can be agreed upon, and what matters might expedite the proceedings;
2. the law governing the matter, unless this is specified in the arbitration agreement of the parties;
3. whether statements, if any, are to be exchanged; their format and the deadlines for exchange of such statements;
4. whether witnesses shall be excluded during the testimony of other witnesses;
5. what documents, correspondence, books or records exist or can be produced, when they shall be produced or exchanged and by whom;
6. whether 'on site' inspections shall be part of the proceedings;
7. the number of witnesses likely to be called to testify, their names and addresses (in the case of expert witnesses, their credentials), the gist of their evidence and whether their evidence can be given by affidavit;
8. the length of time the proceedings will take, including the time to present each party's case;
9. whether a stenographic recording or any type of record of the proceedings shall be kept and how the expense shall be paid and secured;
10. except as to a stenographic record as provided above, what shall be included in the record of the arbitration;
11. whether special services such as interpreters, document translations or security measures are required, and how such services shall be provided and paid for;
12. the basis upon which the arbitrator's fees shall be calculated, secured and paid, including any deposit to be paid in advance of the hearing;
13. whether an arbitration agreement is valid and in force;
14. fixing the locale where the arbitration is to be held; and
15. setting the date, time and place of the hearing.

The preliminary meeting may be held by teleconference with the consent of the parties and the arbitrator(s). Any consensus reached at the preliminary meeting shall be recorded in writing by the arbitrator(s) and such records shall be sent within four days of that meeting to each of the parties.

Legal Representation
The parties may be represented by legal counsel at the preliminary meeting and during any step of the proceedings of the arbitration. The arbitrator shall be informed of the name and address of the lawyers appointed by the parties to represent the parties, at least five days before any scheduled oral hearing or meetings.

Submissions
The arbitrator may in her/his sole discretion, subject to the Rules herein, conduct the arbitration in any manner (s)he considers appropriate giving each party full and fair opportunity to present their case. The arbitrator may, without limiting her/his discretion, conduct the arbitration on the basis of written submissions only or with oral evidence as the arbitrator or the arbitral tribunal may decide.

Jurisdiction
Challenges to the arbitrator's jurisdiction may be dealt with by the arbitrator herself or himself. The arbitrator may treat the arbitration clause forming part of an agreement as independent of the agreement and in the event that the arbitrator decides that the agreement is void, this decision shall not invalidate the arbitration clause in question.

STATEMENTS – CLAIM AND RESPONSE
Within ten days following the pre-arbitration meeting, the claimant shall send a written statement entitled Claim Statement to the respondent and to the arbitrator briefly outlining relevant facts, issues in dispute and relief sought. Within ten days after receipt by the respondent of the Claim Statement, the respondent shall send a written statement entitled Response Statement together with a written statement of counterclaim, if any, to the claimant and the arbitrator. Defence to the counterclaim must be filed by the respondent within ten days after receipt of the counterclaim.

If the respondent fails to deliver a Response Statement, the arbitrator will notify the claimant, and the arbitration shall proceed in accordance with subsections 27(2) and 27(3) of the *Arbitration Act, 1991*(the "Act"), or such other relevant provisions as are then in force.

Document Productions
Annexed to each party's Statement shall be a document list outlining the documents upon which the parties intend to rely. Each document shall be described with sufficient detail for the purpose of clarity. Each party shall make available to the other party for inspection and making copies of any documents outlined in the list of documents.

The arbitrator may order on application or otherwise a party to produce any documents the arbitrator considers relevant upon terms to be decided by the arbitrator.

Amendments to Statements
The arbitrator may permit amendments to Statements by either party including a counterclaim during the course of the arbitration unless the arbitrator considers it inappropriate to allow such amendment because of the party's delay in making it or prejudice to the other parties or any other circumstances. An amendment to or supplemental claim or counterclaim may not be advanced by a party to the arbitration if the amendment would fall outside the scope of the arbitration agreement. The arbitrator may order the parties to identify the facts which are not in dispute and to prepare an Agreed Statement of Facts for filing with the arbitrator to form part of the pleadings. The filing times shall be specified by the arbitrator.

Hearing dates
Dates for oral hearings or meetings of the parties and the arbitrator shall be ordered by the arbitrator on at least seven days written notice of such hearings or meetings to the parties.

The arbitrator(s) for good cause shown may postpone any hearing or meeting upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree thereto.

Evidentiary matters
Subject to the Act or other applicable law, the parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator or other person authorized by the Act or other applicable law with respect to the subpoena of witnesses or documents may do so upon the request of any party or independently. The powers of the arbitrator include the power to administer an oath or affirmation or to require a witness to testify under oath or affirmation.

Parties intending to rely on documents must prepare briefs of all documents including an index page, intended to be introduced at the oral hearing and submitted to the arbitrator no less than ten days before the commencement of the hearings. Request by the parties to introduce documents not contained in the document briefs at the oral hearing may be considered by the arbitrator prior to or at the commencement of the hearing. The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all of the parties except where any of the parties is absent, in default or has waived the right to be present.

Witnesses
An arbitrator may also call a witness on her/his own motion subject to the rights of cross-examination of that witness by the parties, and the right of the parties to call evidence in rebuttal. If a party fails to appear at a hearing or to produce any evidence at that hearing, the arbitrator or arbitral tribunal may proceed with the arbitration and make an arbitral award.

Special counsel may be appointed to assist the arbitrator or arbitral tribunal at their request. Counsel's fees are to be shared equally by the parties.

Experts
An arbitrator has the right to appoint an expert to report to the arbitrator and, following the filing of the report to the arbitrator, the expert shall be subject to questioning by the parties, if requested by the parties.

Default
In the case of claimants or respondents who, without adequate explanation and after seven days notice from the arbitrator, fail to deliver their Claim Statement or Response Statement as the case may be within the required time, the arbitrator shall continue the arbitration. Failure of the respondent to file the Response Statement will not automatically result in an arbitrator making an arbitral award. The arbitrator or arbitral tribunal shall require the claimant to submit proof of its Claim, and the arbitrator or arbitral tribunal shall make an award based upon the evidence before them.

Discretion and Flexibility
The arbitrator shall have broad discretion and flexibility in the conduct of the proceedings and where the arbitrator considers it just and appropriate in the circumstances, these Rules may be modified upon the arbitrator's own initiation. Without limiting the generality of the foregoing, the arbitrator may make interim orders on any matters with respect to which they may make a final award including orders for preservation of property which is the subject matter of the dispute. The arbitrator may also expand or reduce the scope of the discovery of the issues in the arbitration or the documentation of the parties filed.

Award
Upon the conclusion of evidence, the arbitrator or arbitral tribunal may close the hearings and thereafter shall make a final written award within a reasonable time period but no later than 30 days after hearings are closed. Where there is more than one arbitrator any award, decision or ruling of the arbitral tribunal shall be made by a majority of the arbitrators.

In addition to making a final award, the arbitrator or arbitral tribunal may make interim, interlocutory or partial orders and awards.

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties including, but not limited to, punitive damages, specific performance of a contract, injunctions and other equitable remedies.

Costs
The arbitrator may fix costs in the final award or upon application, by either party, may fix costs of the arbitration no later than 15 days after notification of the final award. The arbitrator or arbitral tribunal may determine which party or parties shall bear the costs of legal fees and expenses of the successful party or substantially successful party and may apportion those costs. The costs of the arbitrator's fees and administrative fees are joint and several obligations of the parties to the arbitration unless the parties have agreed otherwise. The party may within 14 days after being notified of the final award make application to the arbitrator to vary, clarify or amend the award with respect to costs and the arbitral tribunal may do so in her/his or their decision.

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Confidentiality

Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator. Unless otherwise agreed by parties or required by applicable law, the arbitrator shall keep confidential all matters relating to the arbitration or the award.