

THIS REVISED DEED OF TRUST (the "**Revised Deed**") is effective as of October 1, 2018 (the "**Effective Date**") and revises the original Deed of Trust (the "**Deed**") that established the HAMILTON HARBOUR DEVELOPMENT TRUST as of November 24, 2000

B E T W E E N:

CITY OF HAMILTON (the "**City**")

-and-

HAMILTON WATERFRONT TRUST (the "**Trust**")

Each a "**Party**" and collectively the "**Parties**"

WHEREAS by a Trust Deed dated November 24, 2000, the City and the Hamilton Harbour Commissioners (the "**Commissioners**")—now known as the Hamilton Port Authority (the "**HPA**")—established a trust known as the Hamilton Harbour Development Trust which is now known as the Hamilton Waterfront Trust (the "**Trust**");

AND WHEREAS on or about November 24, 2000, the Commissioners transferred to the Trust approximately \$6.3 Million for the purposes of land assembly, improvements and development costs relating to Hamilton's West Harbour which funds have long since been invested or expended and the Trust has since developed several alternative revenue sources;

AND WHEREAS as of October 26, 2019, the City, the HPA and the Trust have each approved a restructuring of the Board whereby the City would henceforth appoint all Trustees and the HPA withdrew from further participation in, and oversight of, the Trust;

AND WHEREAS the City or other parties may hereafter transfer or cause to be transferred to the Trust money, securities, land and other assets, all of which are to be

held by the Trustees upon the trusts and with and subject to the powers and provisions declared and contained in this Revised Deed;

NOW THEREFORE THIS REVISED DEED OF TRUST WITNESSETH that in consideration of the premises and the mutual covenants and agreements herein contained, it is hereby covenanted and agreed by and between the Parties as follows:

DESIGNATION AND CONTINUATION OF TRUST

1. The City and the Trust hereby continue a trust known and designated as the Hamilton Waterfront Trust. The Trustees may, in their discretion, in that name, hold title to or ownership of any or all of the assets from time to time forming part or all of the assets of the Trust, carry out any transaction on behalf of the Trust and enter into any contracts or arrangements or otherwise exercise any of the powers, discretion and authorities herein conferred upon them.

2. (a) This Revised Deed is effective as of the Effective Date and shall continue until terminated by the City on no less than twelve (12) months written notice to the Trust.

(b) On receipt of this termination notice from the City, the Trust shall immediately take appropriate steps to wind-up its operations as well as that of its related companies, trusts and other entities, including, without limitation:
 - i. promptly providing working notice to its employees;
 - ii. promptly providing notice of contract termination to its contractors and service providers;
 - iii. disposing of its existing assets; and
 - iv. otherwise resolving all outstanding liabilities.

- (c) On completion of the wind-up of its operations, the Trust shall transfer any remaining Trust Assets including any monetary assets to the City.

INTERPRETATION

3. Meanings of Terms

In this Revised Deed:

- (a) **"Board"** means all of the then currently appointed Trustees collectively;

- (b) **"Lands"** refers to the lands covered by the Hamilton West Harbour Waterfront Recreation Master Plan, and any other lands specifically designated by the City as being subject to the mandate of the Trust including all lands adjacent to Lake Ontario with the City of Hamilton including, specifically, Hamilton Harbour;

- (c) **"Person"** means and includes any individual, corporation, partnership, firm, association, organization, foundation, trust, government or governmental authority of any jurisdiction whatsoever;

- (d) **"Trust"** shall mean the Hamilton Waterfront Trust;

- (e) **"Trust Assets"** shall mean all money, securities and other assets owned by the Trust and any further assets which any other Person or Persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, the Trust and any assets substituted therefore and capital accretions thereto and all income from such assets to be held upon the trusts and with and subject to the powers and provisions hereof;

- (f) **"Trustees"** shall mean and include the trustee or trustees currently appointed to the Board either in accordance with the Trust Deed or this Revised Trust Deed,; and

- (g) **"Hamilton West Harbour Waterfront Recreation Master Plan"** means the Hamilton West Harbour Waterfront Recreation Master Plan dated April 14, 2010.

TRUST ASSETS

4. (a) **Administration of Trust Assets**

The Trust shall administer all Trust Assets upon the trusts and subject to the powers and provisions contained in this Revised Deed.

(b) **Transfer of Further Property**

The Trustees shall have the right at any time during the continuance of the Trust to accept such further, substituted or additional assets which the Trust, the City or any other Person or Persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, the Trust either personally or by testamentary disposition, and all such assets shall, upon acceptance by the Trustees, form part of the Trust Assets.

PURPOSE OF TRUST

5. Subject to the provisions of paragraph 4 of this Revised Deed, the Trust shall receive and stand possessed of the capital and income of the Trust Assets and shall invest and keep the same invested and shall pay out, use and apply all or any part of the Trust Assets from time to time exclusively for the following purposes:

- (a) to promote and facilitate the public's access to, and enjoyment of, Hamilton's Waterfront as more specifically outlined in its Positioning Statement and its Vision Statement, each as amended from time to time;
- (b) the improvement and development of the Lands; and,
- (c) to administer Trust Assets, funds and capital gifts from donors for the purposes set out herein.

Notwithstanding the foregoing it is agreed by the Parties that the City must first approve any transaction, purchase, transfer or similar disposition of, or affecting, the Trust Assets that has of a value of \$250,000 or greater.

ADDITIONAL TRUSTEE POWERS

6. In addition to all other powers vested in trustees by law or otherwise and without in any way restricting the general powers, discretions and authority given to the Trustees in this Revised Deed, the Trustees shall have from time to time and at any time or times the power, discretion and authority:

(a) **Investments**

To retain, invest or reinvest, any money or property constituting the whole or any part of the Trust Assets in any investments, including without limiting the generality of the foregoing, any real or personal property or any interest therein, which the Trustees shall in their discretion determine to be advisable, provided such investments are authorized by law for trustees.

(b) **Disposition of Property**

To sell, transfer, assign, exchange, convey, grant an option with respect to or otherwise dispose of the whole or any part of the investments or other assets constituting the Trust Assets from time to time, in any manner and at any price and upon such terms and conditions as the Trustees shall in their discretion determine advisable and for the benefit of the Trust and the Trustees shall not be bound to obtain the prior consent or approval of any person, official, authority, tribunal or court whomsoever or whatsoever.

(c) **Shares and Other Securities**

To exercise all voting powers attaching to and all rights incidental to the ownership of stocks, shares, bonds or other securities and other assets held as part of the Trust Assets, and to appoint others as proxies and to delegate their discretionary powers in respect thereof; to sell or exercise any subscription rights and to exercise options, conversions, privileges or rights to subscribe for additional securities attaching to any securities held as part of the Trust Assets from time to time in connection with the exercise of subscription rights, to use

money of the Trust Assets for such purpose; to enter into any agreements in respect of the ownership of any securities which at any time form part of the Trust Assets; to consent to, participate in or join in any proposal or fundamental change of or with respect to any issuer of securities, which at any time form part of the Trust Assets; to authorize the sale of the assets or undertaking or a substantial portion of the assets or undertaking of any such corporation; generally to act in respect of such investments as fully and effectually from time to time as if the same were not property of the Trust, but always for the benefit of the Trust.

(d) **Professional Assistance**

To employ and pay for such professional, expert, specialized or other assistance as the Trustees may consider advisable in the discharge of their duties as Trustees.

(e) **Investment Counsel**

To appoint and/or employ one or more trust companies or investment counsel to manage the Trust Assets or to act as their agent in respect of the management of the Trust Assets and from time to time in their discretion to terminate any such appointment and make another. The Trustees are further authorized to fix the remuneration to be paid to any such trust company or investment counsel and such remuneration is to be charged upon the Trust Assets to be payable out of the capital or income thereof in such proportions as the Trustees from time to time decide in their discretion. In making any such arrangement as aforesaid, the Trustees are authorized to place the investment counsel and to transfer such investments or any of them into the name of any such trust company or any nominee thereof or therefore.

(f) **Act on Professional Advice**

To act on the opinion or advice of or information obtained from any lawyer, barrister, solicitor, accountant, financial advisor, valuer, surveyor, broker,

auctioneer or from other experts and professional persons, and the Trustees shall not be responsible for any loss, depreciation or damage occasioned by acting, or not acting, in accordance therewith.

(g) **Determination of Questions**

To determine all questions and matters of doubt which may arise in the course of the management, administration, realization, liquidation, partition or winding up of the Trust.

(h) **Legal Proceedings**

To institute and defend proceedings at law and to proceed to the final determination thereof or compromise the same as the Trustees shall in their discretion determine to be advisable.

(i) **Cash Deposits**

To deposit any money forming part of the Trust Assets at any time in any chartered bank or trust company duly authorized to carry on its business in the jurisdiction in which such deposit is made.

(j) **Borrowing**

To borrow money on the credit of Trust Assets, for the purpose only of funding current operating expenses of the Trust Assets.

(k) **Agreements**

To carry out transactions and enter into contracts or agreements with any person or corporation concerning any asset forming part of the Trust Assets where the Trustees consider such agreement to be in the best interest of the Trust and in connection therewith, the Trustees may make, execute, acknowledge and deliver any and all instruments that may be necessary, proper or desirable.

(l) **Officers**

To appoint any officer or officers to carry out any of the purely administrative duties and responsibilities of the Trustees.

(m) **Creation of Related Companies**

With the City's prior written consent, establish and operate subsidiary or related companies, trusts or other entities.

EXPENSES OF ADMINISTRATION

7. Subject to any other applicable provision in this Revised Deed, the customary expenses in connection with the administration of the Trust, including the investment and reinvestment of any part of the Trust Assets and the collection of income and other sums derivable therefrom, shall be charged against the income of the Trust Assets, but if such income is insufficient for the purpose, then the same shall be charged against the capital of the Trust Assets, or so much thereof as may be required, in addition to the income for the purpose.

TRUSTEES' EXPENSES

8. The Trustees shall serve as such without remuneration, and no Trustees shall directly or indirectly receive any profit from his position as a Trustee; provided that a Trustee shall be entitled upon approval by any two officers of the Trust so authorized by the Trustees to be reimbursed for all reasonable expenses incurred in the performance of his/her duties.

TRUSTEES

9. (a) **Number and Term of Officer**

At all times there shall be no fewer than five (5) Trustees of this Trust all of which shall be appointed by the City. Each shall be appointed for a four (4) year term

consistent with the term served by each City Council. Subject to paragraphs 9(e), (f) and (g) of this Revised Deed, each Trustee shall continue to act as a Trustee until his or her successor is appointed. Trustees shall be eligible for re-appointment by the City.

(b) **Chairperson**

On an annual basis, the Trustees shall appoint a Chairperson of the Trustees from among themselves.

(c) **Execution of Instruments**

Any and all bills of exchange, promissory notes, cheques, other orders for the payment of money, powers of attorney, transfers, papers, documents, contracts or other instruments in writing requiring at any time and from time to time to be executed for or on behalf of this Trust shall be validly executed if signed or otherwise authorized by any two or more officers of the Trust so authorized by the Trustees.

(d) **Majority Decision**

Every discretion or power hereby or by law conferred on the Trustees shall be an unfettered and absolute and uncontrolled discretion or power and every decision required at any time or from time to time to be made by the Trustees may be made by a majority of the Trustees, subject to paragraphs 2, 6(m) and 10(c). Subject to paragraph 9(i), no Trustee shall be held liable for any loss or damage occurring as a result of such Trustee concurring or refusing or failing to concur in any exercise of discretion or power by the Trustees. It shall be the duty of any Trustee not concurring in any lawful decision of the majority to execute such instruments and do such acts and things as may be necessary to give effect to such decision.

(e) **Resignation**

Any Trustee may at any time resign from the office of Trustee hereof on giving not less than thirty (30) days written notice addressed to the Board of Trustees and the City.

(f) **Automatic Termination of Office**

The Office of a Trustee shall be *ipso facto* determined and vacated if such Trustee, being an individual, shall be found to be a mentally incompetent person, or if s/he shall be declared bankrupt or insolvent, or make an assignment in bankruptcy, or removed by order of a court of competent jurisdiction, effective as of the date of such finding, declaration, assignment or removal.

(g) **Removal of Trustees**

All Trustees serve at the pleasure of the City. In the event it is desirable that any Trustee, including any person or persons substituted for the original Trustees, be removed from the position of Trustee, the City at any time may by written notice direct such Trustee to resign as a Trustee, and upon receipt of such notice, such Trustee shall forthwith resign.

In the event of a death, retirement, resignation or removal of any Trustee or upon the occurrence of any of the events to which reference is made in paragraph 9(f), a substitute Trustee shall be appointed forthwith by the City so that at all times (except for the period in which the appointments shall be so made) there shall be at least five (5) Trustees of this Trust. In the event of the death of a Trustee, his heirs, administrators, executors and assigns shall be fully discharged from all further duties and responsibilities in respect of this Revised Deed as of the date of death.

(h) **Notice of Changes**

Notices of every change of Trustees hereunder shall be signed by the City and the Trust and every such notice shall be sufficient evidence to any person having dealings with the Trustees for the time being hereof as to the facts to which it relates.

(i) **Willful Misconduct and Indemnification of Trustees**

No Trustee shall be liable for any error of judgment or mistake of fact or law, or for any act or omission when administering this Revised Deed save the willful neglect or default of, or the willful misconduct of, such Trustee or the willful breach of the terms

of this Revised Deed by such Trustee and each Trustee shall be indemnified and held harmless by the Trust against every claim or loss (except those arising from the willful neglect, default or misconduct of such Trustee or the willful breach of the terms of this Revised Deed by such Trustee), death duties, taxes and impositions arising in connection with the Trust Assets or any part thereof.

(j) **Residence**

Every person who shall be a Trustee shall at all times be required to be a resident of Hamilton, Ontario.

(k) **Bond or Security not Required**

No Trustee shall be required to give any bond or security in connection with the administration of the Trust Assets and the discharge of the trusts hereby created.

(l) **Profits used for Trust**

The Trust shall be carried on without pecuniary gain to its Trustees and any profits or accretions to the Trust shall be used for the promotion of the objects of the Trust and not for the benefit of its Trustees.

(m) **Conflict of Interest – Contracts**

A Trustee who is a party to any proposed contract with the Trust or who has a direct or indirect interest in a corporation or other business which is a party to any proposed contract with the Trust shall disclose the nature and extent of his interest at the meeting of Trustees at which the question is first taken into consideration, or if he was not then interested at the next meeting after he becomes so interested and if he becomes interested after the contract is made, he shall declare his interest at the first meeting held after he becomes so interested. No Trustee shall participate in any decision in respect of any contract or arrangement in which he is so interested.

(n) **Conflict of Interest – Investments**

The Trustees shall not cause or permit any investments of the Trust Assets or any part thereof to be made or to continue in any corporation or other business in which the Trustees or any of them have any interest either directly or indirectly except if such interest is as holder of shares of a company listed on a recognized stock exchange.

(o) **Fiscal Year and Annual Report**

The fiscal year of the Trust shall be from January 1 to December 31.

(p) **Appointment of Additional Trustees**

The City may, on thirty (30) days written notice to the Trust increase the number of Trustees beyond the minimum number set forth in paragraph 9(a) of this Revised Deed.

(q) **Annual Briefing**

Within ninety (90) days of the end of each fiscal year of the Trust, the Trust shall appear before the Council, or an appropriate Committee of the City to present and report on the following:

- (a) its annual audited Financial Statements;
- (b) its Strategic and/or Business Plans and any changes thereto;
- (c) its ten (10) year Capital Plan; and
- (d) any changes to its organizational structure.

MEETINGS

10.(a) **Number of Meetings and Notice of Meetings**

The Trustees shall meet at least six (6) times a year at such times as the Trustees unanimously agree or as the Chairperson shall determine upon ten (10) days notice in writing by the Chairperson to the Trustees. A notice of meeting shall specify the date, time and location of the meeting, and shall include an agenda of matters to be addressed at such meeting, with reasonable details. To the extent reasonably

possible, all reports or other documentation to be considered at such meeting shall be provided to the Trustees with the notice of the meeting.

Any two (2) Trustees may request the Chairperson in writing to call a special meeting, and shall include with their request such information as may be reasonably necessary in order for the Chairperson to fulfill the requirements for providing an agenda and other documentation to all Trustees with the notice of the meeting, as provided in this paragraph. Upon receipt of such request, the Chairperson shall call as a special meeting for a date not later than thirty (30) days following the receipt of the request and information required for the agenda.

The Chairperson shall set out the place of meeting in the notice of the meeting. Meetings may also be held by conference call or by similar telecommunications or electronic means. All records and minutes of the Board shall be kept at a place to be determined by the Trustees by unanimous agreement. The Trustees may waive the delivery of notice of meeting, and shall be deemed to have done so by attending such meeting without objection.

(b) **Quorum**

In order to constitute a quorum, a majority of the Trustees shall be present in person. In the absence of a quorum, no business shall be transacted except the adjournment of the meeting.

(c) **Resolutions**

A Special Resolution shall be a resolution passed by a majority of not less than two-thirds (2/3) of the Trustees present at the meeting; provided that notice of the intention to propose such a resolution as a Special Resolution has been given in the notice calling such meeting. A resolution, including a Special Resolution, in writing and signed by every Trustee shall be as valid as if it had been passed by the Trustee at a meeting.

(d) **Validity of Meeting**

Subject to paragraphs 10(b) and (c), the proceeding at any meeting shall not be invalid merely by reason of any informality or irregularity in the convening or conduct thereof or otherwise.

(e) **Deadlocks**

In the event of a deadlock in any decisions required to be made by or among, any Trustees hereunder, any one of the Trustees may apply to City Council to resolve the deadlock.

(f) **Publication of Minutes of Board Meetings**

The Trustees shall record comprehensive minutes of each of its meetings and, once approved by the Board, post a copy of those minutes on its website and provide a copy to the City.

BY-LAWS

11. The Trustees may make By-Laws governing procedures and the business of the Trust provided they are consistent with this Revised Deed and any amendment hereto. Where this Revised Deed is in conflict with any By-Laws created by the Trustees, this Revised Deed shall govern.

COMMITTEES OR ADVISORY COUNCILS

12. The Trustees may establish such committees or advisory councils as they deem necessary to assist in carrying out the duties and responsibilities of the Trustees. Members of these committees or advisory councils shall hold office at the pleasure of the Trustees.

ACCOUNTS AND FINANCIAL STATEMENTS

13. The Trustees shall appoint an auditor and shall keep accurate and detailed accounts and records of all receipts, disbursements, investments and transactions relating to the Trust Assets, and shall prepare or cause to be prepared all financial statements required by law to be prepared on behalf of the Trust or with respect the Trust Assets from time to time. Without limiting the generality of the foregoing, the Trustees shall prepare and file with each of the City and the Trust and annual financial report accompanied by the auditor's report thereon for the Trust Assets as soon as practicable after the end of the fiscal year of the Trust, and shall also provide to each of the City and Trust such information and material respecting the Trust Assets as either of them may in writing request from time to time.

AMENDMENT OF TRUST

14. This Revised Deed of Trust may be amended by a Special Resolution of the Trustees, subject to the prior written approval of the City, provided that the Trust Assets shall at all times be held in trust absolutely and exclusively for the purposes set out in this Revised Deed.

ACCEPTANCE OF TRUST

15. The Trustees accept the trusts hereby constituted, upon the terms and conditions outlined in this Revised Deed as amended from time to time.

PROPER LAW OF TRUST

16. The Trust is established and continued under the laws of and the rights of all parties and the construction and effect of each and every provision hereof shall be according to the laws of Ontario.

GENDER OR SINGULAR/PLURAL

17. In this Revised Deed and in all By-Laws of the Trust hereafter passed, unless the context otherwise requires, words imposing the singular number of the masculine gender shall include the plural number or feminine gender, as the case may be, and vice-versa.

NOTICE

18. Wherever in this Revised Deed, any request or notice is required or permitted to be given, it shall be given:

(a) to any Trustee, by addressing it to the last address of record reported to the City;

(b) to the City at 71 Main Street West, Hamilton, Ontario L8P 4Y5, *Attention:* Municipal Clerk; and

(c) to the Trust at 47 Guise Street, Hamilton, Ontario L8L 1K1, *Attention:* Executive Director.

19. Notice shall be given by one of: (i) *personal service*, in which case it shall be deemed to have been given on the day of delivery, (ii) *reliable courier*, in which case it shall be deemed to have been given on the next business day following such delivery, or (iii) *pre-paid registered mail*, in which case it shall be deemed to have been given on the fifth day after such mailing, provided that if as of the date of such mailing, an interruption in the Canadian postal system has occurred or is likely to occur, such notice shall not be given by pre-paid registered mail, but shall be given by one of the other means provided for in this paragraph.

20. Each Trustee and Party shall immediately advise the other Trustees and Parties of any change in its address for notice purposes.

EXECUTION PAGE FOLLOWS

IN WITNESS WHEREOF the Parties have hereunto executed and delivered this Revised Deed of Trust at the City of Hamilton.

CITY OF HAMILTON

Per:

Name:

Position: Mayor

Date:

Per:

Name:

Position: Clerk

Date:

I/We have authority to bind the Corporation

HAMILTON WATERFRONT TRUST

Per:

Name:

Position:

Date:

Per:

Name:

Position: Secretary

Date:

I/We have authority to bind the Corporation