

ONTARIO
SUPERIOR COURT OF JUSTICE



IN THE MATTER OF the *Drainage Act*, R.S.O. 1990, Chapter D. 17

AND IN THE MATTER OF an application by Erie Shore Drive Property Owner's Association et al for the opinion, direction and advice of the Referee with respect to maintenance and repairs on the Burke Drain;

B E T W E E N :

ERIE SHORE DRIVE PROPERTY OWNERS ASSOCIATION, TREVOR DIXON, ROWAN DIXON, ROBERT DIXON, RICHARD JOSEPH BARNIER, WENDY ANNE BARNIER, KEITH GORDON PEARCEY, DAVA ROBERTSON PARR, KIMBERLEY ISAAC, RONALD FRANCIS VAN DER PAELT, SARAH-LOUISE VAN DER PAELT, GARY DANIEL JANADIA, MICHAEL KEITH JANADIA, RISARG HUFF, LINDA MAE HUFF, CHERYL ANN WALLACE, JANET CHARLOTTE WALLACE, STEPHANIE BOUDREAU, TRACY ANN HENRY, GLORIA BLONDE BLACK, LYNDA MAE DODMAN, STELLA MARIE DODMAN, MICHAEL SCOTT MORRIS, DEBRA ANN ZIEMBA, EARL HENRY NEAR, JACOBA NEAR, JONATHON MICHAEL SOUTHEN, SHANNON DEANNA WESTGATE, FRANK SPARKS, JENNIFER ANNE SMITH, SIMON HERBERT SMITH, BAVENDRAN ATCHUTHAMPILLAI, EDWIN CLAUDE WOOD, DAVID PATERSON, HOLLY PATERSON, TREVOR RONALD MORTON, FRANK ARTHUR SROKOSZ, DYANNE SROKOSZ, RONALD BRUCE GILLESPIE, Edward Gerard Peck as Estate Trustee of the ESTATE OF WILLIAM ELDON PECK, Deceased, and Betty Peck as Estate Trustee of the ESTATE OF LARRY ALLEN PECK, Deceased; DAVID CHARLES PECK, DENELLE LEA PECK, PAUL MAILLOUX, DANA SMITH, KRISTY TAYLOR, JODIE TAYLOR; HENRY ALLAN DE JONG, MARISKA DE JONG, STIPAN JURKOVIC, MICHELE JURKOVIC, GEOFFREY EDWARD DENNIS, WESLEY ALFRED TROJAND, JEAN ISOBEL HUMPHREY, JUDY LYNN OEHM, CHARLES EDWARD BELBECK, DENNY KEVIN JAKSIC, TERRA DANIELLE CADEAU, MARLENE MARIA SCHERTZER, WILLIAM MICHAEL SCHERTZER, MARIANNE COUSINEAU, JAMES COUSINEAU, ROGER DOUGLAS HOUGHTON, DEBORAH JEAN VINT, LINDA DARLENE HEYNINCK, WERNER KRAUS personally, and in his capacity as Power of Attorney for MARIA KRAUS, DAVID MICHAEL TROTECHAUD, MARJORY ELLEN TORTECHAUD, MELISSA SHARON OGDEN, KIMBERLY MARGARET SNELL, STEVEN BARRY DOBSON, SUSAN ELIZABETH O'BRIEN, DEVY LEANN BROUWER, MARGO TREVOR HINNEGAN, FRANK KEITH ZIEMBA, JEFFREY PETER KNIPFEL, SONYA LYNN KNIPFEL, MURRAY SPENCER, GAIL SPENCER, MICHELLE RUBY PENNEY, ANDREW JOHNATHAN SPENCER,

GARY EDWARD BLAIN, SHARON ELAINE BLAIN, SCOTT FRANCIS, ROSEMARIE KATHI JOHANNA FRANCIS, PHILIP ALLAN SMITH, DEBRA LEE JANE SMITH, CLIFFORD-LAWRENCE BARTLETT, LYNDA LEE BARTLETT, ELIZABETH COLLEEN FLETCHER, 2255577 ONTARIO INC., EDWARD JOSEPH REITBERGER, DARWIN ALLAN RICE, JENNY ROSELINDA RICE, TIMOTHY JOHN AARSSSEN, ELIZABETH JEAN WEBER, CHRISTOPHER DAVID HAGER, CATHERINE MARIE PANCOE, RONALD KENNETH PESESKI, ROSEMARIE BERNADET PESESKI, JENNIFER ANN VANNECK, DAVID THOMAS RUTTY, DENISE MARYLOU RUTTY, JEANINE DORIS WATT, BERTRAM LEON MARKS, MONIQUE DARNELL MARKS, BARBARA ANN HOYETT, STEVEN EDMUND DEW, NANCY MARIE DEW, STEPHANIE LIN GELUK, CHERYL LUGEAN MASON, MYRON BURNS BUSH, DAVID RICHARD COPLEY, MARILYN MAUDE COPLEY, ACAMPORA FAMILY HOLDINGS INC., DAVID MELVIN DAVIS, MARGARET SUSAN LOUISE DAVIS, JAMES EVAN STERLING ALLIN, BRIAN GERHARD FALLAK, LAURIE ELIZABETH FALLAK, DANA DAUGHERTY, LEONARDO CARO, JANICE LYNN CARO, HARRY LOUIS VAN DYKE, MARY VAN DYKE, TERRANCE GILBERT MAYNARD, STEPHEN GARY MAYNARD, CHERYL ANN MACKENZIE, BRENDA ALICE KARLOVCEC, LORI ELLEN MCKEON, JANE DOE in her capacity as ESTATE TRUSTEE for the ESTATE OF SEAN PANJER (deceased), WILLIAM ROBERT SEATON, JULIE WENDY SEATON, STEPHANIE KATHLEEN COX

Applicants

- and -

THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

Respondent

APPLICATION pursuant to s.106 of the *Drainage Act*, R.S.O. 1990, c D.17

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

June 29, 2021

THIS APPLICATION will come on for a hearing on Tuesday, ~~June 22, 2021~~, at 10:00 a.m., at 425 Grand Avenue West, Chatham, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 18, 2021

Issued by _____
Local registrar

Address of court office 425 Grand Avenue West
Chatham, ON N7M 6M8

TO: The Corporation of the Municipality of Chatham-Kent
315 King Street West
Chatham, ON N7M 5K8

APPLICATION

1. The Applicants make this application for:
 - (a) An Order requiring The Corporation of the Municipality of Chatham-Kent (“**Chatham-Kent**”) to maintain and repair the Burk Drain system;
 - (b) An Order requiring Chatham-Kent to pay all damages incurred by the Applicants associated with the non-repair and failure to maintain of the Burk Drain system;
 - (c) An Order requiring Chatham-Kent to pay out of the general municipal levy pursuant to the provisions of section 118(2) of the *Drainage Act*, R.S.O. 1990, Chapter D.17, the costs and damages as set out in the following Affidavits:
 - (i) Trevor Dixon of 17982 Erie Shore Drive;
 - (ii) Rowan and Robert Dixon of 17992 Erie Shore Drive;
 - (iii) Richard and Wendy Barnier former owners of 18004 Erie Shore Drive;
 - (iv) Keith Gordon Pearcey and Dava Robertson Parr of 18014 Erie Shore Drive;
 - (v) Kimberly Isaac of 18020 Erie Shore Drive;
 - (vi) Ronald Francis Van Der Paelt and Sarah-Louise Van Der Paelt of 18028 and 18032 Erie Shore Drive;
 - (vii) Gary Daniel Janadia and Michael Keith Janadia of 18038 Erie Shore Drive;
 - (viii) Risarg Huff and Linda Mae Huff of 18042 Erie Shore Drive;
 - (ix) Cheryl Ann Wallace of 18058 Erie Shore Drive;
 - (x) Cheryl Ann Wallace and Janet Wallace of vacant lots being adjacent to 18058 Erie Shore Drive described as
 - (A) PT LT 411, PLAN 421 AS IN 524046, S/T LIFE INTEREST IN 441321 HARWICH as registered in the Land Registry Office #24 for property identifier number 00938-0140 (LT); and

- (B) PT LT 411, PLAN 421 AS IN 524046, S/T LIFE INTEREST IN 441320 HARWICH as registered in the Land Registry Office #24 for property identifier number 00938-0142 (LT)
- (xi) Stephanie Boudreau former owner of 18068 Erie Shore Drive;
 - (xii) Tracy Ann Henry and Gloria Blonde Black of 18072 Erie Shore Drive;
 - (xiii) Lynda Mae Dodman and Stella Marie Dodman of 18076 Erie Shore Drive;
 - (xiv) Michael Scott Morris of 18080 Erie Shore Drive;
 - (xv) Debra Ann Ziemba of 18086 Erie Shore Drive;
 - (xvi) Earl Henry Near and Jacoba Near of 18092 Erie Shore Drive;
 - (xvii) Jonathon Michael Southen and Shannon Deanna Westgate of 18094 Erie Shore Drive;
 - (xviii) Frank Sparks of 18098 Erie Shore Drive;
 - (xix) Jennifer Anne Smith and Simon Herbert Smith of 18100 Erie Shore Drive;
 - (xx) Bavendran Atchuthampillai of 18106 Erie Shore Drive;
 - (xxi) Edwin Claude Wood of 18112 Erie Shore Drive;
 - (xxii) David Paterson and Holly Paterson former owners of 18132 Erie Shore Drive;
 - (xxiii) Trevor Ronald Morton of 18134 Erie Shore Drive;
 - (xxiv) Frank Arthur Srokosz and Dyanne Srokosz are former owners of 18140 Erie Shore Drive;

- (xxv) Ronald Bruce Gillespie of 18148 Erie Shore Drive;
- (xxvi) Edward Gerard Peck as Estate Trustee of the ESTATE OF WILLIAM EDWARD ELDON PECK, Deceased and Betty Peck as Estate Trustee of the ESTATE OF LARRY ALLEN PECK, Deceased, of 18162 Erie Shore Drive;
- (xxvii) David Charles Peck and Denelle Lea Peck of 18164 Erie Shore Drive;
- (xxviii) Paul Mailloux, Dana Smith, Jodie Taylor and Kristy Taylor of 18168 Erie Shore Drive;
- (xxix) Henry Allan De Jong and Mariska De Jong of 18170 Erie Shore Drive;
- (xxx) Stipan Jurkovic and Michele Jurkovic of 18172 Erie Shore Drive;
- (xxxi) Geoffrey Edward Dennis of 18176 Erie Shore Drive;
- (xxxii) Wesley Alfred Trojand of 18184 Erie Shore Drive, and 18186 Erie Shore Drive;
- (xxxiii) Jean Isobel Humphrey of 18192 Erie Shore Drive;
- (xxxiv) Judy Lynn Oehm and Charles Edward Belbeck of 18196 Erie Shore Drive;
- (xxxv) Denny Kevin Jaksic and Terra Danielle Cadeau of 18198 Erie Shore Drive;
- (xxxvi) Marlene Maria Schertzer and William Michael Schertzer of 18200 Erie Shore Drive;
- (xxxvii) Marianne Cousineau and James Cousineau former owners of 18208 Erie Shore Drive;

- (xxxviii) Roger Douglas Houghton and Deborah Jean Vint of 18212 Erie Shore Drive;
- (xxxix) Linda Darlene Heyninck former owner of 18214 Erie Shore Drive;
 - (xl) Werner Kraus personally, and in his capacity as Power of Attorney for Maria Kraus of 18218;
 - (xli) David Michael Trotechaud and Marjory Ellen Trotechaud of 18222 Erie Shore Drive;
 - (xlii) Melissa Sharon Ogden and Kimberly Margaret Snell of 18228 Erie Shore Drive;
 - (xliii) Steven Barry Dobson of 18242 Erie Shore Drive;
 - (xliv) Susan Elizabeth O'Brien former owner of 18250 Erie Shore Drive;
 - (xlv) Devy Leann Brower of 18260 Erie Shore Drive;
 - (xlvi) Margo Trevor Hinnegan of 18266 Erie Shore Drive;
 - (xlvii) Frank Keith Ziemba of 18274 Erie Shore Drive;
 - (xlviii) Jeffrey Peter Knipfel and Sonya Lynn Knipfel of 18286 Erie Shore Drive;
 - (xlix) Murray Spencer and Gail Spencer of 18292 Erie Shore Drive;
 - (l) Michelle Ruby Penney and Andrew Johnathan Spencer of 18296 Erie Shore Drive;
 - (li) Gary Edward Blain and Sharon Elaine Blain of 18298 Erie Shore Drive;
 - (lii) Scott Francis and Rosemarie Kathi Johanna Francis of 18300 Erie Shore Drive;

- (liii) Philip Allan Smith and Debra Lee Jane Smith of 18304 Erie Shore Drive;
- (liv) Clifford Lawrence Bartlett and Lynda Lee Bartlett of 18310 Erie Shore Drive;
- (lv) Elizabeth Colleen Fletcher of 18312 Erie Shore Drive;
- (lvi) 2255577 Ontario Inc. of 18316 Erie Shore Drive;
- (lvii) Edward Joseph Reitberger of 18322 Erie Shore Drive;
- (lviii) Darwin Allan Rice and Jenny Roselinda Riche of 18324 Erie Shore Drive;
- (lix) Timothy John Aarssen of 18330 Erie Shore Drive;
- (lx) Elizabeth Jean Webber of 18336 Erie Shore Drive;
- (lxi) Christopher David Hager and Catherine Marie Pancoe of 18360 Erie Shore Drive;
- (lxii) Ronald Kenneth Peseski and Rosemarie Bernadet Peseski of 18366 Erie Shore Drive;
- (lxiii) Jennifer Ann Vanneck nee Wright former owner of 18378 Erie Shore Drive;
- (lxiv) David Thomas Rutty and Denise Marylou Rutty of 18382 Erie Shore Drive;
- (lxv) Jeanine Doris Watt of 18384 Erie Shore Drive;
- (lxvi) Bertram Leon Marks, Monique Darnell, and Barbara Ann Hoyett of 18390 Erie Shore Drive;

- (lxvii) Steven Edmund Dew and Nancy Marie Dew of 18394 Erie Shore Drive;
- (lxviii) Stephanie Lin Geluk of 18396 Erie Shore Drive;
- (lxix) Cheryl Lugean Mason and Myron Burns Bush of 18400 Erie Shore Drive;
- (lxx) David Richard Copley and Marilyn Maude Copley of 18402 Erie Shore Drive;
- (lxxi) Acampora Family Holdings Inc. of 18410 Erie Shore Drive;
- (lxxii) David Melvin Davis and Margaret Susan Louise Davis of 18416 Erie Shore Drive;
- (lxxiii) James Evan Sterling Allin of 18430 Erie Shore Drive;
- (lxxiv) Brian Gerhard Fallak and Laurie Elizabeth Fallak of 18450 Erie Shore Drive;
- (lxxv) Dana Daugherty of 18464 Erie Shore Drive;
- (lxxvi) Leonard Caro and Janice Lynn Caro of 18512 Erie Shore Drive;
- (lxxvii) Harry Louis Van Dyke and Mary Van Dyke of 18528 Erie Shore Drive;
- (lxxviii) Terence Gilbert Maynard, Stephen Gary Maynard, Cheryl Ann MacKenzie, Brenda Alice Karlovcec and Lori Ellen McKeon of 18530 Erie Shore Drive;
- (lxxix) A representative of the Estate of Sean Panjer (deceased) regarding the property owned by Mr. Panjer at 18574 Erie Shore Drive;
- (lxxx) William Robert Seaton and Julie Wendy Seaton of 18590 Erie Shore Drive;

(lxxxix) Stephanie Kathleen Cox of 18596 Erie Shore Drive.

- (d) The costs of this Application on a substantial indemnity basis;
- (e) An order abridging the time for service and filing, if necessary; and
- (f) Such further and other relief as the Applicants may request and the Drainage Referee may deem just.

2. The grounds for the Application are:

THE PARTIES

Applicants

- (a) The Applicants are all current owners or former owners of properties located along Erie Shore Drive in the Municipality of Chatham-Kent, Province of Ontario (“**Erie Shore Drive Properties**”) and include the following individuals / entities:
 - (i) The Applicant, Trevor Dixon, is the owner of the property known municipally as 17982 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 407, PLAN 421 AS IN LT559 HARWICH, as registered in the Land Registry Office #24 as Property Identifier Number (“**PIN**”) 0093890157 (LT), (the “**17982 Property**”).
 - (ii) The Applicants, Rowan Dixon and Robert Dixon are co-owners of the property known municipally as 17992 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 407, PLAN 421 AS IN 479797 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0156 (LT), (the “**17992 Property**”);
 - (iii) The Applicants, Richard Joseph Barnier and Wendy Anne Barnier are former co-owners of the property known municipally as 18004

Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of

(I) PART OF LOT 407, PLAN 421, DESIGNATED AS PART 2, 24R9386; MUNICIPALITY OF CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 00938-0153 (LT); and

(II) PT LT 407, PLAN 421 AS IN 233199 *DESCRIPTION IN 233199 MAY NOT BE ACCEPTABLE IN FUTURE” ; CHATHAM-KENT

(collectively the “**18004 Property**”);

- (iv) The Applicants, Keith Gordon Pearcey and Dava Robertson Parr are co-owners of the property known municipally as 18014 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PL LT 408, PLAN 421 AS IN 517382 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0150 (LT), (the “**18014 Property**”);
- (v) The Applicant, Kimberley Isaac is the owner of the property known municipally as 18020 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PL LT 408, PLAN 421 AS IN 477087 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0149 (LT), (the “**18014 Property**”);
- (vi) The Applicants, Ronald Francis Van Der Paelt and Sarah-Louise Van Der Paelt are co-owners of properties known municipally as 18028 and 18032 Erie Shore Drive, Chatham-Kent, Ontario, and consolidated legal description of PART OF LOT 408, PLAN 421 AS IN LT53048 (CONSOLIDATED DESCRIPTION);

CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 00938-1261 (LT), (the “**18028 and 18032 Properties**”);

- (vii) The Applicants, Gary Daniel Janadia and Michael Keith Janadia are co-owners of the property known municipally as 18038 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 408 & 409, PLAN 421 AS IN 462157 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0146 (LT), (the “**18038 Property**”);
- (viii) The Applicants, Risarg Huff and Linda Mae Huff are co-owners of the property known municipally as 18042 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PART LOT 409, PLAN 421 AS IN LT27405 (CONSOLIDATED DESCRIPTION); CHATHAM KENT, as registered in the Land Registry Office #24 as PIN 00938-1223 (LT), (the “**18042 Property**”);
- (ix) The Applicant, Cheryl Ann Wallace is the owner of the property known municipally as 18058 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 524045, S/T LIFE INTEREST IN 441319 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0141 (LT), (the “**18058 Property**”);
- (x) The Applicants, Cheryl Ann Wallace and Janet Wallace are co-owners of the vacant lots adjacent to each side of the 18058 Property and described as:
 - (A) PT LT 411, PLAN 421 AS IN 524046, S/T LIFE INTEREST IN 441321 HARWICH as registered in the Land Registry Office #24 for property identifier number 00938-0140 (LT); and

(B) PT LT 411, PLAN 421 AS IN 524046, S/T LIFE INTEREST IN 441320 HARWICH as registered in the Land Registry Office #24 for property identifier number 00938-0142 (LT)

(the “**Wallace vacant lots**”)

- (xi) The Applicant, Stephanie Boudreau is the former owner of the property known municipally as 18068 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 75499 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0139 (LT) (the “**18068 Property**”);
- (xii) The Applicants, Tracy Ann Henry and Gloria Blonde Black are co-owners of the property known municipally as 18072 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 505200 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0138 (LT), (the “**18072 Property**”);
- (xiii) The Applicants, Lynda Mae Dodman and Stella Marie Dodman are co-owners of the property known municipally as 18076 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 446306 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0137 (LT), (the “**18076 Property**”);
- (xiv) The Applicant, Michael Scott Morris is the owner of the property known municipally as 18080 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 508292 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0136 (LT), (the “**18080 Property**”);

- (xv) The Applicant, Debra Ann Ziemba is the owner of the property known municipally as 18086 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 430363 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0134 (LT), (the “**18086 Property**”);
- (xvi) The Applicants, Earl Henry Near and Jacoba Near are co-owners of the property known municipally as 18092 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 170650 HARWICH, as registered in the Land Registry Office #24 as PIN 0938-0133 (LT), (the “**18092 Property**”);
- (xvii) The Applicants, Jonathon Michael Southen and Shannon Deana Westgate are co-owners of the property known municipally as 18094 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 104200 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0132 (LT), (the “**18094 Property**”);
- (xviii) The Applicant, Frank Sparks is the owner of the property known municipally as 18098 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 92957 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0131 (LT), (the “**18098 Property**”);
- (xix) The Applicants, Jennifer Anne Smith and Simon Herbert Smith are co-owners of the property known municipally as 18100 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 411, PLAN 421 AS IN 502077 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0130 (LT), (the “**18100 Property**”);

- (xx) The Applicant, Bavendran Atchuthampillai is the owner of the property known municipally as 18106 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 411 & 414, PLAN 421 AS IN 392966; MUNICIPALITY OF CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 00938-0129 (LT), (the “**18106 Property**”)
- (xxi) The Applicant, Edwin Claude Wood is the owner of the property known municipally as 18112 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PART OF LOTS 411, 414, 415 AND 416 PLAN 421 AS IN LT 2678 (SCHEDULE B) HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0128 (LT), (the “**18112 Property**”);
- (xxii) The Applicants, David Paterson and Holly Paterson are former owners of the property known municipally as 18132 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 416 & 417, PLAN 421 AS IN 449132 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0125 (LT), (the “**18132 Property**”);
- (xxiii) The Applicant, Trevor Ronald Morton is the owner of the property known municipally as 18134 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 416 & 417, PLAN 421 AS IN 473976 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0124 (LT), (the “**18134 Property**”);
- (xxiv) The Applicants, Frank Arthur Srokosz and Dyanne Srokosz are former owners of the property known municipally as 18140 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 417, PLAN 421 AS IN 483161; CHATHAM-

KENT, as registered in the Land Registry Office #24 as PIN 00938-0123 (LT), (the “**18140 Property**”);

- (xxv) The Applicant, Ronald Bruce Gillespie is the owner of the property known municipally as 18148 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 418, PLAN 421 AS IN 347467 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0122 (LT), (the “**18148 Property**”);
- (xxvi) The Applicants, Edward Gerard Peck as Estate Trustee of the ESTATE OF WILLIAM EDWARD ELDON PECK, Deceased and Betty Peck as Estate Trustee of the ESTATE OF LARRY ALLEN PECK, Deceased, of the property known municipally as 18162 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 419, PLAN 421 AS IN 450214 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0120 (LT), (the “**18162 Property**”);
- (xxvii) The Applicants, David Charles Peck and Denelle Lea Peck are co-owners of the property known municipally as 18164 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 419, PLAN 421 AS IN 494112 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0119 (LT), (the “**18164 Property**”);
- (xxviii) The Applicants, Paul Mailloux, Dana Smith, Kristy Taylor and Jodie Taylor are co-owners of the property municipally known as 18168 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 419, PLAN 421 AS IN 347432 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0118 (LT), (the “**18168 Property**”). Mr. Mailloux, Ms. Smith, Ms. Kristy Taylor, and Ms. Jodie Taylor have together sold the 18168 Property which is scheduled to close on May 13, 2021;

- (xxix) The Applicants, Henry Allan De Jong and Mariska De Jong are co-owners of the property known municipally as 18170 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 419 & 425, PLAN 421 AS IN 244808 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0117 (LT), (the “**18170 Property**”);
- (xxx) The Applicants, Stipan Jurkovic and Michele Jurkovic are co-owners of the property known municipally as 18172 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 425, PLAN 421 AS IN 192366 & 210971 HARWICH; MUNICIPALITY CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 0938-0116 (LT), (the “**18172 Property**”);
- (xxxii) The Applicant, Geoffrey Edward Dennis is the owner of the property known municipally as 18176 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 425, PLAN 421 AS IN 102727 HARWICH, as registered in the Land Registry Office #24 as PIN 0938-0115 (LT), (the “**18176 Property**”);
- (xxxiii) The Applicant, Wesley Alfred Trojand is the owner of properties known municipally as 18184 Erie Shore Drive and 18186, Chatham-Kent, Ontario, and having the legal descriptions respectively of:
- (A) PT LT 426, PLAN 421 AS IN 426797 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0114 (LT);

(B) PT LT 426, PLAN 421 AS IN 452274 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0113 (LT)

(the “**18184 and 18186 Properties**”)

- (xxxiii) The Applicant, Jean Isobel Humphrey is the owner of the property known municipally as 18192 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 426 & 427, PLAN 421 AS IN 447610 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0112 (LT), (the “**18192 Property**”);
- (xxxiv) The Applicants, Judy Lynn Oehm and Charles Edward Belbeck are co-owners of the property known municipally as 18196 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 426 & 427, PLAN 421 AS IN 309797 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0111 (LT), (the “**18186 Property**”);
- (xxxv) The Applicants, Denny Kevin Jaksic and Terra Danielle Cadeau are co-owners of the property known municipally as 18198 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of W 1/2 LT 427, PLAN 421 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0110 (LT), (the “**18198 Property**”);
- (xxxvi) The Applicants, Marlene Maria Schertzer and William Michael Schertzer are co-owners of the property known municipally as 18200 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 428, PLAN 421 AS IN 106309 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0109 (LT), (the “**18200 Property**”). Mr. and Mrs. Schertzer

have sold the 18200 Property which is scheduled to close on or about August 31, 2021;

(xxxvii) The Applicants, Marianne Cousineau and James Cousineau are former owners of the property known municipally as 18208 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 428 & 429, PLAN 421 AS IN 167370 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0108 (PT), (the “**18208 Property**”). Mr. and Mrs. Cousineau have sold the 18068 Property which closed on or about April 30, 2021;

(xxxviii) The Applicants, Roger Douglas Houghton and Deborah Jean Vint are co-owners of the property known municipally as 18212 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 429, PLAN 421 AS IN 487303 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0106 (PT), (the “**18212 Property**”). Mr. Houghton and Ms. Vint have sold the 18212 Property which is schedule to close on or about May 14, 2021;

(xxxix) The Applicant, Linda Darlene Heyninck is the former owner of the property known municipally as 18214 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 429, PLAN 421 AS IN 515037 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0105 (LT), (the “**18214 Property**”).;

(xl) The Applicants, Werner Kraus personally, and in his capacity as Power of Attorney for Maria Kraus the owners of the property known municipally as 18218 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 429, PLAN 421 AS IN 213562 HARWICH, as registered in the Land Registry

Office #24 as PIN 00938-0104 (LT), (the “**18218 Property**”). Mr. Kraus has sold the 18218 Property which is schedule to close on or about August 31, 2021;

(xli) The Applicants, David Michael Trotechaud and Marjory Ellen Trotechaud are co-owners of the property known municipally as 18222 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 430, PLAN 421, PT 2, 24R-1501 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0103 (LT), (the “**18222 Property**”);

(xlii) The Applicants, Melissa Sharon Ogden and Kimberly Margaret Snell are co-owners of the property known municipally as 18228 Erie Shore Drive, Chatham-Kent, Ontario, and having two lots with the legal description of:

(A) PT LT 431, PLAN 421, PT 4, 24R-1501 “DESCRIPTION IN 313027 MAY NOT BE ACCEPTABLE IN FUTURE” HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0100 (LT);

(B) PART OF LOT 430, PLAN 421, DESIGNATED AS PARTS 3 & 5, 24R1501; CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 00938-1230 (R)

(collectively the “**18228 Property**”)

(xliii) The Applicant, Steven Barry Dobson is the owner of the property known municipally as 18242 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 432, PLAN 421 AS IN 316886 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0096 (LT), (the “**18242 Property**”);

- (xliv) The Applicant, Susan Elizabeth O'Brien is the former owner of the property known municipally as 18250 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 433, PLAN 421 AS IN 520840 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0094 (LT), (the "**18250 Property**");
- (xlv) The Applicant, Devy Leann Brouwer is the owner of the property known municipally as 18260 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 433, PLAN 421 AS IN 379894 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0093 (LT), (the "**18260 Property**"). Ms. Brouwer has sold the 18620 Property which is scheduled to close on or about June 28, 2021;
- (xlvi) The Applicant, Margo Trevor Hinnegan is the sole surviving owner of the property known municipally as 18266 Erie Shore Drive Chatham-Kent, Ontario, and having the legal of PT LT 433, PLAN 421 AS IN 218658 & 218659 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0092 (LT), (the "**18266 Property**");
- (xlvii) The Applicant, Frank Keith Ziemba is the owner of the property known municipally as 18274 Erie Shore Drive and 18280 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal descriptions respectively of:
 - (A) PT LT 433, PLAN 421 AS IN 385857 & 180836 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0091 (LT);

(B) PT LT 433, PLAN 421 AS IN 385857 & 180836 HARWICH, as registered in the Land Registry Office #24 as PIN 00928-0091 (LT)

(the “**18274 and 18280 Properties**”);

- (xlviii) The Applicants, Jeffrey Peter Knipfel and Sonya Lynn Knipfel are co-owners of the property known municipally as 18286 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 35, PLAN 398 & PT LT 433, PLAN 421 AS IN 452193 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0090 (LT), (the “**18286 Property**”);
- (xlix) The Applicants, Murray Spencer and Gail Spencer are co-owners of the property known municipally as 18292 Erie Shore Drive, Chatham-Kent, Ontario, having the legal description of LT 33, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0088 (LT), (the “**18292 Property**”);
- (l) The Applicants, Michelle Ruby Penney and Andrew Johnathan Spencer are co-owners of the property known municipally as 18296 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 32, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0087 (LT), (the “**18296 Property**”);
- (li) The Applicants, Gary Edward Blain and Sharon Elaine Blain are co-owners of the property known municipally as 18298 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 31, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0086 (LT), (the “**18298 Property**”). Mr. Gary Blain and Ms. Sharon Blain sold their 18298 Property and is scheduled to close on or about May 31, 2021;

- (lii) The Applicants, Scott Francis and Rosemarie Kathi Johanna Francis are co-owners of the property known municipally as 18300 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 30, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0085 (LT), (the “**18300 Property**”);
- (liii) The Applicants, Philip Allan Smith and Debra Lee Jane Smith are co-owners of the property known municipally as 18304 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 28 & 29, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0084 (LT), (the “**18304 Property**”);
- (liv) The Applicants, Clifford Lawrence Bartlett and Lynda Lee Bartlett are co-owners of the property known municipally as 18310 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 27, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0083 (LT), (the “**18310 Property**”);
- (lv) The Applicant, Elizabeth Colleen Fletcher is the owner of the property known municipally as 18312 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 26, PLAN 398 HARWICH as registered in the Land Registry Office #24 as PIN 00938-0082 (LT), (the “**18312 Property**”);
- (lvi) The Applicant, 2255577 Ontario Inc. is a corporation incorporated pursuant to the laws of Ontario with its registered head office located at 91 Mill Road, Dorchester, Ontario, N0L 1G2 and is the owner of the property known municipally as 18316 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 24 & 25, PLAN 398 HARWICH, as registered in the Land

Registry Office #24 as PIN 00938-0081 (LT), (the “**18316 Property**”);

- (lvii) The Applicant, Edward Joseph Reitberger is the owner of the property known municipally as 18322 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 23, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0080 (LT), (the “**18322 Property**”);
- (lviii) The Applicants, Darwin Allan Rice and Jenny Roselinda Rice are co-owners of the property known municipally as 18324 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 22 & E 1/2 LT 21, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0079 (LT), (the “**18324 Property**”);
- (lix) The Applicant, Timothy John Aarssen is the owner of the property known municipally as 18330 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 20 & W 1/2 LT 21, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0078 (LT), (the “**18330 Property**”);
- (lx) The Applicant, Elizabeth Jean Webber is the owner of the property known municipally as 18336 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 19, PLAN 398 HARWICH as registered in the Land Registry Office #24 as PIN 00938-0077 (LT), (the “**18336 Property**”);
- (lxi) The Applicants, Christopher David Hager and Catherine Marie Pancoe are co-owners of the property known municipally as 18360 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 10, 11 & 12, PLAN 398 HARWICH, as

registered in the Land Registry Office #24 as PIN 00938-0072 (LT), (the “**18360 Property**”);

- (lxii) The Applicants, Ronald Kenneth Peseski and Rosemarie Bernadet Peseski are co-owners of the property known municipally as 18366 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 9, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0071 (LT), (the “**18366 Property**”);
- (lxiii) The Applicant, Jennifer Ann Vanneck nee Wright, is the former owner of the property known municipally as 18378 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 5 & 6, PLAN 398 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0069, (the “**18378 Property**”);
- (lxiv) The Applicants, David Thomas Ruty and Denise Marylou Ruty are co-owners of the property known municipally as 18382 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of XXX, as registered in the Land Registry Office #24 as PIN 00938-0067 (LT), (the “**18382 Property**”);
- (lxv) The Applicant, Jeanine Doris Watt is the owner of the property known municipally as 18384 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of 18384 as registered in the Land Registry Office #24 as PIN 00938-0066 (LT), (the “**18384 Property**”);
- (lxvi) The Applicants, Bertram Leon Marks, Monique Darnell, and Barbara Ann Hoyett are co-owners of the property known municipally as 18390 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 26, PLAN 426 & PT LTS 1, 2 & 3, PLAN 398 AS IN 445116 HARWICH, as registered in

the Land Registry Office #24 as PIN 00938-0065 (LT), (the “**18390 Property**”);

- (lxvii) The Applicants, Steven Edmund Dew and Nancy Marie Dew are co-owners of the property known municipally as 18394 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LTS 24, 25 & 26, PLAN 426 & PT LTS 1 & 2, PLAN 398 AS IN 321723 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0064 (LT), (the “**18394 Property**”);
- (lxviii) The Applicant, Stephanie Lin Geluk is the owner of the property known municipally as 18396 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT. LTS 24, 25 & 26, PLAN 426 AS IN 133106 HARWICH; DESCRIPTION AMENDED BY ELIZABETH WRIGHT ON JULY 23, 1998, as registered in the Land Registry Office #24 as PIN 00938-0063 (LT), (the “**18396 Property**”);
- (lxix) The Applicants, Cheryl Legean Mason and Myron Burns Bush are co-owners of the property known municipally as 18400 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 23, PLAN 426 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0062 (LT), (the “**18400 Property**”);
- (lxx) The Applicants, David Richard Copley and Marilyn Maude Copley are co-owners of the property known municipally as 18402 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 21 & 22, PLAN 426 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0061, (the “**18402 Property**”);
- (lxxi) The Applicant, Acampora Family Holdings Inc. is a corporation incorporated pursuant to the laws of Ontario with its registered head

office located at 64 Henry O'Way, Chatham, Ontario, N7L 5L6, and the owner of the property known municipally as 18410 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 19 & 20, PLAN 426 HARWICH as registered in the Land Registry Office #24 as PIN 00938-0060 (LT), (the "**18410 Property**");

(lxxii) The Applicants, David Melvin Davis and Margaret Susan Louise are co-owners of the property known municipally as 18416 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 18, PLAN 426; HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0059 (LT), (the "**18416 Property**");

(lxxiii) The Applicant, James Evan Sterling Allin is the owner of the property known municipally as 18430 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 12, 13, 14 & PT LT 15, PLAN 426 AS IN 115192, EXCEPT 523247 "DESCRIPTION IN 115192 MAY NOT BE ACCEPTABLE IN THE FUTURE" HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0055 (LT), (the "**18430 Property**");

(lxxiv) The Applicants, Brian Gerhard Fallak and Laurie Elizabeth Fallak are co-owners of the property known municipally as 18450 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of:

(A) LT 6, PLAN 426 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0051 (LT);

(B) LT 7, PLAN 426 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0052 (LT);

(collectively referred to as the "**18450 Property**");

- (lxxv) The Applicant, Dana Daugherty is the sole surviving owner of the property known municipally as 18464 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LTS 1 & 2, PLAN 426 HARWICH as registered in the Land Registry Office #24 as PIN 00938-0047 (LT), (the “**18464 Property**”);
- (lxxvi) The Applicants, Leonardo Caro and Janice Lynn Caro are co-owners of the property known municipally as 18512 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PT LT 449, PLAN 421 AS IN 373791 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0035 (LT), (the “**18512 Property**”);
- (lxxvii) The Applicants, Harry Louis Van Dyke and Mary Van Dyke are co-owners of the property known municipally as 18526 Erie Shore Drive and 18528 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of PART OF LOT 449, PLAN 421, DESIGNATED AS PARTS 1, 2 & 3, 24R7358; CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 00938-1251 (LT), (the “**18526 and 18528 Property**”);
- (lxxviii) The Applicants, Terence Gilbert Maynard, Stephen Gary Maynard, Cheryl Ann MacKenzie, Brenda Alice Karlovcec, and Lori Ellen McKeon are co-owners of the property known municipally as 18570 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 476, PLAN 421 S/T HA29105 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0023, (the “**18570 Property**”);
- (lxxix) The Applicant, Jane Doe in her capacity as Estate of Sean Panjer (deceased) regarding property owned by Mr. Panjer municipally described as 18574 Erie Shore Drive, and having the legal

description PT LT 475, PLAN 421, PT 3, 24R-3214 HARWICH
(the “**18574 Property**”)

(lxxx) The Applicants, William Robert Seaton and Julie Wendy are co-owners of the property known municipally as 18590 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of:

(A) PT LTS 455 & 474, PLAN 421 AS IN 310378 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0017 (LT);

(B) PT LT 475, PLAN 421, PT 1, 24R-3214 HARWICH, as registered in the Land Registry Office #24 as PIN 00938-0019 (LT);

(collectively the “**18590 Property**”)

(lxxxi) The Applicant, Stephanie Kathleen Cox is the owner of the property known municipally as 18596 Erie Shore Drive, Chatham-Kent, Ontario, and having the legal description of LT 473, PT LTS 455 & 474, PLAN 421 DESIGNATED AS PART 1, 24R8153, CHATHAM-KENT, as registered in the Land Registry Office #24 as PIN 00938-0016 (LT), (the “**18596 Property**”).

Collectively the Applicants are referred to as the “**Erie Shore Drive Property Owners**”.

(b) The Applicant, Erie Shore Property Owners Association (“**ESDPOA**”), formerly known as the Harwich Erie Shore Homeowners Committee, was established in 2017. The members of ESDPOA include property owners residing on Erie Shore Drive whose purpose is to work together for the common goals of enhancing the quality of life for both seasonal and permanent residents, to build a greater sense of community, shoreline protection, education and advocacy.

Respondent

- (c) The Respondent, The Corporation of the Municipality of Chatham-Kent (“**Chatham-Kent**” or “**Municipality**”) is a municipal corporation incorporated pursuant to the laws of Ontario.
- (d) Chatham-Kent is a single-tier municipality located in Southwestern Ontario that was created in 1998 by amalgamation of Blenheim, Bothwell, Camden, City of Chatham, Township of Chatham, Dover, Dresden, Erie Beach, Erieau, Harwich, Highgate, Howard, Orford, Raleigh, Ridgetown, Thamesville, Tilbury, East, Tilbury, Wallaceburg, Wheatley, and Zone.
- (e) The Burk Drain and the associated Burk Drain system was constructed in the Township of Harwich pre-amalgamation into Chatham-Kent. All of the obligations, responsibilities, liabilities associated with the Burk Drain and Burk Drain system were assumed by Chatham-Kent as part of the amalgamation in 1998.

THE BURK DRAINAGE SYSTEM

- (a) The Burk Drainage System is a municipal drainage system that was constructed pursuant to an engineer’s report under the provisions of the *Drainage Act* in or around 1914. The wooden seawall and wooden groynes were constructed pursuant to the provisions of the *Drainage Act* in or around 1938 (collectively the area is referred to as the “**Burk Drainage System**”).
- (b) All of the Erie Shore Drive Property Owners’ properties are all situated within the Burk Drainage System.
- (c) All of the members of ESDPOA are property owners situated along Erie Shore Drive whose purpose is to work together for the common goals of enhancing the quality of life for both seasonal and permanent residents, to

build a greater sense of community, shoreline protection, education and advocacy.

FAILURE TO MAINTAIN AND REPAIR

- (d) For a significant number of years, the Erie Shore Drive Property Owners have been subject to various levels of flooding and other issues as a result of the Municipality's continued failure to repair and maintain the Burk Drainage System.
- (e) In or around 2001 the landowners in the Burk Drainage System notified the Municipality under section 79 of the *Drainage Act* that the Burk Drainage System was not being repaired and maintained and needed to be addressed by the Municipality. No work was undertaken at that time and no repairs and/or maintenance completed by the Municipality.
- (f) Chatham-Kent's failure to maintain and repair the Burk Drainage system has resulted in significant damage to the Applicants' properties. The lack of repair and maintenance of the Burk Drainage System includes but is not limited to constructing, reconstructing or extending embankments, walls, dykes, reservoirs, pumping stations, the seawall and groynes and/or other drainage works in connection with the Burk Drainage system.
- (g) On September 1, 2020, the Applicants submitted a repair and maintenance request under the provisions of the *Drainage Act*, R.S.O. 1990 C.D.17 (the "***Drainage Act***", for the Burk Drainage System to the Clerk and Chief Administrative Officer of Chatham-Kent requesting that the Burk Drainage System be immediately maintained and repaired.
- (h) On October 19, 2020 the Applicants further advised Chatham-Kent of its concerns with the lack of repair and maintenance of the Burk Drainage System including but not limited to the flooding and drainage problems being experienced in the area.

- (i) The *Drainage Act* provides that any person affected by drainage works may give notice requiring Chatham-Kent to make repairs and/or maintain the drainage works. If the repairs and maintenance to the drainage works are not completed the Referee has the jurisdiction to order/compel Chatham-Kent to make the repairs. The *Drainage Act* notice also triggers Chatham-Kent's liability for the damages suffered as a result of the non-repair of the Burk Drainage System.
- (j) The deficiencies in the Burk Drainage System have resulted in, or significantly impacted, the Applicants' use and enjoyment of their properties and resulted in the Applicants incurring significant costs to protect their properties from the flooding caused by the continued failure of Chatham-Kent to perform any work, maintenance or repairs on the Burk Drainage System.
- (k) Despite the Applicants repeated requests for maintenance and repairs of the Burk Drainage System including but not limited to the wooden seawall and groynes, Chatham-Kent has refused, failed, or neglected to repair and/or maintain the Burk Drainage System.
- (l) Chatham-Kent has refused, failed, or neglected to comply with the Applicants' section 79 request for repairs and maintenance within a period of forty-five (45) days of receiving the request.

DEFINITION OF DRAINAGE WORKS

- (m) The *Drainage Act* broadly defines "drainage works" to include:

a drain constructed by any means, including the improving of a natural watercourse and includes works necessary to regulate the water table or water level within or on any lands or to regulate the level of the waters of a drain, reservoir, lake or pond and includes a dam, embankment, wall, protective works or any combination thereof.

- (n) The Applicants' have suffered, and continue to suffer as a result of Chatham-Kent's failure to maintain and repair the Burk Drainage System the loss of:
- (i) the use and enjoyment of their properties;
 - (ii) or, limited access to, their cottages/homes;
 - (iii) the ability to acquire suitable insurance;
 - (iv) full unfettered use of the municipal right-of-way;
 - (v) property values due to actual or perceived stigma damages as a result of constant flooding;
 - (vi) personal belongings as a result of the flooding of the properties;
 - (vii) structures or structural integrity of the properties; and,
 - (viii) easy access to their properties from a publicly operated and maintained municipal road.
- (o) The Applicants have expended and continue to incur costs of maintaining and repairing the properties.
- (p) The definition of drainage works as set out in the *Drainage Act* includes the shoreline protection works all of which are part of the Burk Drainage System.

HISTORY OF THE BURK DRAINAGE SYSTEM

- (q) The Burk Drainage System is identified by engineers as an area of low-lying muck land adjacent to the shore of Lake Erie in Chatham-Kent formerly South Harwich. The area consists of low-lying lands that were at one point directly exposed to the waters of Lake Erie. In the period of the late 1910's lands in the area were reclaimed from Lake Erie by a series of work undertaken under the provisions of the *Drainage Act*.
- (r) The area of the Burk Drainage System is in excess of 1,600 acres in size of which approximately 1,340 acres of the agricultural area is considered floodable.
- (s) The Burk Drainage System consists of an extensive internal gravity and artificially pumped drainage system that is protected from Lake Erie and Rondeau Bay by an extensive system of dykes, groynes, the seawall and other protective works.
- (t) The Burk Drainage System was originally constructed in accordance with a report prepared under the provisions of the *Drainage Act* by George A. McCubbin dated March 25, 1914 (the "**1914 Report**").
- (u) The 1914 Report initially created the Burk Drainage System which recommended the cutting off of drains to Rondeau Bay and Lake Erie, with embankments to 'contain' the drains, along with pumping units on specific lands. One of embankment would serve as a roadbed for Pere Marquette Railway and the other as a base road from Erie Beach to Erieau (later referred to as Dyke Road). The Burk Drainage System also provided for the discharge of excessive runoff from the lands as far north as gravel ridge.
- (v) In or around 1929 a serious flood occurred in the area with the Lake Erie water coming over the shoreline and pouring over Dyke Road. The road along the top of the dyke was washed away and significant portions of land were under water. It is reported that approximately 1,300 acres of

productive land were reduced to a “flooded waste.” At that time owners of the lands in the area requested that the former Township of Harwich (now Chatham-Kent) take steps to reclaim the land. The Township refused and reduced marsh land assessments and implemented the recommendations in the 1914 Report.

- (w) The recommendations in the 1914 Report resulted in the water flowing by gravity by the upper lands to the low-lying lands located within the Burk Drainage System being re-directed via large open channels and dyke systems to prevent these flows from being discharged into the Burk Drainage System.
- (x) The Burk Drainage System also included three external drains identified as the Third Concession Drain, the Burk Drain and the Beaver Creek Drain that were all constructed to cut off the upstream flows and discharged them by gravity into either Lake Erie or Rondeau Bay. Earthen embankments contained the flow within these channels and provided protection to the low lying lands located within the Burk Drainage System.
- (y) The Burk Drainage System consisted of a system of open drains within the low lying lands that were provided an outlet through mechanical pumping stations. Following the initial construction activities arising from the 1914 Report numerous repairs and improvement of the internal drainage system and pumping facilities were undertaken under the provisions of the *Drainage Act*.
- (z) Subsequent to the 1914 Report numerous engineering reports have been prepared by the Township Harwich and Municipality of Chatham-Kent relating to the strengthening, raising and protection of the various embankments around the Burk Drainage System and along the external and internal drains.

- (aa) Over the last several decades there have been a series of repairs and improvements carried out along the shore of Lake Erie under the provisions of the *Drainage Act* for the purposes of protecting the beach and the embankment all of which form part of the Burk Drainage System.
- (bb) As part of the dyke system associated with the Burk Drainage System and following the 1914 Report the Erie Shore Drive dyke was constructed as a flood control structure to create farmland and provide safe access to the Village of Erieau.
- (cc) The dyke associated with the Burk Drainage System was considered necessary to regulate the water levels in the area and constructed and improved under the provisions of the *Drainage Act*.
- (dd) The wooden seawalls and wooden groynes forming part of the Burk Drainage System were constructed along the Lake Erie shoreline abutting the Dyke Road under the provisions of the *Drainage Act* pursuant to a series of reports dated in or around 1930, 1943, 1946, 1947, 1948, 1951, and 1968.
- (ee) In or around the spring of 1968 a petition was filed under the provisions of the *Drainage Act* for repair and maintenance of the Burk Drainage System as a result of the poor conditions of the dykes and continued erosion concerns in the area.
- (ff) In or around June 10, 1968 the Township of Harwich (now Chatham-Kent) in response to a petition of owners of the lands in the area constructed the wooden seawall and groynes in the Burk Drainage System for the protection of the properties in the area. The petition was prompted by the concern that due to erosion threatening the dyke the entire Burk Drainage System below lake level could be flooded. The engineer assessed the costs of these works, being the construction of wooden seawalls and groynes, to the lands and roads that benefitted from the work as part of the

Burk Drainage System under the provisions of the *Drainage Act*. The engineer at that time confirmed with Council for the Municipality that “*After completion the work is to be maintained by the Municipality.*” Funds were borrowed by the Township of Harwich (now Chatham-Kent) to complete the construction of the wooden seawall and groynes.

- (gg) In or around 1972 Township of Harwich (now Chatham-Kent) engaged in further work on the Burk Drainage System and installed a new concrete pumphouse station and steel retaining wall providing for the drainage of the Burk Drainage System.
- (hh) In or around 1973 Township of Harwich (now Chatham-Kent) conducted an examination of the works associated with the Burk Drainage System. The engineer advised that the waves from Lake Erie can be devastating and work is necessary for protection of the area due to unprecedented high water levels in the Great Lakes system.
- (ii) In or around 1973, two sections of dyke paralleling the shore of Lake Erie were improved in order to protect the Burk Drainage System. This work was completed following a petition of landowners in the area under the provisions of the *Drainage Act* to have the Burk Drainage System repaired. One section of the dyke was raised and strengthened to provide protection from the waves of Lake Erie for a length of approximately 400 metres starting approximately 600 metres east of the Bisnett Sideroad and ending approximately 1,000 metres east of the Bisnett Sideroad. The second section of dyke was also raised and strengthened to provide protection from the waves of Lake Erie for a length of approximately 1,250 metres located between McGeachy’s Pond and Lake Erie. The improvement to these two sections of dyke were completed by the Township of Harwich (now Chatham-Kent) in accordance with the provisions of the *Drainage Act*.

- (jj) In or around March 1973 the Township of Harwich (now Chatham Kent) received financial assistance from both the Federal and Provincial governments for the work being completed on the Burk Drainage System.
- (kk) In or around February 1974, the Township of Harwich (now Chatham Kent) approved the construction of a third dyke along Lakeshore Road between Erieau and Erie Beach.
- (ll) In or around April 1985, Premier Frank Millar, the premier of Ontario at that time sent a cabinet representative to the area to survey the flood damage along the Lake Erie shoreline near Erieau. The Premier acknowledged that the flooding problems in the area were raised numerous times by area residents. The flooding in the area of the Burk Drainage System in or around April 1985 resulted in the evacuation of numerous families from their homes.
- (mm) In or around 1986 the Township of Harwich (now Chatham-Kent) commissioned another engineer's report to review and assess the Burk Drainage System. As part of this work the engineer confirmed that the wooden seawalls and wooden groynes constructed along the lakeshore occurred under a series of reports under the provisions of the *Drainage Act*. This report confirmed that the existing wooden seawalls and groynes constructed under the *Drainage Act* extended along the Lake Erie shoreline.
- (nn) The 1986 Report confirmed that the wooden seawall and groynes constructed by the Township of Harwich (now Chatham Kent) under the *Drainage Act* have "*deteriorated substantially over the years and are in various states of disrepair*" and further that "*there are sections where the seawall and groynes are no longer physically capable of performing their function*";

- (oo) In or around 1986 the Township of Harwich (now Chatham Kent) authorized the construction of the emergency shoreline protection works under the provisions of the *Drainage Act*.
- (pp) In or around 1998 the Municipality conducted a further study under the provisions of the *Drainage Act* on the Burk Drainage System. This study, being “The Erie Shore Drive Flood Protection Study” prepared by Todgham & Case Associates Inc. again confirmed that the wooden seawall and groynes were originally constructed along the lakeshore under the provisions of the *Drainage Act* and stated that “*Generally speaking, these walls have not been maintained by the Municipality.*”
- (qq) The engineering studies completed by the Municipality under the *Drainage Act* in or around the Spring of 1998 were presented to the public. The most significant engineering conclusions at that time included but were not limited that: the shoreline is eroding and this process is irreversible without engineering intervention in the form of a comprehensive shoreline protection system; and, the risk of flooding and erosion are greater during periods of high water levels.
- (rr) Since 1998 there have been numerous investigations and engineering studies conducted by, or prepared by the Municipality under the provisions of the *Drainage Act*. The continued failure of the Municipality to maintain and repair the Burk Drainage System has resulted in damages suffered by the Applicants.
- (ss) In or around 2005 the Municipality approved construction of an additional dwelling or cottage along the south side of Erie Shore Drive despite knowing of the history and risk of flooding in the area.
- (tt) In or around November 2016, Municipal Council for Chatham-Kent sought funding from various levels of government to resolve the flooding and erosion issues on Erie Shore Drive. The Municipality publicly

acknowledged that the Municipality has known about the flooding issues for a number of years but have not resolved or fixed the concerns and reference the studies completed in 1998 under the *Drainage Act*.

- (uu) In or around 2018 Golder Associates was retained by the Municipality to conduct a geotechnical investigation of Erie Shore Drive and recommended that aspects of the Burk Drainage System, being Erie Shore Drive and the dyke slopes be reinforced in accordance with the provisions of the *Drainage Act*. This work was not undertaken by the Municipality. Golder's recommendation was reiterated in its August 2019 report to the Municipality following the additional geotechnical exploration of Erie Shore Drive.
- (vv) The Erie Shore Drive dyke was historically constructed in 1914. For numerous decades the Erie Shore Drive Dyke has been, and continues to be, subject to flooding, erosion and safety concerns that has been, and continue to be, identified by the consultants hired by the Municipality. Despite knowing of these concerns the Municipality failed to take any steps to resolve the concerns associated with the Burk Drainage System, specifically the continued flooding. The Municipality declared a state of emergency as a result of the flooding in August 2019 and February 2020. The state of emergency either prohibited or restricted access to the Applicants' properties. This has resulted in additional harm to the Applicants impacting the use and enjoyment of their properties and significantly diminishing the value of their properties. Erie Shore Drive remains closed to the public at the time of the filing of this Application.
- (ww) The existing wooden seawall and groynes were installed under the provisions of the *Drainage Act*. Under the provisions of the *Drainage Act* the Municipality is responsible to repair, maintain and improve the Burk Drainage System and has failed to do so at the cost and expense of the Applicants' properties situated along the Lake Erie shoreline.

- (xx) The Applicants plead and rely on the following legislation:
 - (i) *Drainage Act*, R.S.O. 1990, c.D. 17;
 - (ii) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05(2), 38, 39, 53 and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
 - (iii) Section 131 of the *Courts of Justice Act*, RSO, 1990, C.43;
 - (yy) Such further and other grounds as counsel may advise and the Referee may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of Terra Cadeau on behalf of all of the ESDPOA and the Applicants;
 - (b) The affidavits of the Erie Shore Drive property owners or former owners described herein who have suffered damages;
 - (c) The affidavit(s) of expert witnesses; and
 - (d) Such further and other evidence as may be allowed.

May 10, 2021

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Paula Lombardi LSO#: 46935M
paula.lombardi@siskinds.com
Tel: 519.660.7878
Fax: 519.660.7879

Lawyers for the Applicants

ERIE SHORE DRIVE PROPERTY
OWNERS ASSOCIATION et al
Applicants

and

THE CORPORATION OF THE
MUNICIPALITY OF CHATHAM-KENT
Respondent

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Chatham

NOTICE OF APPLICATION

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Paula Lombardi LSO#: 46935M
paula.lombardi@siskinds.com
Tel: (519) 660-7878
Fax: (519) 660-7879

Lawyers for the Applicants