

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 05-003

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN ENCROACHMENT AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND WELLNESS REVOLUTION INC., WITH RESPECT TO THE PROPERTY KNOWN MUNICIPALLY AS 354 CHARLOTTE STREET

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an Encroachment Agreement between The Corporation of the City of Peterborough and Wellness Revolution Inc. with respect to the encroachment of a sign on to the road allowance known as Downie Street, in the form attached hereto as Schedule "A", and to affix the Seal of the Corporation thereto

By-law read a first and second time this 17th day of January, 2005

By-law read a third time and finally passed this 17th day of January, 2005

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made, in duplicate, this 12th day of November, 2004.

B E T W E E N :

THE CORPORATION OF THE CITY OF PETERBOROUGH

hereinafter called the "City"

OF THE FIRST PART

- and -

WELLNESS REVOLUTION INC.

hereinafter called the "Licencee"

OF THE SECOND PART

WHEREAS the Licencee is the registered owner of the lands and premises known municipally as 354 Charlotte Street, in the City of Peterborough, in the County of Peterborough, and being more particularly described in Schedule "A" attached hereto;

AND WHEREAS part of the buildings and structures erected on the said lands encroach, or will encroach, on a public road allowance in the said City of Peterborough, known as Downie Street, which encroachment is described in Schedule "B" attached hereto (hereinafter referred to as the "Encroachment");

AND WHEREAS the Licencee has requested permission from the City to maintain the Encroachment, on the terms and conditions hereinafter set in the position described in Schedule "B" attached hereto, during the lifetime of the building;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the covenants and agreements hereinafter contained on the part of the Licencee to be observed, fulfilled and performed, the City hereby grants to the Licencee permission to maintain the Encroachment, upon the following terms and conditions:

1. The Licencee shall maintain the Encroachment in a good and workmanlike fashion and shall comply in all respects with the provisions of the *Building Code Act*, all by-laws of the City, and any other applicable regulations.
2. The Licencee acknowledges and agrees that the permission granted by the City to maintain the encroachment is at the sole risk of the Licencee. The Licencee

agrees to indemnify and save harmless, the City, against all actions, suits, claims and demands, which may be brought against or made upon the City and against all loss, costs, damages, charges, or expenses whatsoever which may be sustained, incurred or paid by the City in consequence of the Encroachment, or otherwise by reason of the exercise by the Licencee of the permission hereby granted to maintain the Encroachment. The Licencee hereby grants to the City full power and authority to settle any action, suit, claim or demand on such terms as the City may deem advisable and hereby covenants and agrees with the City to pay to the City, on demand, all monies paid by the City in pursuance of any such settlement and also such sum which shall represent the reasonable cost to the City, or its solicitor, in defending or settling any such action, suit, claim or demand. This Agreement shall not be alleged as a defence by the Licencee in any action, by any person, for actual damage suffered by reason of the permission hereby granted to maintain the Encroachment.

3. The Licencee agrees to maintain in full force and effect property damage and public liability insurance, naming the City as an additional named insured, and with a cross-liability endorsement in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence. The Licencee shall provide the City with a Certificate confirming the existence of the above noted insurance coverage.

4. The Licencee acknowledges and agrees that, should the City require the use, for public purposes, of the lands upon which the Encroachment is located, the Licencee shall, upon thirty (30) days written notice from the City, remove or relocate the encroachment, including reinstatement of the City lands, to the satisfaction of the City and at the sole expense of the Licencee.

5. This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their authorized signing officers in that regard.

SIGNED, SEALED & DELIVERED)
in the presence of:)
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**THE CORPORATION OF THE
CITY OF PETERBOROUGH**

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

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WELLNESS REVOLUTION INC.

) Janis Lukinuk, President

I have authority to bind the

Corporation

SCHEDULE "A"

(Legal Description of Property)

P.I.N. 28089-0063(LT), being Lot 4, Plan 91, in the City of Peterborough, in the County of Peterborough

SCHEDULE "B"

(Sketch with Encroachment(s) shown thereon)