THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 10-067


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

1. That the Mayor and Clerk be hereby authorized to execute an indemnity agreement between The Corporation of The City of Peterborough and 1783883 Ontario Inc. in the form attached hereby as Schedule “A”, and to affix the Seal of The Corporation thereto;

2. That the Mayor and Clerk be hereby authorized to execute an indemnity agreement between The Corporation of The City of Peterborough and Huntingdon Real Estate Investment Trust in the form attached hereby as Schedule “B”, and to affix the Seal of The Corporation thereto.

By-law read a first, second and third time this 3rd day of May, 2010.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Kevin Arjoon, Deputy Clerk
THIS AGREEMENT dated this ___ day of ______________2010

B E W T E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the “City”)

and

1783883 ONTARIO INC.
(the “Owner”)

WHEREAS the Owner is the registered owner of 400 Lansdowne Street East, in the City of Peterborough (the “Lands”);

AND WHEREAS the City desires, at its sole risk and expense, to construct and thereafter maintain a paved recreational trail (the “Trail”) for the benefit of members of the public on the portion of 400 Lansdowne Street East, in the City of Peterborough as more particularly described in Schedule “A”, forming part of this Agreement, which is already subject to certain easements which are set out in instruments LT 23509 and LT 39447;

AND WHEREAS the City is already a beneficiary of the aforementioned easements over the lands described in Schedule ‘A’ for the purpose of operating and maintaining a watermain and a sanitary sewer;

AND WHEREAS the Owner, in consideration of the City’s warranties and covenants hereinafter contained shall permit the City to construct and thereafter maintain the Trail on the following terms and conditions;

1. CONSTRUCTION AND MAINTENANCE

For the term of this agreement, the City warrants and covenants that it shall pay all costs, fees and expenses associated with the construction, repair, replacement, operation and maintenance of the Trail wholly within the lands described in instrument numbers LT 23509 and LT 39447.

The Trail shall be constructed, repaired, replaced operated and maintained by the City to an acceptable standard for the benefit of members of the public at the sole cost and expense of the City.

The City covenants and agrees to rectify any damage incurred or suffered to any part of the Lands as a result of the construction, repair, replacement, operation and maintenance of the Trail to the reasonable satisfaction of the Owner including, without limitation, the clean up and removal of any building material, mud, waste, soil or dust.

2. RIGHT TO PUBLIC ACCESS

The Owner acknowledges that the Trail shall be used by members of the public for recreational and other purposes and it agrees that it shall not, by any means whatsoever, unilaterally or unreasonably prevent the lawful use of the Trail.

3. PAYMENT OF FEES

The City shall pay all reasonable professional fees, incurred by the Owner, including reasonable legal fees, associated with the design and construction of the Trail.

Upon the completion of the Trail, the City shall indemnify the Owner for its reasonable legal fees in the event of a claim made against the Owner in which the City is also named as a defendant by statement of claim or cross-claim.
4. REGISTER NOTICE OF AGREEMENT ON TITLE

The City shall, at its own expense, register notice of this agreement on title within sixty days of its being executed by the parties. This agreement shall run with the land and shall remain in effect for such period of time as the City desires to maintain the Trail.

In the event the City elects to close the Trail it shall, at its sole expense, take such steps as are necessary to remove notice of this agreement from title and restore the Lands described in Schedule “A” to their original condition at the City’s sole cost and expense.

5. INSURANCE

The City shall, during the Term of this Agreement, procure and obtain, at its own expense, Commercial General Liability insurance including “1783883 Ontario Inc.” as an additional insured in the amount of FIVE MILLION DOLLARS ($5,000,000.00), or such other amount as the City’s insurer may reasonably suggest or require, against liability arising out of the construction and maintenance of the paved recreational trail on land owned by the Owner at 400 Lansdowne Street East. Such policy of insurance shall contain a severability of interest clause and cross liability clause between the City and the Owner.

The City shall, upon the Owner’s request, provide the Owner with evidence, satisfactory to the Owner, of its compliance with Article 5.

Forthwith upon the execution of the Agreement, the City shall file a certificate of such insurance with the Owner. If the City fails to provide or maintain the required insurance the Owner shall have the right to provide and maintain such insurance and give evidence to the City. The City shall pay the cost thereof to the Owner on demand.

The City shall be responsible for deductible amounts under the policies of insurance.

6. INDEMNIFICATION

The City shall indemnify and save the Owner harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the Owner, its agents, servants or officers, may suffer as a result of the right granted to the City under this Agreement and/or the use of the Trail by members of the public;

7. NOTICE

The address for service for the parties are as follows:

For the City:

The Corporation of the City of Peterborough
500 George Street North
Peterborough, ON  K9H 3R9
Attention: City Clerk

With a Copy to:

The Corporation of the City of Peterborough
Legal Services Department
500 George Street North
Peterborough, ON  K9H 3R9
Attention: City Solicitor

For the Owner:

1783883 Ontario Inc.
1002 – 75 The Donway West
8. **SUCCESSORS AND ASSIGNS**

This agreement shall enure to the benefit of the parties and their respective successors and assigns.

**IN WITNESS WHEREOF** this agreement has been duly executed by the parties hereto.

**SIGNED, SEALED AND DELIVERED**

in the presence of:

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

D. Paul Ayotte, Mayor

Nancy Wright-Laking, City Clerk

1783883 ONTARIO INC.

Witness

Ori Goldman, Secretary

I/We have authority to bind the Corporation

**SCHEDULE ‘A’**

Legal Description of Land owned by 1783883 Ontario Inc.

PT BLK 4 PL 45M119 (PETERBOROUGH), PTS 10 PL 45R11516, S/T EASEMENT OVER PT 10 PL 45R11516, AS IN LT23509 & LT39447; PETERBOROUGH being part of PIN 28456-0091 (LT).
THIS AGREEMENT dated this ___ day of ______________2010

B E W T E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the "City")

and

HUNTINGDON REAL ESTATE INVESTMENT TRUST
(the "Owner")

WHEREAS the Owner is the registered owner of 396 Lansdowne Street East, in the City of Peterborough (the "Lands");

AND WHEREAS the City desires, at its sole risk and expense, to construct and thereafter maintain a paved recreational trail (the "Trail") for the benefit of members of the public on the portion of 396 Lansdowne Street East, in the City of Peterborough as more particularly described in Schedule "A", forming part of this Agreement, which is already subject to certain easements which are set out in instruments LT 23509 and LT 39447;

AND WHEREAS the City is already a beneficiary of the aforementioned easements over the lands described in Schedule 'A' for the purpose of operating and maintaining a watermain and a sanitary sewer;

AND WHEREAS the Owner, in consideration of the City's warranties and covenants hereinafter contained shall permit the City to construct and thereafter maintain the Trail on the following terms and conditions;

1. CONSTRUCTION AND MAINTENANCE

For the term of this agreement, the City warrants and covenants that it shall pay all costs, fees and expenses associated with the construction, repair, replacement, operation and maintenance of the Trail wholly within the lands described in instrument numbers LT 23509 and LT 39447.

The Trail shall be constructed, repaired, replaced, operated and maintained by the City to an acceptable standard for the benefit of members of the public at the sole cost and expense of the City.

The City covenants and agrees to rectify any damage incurred or suffered to any part of the Lands as a result of the construction, repair, replacement, operation and maintenance of the Trail to the reasonable satisfaction of the Owner including, without limitation, the clean up and removal of any building material, mud, waste, soil or dust.

2. RIGHT TO PUBLIC ACCESS

The Owner acknowledges that the Trail shall be used by members of the public for recreational and other purposes and it agrees that it shall not, by any means whatsoever, unilaterally or unreasonably prevent the lawful use of the Trail.

3. PAYMENT OF FEES

The City shall pay all reasonable professional fees, incurred by the Owner, including reasonable legal fees, associated with the design and construction of the Trail.
Upon the completion of the Trail, the City shall indemnify the Owner for its reasonable legal fees in the event of a claim made against the Owner in which the City is also named as a defendant by statement of claim or cross-claim.

4. REGISTER NOTICE OF AGREEMENT ON TITLE

The City shall, at its own expense, register notice of this Agreement on title within sixty days of its being executed by the parties. This agreement shall run with the land and shall remain in effect for such period of time, as the City desires to maintain the Trail.

In the event the City elects to close the Trail it shall, at its sole expense, take such steps as are necessary to remove notice of this Agreement from title and restore the Lands described in Schedule “A” to their original condition at the City’s sole cost and expense.

5. INSURANCE

The City shall, during the Term of this Agreement, procure and obtain, at its own expense, Commercial General Liability insurance including “Huntingdon Real Estate Investment Trust,” as an additional insured in the amount of FIVE MILLION DOLLARS ($5,000,000.00), or such other amount as the City’s insurer may reasonably suggest or require, against liability arising out of the construction and maintenance of the paved recreational trail on land owned by the Owner at 396 Lansdowne Street East, in the City of Peterborough. Such policy of insurance shall contain a severability of interest clause and cross liability clause between the City and the Owner.

The City shall, upon the Owner’s request, provide the Owner with evidence, satisfactory to the Owner, of its compliance with Article 5.

Forthwith upon the execution of the Agreement, the City shall file a certificate of such insurance with the Owner. If the City fails to provide or maintain the required insurance the Owner shall have the right to provide and maintain such insurance and give evidence to the City. The City shall pay the cost thereof to the Owner on demand.

The City shall be responsible for deductible amounts under the policies of insurance.

6. INDEMNIFICATION

The City shall indemnify and save the Owner harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the Owner, its agents, servants or officers, may suffer as a result of the rights granted to the City under this Agreement and/or the use of the Trail by members of the public.

7. NOTICE

The addresses for service for the parties are as follows:

For the City:

The Corporation of the City of Peterborough
500 George Street North
Peterborough, ON K9H 3R9
Attention: City Clerk

With a Copy to:

The Corporation of the City of Peterborough
Legal Services Department
500 George Street North
Peterborough, ON   K9H 3R9   Attention: City Solicitor

For the Owner:

Huntingdon Real Estate Investment Trust
502-649 Scottsdale Drive
Guelph, ON   N1G 4T7   Attention: Grace Rasmussen
8. SUCCESSORS AND ASSIGNS

This agreement shall enure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto.

SIGNED, SEALED AND DELIVERED

in the presence of:

THE CORPORATION OF THE
CITY OF PETERBOROUGH

D. Paul Ayotte, Mayor

Nancy Wright-Laking, City Clerk

HUNTINGDON REAL ESTATE INVESTMENT TRUST

Witness

Name:

Title:

I/We have authority to bind the Corporation

SCHEDULE ‘A’

Legal Description of Land owned by HUNTINGDON REAL ESTATE INVESTMENT TRUST
PT BLK 4 PL 45M119 (PETERBOROUGH), EXCEPT PT 1 PL 45R10630, EXCEPT PTS 2, 3 & 4 PL 45R12010, EXCEPT PTS 1, 2 & 10 PL 45R11516, S/T LT23509, LT39 447 & R158994; PETERBOROUGH being part of PIN 28456-0091 (LT).