THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 10-157

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND SENIOR CITIZENS ASSOCIATION OF PETERBOROUGH TO EXEMPT THE MAPLERIDGE SENIORS RECREATION CENTRE FROM MUNICIPAL AND SCHOOL TAXES

WHEREAS Section 110(1) of the Municipal Act 2001, S.O. 2001, c.25, provides that a municipality may enter into agreements for the provision of municipal capital facilities;

AND WHEREAS the proposed new facility owned by the Senior Citizens Association of Peterborough, at the address municipally known as 1085 Brealey Drive, in the City of Peterborough, in the County of Peterborough, is deemed to be a municipal capital facility to be used as a community centre;

AND WHEREAS Section 110(6) of the Municipal Act, 2001, S.O. c.25, permits a municipality to exempt from all or part of the taxes levied for municipal and school purposes land or a portion of it on which a municipal capital facility is or will be located that is subject to an agreement under Section 110(1) of the Municipal Act, 2001, S.O. c.25,

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

That the Mayor and the Clerk be and they are hereby authorized to execute a municipal capital facilities agreement between The Corporation of the City of Peterborough and the Senior Citizens Association of Peterborough for the provision of a community centre, at 1085 Brealey Drive, in the City of Peterborough, (to be known as the Mapleridge Seniors Recreation Centre) and to affix the Seal of the Corporation thereto, in the form attached hereto as Schedule A.

By-law read a first, second and third time this 7th day of September, 2010.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) John Kennedy, Deputy Clerk
SCHEDULE “A”

THIS AGREEMENT made in quadruplicate this ___ day of July 2010.

B E T W E E N:

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

and

THE SENIOR CITIZENS ASSOCIATION OF PETERBOROUGH
(the “Association”)

WHEREAS the Association intends to construct and operate a municipal capital facility, being the Mapleridge Seniors Recreation Centre, at 1085 Brealey Drive in the City of Peterborough (the “MCF”);

AND WHEREAS the City wishes to provide funding for the MCF on the terms and conditions set out herein;

AND WHEREAS the Association has agreed to utilize such City funding for the operation of the MCF on the terms and conditions set out herein;

AND WHEREAS The Municipal Act, 2001, and Ontario Regulation 46/94, as amended, permit the City to enter into an agreement for the provision of municipal capital facilities.

NOW THEREFORE in consideration of the mutual covenants hereinafter set out and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to the following terms, conditions and covenants:

DEFINITIONS

Funding – means the $260,910.00 being the combination of the $200,000.00 Payment, the waiver of Development Charges to a maximum of $48,410.00 and the waiver of the Parks Levy to a maximum of $12,500.00, as itemized in Article 2.1.

Seniors Recreation Centre – means a public facility where members of the community may gather for group activities, recreational programs and social support to persons who are members of the Association;

MCF – means a municipal capital facility, as that term is defined in O. Reg. 46/94, enacted under the Municipal Act, 2001 located at 1085 Brealey Drive in the City of Peterborough;

ARTICLE 1 – OVERVIEW OF AGREEMENT

1.1 In consideration of the Association agreeing to operate the MCF as a Seniors Recreation Centre, the City agrees to provide $260,910.00 in funding (the “Funding”) to the Association, in accordance with Article 2 and the Association agrees to accept the Funding subject to the terms and conditions as contained herein.

1.2 Except for the provision of the Funding described in this agreement, the Association acknowledges and agrees that the City has no other obligations or responsibilities in connection with the MCF or the Seniors Recreation Centre and its operation.
1.3 The Association shall disclose to the City without delay any fact or event that the Association is aware of from time to time which may compromise the Association’s ability to continue to operate the Seniors Recreation Centre at the MCF.

ARTICLE 2 – FUNDING

2.1 The City shall provide Funding to the Association as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. The Payment</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>b. Waiver of Development Charges up to</td>
<td>$48,410.00</td>
</tr>
<tr>
<td>c. Waiver of Parks Levy up to</td>
<td>$12,500.00</td>
</tr>
<tr>
<td>Total Funding</td>
<td>$260,910.00</td>
</tr>
</tbody>
</table>

2.2 The Payment shall be paid in two equal instalments. The first instalment shall be made by the City upon the Association satisfying the City, acting reasonably, that it has obtained all approvals, including Site Plan approval, and permits required to commence construction. The City shall then make the first instalment within 30 days of satisfying itself of the foregoing. Provided the Association is not in breach of its obligations as contained in this agreement, the second instalment shall be paid by the City after 1 January 2011 but on or before 31 March 2011. The City shall be the second party to execute the agreement.

2.3 Upon request from the Association, the City shall provide verification of the calculation of the Development Charge and the Parks Levy.

2.4 Notwithstanding any contrary policies of the Association or the City, the parties acknowledge and agree that in the event the MCF is sold or if the Association ceases to operate as a Seniors Recreation Centre at the MCF at any time from the date hereof until the 25th anniversary thereof, the City shall have the right to require the repayment by the Association of an amount of money equal to:

a. $260,910.00 divided by 25 = $10,436.40; and
b. $10,436.40 times the number of years less than 25-years, that the Association did not operate a Seniors Recreational Centre, or such other facility as complies with the requirements of the Municipal Act, 2001, and Ontario Regulation 46/94, as amended.

For example, if the Association started operating the Seniors Recreation Centre in 2011 and stopped operating a facility which complies with the requirements of the Municipal Act, 2001, and Ontario Regulation 46/94, as amended, in 2030 (19 years), then the Association would pay to the City the sum of $62,618.40, being $10,436.40 multiplied by 6 years. For the sake of performing this calculation, any part years shall be rounded up or down to the nearest quarter-year and such calculation shall be performed taking into account the last quarter-year the Association operated the Seniors Recreational Centre at the MCF.

ARTICLE 3 – FIRST RIGHT OF REFUSAL

3.1 In consideration of the Association’s receipt of the Funding, the Association hereby grants an option to the City, by way of first right of refusal, to acquire the Association’s premises located at 1085 Brealey Drive in Peterborough, Ontario (the “Property”) should the Association decide to sell the Property.
3.2 The Association and the City agree that, provided that the City is not in default of its obligations under this agreement, the Association shall first provide notice (the "Sale Notice") to the City:

a. Offering to sell, transfer or otherwise convey the Property to the City;

b. Stipulating the sale price for which the Association is prepared to sell, transfer or otherwise convey the Property (the "Sale Price"); and

c. Setting out the terms and conditions (other than the Sale Price) on and subject to which the Association is prepared to sell, transfer or otherwise convey the Property (the "Sale Terms").

3.3 The City shall have the right to purchase and acquire the Property from the Association at the Sale Price on and subject to the Sale Terms in the event that it provides notice (a "Purchase Notice") to the Association of its election to purchase the Property at the Sale Price on and subject to the Sale Terms within ninety (90) business days from receipt by the City of the Sale Notice. In the event that the City provides a Purchase Notice to the Association in the manner and within the time herein specified then, without further documentation, a binding agreement of purchase and sale of the Property at the Sale Price and on the Sale Terms shall be constituted between the Association, as Vendor, and the City, as Purchaser.

3.4 The parties acknowledge and agree that in the event such an agreement is entered into, the Funding shall represent a down payment by the City on the Sale Price and such amount shall be credited against the Sale Price.

3.5 If the City does not deliver a Purchase Notice to the Association in accordance with the preceding paragraphs, the Association shall have the right, within the period of 180 days following the expiry of the period in which the City had to deliver a Purchase Notice, to sell, transfer or otherwise convey the Property (the "Third Party Sale") at a sale price which is greater than or equal to the Sale Price and on terms and conditions which in the aggregate are not more favourable than the Sale Terms.

3.6 In the event the City does not deliver a Purchase Notice in response to the Sale Notice of the Association such that an agreement of purchase and sale is not reached, the Funding shall be considered a grant to the Association and shall not be refundable in any way.

3.7 For greater certainty, the parties acknowledge and agree that an offer from the City to the Association to purchase the Property shall not trigger any rights of the City set out in this Article 3 unless such offer is accepted by the Association.

ARTICLE 4 – INSURANCE AND INDEMNITY

4.1 The Association agrees that it will indemnify and save harmless the City and its officers, employees, servants, agents, successors, and assigns from and against any and all claims whatsoever including all damages, liabilities, expenses, costs, including legal or other fees incurred in respect of any such claim, or any cause or proceeding brought thereon arising directly or indirectly from or in connection with this agreement, unless such claims are as a result of the negligence of the City or its officers, employees, servants, agents, successors, and assigns.
ARTICLE 5 – MISCELLANEOUS

5.1 The Association shall permit the City to use the Centre, free of charge, on four (4) occasions in each calendar year. The City will use its best efforts to provide at least sixty (60) calendar days notice to the Association prior to each such use.

5.2 The Association shall ensure that in any and all communication activities, publications, advertising and press releases referring to the services there shall be included an appropriate acknowledgement, in terms satisfactory to the City, of the City's contribution.

5.3 This agreement and all schedules and attachments are subject to the Municipal Freedom of Information and Protection of Privacy Act (referred to as MFIPPA). Any information collected by the City pursuant to this agreement is subject to the rights and safeguards provided for in the MFIPPA. This agreement is a public document and may, subject to MFIPPA, be provided to any person who makes a lawful inquiry.

5.4 This agreement may be amended by the mutual consent of the Parties. Any such amendment must occur through a written amendment agreement approved by the parties and executed on behalf of the City by its Mayor and Clerk following approval through By-law enacted by the Municipal Council of the City.

5.5 This agreement is binding upon the Association and its successors and assigns and supersedes all previous agreements between the Parties. The Association shall not assign or in any way transfer this agreement or any of its rights, privileges, duties or obligations under this agreement without the prior written consent of the City which may be unreasonably withheld or delayed.

5.6 The Parties hereto declare that nothing in this agreement shall be construed as creating a legally binding partnership or agency relationship between them. The Association is not in any way authorized to make a promise, agreement or contract on behalf of the City.

5.7 All dollar amounts referred to in this agreement are in lawful money of Canada.

5.8 Each of the parties hereto shall from time to time at the other's request and expense and without further consideration, execute and deliver such other instruments of transfer, conveyance, and assignment and take such further action as the other may require to more effectively complete any matter provided for herein.

5.9 This agreement constitutes the entire agreement between the parties and, except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective parties. There are no oral representations or warranties among the parties of any kind. This agreement may not be amended or modified in any respect except by written instrument signed by both parties.

5.10 This agreement shall be interpreted in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.

5.11 Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (i) delivered personally, (ii) sent by prepaid
courier service or mail, or (iii) sent prepaid by facsimile, telex, or other similar means of electronic communication and confirmed on the same or following day by prepaid mail, addressed, in the case of notice to the City, as follows:

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

and in the case of notice to the Association, if addressed to it as follows:

The President
The Senior Citizens Association of Peterborough
1085 Brealey Drive
Peterborough, ON    K9J 6X4

and in all cases so delivered personally or by courier or so sent by means of electronic communication, so confirmed. Any notice so given is deemed conclusively to have been given and received when so personally delivered or sent by telex, facsimile, or other electronic communication or on the second day following the sending thereof by private courier or mail. Any party hereto or others mentioned above may change any particulars of its address for notice by notice to the others in the manner aforesaid.

5.12 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns, including, but not limited to, any corporation resulting from an amalgamation.

IN WITNESS WHEREOF the parties have hereto set their hands and seals as of the date above written.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF PETERBOROUGH

D. Paul Ayotte, Mayor

Nancy Wright-Laking, Clerk

THE SENIOR CITIZENS ASSOCIATION OF PETERBOROUGH

Marion Batten, President
I/We have authority to bind the Association

Grace Buck, Treasurer
I/We have authority to bind the Association