THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 11-067

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND PETERBOROUGH LAWN BOWLING CLUB FOR THE CONSTRUCTION OF A NEW COMMUNITY CENTRE

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

That the Mayor and Clerk be hereby authorized to execute a loan agreement between the Corporation of the City of Peterborough and Peterborough Lawn Bowling Club, in the form attached hereby as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 26th day of April, 2011

(Sgd.) Daryl Bennett, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk
THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter called the “City”)

and

PETERBOROUGH LAWN BOWLING CLUB

(hereinafter called the “PLBC”)

LOAN AGREEMENT
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LOAN AGREEMENT
This Agreement made the 4th of May, 2011

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter called the “City”)

and

PETERBOROUGH LAWN BOWLING CLUB

(hereinafter called the “PLBC”)

WHEREAS:

A. The PLBC intends to construct a new community centre (the “Project”) to be located on lands known municipally as 577 and 581 McDonnell Street, Peterborough, Ontario;
B. The City wishes to provide funding for the Project on the terms and conditions set out in this Agreement;
C. The PLBC has agreed to utilize such City funding for the Project on the terms and conditions set out in the Agreement;
D. In addition, the Parties have entered into a Municipal Capital Facility Agreement, dated August 9, 2010 in accordance with the Municipal Act, 2001 and Ontario Regulation 46/94, as amended, waiving Development Charges and Parks Levies

NOW THEREFORE in consideration of the mutual covenants hereinafter set out and 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:

1. INTERPRETATION

1.1 In the Agreement, including its Schedules, unless the context requires otherwise,

• “Agreement” means this Loan Agreement entered into between the City and the PLBC
• "City Bank" means the Canadian Imperial Bank of Commerce;
• "Development Activities" means those activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation or conversion of buildings for the Project;
• “Event of Default” has the meaning ascribed thereto in Section 10.0;
• “First Mortgage” means the institutional financing and security collateral, arranged by PLBC totalling principal amounts, which do not exceed the total costs of the Development Activities incurred in connection with the Project;
• “Force Majeure” means a delay arising from strike, lockout, riot, insurrection, terrorism, war, fire, tempest, act of God, lack of material or supply of service at a reasonable cost, inclement weather, binding orders or regulations of governmental bodies, courts or arbitrators or any other event beyond the control of the Parties which causes a delay in the fulfillment of a Party’s obligations under this Agreement notwithstanding the reasonable efforts of such Party and provided that any such non availability or delay does not relate to any extent to any act or omission by such Party or any of its authorized agents or employees;
• “Funds” means the total amount of dollars provided to the PLBC, and the term “Funding” shall have the same meaning;
• "Loan Payment Schedule" means the payment of principal and interest to be paid by PLBC to the City, in accordance with Section 4.0;
• "Parties" means the City and the PLBC and "Party" means either of them, as the context may require;

• “Permitted Encumbrances” has the meaning described in Section 6.2;

• "Project" means the public facility, known as a community center, located on Lots 39 to 41 and 58 to 60, PL 80 (Peterborough), Peterborough, known municipally as 577 McDonnel, where members of the community gather for group activities, recreational programs and social support to persons who are members of the PLBC and/or members of any tenant of the PLBC;

• "Property" means the lands and premises (including any building located thereon) which are the property of the PLBC and upon which the Project shall be built, described in Schedule “C”;

• "Security Documents" means the security documents attached to and forming part of the this Agreement including the Security Documents required in Section 5 of this Agreement;

1.2 The following Schedules are attached to and form part of this Agreement:

Schedule "A" - Additional Provisions to the Charge/Mortgage of Land
Schedule "B" - Security Agreement
Schedule "C" - Legal Description of Property

1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

1.4 All references in this Agreement to section numbers are references to sections of this Agreement unless otherwise stated.

2. AMOUNT OF FUNDING AND DISBURSEMENT OF LOAN

2.1 The City agrees to provide to the PLBC upon the terms and subject to the conditions set out in this Agreement the amount of Six Hundred Thousand Dollars ($600,000.00).

3. CONDITIONS PRECEDENT

3.1 The provision of the Funding by the City pursuant to Section 2.1 is subject to the following conditions precedent, each of which is for the exclusive benefit of the City, and may be waived in full or in part by the City by written notice to the PLBC:

(a) the PLBC is the registered owner in fee simple of the lands described in Schedule “C” or shall have entered into a lease agreement for the term of this Agreement, with the registered property owners;

(b) there being no Claim for Lien under the Construction Lien Act, 1990, registered against the Project;

(c) there being in existence no unregistered lien or statutory claim having priority against the Project;

(d) there being no work orders issued against the Project by any governmental entity, agency or official;

(e) the PLBC having provided the City with the security documents required by Section 5 and in accordance with the said section;

(f) the PLBC obtaining a current Location Survey (the “survey”) prepared by a qualified land surveyor showing the location of the existing building(s) and showing that these buildings are contained entirely within the limits of the land and that there are no encroachments on the land from adjoining properties or in the alternative, a title insurance policy will be accepted in lieu of a survey;

(g) the PLBC having received the required planning approvals including but not limited to severance application, Official Plan and zoning by-law amendments; and

4. TERMS OF FUNDING

4.1 The Funding shall become due and payable to the City on or before June 30, 2015.
4.2 The Funding shall bear a flexible interest rate based on the City Bank’s daily prime rate plus 0.25%, compounded monthly.

4.3 The PLBC shall annually on or before December 1st, make a minimum payment of the interest on the outstanding balance, at the rate identified in Section 4.2.

4.4 Any payments on the principal amount shall be made by PLBC to the City, in amounts of no less than Twenty-Five Thousand Dollars ($25,000.00).

4.5 The PLBC shall provide the City with such information respecting the PLBC’s permanent financing obligations for the Project as the City may require from time to time.

4.6 The City shall not be liable to the contractor, suppliers, sub-contractors, craftsmen, labourers or others for goods and services delivered by them in relation to the Project on behalf of the PLBC, or employed in the construction of the Project, or for any debts or claims accruing to any of the parties against the PLBC or against the Project.

4.7 It is distinctly understood and agreed by the parties hereto that there is no contractual relationship either express or implied, between the City and the contractor, any supplier, contractor, sub-contractor, craftsman, labourer or person supplying any work, services or material to the Project, on behalf of the PLBC. The PLBC is not, and shall not be, the agent of the City for any purpose. There shall be no third party beneficiary of this Agreement, express or implied.

5. SECURITY

5.1 Prior to the City disbursing the Funds to the PLBC pursuant to Section 2.1, the PLBC shall provide the City with an executed registrable Agreement and security documents in the form attached hereto as Schedules "A" and "B" (the "Security"), completed in accordance with this Agreement.

5.2 The Security shall be collateral to this Agreement.

5.3 Without limiting the PLBC’s covenants and the remedies of the City under this Agreement and the Security, the PLBC agrees that a breach of this Agreement including the occurrence of an Event of Default pursuant to Section 10 shall constitute a breach of the Security and a breach of the Security shall constitute a breach of this Agreement.

5.4 The Security shall rank immediately behind the registered security for the PLBC’s First Mortgage for the Project, or as otherwise determined by the City.

6. COVENANTS OF THE PLBC

6.1 The PLBC covenants and agrees with the City that, it shall:

(a) take all such actions and do all such things required to develop and continuously carry on the Development Activities in a good and workmanlike manner and to complete such construction not later than September 1, 2011, subject to acts of God and other events which occur for non-financial reasons beyond the control of the PLBC, including, without limitation, strikes, lock-outs or other labour or industrial disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, future valid orders of any regulatory body having proper jurisdiction, wars, riots, sabotage, blockades, embargoes, insurrections, lightning, earthquake, fires, storms, floods and explosions and to pay all costs thereof;

(c) do or cause to be done all acts and things necessary to preserve in full force and effect the existence of the PLBC and all licences and permits required for the carrying on of the operations of the PLBC at and from the Project and to preserve and protect all of the properties, real and personal owned and used by the PLBC in connection with the Project and to cause the same to be properly maintained and to be kept in good state of repair; and

(d) pay and discharge or cause to be paid and discharged all taxes and other levies of the Province of Ontario, the City, or of any other entity having jurisdiction to impose such taxes or levies, when the same become due and payable, except such taxes as are being contested in good faith by appropriate proceedings and provided that, in such case the PLBC shall have provided the City with appropriate security.

6.2 The PLBC covenants and agrees with the City that, so long as any obligation is outstanding by the PLBC to the City hereunder the PLBC will not, without the prior written consent of the City, which consent may be unreasonably withheld:
(a) create, incur, assume or permit to exist, after knowledge of the existence thereof, any mortgage, pledge, lien, hypothecation, charge (fixed or floating), security interest or other encumbrance whatsoever on the Property or any personal property or fixtures thereon except the encumbrances created by the following encumbrances (collectively, the "Permitted Encumbrances"):

(i) encumbrances created in favour of or assigned or pledged to the City;

(ii) inchoate or statutory liens for taxes which have not been assessed, or if assessed, which are either not delinquent or which are being contested by bona fide proceedings in good faith, and sufficient security for the payment of same has been given to the City, if requested; and

(iii) inchoate or statutory liens of contractors, sub-contractors, mechanics, suppliers, workers and others in respect of the construction, maintenance, repair and operation of the Project, provided that the same are not registered encumbrances against title to the Property or any personal property, or, if so registered, have been postponed to all charges in favour of the City contained in the Security Documents or are being contested by bona fide proceedings in good faith with sufficient security for the payment thereof having been given to the City or paid into Court to prevent effectively in the City's opinion realization by disposal or other alienation from the PLBC of its legal or beneficial title to or interest in any such property; and

(iv) First Mortgage and security collateral.

(b) become a party, without the prior written consent of the City, to any transaction whereby the Project would become the property of any other person, whether by way of reorganization, amalgamation, merger, transfer, sale, lease, sale and leaseback, or otherwise.

6.3 The PLBC represents that it has not provided the City with any false or misleading information respecting the Project and this Agreement and agrees that it shall not provide any false or misleading information to the City in the performance of its obligations under this Agreement.

6.4 The PLBC shall disclose to the City without delay any fact or event that the PLBC is aware of from time to time which may compromise the PLBC’s chance of success in carrying out and administering the Project.

7. REPRESENTATIONS AND WARRANTIES

The PLBC represents and warrants to the City that:

7.1 The PLBC is a duly incorporated, organized and validly existing body corporate under the laws of the Province of Ontario and has full capacity, power and authority to own all its property and to carry on its business as now conducted and as contemplated under this Agreement and all other agreements contemplated hereunder including but not limited to development, operation and management of the Project, and is duly qualified and in good standing in each jurisdiction in which the character of the property owned or leased or the nature of the business carried on by it makes such qualification necessary or desirable.

7.2 The PLBC has full corporate power, legal right and authority to enter into this Agreement and each of the Security Documents to which it is a party in accordance with their respective terms and perform its obligations and to do all acts and things as are required or contemplated hereunder to be done, observed or performed by it.

7.3 That this Agreement and each of the Security Documents to which the PLBC is a party have been duly and validly authorized, executed and delivered by the PLBC and are valid and binding obligations of the PLBC enforceable in accordance with their respective terms.

7.4 Neither the execution and delivery of this Agreement or Security Documents, the consummation of the transactions herein contemplated, nor the compliance with the terms, conditions and provisions hereof and of the Charge/Mortgage of Land will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter documents or by-laws or constituting documents of the PLBC or of any agreement or instrument to which it is now a party, or constitute a default thereunder.

7.5 There is not now pending against the PLBC any litigation, action, suit or other proceeding of a material nature by or before any court, tribunal or other governmental agency or authority or any other such pending or threatened action, suit or other proceeding against the PLBC or against or affecting any of the properties or assets of the PLBC (whether such property or assets are
owned legally or beneficially) such that if the same were adversely determined, it could be reasonably expected to materially and adversely affect the business operations, properties or assets, or the condition, financial or otherwise, of the PLBC.

7.6 Except as previously disclosed in writing to the City, the PLBC is not a party to any agreement or instrument or subject to any restriction or any judgment, order, writ, injunction, decree, rule or regulation which materially and adversely affects the business, operations, prospects, properties or assets, or condition, financial or otherwise, of the PLBC.

7.7 None of the information, financial or otherwise, provided by the PLBC to the City to induce the City to provide Funding and to enter into this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which it was made.

8. INDEMNIFICATION

8.1 The PLBC shall indemnify and save harmless the City, its Mayor, Councillors, officers, directors, employees, agents, representatives, successors and assigns, from all claims, costs, losses, damages, expenses, injury, disability, duties, dues, accounts, covenants, demands all matter of actions, causes of action, or other proceedings of every kind or nature whatsoever at law or in equity arising out of this Agreement and the Project but not limited to claims arising out of negligence of any party to this Agreement and specifically, all claims arising out of the intentional or criminal acts of any officers or directors, employees, agents, volunteers or independent contractors or subcontractors of the PLBC. Such indemnification shall survive the termination of this Agreement for claims arising from or out of incidents occurring during the term of this agreement.

8.2 The City is in no way responsible for any environmental or pollution matters related to this Agreement and the Project. The PLBC shall indemnify and save harmless the City, its Mayor, Councillors, officers, directors, employees, agents, representatives, successors and assigns, the Province of Ontario and CMHC, from all claims, costs, losses, damages, expenses, injury, disability, duties, dues, accounts, covenants, demands all matter of actions, causes of action, or other proceedings of every kind or nature whatsoever which the City may suffer as a result of claims of any sort whenever made arising out of the implementation of this Agreement, including any environmental or pollution claims.

9. INSURANCE

9.1 The PLBC covenants and agrees at all times during the term hereof to take out and keep in full force and affect the following policies as outlined in Article 9.

9.2 The PLBC shall, at all times during the term of this Agreement, maintain or cause to be maintained comprehensive Commercial General Liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Project or out of the operations of the PLBC or its sublessees in, on or about the Project, indemnifying and insuring the City and the PLBC and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Project would, from time to time, carrying (which amount shall initially be no less than Five Million Dollars ($5,000,000.00) during any period of construction and thereafter not less than Five Million Dollars ($5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for cross-liability and severability of interests. During the course of the work or any other construction, the liability insurance required under this Article shall relate to property damage, death or injury arising out of the performance or non-performance of the work or any other construction or related work and shall include non-owned automobile liability insurance. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies. The City will be included as an additional insured on the Commercial General Liability insurance policy which is to be maintained by the PLBC following the completion of construction.

9.3 During the period of construction including demolition or construction on the Project, the Proponent shall effect, maintain or cause to be maintained and keep in force, until completion of such work, including demolition, repair, alterations, construction, additions and/or renovations, insurance insuring the City and the PLBC their employees and all those for whom they are at law responsible (without rights of cross-claim as between the City and the PLBC) from damage to the Project from time to time during the work, including demolition and construction (which may be by policies effective from time to time covering the risks during different phases of the work, demolition and construction) by a Builders’ Insurance Policy including resultant damage for error or design and faulty workmanship and, to the extent available and as would be
obtained by a prudent owner of such a Project, to the replacement cost thereof. The City will be included as joint loss payee on the insurance policy.

9.4 Except as to any portion of the Project under construction which is insured by the insurance coverage provided pursuant to Builder's Insurance Risk policy above, the PLBC shall, at all times during the loan period, insure and keep insured the Project and all other insurable property belonging to the PLBC and from time to time located on the Project in an amount not less than the replacement cost thereof against loss or damage by perils of "all risks" (being the perils from time to time included in the standard "all risk" policy and to the extent available and as would be obtained by a prudent owner of such a Project). The City will be included as joint loss payee on the insurance policy.

9.5 The PLBC shall deliver certificates of all insurance forthwith to the City.

9.6 Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or materially change the policies, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) days' prior written notice to the City.

9.7 The PLBC shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article.

9.8 The PLBC shall advise the City of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the PLBC fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Article, the City shall have the right, upon notice to the PLBC and without assuming any obligation in connection therewith, to effect such insurance at the cost of the PLBC and all outlays by the City shall be payable by the PLBC to the City forthwith upon demand without prejudice to any other rights and recourses of the City hereunder. No such insurance taken out by the City shall relieve the PLBC of its obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the PLBC in connection therewith.

9.9 The City shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Project, or damage to property of the PLBC, or of others located on the Project, nor shall it be responsible for any loss of or damage to any property of the PLBC or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence of the City, its agents, employees, contractors, or others for whom it may in law be responsible. Without limiting the generality of the foregoing, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Project or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The City shall not be liable for any such damage caused by other Persons on the Project or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the PLBC kept or stored on the Project shall be so kept or stored at the risk of the PLBC and the City releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same, including, without limitation, any subrogation claims by the PLBC's insurers.

9.10 The PLBC agrees to obtain for its employees and to require all designated contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants and other persons Workplace Safety and Insurance Board coverage and to ensure that such coverage continues in effect throughout the period of work.

9.11 It shall be the sole responsibility of the PLBC to determine what additional insurance coverage, if any, are necessary and advisable for its own protection and/or to fulfil its obligation under this Agreement. Any such additional insurance shall be maintained and provided at the sole expense of the PLBC.

10.0 EVENTS OF DEFAULT AND REMEDIES

10.1 Upon the occurrence of any one or more of the following events (each an "Event of Default"):

(a) the failure of the PLBC to perform, observe or comply with any term, covenant, condition or provision of this Agreement within ten (10) days of receipt of written notice of the "failure" from the City provided the PLBC shall not be deemed to be in default if within the said period of ten (10) days, the PLBC commences the necessary action to remove the "failure" and such action is diligently prosecuted;
(b) any representation or warranty made by the PLBC in this Agreement proves to have been untrue or misleading in any material respect as of the date on which it was made;
(c) any person commences an action, suit or proceeding materially affecting the Project or files a lien against the Project, or any person shall commence an action, suit or proceeding contesting or questioning the validity or enforceability of this Agreement, unless the PLBC shall diligently contest such action, suit or proceeding and discharge any such lien forthwith without the requirement of notice by the City and post such bonds, cash or letters of credit or give such other security in order to obtain such discharge in amounts and on terms satisfactory to the City, acting reasonably;
(d) the PLBC ceases to carry on business;
(e) the PLBC:
   (i) becomes insolvent or unable to pay its debts as they become due; or
   (ii) files a petition in bankruptcy or voluntary petition seeking reorganization or effect a plan or other arrangement with creditors; or
   (iii) makes an assignment for the benefit of creditors under the Bankruptcy Act (Canada) or any other insolvent debtors' legislation; or
   (iv) applies for or consents to the appointment of any receiver or trustee for it or of all or any substantial part of its property and assets; or
   (v) voluntarily liquidates or winds-up or suffers itself to be liquidated or wound-up;
(f) any of:
   (i) an involuntary petition seeking the adjudication of the PLBC as bankrupt or insolvent not removed within thirty (30) days; or
   (ii) an order of any court or other authority appointing any receiver or trustee for the PLBC or for all or any substantial portion of its property and assets; or
   (iii) a writ of execution, judgment or writ of attachment or any similar process which may, in the reasonable opinion of the City, materially impair the ability of the PLBC to perform its obligations under this Agreement or any of the Security Documents shall be made, given or issued against the PLBC or in respect of its property and assets, and such petition, order, writ or judgment is not vacated or stayed within fifteen (15) days after its date;
(g) the occurrence of a material adverse change in the financial condition of the PLBC which would, in the reasonable opinion of the City, detrimentally affect the ability of the PLBC to meet its obligations to the City;
(h) if the Project is entirely destroyed or damaged to such an extent that, in the opinion of the quantity surveyor, acting reasonably, it is no longer fit for the purpose for which it was intended and the insurance proceeds, if any, held by the City, in the opinion of the quantity surveyor, acting reasonably, are insufficient to repair such destruction or damage, and the PLBC has not provided evidence satisfactory to the City of the timely availability of such sufficient funds;

then, the City may declare all of the Funds, together with all other moneys owing to the City hereunder, due and payable forthwith. In such case, the City may realize upon any and all security pledged to it and may commence such other legal actions or proceedings against the PLBC, the Project or assets of the PLBC as may be permitted hereunder or by any one or more of the Security Documents or at law or in equity, all as it, in its sole discretion, deems expedient.

10.2 Should the PLBC be in default under the terms of the Security Documents or under the terms of this Agreement or under the terms of any mortgage or other encumbrance registered on title to the Property comprising the Project, the City shall have the right to declare all the Funds due and payable immediately.

10.3 All reasonable costs and expenses of collection (including legal fees, disbursements and court costs) of all amounts owing hereunder or of enforcement of any security created in favour of the City pursuant hereto, shall be for the account of the PLBC and shall be repayable on demand.
10.4 All of the remedies in this Agreement are cumulative and are not alternative and the City shall not be precluded from availing itself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.

10.5 Notwithstanding any of the terms of this Agreement, the City shall have the option of waiving any or all of its remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

11. NOTICE

11.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

(a) delivered personally;
(b) sent by prepaid courier service; or
(c) sent by facsimile communication, and confirmed by mailing the original documents so sent by prepaid mail on the same or following day, addressed as follows:

(i) in the case of notice to the City:
   The Corporation of the City of Peterborough
   City Clerk’s Office
   500 George Street North
   Peterborough, ON K9H 3R9
   Fax: 705.742.5218

(ii) in the case of notice to the PLBC:
   Peterborough Lawn Bowling Club
   P.O. Box 1052, Station Main
   Peterborough, ON K9J 7A9
   Attention: President

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this Section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:20 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1st) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

12. GENERAL

12.1 Any power, right or function of the City, contemplated by this Agreement, may be exercised by any employee or agent of the City, who is hereby specifically authorized in this regard.

12.2 It is understood that the Municipal Freedom of Information and Protection of Privacy Act, as amended, shall apply to all records submitted to or created by the City pursuant to this Agreement.

12.3 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the City and the PLBC as partners of each other.

12.4 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the City and the PLBC or their respective solicitors or their behalf, who are hereby expressly authorized in this regard.

12.5 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
12.6 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.

12.7 The Parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting the Project or this Agreement other than as expressed in writing in this Agreement.

12.8 This Agreement shall be read with all changes of gender and number required by the context.

12.9 The PLBC shall not list, advertise or hold out for sale or lease or otherwise offer for disposal the Project or any part of the Project.

12.10 If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Agreement in any jurisdiction.

12.11 This Agreement shall be binding upon and enure to the benefit of the PLBC and the City and their respective heirs, successors and permitted assigns, as the case may be.

CONTINUED ON PAGE 12
IN WITNESS WHEREOF this Agreement has been executed by the Parties.

THE CORPORATION OF THE CITY OF PETERBOROUGH

Daryl Bennett
Mayor

Nancy Wright-Laking
City Clerk

PETERBOROUGH LAWN BOWLING CLUB

Per:________________________________
Name:______________________________
Office:

Per:________________________________
Name:______________________________
Office:
We/I have the authority to bind the Corporation
SCHEDULE “A”

ADDITIONAL PROVISIONS

1. This charge/mortgage of land (the “Charge”) is collateral security for the Agreement made between the Chargor and the Corporation the City of Peterborough (“the Chargee”), dated the 4th day of April, 2011, under which the City contributed the amount of Six Hundred Thousand Dollars ($600,000.00) (the “Funding”) towards the Project in relation to the Property, registered [insert date and Registry Office for Notice of Agreement] as Instrument No. [insert number for Notice of Agreement] and is in addition to and not in substitution for any other security held by the Chargee for all or any part of the monies secured under this Charge.

2. It is understood and agreed that the Chargee may pursue its remedies under this Charge or under any other security, concurrently or successively, at its option. The Chargee shall act reasonably and in good faith in considering the course of action to be taken with respect to the pursuit of its remedies.

3. It is hereby mutually covenanted and agreed by and between the parties hereto that all erections and improvements fixed or otherwise now on or hereafter put upon the premises described in Schedule “C” of the Agreement, including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, aerials, air-conditioning, ventilating, lighting and water heating equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings and all apparatus and equipment appurtenant thereto, are and shall, in addition to other fixtures thereon, be and become fixtures and an accession to the freehold and a part of the realty as between the parties hereto, their heirs, executors, administrators, successors, legal representatives and assigns and all persons claiming by, through or under them and shall be a portion of the security for the indebtedness herein mentioned.

4. In the event of a breach of the terms of the Security Agreement attached to the Agreement as Schedule “B” being given by the Chargor to the Chargee simultaneously with this Charge, the principal balance then outstanding, together with any other amounts payable pursuant to the terms of this Charge, shall forthwith become due and payable at the option of the Chargee and all powers conferred by this Charge shall become exercisable by the Chargee.

5. With respect to amount advanced by the Chargee:
   (a) The Funding shall become due and payable to the Chargee on or before June 30, 2015.
   (b) The Funding shall bear a flexible interest rate based on the Chargee’s Bank’s daily prime rate plus 0.25%, compounded monthly.
   (c) The Chargor shall annually on or before December 1st, make a minimum payment of the interest on the outstanding balance, at the rate identified in 5(b) above.
   (d) Any payments on the principal amount shall be made by the Chargor to the Chargee, in amounts of no less than Twenty-Five Thousand Dollars ($25,000.00).
   (e) In the event of default by the Chargor prior to the end of the term of the Agreement, the Chargee may exercise any of its remedies as set out in the Agreement, and may, at its option, declare the Funding then advanced, together with all other moneys owing to the Chargee under the Agreement, due and payable forthwith.

6. The Chargor covenants with the Chargee that if the Chargee makes any payment, in connection with the determination, establishment or preservation of its priority, whether such payment is made to a lien claimant or other person claiming an interest in the Property or is paid into court, then the amount or amounts so paid and all costs, charges and expenses incurred in connection therewith shall be forthwith payable to the Chargee by the Chargor and shall be a charge on the Property and shall be added to the debt hereby secured and shall bear interest at the said rate, and in default of payment, the power of sale and other remedies hereunder may be exercised. It is further agreed that the Chargee shall not become a mortgagee in possession by reason only of exercising any of the rights given to them under this paragraph or in making any payment to preserve, protect or secure the Property.

7. The Chargor covenants with the Chargee that in the event of the Chargor selling, conveying, transferring or entering into an agreement for the sale or transfer of title of the Property to a purchaser or transferee not approved in writing by the Chargee, which approval may be unreasonably withheld, all monies hereby secured with accrued interest thereon, at the option of the Chargee, shall forthwith become due and payable.
8. Subject to the renewals, replacements and consolidations permitted in paragraph 13 below, the Chargor shall not further mortgage or encumber the Property without the prior written approval of the Chargee.

9. The Chargor covenants and agrees at all times during the term hereof to take out and keep in full force and effect the following policies as outlined as follows:

(a) The Chargor shall, at all times during the term of this Agreement, maintain or cause to be maintained comprehensive Commercial General Liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Project or out of the operations of the Chargor or its sublessees in, on or about the Project, indemnifying and insuring the City and the Chargor and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Project would, from time to time, carrying (which amount shall initially be no less than Five Million Dollars ($5,000,000.00) during any period of construction and thereafter not less than Five Million Dollars ($5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for cross-liability and severability of interests. During the course of the work or any other construction, the liability insurance required under this Article shall relate to property damage, death or injury arising out of the performance or non-performance of the work or any other construction or related work and shall include non-owned automobile liability insurance. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies. The City will be included as an additional insured on the Commercial General Liability insurance policy which is to be maintained by the Chargor following the completion of construction.

(b) During the period of construction including demolition or construction on the Project, the Proponent shall effect, maintain or cause to be maintained and keep in force, until completion of such work, including demolition, repair, alterations, construction, additions and/or renovations, insurance insuring the City and the PLBC their employees and all those for whom they are at law responsible (without rights of cross-claim as between the City and the PLBC) from damage to the Project from time to time during the work, including demolition and construction (which may be by policies effective from time to time covering the risks during different phases of the work, demolition and construction) by a Builder's Insurance Policy including resultant damage for error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a Project, to the replacement cost thereof. The City will be included as joint loss payee on the insurance policy.

(c) Except as to any portion of the Project under construction which is insured by the insurance coverage provided pursuant to Builder's Insurance Risk policy above, the PLBC shall, at all times during the loan period, insure and keep insured the Project and all other insurable property belonging to the PLBC and from time to time located on the Project in an amount not less than the replacement cost thereof against loss or damage by perils of "all risks" (being the perils from time to time included in the standard "all risk" policy and to the extent available and as would be obtained by a prudent owner of such a Project). The City will be included as joint loss payee on the insurance policy.

(d) The Chargor shall deliver certificates of all insurance to the City forthwith.

(e) Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will not cancel or alter or materially change the policies, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) days' prior written notice to the City.

(f) The Chargor shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article.

(g) The Chargor shall advise the City of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Chargor fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Article, the City shall have the right, upon notice to the Chargor and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Chargor and all outlays by the City shall be payable by the Chargor to the City forthwith upon demand without prejudice to any other rights and recourses of the City hereunder. No such insurance taken out by the City shall relieve the Chargor of its
obligations to insure hereunder and the City shall not be liable for any loss or damage suffered by the Chargor in connection therewith.

(h) The City shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Project, or damage to property of the Chargor, or of others located on the Project, nor shall it be responsible for any loss of or damage to any property of the Chargor or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence of the City, its agents, employees, contractors, or others for whom it may in law be responsible. Without limiting the generality of the foregoing, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Project or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The City shall not be liable for any such damage caused by other Persons on the Project or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Chargor kept or stored on the Project shall be so kept or stored at the risk of the Chargor only and the Chargor releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same, including, without limitation, any subrogation claims by the Chargor's insurers.

(i) The Chargor agrees to obtain for its employees and to require all designated contractors, all other contractors, sub-contractors, suppliers and/or tradesmen while working on the site, engineers, architects, consultants and other persons Workplace Safety and Insurance Board coverage and to ensure that such coverage continues in effect throughout the period of work.

(j) It shall be the sole responsibility of the Chargor to determine what additional insurance coverage, if any, are necessary and advisable for its own protection and/or to fulfill its obligation under this Agreement. Any such additional insurance shall be maintained and provided at the sole expense of the Chargor.

10. (a) To the best of the Chargor’s knowledge and belief, the Property contain no asbestos, urea formaldehyde insulation, polychlorinated biphenyls (PCB’s), radioactive substances or other materials deemed to be hazardous under any applicable environmental legislation, there are no outstanding orders or notices and any required permits or licences are in good standing.

(b) The Chargor, at its sole cost and expense, shall comply, or cause its tenants, agents, and invitees, at their sole cost and expense, to comply with all federal, provincial and municipal laws, rules, regulations and orders, with respect to the discharge and removal of hazardous or toxic wastes, and with respect to the discharge of contaminants into the natural environment. The Chargor shall pay immediately when due the cost of removal of any such wastes and the cost of any improvements necessary to deal with such contaminants and keep the Property free and clear of any lien imposed pursuant to such laws, rules and regulations. In the event the Chargor fails to do so, after notice to the Chargor and the expiration of the earlier of (i) any applicable cure period under the Charge or (ii) the cure period under the applicable law, rule, regulation or order, the Chargee at its sole option may declare the Charge to be in default.

(c) The Chargor shall indemnify and hold the Chargee harmless from and against all losses, costs, damages or expenses (including, without limitation, legal fees and costs incurred in the investigation, defence and settlement of any claims) relating to the presence of any hazardous waste or contaminant referred to herein.

11. The Chargee or its agents may, at any time, before and after default, and for any purpose deemed necessary by the Chargee, enter upon the Property to inspect the lands and buildings thereon.

Without limiting the generality of the foregoing, the Chargee or its agents may enter upon the Property to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Chargee and the reasonable cost of such testing, assessment, investigation or study, as the case may be, shall be payable by the Chargor forthwith and shall be a charge upon the said Property. The exercise of any of the powers enumerated in this paragraph shall not deem the Chargee or its agents to be in possession, management or control of the said lands and buildings.

12. At any time after the security hereby constituted becomes enforceable, or the moneys hereby secured shall have become payable, the Chargee may appoint in writing a receiver or receiver-manager (the "Receiver") of the Property, with or without bond, and may from time to time
remove the Receiver and appoint another in its stead, and any such Receiver appointed hereunder shall have the following powers:

(a) To take possession of the Property and to collect the rents and such property, undertaking and assets of the Chargor assigned and/or charged to the Chargee herein and for such purpose to enter into and upon any lands, buildings and premises and for such purpose to do any act and take any proceedings in the name of the Chargor or otherwise as it shall deem necessary, specifically including, but not limited to managing, operating, repairing, altering or extending the Property or any part thereof;

(b) To employ and discharge agents, workmen, accountants and others upon such terms and with such salaries, wages or remuneration as it shall think proper, to repair and keep in repair the Property and to do all necessary acts and things for the protection of the said Property;

(c) To sell or lease or concur in selling or leasing any or all of the Property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise, and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part or parts of the Property and the Receiver may make any stipulations as to title or conveyance or commencement of title or otherwise which it shall deem proper and it may buy or rescind or vary any contracts for the sale of any part of the Property and may resell the same and it may sell any of the same on such terms as to credit or part cash and part credit or otherwise as shall appear in its sole opinion to be most advantageous and at such prices as can reasonably be obtained thereof and in the event of a sale on credit, neither the Receiver nor the Chargee shall be accountable for or charged with any moneys until actually received;

(d) To make any arrangement or compromise which the Receiver may think expedient in the interest of the Chargee and to consent to any modification or change in or omission from the provisions of this Charge and to exchange any part or parts of the Property for any other property suitable for the purposes of the Chargee and upon such terms as may seem expedient and either with or without payment or exchange of money or regard to the equality of the exchange or otherwise;

(e) To borrow money to carry on the operations of the Chargor at the Property and to charge the whole or any part of the Property in such amounts as the Receiver may from time to time deem necessary, and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall constitute a Charge against the Property in priority to this Charge;

(f) To execute and prosecute all suits, proceedings and actions which the Receiver, in its opinion, considers necessary for the proper protection of the Property, and to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;

(g) To execute and deliver to the purchaser of any part or parts of the Property, good and sufficient deeds for the same, the Receiver hereby being constituted the irrevocable attorney of the Chargor for the purpose of making such sale and executing such deed, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Chargor, and all other persons claiming the said Property or any part or parcels thereof by, from, through or under the Chargor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided;

(h) The net profits of the operations of the Chargor at the Property and the net proceeds of any sale of the Property or part thereof shall be applied by the Receiver, subject to the claims of any creditor ranking in priority to this Charge:

(i) Firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by it of all or any of the powers aforesaid, including the reasonable remuneration of the Receiver and all amounts properly payable by it;

(ii) Secondly, in payment of all costs, charges and expenses payable hereunder;

(iii) Thirdly, in payment to the Chargee of the principal sum owing hereunder;

(iv) Fourthly, in payment to the Chargee of all interest and arrears of interest, if any, and any other monies remaining unpaid hereunder; and
(v) Fifthly, any surplus shall be paid to the Chargee, provided that in the event any party claims a Charge against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus as the Receiver deems appropriate in the circumstances.

(i) During any period wherein the Chargee or any receiver or receiver and manager appointed by it shall manage the Property or any part thereof, upon or after entry, as provided herein, the Chargee shall not, nor shall any receiver or receiver and manager, be responsible or liable for any debts contracted by it, for damages to any other property or person, or for salaries or non-fulfillment of any contract, save and except as to claims at law or in equity to an accounting and the Chargee shall not be bound to do, observe, or perform or to see the observance or performance by the Chargor of any of the obligations herein imposed upon the Chargor nor in any other way supervise or interfere with the conduct of the Chargor's operations of the Property;

(j) The Chargee shall not be liable to the Receiver for his remuneration, costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising, unless the same shall be caused by his own gross negligence or willful default and he shall, when so appointed, by notice in writing pursuant hereto, be deemed to be the agent of the Chargor, and the Chargor shall be solely responsible for his acts and defaults and for his remuneration;

(k) Save as to claims for an accounting contained in this paragraph, the Chargor hereby releases and discharges any such Receiver from every claim of every nature, whether sounding in damages or not, which may arise or be caused to the Chargor or any person claiming through or under it by reason or as a result of anything done by such Receiver, unless such claim be in direct and proximate result of dishonesty or fraud;

(l) The Chargee may, at any time and from time to time, terminate any Receiver by notice in writing to the Chargor and to the Receiver;

(m) The statutory declaration of an employee or agent of the Chargee as to default under the provisions of this Charge and as to the due appointment of the Receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with the Receiver through its ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual;

(n) The rights and powers conferred herein in respect of the Receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have.

13. The Charge is hereby postponed to the mortgage registered against the Property as of the date of registration of this Charge and shall be continued to be postponed to any renewal or replacement or consolidation of such mortgage, provided in the Chargee's opinion sufficient equity remains to secure the Charge. The Chargee reserves the right to request, at the Chargor's expense, such appraisals, financial statements, mortgage statements or other information as it deems appropriate.
SCHEDULE “B”
SECURITY AGREEMENT

THIS AGREEMENT made this 4th day of May, 2011

BE T W E E N:

PETERBOROUGH LAWN BOWLING CLUB

(hereinafter called the “Assignor”)

- and -

THE CORPORATION OF THE CITY OF PETERBOROUGH

(hereinafter called the “Assignee”)

IN CONSIDERATION of Two Dollars ($2.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Assignee, the Assignor hereby grants, bargains, assigns and transfers to the Assignee a fixed and specific mortgage and charge, as and by way of a continuing security interest (the "Security Interest") in the following property now or hereafter owned or acquired by or on behalf of the Assignor:

Equipment - All tools, machinery, equipment, furniture, plants, fixtures, and other tangible personal property, fixed goods, chattels or assets of the kind, nature or description (the "Collateral").

1. The Security Interest is given for the payment of all obligations, indebtedness and liabilities, direct and indirect, of the Assignor to the Assignee, pursuant to the mortgage/charge (the “Charge”) given by the Assignor to the Assignee, registered on [insert date and Registry Office] as Instrument No. [insert number], including extensions or renewals thereof (the “Obligations”).

2. The Assignor confirms and warrants that the Collateral shall be kept at Peterborough, Ontario, more particularly described in Schedule "A" hereto.

3. The Assignor hereby represents, warrants and covenants to or with the Assignee, as the case may be, that:

(a) the Assignor shall reimburse the Assignee for all costs and expenses, (including legal fees on a solicitor and client basis), incurred by it in the filing of this Agreement and the taking, recovering or possessing the Collateral, and in any other proceedings taken for the purpose of protecting or enforcing the remedies provided herein, or otherwise in relation to the Collateral or by reason of non-payment of the Obligations, and all such costs and expenses shall be payable on demand;

(b) at the time of execution and delivery of this Security Agreement, the Assignor is and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible title to the Collateral, free of any mortgage, lien, charge, security interest or encumbrance, except for any held by the currently registered first mortgagee of the lands and premises described in Schedule "A";

(c) the Assignor shall not remove any of the Collateral from the lands and premises described in paragraph 2, without the Assignee’s prior written consent, unless such Collateral is worn out or obsolete and provided that prior to such removal such Collateral is replaced with other Collateral of comparable quality, which shall be free of any mortgage, lien, charge, security interest or encumbrance, except for any held by any registered first mortgagee, from time to time, of the said lands and premises;

(d) the Assignor shall care for, protect and preserve the Collateral and shall not permit its value to be impaired, and shall not sell, transfer, assign, mortgage, charge, pledge, hypothecate or deliver or otherwise dispose of any such property or any interest therein, except to any registered first mortgagee, from time to time, of the lands and premises described in Schedule “A”, without the prior written consent of the Assignee;

(e) the Assignor shall keep the Collateral insured under the policies provided for in the Charge;
the Assignee shall be entitled, from time to time and at any time, to inspect the Collateral wherever located and to make enquiries and tests concerning the Collateral, and the Assignor shall defray all expenses in connection therewith; and

this Agreement has been properly authorized and constitutes a legally valid and binding obligation of the Assignor in accordance with its terms.

4. Until the occurrence of an event of default, as hereinafter provided, the Assignor may use the Collateral specifically charged in any lawful manner not inconsistent with this Agreement.

5. Obligations not payable on demand shall immediately become payable upon the occurrence of one (1) or more of the following events of default:

(a) the Assignor fails to pay when due any of the Obligations, or to perform or rectify a breach of any of the representations, warranties or covenants of this Agreement or of the Mortgage;

(b) the Assignor ceases or threatens to cease to carry on business, becomes insolvent or the subject of bankruptcy or insolvency proceedings;

(c) an encumbrancer takes possession of any of the Collateral or any process of execution is levied or enforced upon or against any of the Collateral;

(d) indebtedness or liability of the Assignor, other than to the Assignee, becomes due and payable, or capable of being declared due and payable, before the stated maturity thereof, or any such indebtedness or liability shall not be paid at the maturity thereof or upon the expiration of any stated applicable grace period thereof, or any guarantee given by the Assignor is not honoured when due and called upon;

and the Assignee shall have all rights and remedies under the applicable laws, as well as any other rights and remedies provided by this Agreement.

6. In addition to the rights and powers provided in paragraphs 5 and 8 and under the Personal Property Security Act, the Assignee and the Receiver, as defined in paragraph 8, shall have the following rights and powers, if the security hereby constituted becomes enforceable: to dispose of any of the Collateral in the condition in which it was at the date possession of it was taken, or after any commercially reasonable repair, processing or preparation thereof for disposition and the Assignor shall from time to time forthwith on the Assignee’s request, execute, do and make all such agreements, statements, further assignments, acts, matters and things which may, from time to time, in the opinion of the Assignee, be necessary or expedient for the purpose of carrying into effect any of the provisions hereof and of perfecting the title of the Assignee in the Collateral and the Assignee and any of its managers or acting managers are by the Assignor hereby irrevocably constituted and appointed the true and lawful attorney of the Assignor, with full power of substitution for the Assignor, at their option, whenever and wherever it may deem necessary or expedient to do, make and execute all such statements, assignments, documents, acts, matters or things, with the right to use the name of the Assignor.

7. Any breach by the Assignor of any of the provisions contained in this Agreement or any default by the Assignor in the observance or performance of any covenant or condition required to be observed or performed by the Assignor hereunder may only be waived by the Assignee in writing, provided that no such waiver by the Assignee shall extend to or be taken in any manner to affect any subsequent breach or default of the rights resulting therefrom.

8. The Assignee may appoint in writing any person, whether an employee or employees of the Assignee or not, to be a receiver or a receiver and manager (the "Receiver") of the Collateral or any part of parts thereof.

A receiver so appointed shall have power:

(a) to take possession of, collect and get in the Collateral or any part thereof, and for that purpose to take any proceedings in the name of the Assignor or otherwise; and

(b) to sell or concur in selling any of the Collateral.

Any Receiver so appointed shall be deemed to be the agent of the Assignor. The Assignor shall be solely responsible for the Receiver’s acts or defaults and for the Receiver’s remuneration and expenses. The Assignee shall not, in any way, be responsible for any misconduct or negligence on the part of the Receiver.
All moneys received by the Receiver after providing for payment of all costs, charges and expenses of or incidental to the exercise of any of the powers of the Receiver shall be applied in or towards satisfaction of the Security Interest.

The rights and powers conferred by this paragraph are in addition to and not in substitution for any rights the Assignee may have from time to time.

9. The Assignor shall be entitled to not less than fifteen (15) days notice in writing of the date, time and place of any intended disposition of the Collateral, such notice to be sent by registered mail to the last known post office address of the Assignor.

10. The Assignee shall have the right, at any time, to appropriate any payment made to any portion of the Obligations and to revoke or alter any such appropriation.

11. This Agreement shall be a continuing agreement, in every respect, for the payment of the Obligations and it shall remain in full force until all of the Obligations shall be paid in full. In the event any provisions of this Agreement shall be deemed invalid or void by any court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain in full force and effect.

12. The Security Interest is in addition to and not in substitution for any other security now or hereafter held by the Assignee.

13. The Assignor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF this Assignment has been executed on behalf of the Assignor by its authorized officers.

PETERBOROUGH LAWN BOWLING CLUB

Per: _________________________________
Name: _________________________________
Title: _________________________________

Per: _________________________________
Name: _________________________________
Title: _________________________________

We/I have the authority to bind the Corporation.
Municipal Address: 577 McDonnel Street, Peterborough, Ontario
Legal Description: Lots 39 to 41 & 58 to 60, PL 80 (Peterborough); Peterborough

Municipal Address: 581 McDonnel Street, Peterborough, Ontario
Legal Description: Lots 42 to 47 & 52 to 57, PL 80 (Peterborough); Peterborough
SCHEDULE “C”

LEGAL DESCRIPTION OF THE PROPERTY

Municipal Address: 577 McDonnel Street, Peterborough, Ontario
Legal Description: Lots 39 to 41 & 58 to 60, PL 80 (Peterborough); Peterborough

Municipal Address: 581 McDonnel Street, Peterborough, Ontario
Legal Description: Lots 42 to 47 & 52 to 57, PL 80 (Peterborough); Peterborough