THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 11-110

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND PETERBOROUGH RUGBY UNION FOOTBALL CLUB INC. AND TO EXEMPT THE PETERBOROUGH RUGBY UNION FOOTBALL CLUB INC. FROM MUNICIPAL AND SCHOOL TAXES

WHEREAS Section 110(1) of the Municipal Act 2001, S.O. 2001, c.25, and Ontario Regulation 603/06 permit a municipality to enter into agreements for the provision of municipal capital facilities;

AND WHEREAS the proposed new facility owned by the Peterborough Rugby Union Football Club Inc., at the address municipally known as Nicholls Oval Park, in the City of Peterborough, is deemed to be a municipal capital facility to be used for recreational purposes;

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;

AND WHEREAS Section 110(7) of the Municipal Act, 2001, S.O. c.25, provides that a by-law passed under subsection 6 may exempt the facility from the payment of development charges and parks levies;

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

1. 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 Peterborough Rugby Union Football Club Inc. for the provision of a recreational centre, at 725 Armour Road, in the City of Peterborough, and to affix the Seal of the Corporation thereto, in the form attached hereto as Schedule “A”.

2. The land occupied by the Peterborough Rugby Union Football Club Inc., as more particularly described in Schedule “A” attached hereto, is hereby exempt from:
   a. Taxation for municipal and school purposes, pursuant to Section 210(6) of the Municipal Act, 2001, S.O. c.25, effective the 1st day of October, 2011;
   b. Development Charges; and
   c. Parks Levy.

By-law read a first, second and third time this 12th day of September 2011

(Sgd.) Daryl Bennett, Mayor

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

AGREEMENT made this ____ day of ____________, 2011

BETWEEN:

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

and

PETERBOROUGH RUGBY UNION FOOTBALL CLUB INC.
(the “Club”)

WHEREAS, by By-law Number 11-110, The Corporation of the City of Peterborough is authorized to enter into this agreement for the provision of a municipal capital facility, namely, the “Peterborough Rugby Union Football Club Clubhouse” (hereinafter the “Clubhouse”) pursuant to Sections 110(1) and 110(6) of the Municipal Act, 2001;

AND WHEREAS pursuant to Sections 110(6) and 110(7) of the Municipal Act, 2001, S.O. c.25, and pursuant to By-law Number 11-110, the City has agreed to exempt the Property (as hereinafter described) from all the taxes levied for municipal and school purposes and from all Development Charges and Parks Levies;

AND WHEREAS the Club covenants and represents that it shall commence construction, with all diligence and dispatch, so as to prepare for the removal of the former Peterborough Lawn Bowling Club Clubhouse from 577 McDonnel Street in the City of Peterborough to a location within Nicholls Oval Park (725 Armour Road) during the first half of 2011 and thereafter complete exterior construction of the Clubhouse no later than 31 December 2011;

NOW THE PARTIES AGREE AS FOLLOWS:

1.00 THE PROPERTY

1.01 The parties acknowledge that the Club is a lessee of certain property located with a park known municipally as Nicholls Oval Park and more particularly described in Schedule “A” (the “Property”).
1.02 The Club hereby agrees to construct, operate, own and maintain a recreation centre, known as the “Peterborough Rugby Union Football Club Clubhouse” (the “Clubhouse”) on the Property.

2.00 TERM OF AGREEMENT
2.01 This agreement shall be in full force and effect from the date of execution, until it is terminated by the City, pursuant to the provisions of this agreement.

2.02 This agreement shall terminate on the date which is fifty years less a day from the execution date hereof or before that date if the Club ceases to operate or makes an assignment in bankruptcy or any arrangement to the benefit of its creditors under applicable federal or provincial legislation. The agreement shall terminate if the Club ceases, for whatever reason, to use the Clubhouse as a recreation centre and such cessation is not rectified to the satisfaction of the City within thirty (30) days.

2.03 In the event this agreement is terminated in accordance with Article 2.02, the Clubhouse shall, at the option of the City (to be exercised within sixty (60) days of termination and completed within thirty (30) days of exercise), be transferred to the City, free of financial encumbrances (other than the Club’s mortgages/charges on the Property), unless the Club makes payment in full to City of the amounts of the grants, Development Charges and Park Levies listed in Article 3.01.

2.04 Notwithstanding Article 2.02, the term of this agreement may be extended for a further term of not more than fifty (50) years less one day, upon such terms and conditions as the parties hereto may agree. If either party wishes to extend the term of this agreement beyond its initial term of fifty (50) years less one day, that party shall deliver written notice to the other party during, no earlier than January 1st, 2060 and no later than September 30th, 2060 and the parties shall then commence good faith negotiations concerning an extension of this agreement.
3.00 CONSIDERATION PROVIDED BY THE CITY

3.01 The City has provided, or shall provide, the following consideration to the Club:

   a. A grant in the amount of $31,500.00; and
   b. A grant in the amount of $120,000.00; and
   c. A waiver of all (i) Development Charges; (ii) Parks Levy; (iii) Municipal Reality Taxes; and (iv) School Taxes. In exchange for that consideration, the Club covenants and warrants that it shall, in the event this agreement is terminated by City for cause and if the Club does not make payment to the City in accordance with Article 2.03, forthwith transfer ownership of the Clubhouse to the City and forthwith vacate the leased Property in accordance with the City’s direction.

4.00 TERMINATION OF AGREEMENT

4.01 The City may terminate this agreement upon written notice to the Club, in the event that the Club fails to perform any of its obligations, or is in breach of any of its covenants, pursuant to this agreement or the Lease, and has failed to perform such obligations or remedy such breach within thirty (30) days from the date of written notification to the Club by the City.

5.00 USE OF THE PROPERTY

5.01 The City acknowledges that the use of the Property as a clubhouse satisfies the requirements of Section 110(1) of the Municipal Act, 2001. The Club covenants and represents that it shall only use the Property only for the purposes of a clubhouse and for no purpose that does not meet the requirements of Section 110(1) of the Municipal Act, 2001 or of O. Reg. 603/06.

5.02 The Club shall permit use of the Clubhouse by the City, free of charge, on four (4) occasions in each calendar year. The City shall provide at least sixty (60) days notice to the Club prior to each such use. In the event the City does not use all or any of its four (4) annual days in any calendar year, the City’s unused days shall not accrue or carry over.
6.00 INDEMNIFICATION AND INSURANCE
6.01 The Club agrees that it will indemnify and hold harmless the City from any liability, claims or costs, including solicitor’s fee and reasonable disbursements, which may be incurred as a result of the City entering into this agreement and which does not result from the City’s or its agent’s willful act, negligence, breach of contract or breach of law.

6.02 During the term of this agreement, the Club shall, at its expense, maintain a policy of insurance for property damage and third party public liability, in the minimum amount of Five Million Dollars ($5,000,000.00) or such other greater amount as the City may, after consulting with its insurer, reasonably require and property insurance of not less than the appraised value of the Clubhouse. Evidence of insurance shall be provided annually to the Director of Community Services or designate.

7.00 TAXES, DEVELOPMENT CHARGES AND PARKS LEVY
7.01 The City shall enact a by-law pursuant to Section 110 (6) of the Municipal Act, 2001, exempting the Property from taxation for municipal and school purposes, and from all development charges and parks levy amounts.

8.00 NOTICES AND CHANGES OF ADDRESS
8.01 Any notice required to be given pursuant to this agreement shall be either personally delivered or sent by facsimile transmission to the parties at the following addresses:
(a) to the City at: City Hall
500 George Street North
Peterborough, Ontario K9H 3R9
Attention: City Clerk
Facsimile Number: 705.743.7825

(b) to the Club at: Peterborough Rugby Union Football Club Inc.
2060 Campbell Ave.
P.O. Box 1761
Peterborough, ON K9J 6X4
Attention: The President
8.00 INDEPENDENT LEGAL ADVICE
8.01 The Club represents and warrants that (1) it has received independent legal advice before executing this agreement and (2) it has executed this agreement with a full understanding of the legal obligations it is undertaking and of the consequences of breaching this agreement.

9.00 ENUREMENT
9.01 This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunder set their respective hands and seals.

THE CORPORATION OF THE
CITY OF PETERBOROUGH

________________________________________
Daryl Bennett, Mayor

________________________________________
Nancy Wright-Laking, City Clerk

PETERBOROUGH RUGBY UNION
FOOTBALL CLUB

Date of Signature ______________________
Richard Aitken
President

Date of Signature ______________________
Bruce Kidd
Director of Development & Game

I/We have the authority to bind the Corporation
SCHEDULE “A”
LEGAL DESCRIPTION OF THE LEASED PROPERTY

Part of Block P Registered Plan No. 1A, Village of Ashburnham, Designated as Parts 2 and 3 on Reference Plan 45R-15256; Peterborough.