THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 13-158

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN ENCROACHMENT AGREEMENT FOR LANDS MUNICIPALLY KNOWN AS 25 GEORGE STREET NORTH, IN THE CITY OF PETERBOROUGH

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 an Encroachment Agreement with respect to the encroachment of the wooden exterior deck located at 25 George Street North, which said encroachment is on the lands described as Lake Street, in the City of Peterborough, 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 12th day of November, 2013.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
ENCROACHMENT AGREEMENT made this 29th day of October 2013

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
hereinafter referred to as the “City”,

and

SHAFIQ’S TASTE OF INDIA INC.
hereinafter referred to as the “Licencee”

and

PETERBOROUGH UTILITIES COMMISSION
hereinafter referred to as the “PUC”

WHEREAS the Licencee are the registered owners of the lands and premises known municipally as 25 George Street North, in the City of Peterborough, in the County of Peterborough, and being more particularly described in Schedule “A” attached hereto;

AND WHEREAS part of the wooden exterior deck erected on the said lands encroach over City owned lands in the City of Peterborough, known as Lake Street, which encroachments are described in Schedule “B” attached hereto (hereinafter referred to as the “Encroachment”);

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

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

1. The Licencee shall maintain the Encroachment in a good and workmanlike fashion and shall comply in all respects with the provisions of the Building Code Act, all by-laws of the City, and any other applicable regulations or reasonable direction from the City.

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

3. The Licencee agrees to maintain in full force and effect property damage and public liability insurance, naming “The Corporation of the City of Peterborough” and “Peterborough Utilities Commission, as additional named insureds, and with a cross liability endorsement in the minimum amount of Two Million Dollars ($2,000,000.00) per occurrence. Concurrent with the execution of this agreement, and on every anniversary date thereafter, the Licencee shall provide the City and PUC with a Certificate of Insurance confirming the existence of the above noted insurance coverage.

4. The Licencee acknowledges and agrees that, should the City require the use, for public purposes, of the lands upon which the Encroachment is located, the Licencee shall, upon sixty (60) days written notice from the City, remove or relocate the encroachment, and then reinstate the encroachment, to the satisfaction of the City all at the sole expense of the Licencee.
5. The Licencee acknowledges and agrees that the Encroachment is located near infrastructure which is owned, inspected, repaired and maintained by PUC. The Licencee further acknowledges that, due to the nature of PUC infrastructure, PUC may require access to its infrastructure in circumstances which make providing prior notice impossible or impracticable. While PUC will, if circumstances permit, use its best efforts to provide prior notice to the Licencee, the Licencee acknowledges and agrees that in urgent or emergency situations it may not be possible for PUC to provide prior notice before it inspects, repairs or maintains its infrastructure. In the event PUC requires access to its infrastructure, and such access requires all or a portion of the Encroachment to be removed, such removal, whether performed by the Licencee or by PUC or its agents, and whether prior notice has been provided or not, shall be performed at the sole expense of the Licencee. If PUC has provided prior notice to the Licencee that the Encroachment, or a portion thereof, needs to be removed, then the Licencee shall forthwith upon receiving notice from PUC remove the Encroachment as directed. The Licencee shall only reinstate the Encroachment, after receiving permission and direction from the City and PUC and all such removal and reinstatement shall be at the sole expense of the Licencee.

6. The Licencee acknowledges and agrees that under no circumstances shall the City or PUC be liable to the Licencee for any damage to the Encroachment no matter how such damage is caused. Without limiting the generality of the foregoing, but for greater clarity, neither the City nor PUC shall be responsible for any damage caused to the Encroachment as a result of carrying out any inspection, maintenance, repair, snow removal, or other activity in, on, or to their infrastructure (including but not limited to roadways, boulevards and sidewalks) owned or maintained by either the City or PUC.

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

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

SIGNED, SEALED AND DELIVERED in the presence of:

THE CORPORATION OF THE
CITY OF PETERBOROUGH

Daryl Bennett, Mayor

John Kennedy, Clerk

SHAFIQ’S TASTE OF INDIA INC.

Per: ____________________________
Name: __________________________
Office: __________________________
I have the authority to bind the Corporation.

PETERBOROUGH UTILITIES COMMISSION

Per: ____________________________
Name: __________________________
Office: __________________________

Per: ____________________________
Name: __________________________
Office: __________________________
I/We have the authority to bind the Commission
SCHEDULE A

Legal Description

PART LOT 1 SOUTH OF PERRY STREET & WEST OF GEORGE STREET, NORTH OF LAKE STREET
PLAN 7 (PETERBOROUGH), PARTS 1 & 2 PLAN 45R9957, S/T AN EASEMENT OVER PART 2 PLAN
45R9957 AS IN R415747; PETERBOROUGH
SCHEDULE B

(Diagram/drawing/survey/permit approved plans showing location of Encroachment filed with Building Division)