The Corporation of the City of Peterborough

By-Law Number 16-006

Being a By-law to authorize the execution of an Encroachment Agreement for lands municipally known as 168 Brock Street and 172 Brock Street, in the City of Peterborough

The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

1. That the Mayor and Clerk be hereby authorized to execute an Encroachment Agreement to permit the installation of west facing door openings and windows in the existing Building and to maintain the encroachment, which said encroachment is on the lands described as Brock Street parking lot, 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 1st day of February, 2016.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
Schedule “A”

Encroachment Agreement made this ____ day of ________________, 2016.

Between:

The Corporation of the City of Peterborough (the “City”)

and

172 Brock Corporation (the “Owner”)

Recitals

A. The Owner is the registered owner of the lands and premises known municipally as 168 Brock Street and 172 Brock Street, in the City of Peterborough, and being more particularly described in Schedule “A” attached hereto.

B. Prior to 14 January 2016 each of 168 Brock Street and 172 Brock Street contained a separate building.

C. On 14 January 2016, title to 168 Brock Street and 172 Brock Street merged in the Owner’s name.

D. After the intended renovation is complete, the two former buildings will function as one building (the “Building”).

E. The Owner wishes to renovate the Building and install new west-facing windows.

F. Part of the Building erected on the said lands, more specifically on the lands with the municipal address, 172 Brock Street, does not meet minimum building setback requirements under the Building Code Act (the “Limiting Distance”) to permit the Owner to install west-facing door openings and windows and therefore encroach onto City-owned lands in the City of Peterborough, known as 190 Brock Street, a.k.a. the Brock Street Parking Lot, (the “City Property”). Encroachments are described in Schedule “B” attached hereto (the “Encroachment”).

G. The Owner has applied for a Building Permit to renovate the Building and create windows in the west wall.

H. As a condition of being granted a Building Permit, the Owner is required to enter into this Agreement.

Now therefore the Parties hereto covenant and Agreement as follows:

1. The City grants permission to the Owner, at the sole risk and expense of the Owner, to install west-facing door openings and windows in the Building, provided that the size and location of such windows shall first be approved by the City.

2. The Owner shall maintain the Encroachments in a good and workmanlike fashion and shall comply in all respects with the provisions of all City by-laws, the Building Code Act, the Fire Code and any other applicable regulations.

3. Nothing in this agreement shall have the effect of permitting the Owner to interfere, in any way, with the usefulness or safety of the City Property.

4. The Owner shall at all times, indemnify and save harmless the City from any loss, expense, or liability howsoever incurred by the City arising from the exercise of the privileges herein granted to the Owner, and the Owner hereby waives, as against the City, all claims of whatever nature, where such loss, expense, liability or claims arise directly or indirectly out of or attributable to:
   a. the exercise by the Owner or others of the privileges herein granted, whether or not such loss, expense, liability or claim result from the negligence of the City; and
   b. the Owner’s failure to exercise its obligations under Article 7 herein; and
c. the exercise by the City, or by agents of the City, of the City's rights under Article 8 herein.

5. The Owner shall obtain and maintain in force during the continuance of this agreement, insurance providing coverage for commercial general liability and property damage, in the minimum amount of Two Million Dollars ($2,000,000.00). The City shall be named as an additional insured, and the policy shall contain a cross-liability clause, to the satisfaction of the City. The Owner agrees to forward to the City the original or certified copy of a certificate of such insurance, and the annual renewals thereof. It is acknowledged and agreed by the Owner that the provision of such insurance shall in no way relieve the Owner of its obligations pursuant to this agreement.

6. This agreement shall not be assignable by the Owner without the written consent of the City.

7. The Owner acknowledges and agrees that, should the City or a successor in title, develop the City Property, the Owner shall at its sole risk and expense, upon ninety (90) days written notice from the City, or from a successor in title:
   a. Replace any and all windows in the west wall of the Building which do not meet the Limiting Distance with fire-rated windows or doors; or
   b. Block-up such window opening or door opening with non-combustible material.

All such work undertaken by the Owner shall meet or exceed requirements contained in the Building Code Act in effect at the time the notice is sent.

8. If the Owner fails to perform any obligation under this Agreement, the Owner consents to the City entering upon the land and into the Building with such personnel, agents, equipment and materials as necessary to perform the such work as the City’s Chief Building Official, or qualified designate, may direct or require to obtain compliance with the Building Code Act in relation to the Limiting Distance. The Owner further consents to any costs incurred by the City, including a 25% administrative surcharge, being added to the tax-roll for the Owner’s property.

9. Each Party acknowledges and agrees that it has participated in the preparation and drafting of this Agreement and, accordingly, this Agreement shall not be interpreted either more or less favorably in favor of any Party by virtue of the fact that one Party or its counsel has been principally responsible for the preparation or drafting of all or a portion of this Agreement.

In witness whereof the parties hereto have hereunto set their respective hands and seals.

Signed, Sealed & Delivered in the presence of:  

The Corporation of the City of Peterborough

Allan Seabrooke, CAO

John Kennedy, Clerk

172 Brock Corporation

Dr. J. Ingram, President

I/We have the authority to bind the Corporation
Schedule A  
Legal Description

168 Brock Street

PIN 28106-0072

PT LT 2 W OF GEORGE ST & N OF BROCK ST PL 1 TOWN OF PETERBOROUGH
PT 7 45R3889; PETERBOROUGH CITY

172 Brock Street

PIN 28106-0073

PT LT 2 W OF GEORGE ST & N OF BROCK ST PL 1 TOWN OF PETERBOROUGH
AS IN R517072, T/W INTEREST IN R517072; CITY OF PETERBOROUGH
Schedule B

(Diagram/drawing/survey showing location of Encroachments filed with Legal Services)
