THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 03-157

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF
AN AGREEMENT BETWEEN THE CORPORATION OF THE
CITY OF PETERBOROUGH AND FIRST CAPITAL
(PETERBOROUGH) CORPORATION (LICENCE FOR
DRIVEWAY TO CLONSILLA AVENUE)

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
an Agreement between The Corporation of the City of Peterborough and,
First Capital (Peterborough) Corporation) in the form attached hereto as
Schedule "A", and to affix the seal of the Corporation thereto.

By-law read a first and second time this 11th day of August, 2003

By-law read a third time and finally passed this 11th day of August, 2003

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk
AGREEMENT made this 11th day of August, 2003.

BETWEEN:

FIRST CAPITAL (PETERBOROUGH) CORPORATION
hereinafter referred to as the “Licensee”,

OF THE FIRST PART

- and –

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

OF THE SECOND PART

WHEREAS the City is the owner of the lands having an area of approximately 0.509 hectares (1.26 acres) and described in Schedule “A” attached hereto (hereinafter referred to as the “Driveway Lands”), which lands are located immediately to the west of lands owned by the Licensee, which lands are subject to a Site Plan Agreement between the Licensee and the City which was registered on May 2, 2002, as Instrument 95950;

AND WHEREAS the Licensee has requested that the City grant to the Licensee the right to construct and use a driveway on the Driveway Lands, and the City is prepared to do so, upon the terms and conditions hereinafter set forth;

NOW THEREFORE THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

1. The City agrees to permit the Licensee to use the Driveway Lands for the purpose of constructing, using and maintaining a driveway from Clonsilla Avenue to the Licensee’s lands adjacent to the Driveway Lands.

2. The licence hereby granted shall commence on the date of execution of this agreement and continue in full force and effect until terminated by either party pursuant to the provisions of this agreement.

3. The Licensee shall use the Driveway Lands solely for the purpose of constructing, using and maintaining a driveway for vehicular and/or pedestrian ingress and egress to and from the Licensee’s lands and Clonsilla Avenue. Prior to commencement of construction of the driveway, the Licensee shall obtain the City’s approval of detailed plans and specifications prepared by a Professional Engineer.

4. Prior to commencement of construction of the driveway, the Licensee shall provide to the City a detailed vegetation inventory of the Driveway Lands, and will provide adequate compensation for any vegetation to be lost through construction of the driveway, to the satisfaction of the Planner, Urban Design.

5. Commencing on the date upon which the driveway to be constructed by the Licensee is completely constructed and ready for use, and any necessary and applicable approvals have been obtained,
and on the anniversary of such date in each year so long as this agreement continues in full force and effect, the Licensee shall pay to the City, in advance, an annual licence fee. The annual licence fee for the first ten (10) years shall be the annual yield for the applicable Canada Savings Bonds maturing closest to the tenth anniversary of the date of the first payment, applied to a notional value of the Driveway Lands of $150,000. In the event that this agreement continues beyond the first ten years, the annual fee for each succeeding ten-year period shall be the lesser of:

(a) the then-current ten-year rate applicable to Canada Savings Bonds, and
(b) the rate for the then-expiring ten years, such then-expiring rate to be adjusted for the increase or decrease in the Consumer Price Index for such ten year period. For certainty, the parties acknowledge that the notional value employed for the purposes of this paragraph is not based on a current appraisal and shall have no bearing whatsoever on the determination of the fair market value of the Driveway Lands for the purposes of paragraph 9 hereof.

6. The Licensee agrees that the driveway shall be restricted to “right in, right out” movements only, unless or until the Licensee provides a left turn lane on Clonsilla Avenue, at the Licensee’s sole expense, and to the full satisfaction of the City, after which, left turns into the driveway from Clonsilla Avenue will be permitted. Left turns out of the driveway shall continue to be prohibited.

7. The Licensee agrees to indemnify and save harmless the City in respect of any liabilities, claims, actions, costs, or expenses incurred by the City and arising, either directly or indirectly, from either the construction, maintenance or use of the driveway on the Driveway Lands. The City shall advise the Licensee in writing, upon receipt of any claim, action or other proceeding that could give rise to the indemnity contemplated by this paragraph.

8. The Licensee shall obtain, and maintain in full force and effect during the currency of this agreement, comprehensive liability insurance with respect to personal injury and property damage, in an amount of at least Two Million Dollars ($2,000,000.00), duly endorsed with loss payable to the City as an additional named insured, as its interest may appear. The Licensee shall provide written evidence of such insurance coverage at the time of execution of this agreement, and thereafter as requested. The said insurance policy shall not be capable of cancellation by the insurer, in the absence of at least thirty (30) days notice to the City.

9. The Licensee shall, upon written notice from the City, purchase the Driveway Lands at their fair market value. In the event that the City wishes to sell the Driveway Lands to the Licensee pursuant to this agreement, the City shall provide written notice to the Licensee, accompanied by an appraisal obtained by the City at its expense, performed by a fully qualified appraiser. The Licensee may accept the City’s appraisal, or shall obtain a second appraisal at its expense, and, provided that the two appraisals are within ten per cent (10%) of each other, the fair market value shall be the average of the two appraisals. In the event that the appraisals differ by more than ten per cent (10%), and the parties are unable to agree on the fair market value, the two appraisers shall select a third fully qualified appraiser, whose determination of
the fair market value shall be final and binding, and the cost of the third appraiser shall be divided equally
between the City and the Licensee. The Lands shall be appraised as if they were in the state that existed
prior to this licence agreement, and no value shall be added as a result of the access or improvements
thereon. The Licensee shall bear the cost of the preparation of a reference plan of survey.

10. This agreement may be terminated by either party upon at least six (6) months written notice to the
other. The City agrees that its right to terminate the agreement may be exercised only in the event that the
Driveway Lands are required by the City for public highway purposes. Regardless of which party
terminates the agreement, the Licensee shall, at the option of the City, remove the driveway within ninety
(90) days of the termination date, and restore the Driveway Lands to a level condition satisfactory to the
City Engineer, at the expense of the Licensee.

11. The Licensee agrees that this agreement is assignable to a successor in title to the Licensee’s lands
only in the event that such successor agrees, in writing, to assume all of the obligations of the Licensee
pursuant to this agreement.

12. Any notice required to be given pursuant to this agreement shall be sufficiently given if forwarded
by prepaid registered mail, or facsimile transmission, to the parties at the following addresses:

(a) To the City at: 500 George Street North
Peterborough, Ontario K9H 3R9
Attention: City Clerk

(b) To the Licensee at: BCE Place, Canada Trust Tower,
Suite 2820, P.O. Box 219,
161 Bay St.,
Toronto, Ontario M5J 2S1

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

SIGNED, SEALED AND DELIVERED in the presence of:

FIRST CAPITAL (PETERBOROUGH)
CORPORATION

Name:
Office:

The Corporation of the City of Peterborough

Sylvia Sutherland, Mayor

Nancy Wright-Laking, Clerk