

**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 11<sup>th</sup> day of August, 2003

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

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

**SCHEDULE 'A'**

A G R E E M E N T made this 11th day of August, 2003.

B E T W E E N :

**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

