

2298

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Agreement**”) is made this 19th. day of JULY, 2004 (the “**Effective Date**”)

B E T W E E N:

DIEBOLD ELECTION SYSTEMS ULC.
Suite 350-1200 West 73rd Avenue
Vancouver, British Columbia, Canada
V6P 6G5

(the “**Lessee**”)

– and –

The Town of Pelham
Pelham Municipal Building
20 Pelham Town Square
Fonthill, ON
L0S 1E0

(the “**Lessor**”)

WHEREAS the Lessee wishes to lease certain voting election equipment owned by the Lessor and the Lessor has agreed to lease such equipment to the Lessee on the terms and conditions hereinafter set forth;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. LEASE

The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor those Accu Vote Ballot Tabulating Units (the “Unit” or collectively, the “Units”) described in the attached Schedule A for use by Lessee.

2. TERM

Notwithstanding the actual delivery date of the Units, this Agreement is for a term of 8 months commencing on August 23, 2004 and ending on **April 30, 2005** (the “**Lease Term**”), unless otherwise agreed by the parties in writing subsequent to the Effective Date.

3. RENT

The Lessee shall pay to the Lessor rent for the Lease Term in the amount of \$250.00 Cdn per Unit plus applicable taxes, including goods and services tax, which rent and taxes shall be payable net thirty (30) days once the Agreement has been signed.

4. INSTALLATION, MAINTENANCE AND REPAIR

The Lessor will be responsible for preparing and packaging the Units and will communicate to the Lessee that the Units are ready for shipping. The Lessee will arrange for the shipping and transportation of the Units from the Lessor's location to the address of the Lessee set out in this Agreement. The Lessee will be entirely responsible to pay applicable customs or export duties, if any, in connection with such shipment and delivery. The Lessee will also assume responsibility for all other costs associated with transporting the Units to its own customers. Except as otherwise described, the Lessee shall, at its expense, be responsible for arranging installation, removal and return, maintenance and repair of the Units and, at its expense, shall keep the Units in good repair, condition and working order. The Lessee shall not make any alterations to the Units during the Lease Term without first obtaining the written permission of the Lessor.

5. CORRECTION OF THE UNITS

The Lessor represents and warrants that the Units will be delivered to the Lessee in proper working condition and free from any defects in design, operation or fitness for purpose of use. In the event, however, that the Lessee determines that the Units were not delivered in good working order, the Lessee shall alert the Lessor of any such problems and the Lessor shall ask the Lessee to rectify such problems identified by the Lessee with such Units. If the Lessee is unable to rectify the problems described above to its satisfaction, acting reasonably, within thirty (30) days of the Lessee's original notice to the Lessor describing the Units' problems, then the Lessee shall be entitled to terminate the Agreement upon the provision of seven (7) days' notice to the Lessor and the Lessee shall receive a complete refund of the fees charged by the Lessor for such defective Units during the Lease Term.

6. LOSS AND DAMAGE

The Units shall be at the risk of the Lessee. Should any Unit shall be lost, stolen, destroyed or damaged beyond repair, for any reason, the Lessee shall promptly notify the Lessor, and shall forthwith pay, at the Lessee's discretion, the current replacement value of the Units so lost, stolen, destroyed, damaged, condemned, confiscated or seized or replace the Units with like or current versions of such Units of its own.

7. LIMITATION OF LIABILITY

OTHER THAN AS DESCRIBED IN SECTION 6 ABOVE, UNDER NO CIRCUMSTANCES SHALL THE LESSEE BE RESPONSIBLE TO THE LESSOR FOR ANY LOSSES, DAMAGES, PENALTIES, COSTS, EXPENSES OR INCONVENIENCES OF ANY KIND OR NATURE WHATSOEVER OR HOWSOEVER CAUSED RELATED TO THIS AGREEMENT OR FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES EXPERIENCED BY THE LESSOR UNDER THIS AGREEMENT EVEN IF THE LESSOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST REVENUES, LOST SALES, LOST OPPORTUNITIES, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED SAVINGS OR DAMAGES DUE TO ECONOMIC LOSSES OF ANY KIND.

8. RETURN OF UNITS

Upon expiration of the Lease Term, the Lessee will, at its own risk and expense, as soon as practicable return the Units to the Lessor in the same condition as when delivered, at such location as the Lessor shall reasonably designate.

9. SURVIVAL

Those Sections which should by their very nature survive the termination of this Agreement shall survive such termination, such Sections to include, but be not limited to: Sections 4, 5, 6, 7, 9 and 10.

10. GENERAL

- (A) Time is hereby expressly made of the essence of this Agreement with respect to the performance by the parties of their respective obligations under this Agreement.
- (B) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, personal representatives, successors and permitted assigns. This Agreement may not be assigned by either party hereto without the prior written consent of the other party.
- (C) This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior agreements between the parties. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought.
- (D) Each of the parties hereto hereby covenants and agrees to execute such further and other documents and instruments and do such further acts and other things as may be commercially reasonably required to implemented carry out the intent of this Agreement.
- (E) All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by postage prepaid double registered mail addressed as follows:

To the Lessee:
DIEBOLD ELECTION SYSTEMS ULC.
Suite 350-1200 West 73rd Avenue
Vancouver, BC
V6P 3G2

To the Lessor:
The Town of Pelham
Pelham Municipal Building
20 Pelham Town Square
Fonthill, ON
L0S 1E0
Attention: Cheryl Miclette

or to such other address as may be given in writing by the Lessee or the Lessor and shall be deemed to have been received, if delivered, on the date of delivery and if mailed then on the third business day following the posting thereof.

- (F) This Agreement may be executed in counterparts, all of which when executed and delivered, shall constitute one single agreement between the parties. This Agreement may be executed by facsimile.
- (G) The headings of Sections are inserted for convenience only and are not intended to be construed as part of this Agreement or to limit the scope of a particular Section.
- (H) If any Section, sentence, paragraph or part of this Agreement shall be held by any court of competent jurisdiction to be invalid, illegal or unenforceable, such judgment will not affect or nullify the remaining provisions of this Agreement.
- (I) This Agreement shall be governed by and interpreted in accordance with the laws of the province of British Columbia, Canada and the federal laws of Canada applicable therein, excluding any conflicts of laws rules. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. The parties irrevocably attorn to the non-exclusive jurisdiction of the courts of Vancouver, British Columbia in respect of any disputes arising under this Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto effective as of the Effective Date.

DIEBOLD ELECTION SYSTEMS ULC.

By: _____

Name: Dave Byrd

Title: Director of Operations

LESSOR

By: _____

Ronald W. Leavens

Name: Ron Leavens

Title: Mayor

By: _____

Cheryl Midette

Name: Cheryl Midette

Title: Town Clerk

SCHEDULE A
DESCRIPTION OF THE UNITS

AccuVote OS units Serial Number:

86994, 86996, 86963, 82533, 82528, 82529

6 Carrying Cases

TOR_LAW\5647473\2

BL# 2598

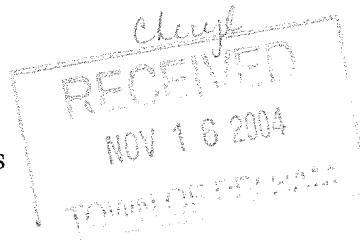


Diebold Election Systems Inc.

1200 West 73rd Avenue
Suite 350
Vancouver, BC V6P 3G5
604 261-6313
fax 604 261-9226
www.dieboldes.com

November 9, 2004

The Town of Pelham
City Clerks Department/Elections
20 Pelham Town Square
Fonthill, Ontario
L0S 1E0



To Whom It May Concern:
Attn: Cheryl Miclette

Enclosed is a fully executed contract for your records. Diebold Elections Systems thanks you for giving us access to your Accu Vote equipment. If you have any questions concerning this agreement, please give us a call at Diebold Election Systems Vancouver office.

Sincerely,

Cheryl Hall
Administrative Assistant

/ch

Enclosure

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made this 1st day of JULY, 2004 (the "Effective Date")

BETWEEN:

DIEBOLD ELECTION SYSTEMS ULC.

Suite 350-1200 West 73rd Avenue
Vancouver, British Columbia, Canada
V6P 6G5

(the "Lessee")

– and –

The Town of Pelham
Pelham Municipal Building
20 Pelham Town Square
Fonthill, ON
L0S 1E0

(the "Lessor")

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NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. LEASE

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2. TERM

Notwithstanding the actual delivery date of the Units, this Agreement is for a term of 8 months commencing on August 30, 2004 and ending on April 30, 2005 (the "Lease Term"), unless otherwise agreed by the parties in writing subsequent to the Effective Date.

3. RENT

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4. INSTALLATION, MAINTENANCE AND REPAIR

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5. CORRECTION OF THE UNITS

The Lessor represents and warrants that the Units will be delivered to the Lessee in proper working condition and free from any defects in design, operation or fitness for purpose of use. In the event, however, that the Lessee determines that the Units were not delivered in good working order, the Lessee shall alert the Lessor of any such problems and the Lessor shall ask the Lessee to rectify such problems identified by the Lessee with such Units. If the Lessee is unable to rectify the problems described above to its satisfaction, acting reasonably, within thirty (30) days of the Lessee's original notice to the Lessor describing the Units' problems, then the Lessee shall be entitled to terminate the Agreement upon the provision of seven (7) days' notice to the Lessor and the Lessee shall receive a complete refund of the fees charged by the Lessor for such defective Units during the Lease Term.

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(a) Time is hereby expressly made of the essence of this Agreement with respect to the performance by the parties of their respective obligations under this Agreement.

(b) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, personal representatives, successors and permitted assigns. This Agreement may not be assigned by either party hereto without the prior written consent of the other party.

(c) This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior agreements between the parties. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought

(d) Each of the parties hereto hereby covenants and agrees to execute such further and other documents and instruments and do such further acts and other things as may be commercially reasonably required to implemented carry out the intent of this Agreement.

(e) All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by postage prepaid double registered mail addressed as follows:

To the Lessee:

DIEBOLD ELECTION SYSTEMS ULC.

Suite 350-1200 West 73rd Avenue

Vancouver, BC

V6P 3G2

With copy to:

Diebold Election Systems Inc.

1611 Wilmeth Road

McKinney, TX

USA, 75069

ATTN: Contract Administrator

To the Lessor:

The Town of Pelham
Pelham Municipal Building
20 Pelham Town Square
Fonthill, ON
L0S 1E0

Attention: Cheryl Miclette

or to such other address as may be given in writing by the Lessee or the Lessor and shall be deemed to have been received, if delivered, on the date of delivery and if mailed then on the third business day following the posting thereof.

(f) This Agreement may be executed in counterparts, all of which when executed and delivered, shall constitute one single agreement between the parties. This Agreement may be executed by facsimile.

(g) The headings of Sections are inserted for convenience only and are not intended to be construed as part of this Agreement or to limit the scope of a particular Section.


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(i) This Agreement shall be governed by and interpreted in accordance with the laws of the province of British Columbia, Canada and the federal laws of Canada applicable therein, excluding any conflicts of laws rules. The *United Nations Convention for the International Sale of Goods* shall not apply to this Agreement. The parties irrevocably attorn to the non-exclusive jurisdiction of the courts of Vancouver, British Columbia in respect of any disputes arising under this Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto effective as of the Effective Date.


DIEBOLD ELECTION SYSTEMS ULC.

By:



Name: ~~Greg Loe~~ **DAVE BIND**
Title: Director of Operations

LESSOR

By:


Name: Ron Leavens
Title: Mayor

By:


Name: Cheryl Miclette
Title: Town Clerk

SCHEDULE A
DESCRIPTION OF THE UNITS

AccuVote OS units Serial Number:

86994, 86996, 86963, 82533, 82528, 82529

6 Carrying Cases

TOR_LAW\5647473\2