



LEASE (COMMERCIAL)

Made the 23rd day of August, 2010

BETWEEN

1729755 Ontario Limited

(the "Landlord")

- and -

THE CORPORATION OF THE TOWN OF PELHAM

(the "Tenant")

In consideration of the rents, covenants and obligations stipulated herein the Landlord and the Tenant have agreed to enter into a Lease of part of the premises known municipally as:

294 Canboro Road
Ridgeville, Ontario L0S 1M0
(Part Lot 5, Concession 8, Pelham as in RO591374
and being all of PIN 64034-0024 (LT))

which part is more particularly outlined in red on Schedule A attached (the "Premises").

1. GRANT OF LEASE

- I. The Landlord leases the Premises to the Tenant:
 - a. At the Rent set forth in Section 2;
 - b. For the Term set forth in Section 3; and
 - c. Subject to the conditions and in accordance with the covenants, obligations, and agreements herein.
- II. The Landlord covenants that it has the right to grant the leasehold interest in the Premises free from encumbrances except as disclosed on title.

2. RENT

- I. Rent means the amounts payable by the Tenant to the Landlord pursuant to this Section and includes Additional Rent.
- II. The Tenant covenants to pay the Landlord, during the Term of this Lease rent as follows:
 - a. The sum of \$12,000 per annum, payable monthly in advance in equal installments of \$1,000 on the 1st day of each and every month, commencing on the first day of the Term;
- III. The Tenant further covenants to pay all other sums required by this Lease to be paid by it.



- IV. The Tenant and Landlord agree to the following terms regarding payment of expenses related to the property:
- a. The Landlord will be responsible to pay all taxes on the property such as income and estate taxes, property taxes and mortgage payments if applicable);
 - b. The Tenant shall pay the following expenses related to the Premises:
 - (i) Utilities (limited to hydro and water);
 - (ii) Property Taxes (limited to ½ the annual amount billed by the Town)
 - (ii) Insurance premiums for that insurance for which the Tenant is responsible (limited to operation of bulk water station).
 - c. The Tenant agrees to have all invoices for expenses set out in Section 2 (IV) (b) (i) and (ii) invoiced directly to the Tenant.
 - d. The Tenant hereby agrees to indemnify and protect the Landlord from any liability accruing to the Landlord in respect of the expenses payable by the Tenant as provided for herein;
 - e. If the Tenant fails to make any of the payments required by this Lease then the Landlord may make such payments and charge to the Tenant as Additional Rent the amounts paid by the Landlord;
 - (i) And if such charges are not paid by the Tenant on demand the Landlord shall be entitled to the same remedies and may take the same steps for recovery of the unpaid charges in the event of the Rent in arrears.
- V. All payments to be made by the Tenant pursuant to this Lease shall be delivered to the Landlord at the Landlord's address for service set out in Section 12 or to such other place as the Landlord may from time to time direct in writing.

3. TERM AND POSSESSION

- I. The tenant shall have possession of the Premises for a period of three (3) years, commencing on the 1st day of August, 2010 and ending on the 31st day of July, 2013, subject to rights of earlier termination and rights of renewal as provided for in Schedule "A".
- II. Subject to the Landlord's rights under this Lease, and as long as the Lease is in good standing the Landlord covenants that the Tenant shall have quiet enjoyment of the Premises during the Term of the Lease without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming through the Landlord. In the event that the Landlord should sell the lands of which the Premises form a part it shall be a condition of such sale that the purchaser agrees to be bound by the terms and conditions of this Lease.
- III. If for reasons beyond the Landlord's control, vacant possession of the Premises cannot be given to the Tenant on the commencement date of the Term of the Lease, the Lease shall remain in effect but the Tenant shall not be required to pay Rent until the date when possession is actually given to the Tenant;
 - a. But if possession is not given within ninety (90) clear days from the commencement date of this Lease, the Tenant may terminate this Lease by written notice to the Landlord;
 - b. And any delay in the actual occupation by the Tenant of the Premises shall extend the Term of the Lease for that same period.

4. ASSIGNMENT

- I. The Tenant shall not assign this Lease or sublet the whole or any part of the Premises unless he first obtains the consent of the Landlord in writing, which consent shall not unreasonably be withheld:



- a. And the Tenant hereby waives his right to the benefit of any present or future Act of the Legislature of Ontario which would allow the Tenant to assign this Lease or sublet the Premises without the Landlord's consent.
- II. The consent of the Landlord to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting.
- III. Any consent granted by the Landlord shall be conditional upon the assignee, sublessee or occupant executing a written agreement directly with the Landlord agreeing to be bound by all the terms of this Lease as if the assignee, sublessee or occupant had originally executed this Lease as Tenant.
- IV. Any consent given by the Landlord to any assignment or other disposition of the Tenant's interest in this Lease or in the Premises shall not relieve the Tenant from his obligations under this Lease, including the obligation to pay Rent and Additional Rent as provided for herein.

5. USE

- I. During the Term of this Lease the Premises shall not be used for any purpose other than as a bulk water filling station unless express written consent of the Landlord is received for a change in use. The Landlord acknowledges that the Premises will be used by various trucks and other vehicles coming onto the Premises in order to remove water from the Premises through use of the Tenant's card reading system and related equipment (the "System").
- II. The Tenant shall not do or permit to be done at the Premises anything which may:
 - a. Constitute a nuisance;
 - b. Cause damage to the Premises;
 - c. Cause injury or annoyance to occupants of neighbouring premises;
 - d. Make void or voidable any insurance upon the Premises;
 - e. Constitute a breach of any by-law, statute, order or regulation of any municipal, provincial or other competent authority relating to the Premises.
- III. The Landlord and Tenant mutually agree that the existing garage at the rear of the Premises shall be accessible to the Landlord at its convenience and all upkeep, repair, and maintenance of said garage will be the complete responsibility of the Landlord. The garage is shown on the attached Schedule "A".

6. REPAIR AND MAINTENANCE

- I. The Tenant covenants that during the term of this Lease and any renewal thereof the Tenant shall keep in good condition the land including all alterations and additions made thereto by the Tenant and make all necessary repairs to ensure alterations do not degrade the value of the land:
 - a. But the Tenant shall not be liable to effect repairs attributable to reasonable wear and tear, or to damage caused by fire, lightning or storm.
 - b. And the Tenant shall not be liable to effect repairs attributable to the garage outlined in Section 5 (III).
- II. The Tenant shall permit the Landlord or a person authorized by the Landlord to enter the Premises to examine the condition thereof and view the state of repair at reasonable times:
 - a. And if upon such examination repairs are found to be necessary, written notice of repairs required shall be given to the Tenant by or on behalf of the Landlord and the Tenant shall make the necessary repairs within the time specified in the notice;



- b. And if the Tenant refuses or neglects to keep the Premises in good repair the Landlord may, but shall not be obliged to, make any necessary repairs, and shall be permitted to enter the Premises, by himself or his servants or agents, for the purpose of effecting the repairs without being liable to the Tenant for any loss, damage or inconvenience to the Tenant in connection with the Landlord's entry and repairs;
 - i. And if the Landlord makes repairs the Tenant shall pay the cost of the immediately as Additional rent.
- III. Upon the expiry of the Term or other determination of this Lease the Tenant agrees peaceably to surrender the Premises, including any alterations or additions made thereto, to the Landlord in a state of good repair, reasonable wear and tear and damage by fire, lightning and storm only excepted.
- IV. The Tenant shall immediately give written notice to the Landlord of any substantial damage that occurs to the Premises from any cause.

7. ALTERATIONS AND ADDITIONS

- I. If the Tenant, during the Term of this Lease or any renewal of it, desires to make any alterations or additions to the Premises, including but not limited to: erecting partitions, attaching equipment, and installing necessary furnishings or additional equipment of the Tenant's business, the Tenant may do so at its own expense, at any time and from time to time, if the following conditions are met:
 - a. Before undertaking any alteration or addition the Tenant shall submit to the Landlord a plan showing the proposed alterations or additions and the Tenant shall not proceed to make any alteration or addition unless the Landlord has approved the plan, and the Landlord shall not unreasonably or arbitrarily withhold his approval;
 - i. And items included in the plan which are regarded by the Tenant as "Trade Fixtures" shall be designated as such on the plan. In this regard the Landlord acknowledges that the System is a Trade Fixture;
 - b. Any and all alterations or additions to the Premises made by the Tenant must comply with all applicable building code standards and by-laws of the municipality in which the Premises are located.
- II. The Tenant shall be responsible for and pay the cost of any alterations, additions, installations or improvements that any governing authority, municipal, provincial or otherwise, may require to be made in, on or to the Premises if such alterations, additions, installations or improvements are required because of the Tenant's use of the Premises.
- III. No sign, advertisement or notice shall be inscribed, painted or affixed by the Tenant, or any other person on the Tenant's behalf, on any part of the inside or outside of the building in which the Premises are located unless the sign, advertisement or notice has been approved by the Landlord acting reasonably.
- IV. All alterations and additions to the Premises made by or on behalf of the Tenant, other than the Tenant's Trade Fixtures, shall immediately become the property of the Landlord without compensation to the Tenant unless the Tenant gets written acknowledgement to the contrary by the Landlord prior to installation.
- V. The Tenant agrees, at his own expense and by whatever means may be necessary, immediately to obtain the release or discharge of any encumbrance that may be registered against the Landlord's property in connection with any additions or alterations to the Premises made by the Tenant or in connection with any other activity of the Tenant.
- VI. If the Tenant has complied with his obligations according to the provisions of this Lease, the Tenant may remove his Trade Fixtures at the end of the Term or other termination of this Lease and the Tenant covenants that he



- will make good repair or replace as necessary any damage caused to the Premises by the removal of the Tenant's Trade Fixtures.
- VII. Other than as provided in paragraph 7 (VI) above, the Tenant shall not, during the Term of this Lease or anytime thereafter remove from the Premises any trade Fixtures or other goods and chattels of the Tenant except in the following circumstances:
- a. The removal is in the ordinary course of business;
 - b. The Trade Fixture has become unnecessary for the Tenant's business or is being replaced by a new or similar Trade Fixture; or
 - c. The Landlord has consented in writing to the removal;
- but in any case the Tenant shall make good any damage caused to the Premises by the installation or removal of any Trade Fixtures, equipment, partitions, furnishings and any other objects whatsoever brought onto the Premises by the Tenant.
- VIII. The Tenant shall not bring onto the Premises or any part of the Premises any machinery, equipment or any other thing that might in the opinion of the Landlord, by reason of its weight, size or use, damage the Premises.

8. INSURANCE

- I. During the Term of this Lease and any renewal thereof the Landlord shall at its cost maintain with respect to the Premises (including the garage located on the Premises), insurance coverage insuring against:
- a. Loss or damage by fire, lightning, storm and other perils that may cause damage to the Premises or the property of the Landlord in which the Premises are located as are commonly provided for as extended perils coverage or as may be reasonably required and obtained by the Landlord;
 - i. And the insurance policy shall provide coverage on a replacement cost basis in an amount sufficient to cover the cost of all signs and leasehold improvements;
 - b. Liability for bodily injury or death or property damage sustained by third parties up to such limits as the Landlord in his sole discretion deems advisable;
 - c. Rental income protection insurance with respect to fire and other perils to the extent of one year's Rent payable under this Lease;
 - i. But such insurance and any payment of the proceeds thereof to the Landlord shall not relieve the Tenant of its obligations to continue to pay rent during any period of rebuilding, repairing or restoration of the Premises except as provided in Section 9.
- II. The Tenant covenants to keep the Landlord indemnified against all claims and demands whatsoever by any person, whether in respect of damage to person or property, arising out of or occasioned by negligence of the Tenant in the maintenance, use or occupancy of the Premises by the Tenant or the subletting or assignment of same or any part thereof. And the Tenant further covenants to indemnify the Landlord with respect to any encumbrance on or damage to the Premises occasioned by or arising from the act, default, or negligence of the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees.
- III. The Tenant shall carry insurance in its own name insuring against the risk of damage to the Tenant's property within the Premises caused by fire or other perils and the policy shall provide for coverage on a replacement cost basis to protect the Tenant's stock-in-trade, equipment, Trade Fixtures, decorations and improvements.



9. DAMAGE TO THE PREMISES

- I. If the Premises or the building in which the Premises are located, are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:
 - a. If the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 120 clear days from the happening of such damage or destruction, then the Term hereby granted shall cease from the date the damage or destruction occurred, and the Tenant shall immediately surrender the remainder of the Term and give possession of the Premises to the Landlord, and the Rent from the time of the surrender shall abate;
 - b. If the Premises can with reasonable diligence be repaired and rendered fit for occupancy within 120 days from the happening of the damage or destruction, but the damage renders the Premises wholly unfit for occupancy, then the rent hereby reserved shall not accrue after the day that such damage occurred, or while the process of repair is going on, and the Landlord shall repair the Premises with all reasonable speed, and the Tenant's obligation to pay Rent shall resume immediately after the necessary repairs have been completed unless the Tenant gives notice it wished to terminate the Lease;
 - c. If the Lease premises can be repaired within 120 days as aforesaid, but the damage is such that the leased Premises are capable of being partially used, then until such damage has been repaired, the Tenant shall continue in possession and the Rent shall abate proportionately.
- II. Any question as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Landlord, but subject to the Tenants agreement.

10. ACTS OF DEFAULT AND LANDLORD'S REMEDIES

- I. An Act of Default has occurred when:
 - a. The Tenant has failed to pay Rent for a period of 15 consecutive days, regardless of whether demand for payment has been made or not;
 - b. The Tenant has breached his covenants or failed to perform any of his obligations under this Lease; and
 - i. The Landlord has given notice specifying the nature of the default and the steps required to correct it; and
 - ii. The Tenant has failed to correct the default as required by the notice;
 - c. The Tenant has:
 - i. Become bankrupt or insolvent or made an assignment for the benefit of Creditors;
 - ii. Had its property seized or attached in satisfaction of a judgment;
 - iii. Had a receiver appointed;
 - iv. Committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Landlord's property;
 - v. Without the consent of the Landlord, made or entered into an agreement to make a sale of its assets to which the Bulk Sales Act applies;
 - vi. Taken action if the Tenant is a corporation, with a view to winding up, dissolution or liquidation;



- d. Any insurance policy is cancelled or not renewed by reason of the use or occupation of the Premises, or by reason of non-payment of premiums;
- e. The Premises;
 - i. Become vacant or remain unoccupied for a period of thirty (30) consecutive days; or
 - ii. Are not open for business on more than thirty (30) consecutive business days in any twelve (12) month period or on any twelve (12) consecutive business days;
 - iii. Are used by any other person or persons, or for any other purpose as provided for in this Lease without the written consent of the Landlord,
- II. When an Act of Default on the part of the Tenant has occurred:
 - a. The current month's rent together with the next three months' rent shall become due and payable immediately, and
 - b. The Landlord shall have the right to terminate this Lease and to re-enter the Premises and deal with them as he may choose.
- III. If, because an Act of Default has occurred, the Landlord exercises his right to terminate this Lease and re-enter the Premises prior to the end of the Term, the Tenant shall nevertheless be liable for payment of Rent and all other amounts payable by the Tenant in accordance with the provisions of this Lease until the Landlord has re-let the Premises or otherwise dealt with the Premises in such manner that the cessation of payments by the Tenant will not result in loss to the Landlord:
 - a. And the Tenant agrees to be liable to the Landlord, until the end of the Term of this Lease for payment of any difference between the amount of Rent hereby agreed to be paid for the Term hereby granted and the Rent any new tenant pays to the Landlord.
- IV. The Tenant covenants that notwithstanding any present or future Act of this legislature of the Province of Ontario, the personal property of the Tenant during the term of this Lease shall not be exempt from levy by distress for Rent in arrears:
 - a. And the Tenant acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and by executing this lease:
 - i. The Tenant waives the benefit of any such legislative provisions which might otherwise be available to the Tenant in the absence of this agreement; and
 - ii. The Tenant agrees that the Landlord may plead this covenant as an estoppel against the Tenant if an action is brought to test the Landlord's right to levy distress against the Tenant's property.
- V. If, when an Act of Default has occurred, the Landlord chooses not to terminate the Lease and re-enter the Premises, the Landlord shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Tenant and to charge the costs of such rectification to the Tenant and to recover the costs as Rent.
- VI. If, when an Act of Default has occurred the Landlord chooses to waive his right to exercise the remedies available to him under this Lease or at law the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Landlord to prevent his exercising his remedies with respect to a subsequent Act of Default;
 - a. No covenant, term, or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

11. TERMINATION UPON NOTICE AND AT END OF TERM

- I. The Tenant agrees to permit the Landlord during the last three months of the Term of this Lease to display "For Rent" or "For Sale" signs or both at



the Premises and to show the Premises to prospective new tenants or purchasers and to permit anyone having written authority of the Landlord to view the Premises at reasonable hours.

- II. If the Tenant remains in possession of the Premises after termination of this Lease as aforesaid and if the Landlord then accepts rent for the Premises from the Tenant, it is agreed that such overholding by the Tenant and acceptance of Rent by the Landlord shall create a monthly tenancy only but the tenancy shall remain subject to all the terms and conditions of this Lease except those regarding the Term.

12. NOTICE

- I. Any notice required or permitted to be given by one party to the other pursuant to the terms of this Lease may be given

To the Landlord at:

1729755 Ontario Limited
227 Hwy 20 East,
Fonthill, ON L0S 1E6

To the Tenant at the Premises or at:

Town of Pelham
20 Pelham Town Square
PO Box 400
Fonthill, ON L0S 1E0

- II. The above addresses may be changed at any time by giving ten (10) days written notice.
- III. Any notice given by one party to the other in accordance with the provisions of this Lease shall be deemed conclusively to have been received on the date delivered if the notice is served personally or seventy-two (72) hours after mailing if the notice is mailed.

13. REGISTRATION

The Tenant shall be permitted to register notice of or a copy of this Lease on title to the property of which the Premises form part without consent of the Landlord.

14. INTERPRETATION

- I. The words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.
- II. Unless the context otherwise requires, the word "Landlord" and the word "Tenant" wherever used herein shall be construed to include the executors, administrators, successors and assigns of the Landlord and Tenant, respectively.
- III. When there are two or more Tenants bound by the same covenants herein contained, their obligations shall be joint and several.

15. The parties hereby acknowledge that there are additional covenants, conditions and provisions contained in Schedule 'B' and that such covenants, conditions and provisions shall form part of this Lease.



In Witness of the foregoing covenants the Landlord and the Tenant have
executed this lease.

1729755 ONTARIO LIMITED

PER: 

GARY RILEY, President

I have authority to bind the corporation.

THE CORPORATION OF THE TOWN OF PELHAM

PER: 

MAYOR

PER: 

CLERK



SCHEDULE A

Existing Garage



Dylen
3135 (2010)

SCHEDULE B

1. RIGHT OF RENEWAL

The Tenant shall have the right to renew the Lease for additional terms of two (2) years each year at the end of the Term, or any renewal thereof, provided that it gives the Landlord at least six (6) months notice in writing prior to the end of the Term or any renewal period of its wish to renew. Such renewal shall be on the same terms and conditions including rent and the right to renew.

2. TERMINATION

Either party shall be permitted to terminate this Lease on six (6) months notice in writing to the other party.