

THIS AGREEMENT made in triplicate this 25th day of
September, 1978 A.D.

BETWEEN: MICHAEL NICHOLAS AND THOMAS KERR, of the Town of Pelham,
in the Regional Municipality of Niagara,

HEREINAFTER CALLED "NICHOLAS & KERR"
OF THE FIRST PART

-AND-

THE CORPORATION OF THE TOWN OF PELHAM, a Municipal
Corporation,

HEREINAFTER CALLED THE "TOWN"
OF THE SECOND PART

WHEREAS the parties hereto wish to enter into an agreement
for the purposes of supply and sale by the Town of water to Nicholas & Kerr
for a water loading station.

AND WHEREAS the owner of the lands described in ~~Schedule~~^A "A"
to this agreement is in agreement with the location of the water loading
station on his property in accordance with the terms of this agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration
of the mutual covenants and agreements herein contained, the parties hereto
agree as follows:

(1) BUILDING -

Nicholas & Kerr shall at their own expense construct
and arrange to be located in a position satisfactory to the Town's building
inspector, one aluminum clad building or proper wood construction, to be
termed a water station to receive the supply of water from the Town.
Such building shall be located on the lands described in Schedule "A".
Such building shall be adequately secured with locking door, and shall be
used solely for the purpose of housing the water standpipe, the water
meter, all necessary appurtenances thereto and an electrical supply adequate
to heat the building and water line.

(2) INSTALLATION OF WATER SERVICE -

(a) The Town shall pay all costs of the installation of
a two inch water line to the south limit of the lands described in Schedule
"A" hereto, Nicholas & Kerr shall at their own expense construct and
install the two inch water line from the said property line to the building,
a Clayton Valve Model 50g pressure sustaining valve and water meter, all
under the direction of, and to the satisfaction of the Town's Works Super-
intendent.

(b) The pressure sustaining valve and water meter shall be entirely housed in the water station and the water supply shall be used solely by Nicholas & Kerr, their servants and employees except in cases of emergency as hereinafter provided.

(3) DRAINAGE -

(a) Nicholas & Kerr shall insure that the lands associated with the water loading station and used for the purpose of vehicular traffic associated with the water station, or for accommodating the building, are graded in such a manner as to prevent any accumulation of water on the surface of the lands adjacent thereto.

(b) The Town's Works Superintendent shall inspect the property periodically to determine that such grading has been undertaken to his satisfaction and any regrading shall be carried on by Nicholas & Kerr forthwith upon the request of the Works Superintendent.

(4) CASH DEPOSIT -

Nicholas & Kerr has heretofore deposited with the Town's Treasurer the sum of Five Hundred (\$500.00) Dollars in trust to indemnify the Town against any outstanding accounts which may be owed and due to the Town or related to any matters covered by this agreement. The Town is hereby authorized to deduct from the said deposit any unpaid balance resulting from the purchase of water from the Town by Nicholas and Kerr, and in the event that there are no unpaid accounts by Nicholas & Kerr at the time of the termination of this agreement, the deposit shall be returned to Nicholas & Kerr by the Town without interest.

(5) WATER BILLING -

(a) Nicholas and Kerr shall be billed by the Town on a monthly basis for all water consumed and delivered under the provisions of this agreement during the previous month at the rate of \$1.02 per thousand gallons, provided that this charge will be subject to adjustments in direct proportion to the adjustment of the rate charged to the Town by the Regional Municipality of Niagara from time to time, and in direct proportion to the adjustment of the rate charged by the Town to its water users generally.

(b) Nicholas & Kerr shall have fifteen (15) days after mailing of the bill provided for in subparagraph (a) by the Town, to make full remittance in payment of such account to the Town's Treasurer. In the event of any default in making of payment by Nicholas & Kerr, the Town shall notify Nicholas & Kerr of the default and if such default is not rectified within ten (10) days next after notification by the Town, this agreement shall forthwith be at an end.

(c) The Town does not hereby guarantee or undertake the furnishing of any minimum or other amount of water, and reserves the right in times of emergency, as defined by the Town, to limit or terminate the

supply of water temporarily during the duration of such emergency.

(6) GENERAL -

(a) Nicholas & Kerr shall indemnify the Town against any damage sustained by the Town and from any action, cause of action, claim, demand, loss, costs, damage or injury which the Town may suffer or be put to, for or by reason of, or on account of the construction, maintenance, or any work done by Nicholas & Kerr, their contractors, servants, employees or agents in connection with the installation or operation of the water station on the lands described in Schedule "A". Nicholas & Kerr agree that they shall produce evidence of liability insurance covering their own liability and the liability of the Town in the amount of a least \$500,000.00 in connection with their operations upon, and from the lands described in Schedule "A" at all times during the term of the agreement. Nothing herein contained shall require Nicholas & Kerr to indemnify the Town with respect to any loss or damage caused by, and as a result of the entry upon the premises by the servants, agents, employees of the Town or of its Fire Department.

(b) In the event of the failure of Nicholas & Kerr to carry out any of the provisions of this agreement, the Town may give to Nicholas & Kerr ten (10) days notice in writing of the nature of such default, and after such period of notice, or forthwith in cases of emergency as defined by the Town, shall have the right to enter upon the said lands and at the expense of Nicholas & Kerr to do any such work as is required therein, and shall further have the right to recover the costs of such remedial work by action or from the cash deposit hereinbefore referred to, or by a combination thereof, and in addition or in the further alternative to treat the nonpayment of such costs by Nicholas & Kerr as a breach warranting termination of this agreement.

(c) Nicholas & Kerr shall at all times, keep posted on the front of the water station or otherwise prominently displayed, a notice indicating the ownership of the said water station, and mailing address and telephone number of the persons having authority to deal with all matters relating to the said water station.

(d) Nicholas & Kerr shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity, or before any court or administrative tribunal, the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition herein described and this agreement shall be pleaded as an estoppel against Nicholas & Kerr in any such proceedings.

(e) Nicholas & Kerr agree that they shall during the currency of this agreement or any successor thereto, upon the sale and transfer of the lands described in Schedule "A" attached hereto, require the purchaser or transferee thereof, to concur in and approve the provisions of this agreement by letter delivered to the Town and in the event that he

cannot or does not produce evidence of such approval, then this agreement shall terminate at the option of either party.

(7) TERM OF AGREEMENT -

(a) This agreement shall come into force upon the 24th day of September, 1978, or upon such earlier date as Nicholas & Kerr commences the drawing of water from the water station; provided however that if for any reason beyond the control of the Town, the installation of the water line from its main to the north limit of the lands described in Schedule "A" is delayed, the agreement shall come into force on the first day of the month next following the installation of said line. This agreement shall remain in force and effect at the descretion of Council.

(b) Any notice required under the terms of this agreement shall be given in writing by either party to the other of them as follows:

To the Town at the Municipal Offices, P.O. Box 400,
Fonthill, Ontario;

and to Nicholas & Kerr at :

Any such notice shall be deemed to have been received by the other party at the time of personal service upon such other party, or on the third business day next after the mailing of such notice by prepaid first class mail.

(c) This agreement, or any extension or renewal thereof shall not be transferable to any party without the express concurrence and agreement of the other party to this agreement. The agreement shall take effect only upon receipt by the Town of the approval in writing of the present registered owner of the lands described in Schedule "A", to the terms of this agreement.

(8) FIRE DEPARTMENT -

Notwithstanding anything contained in this agreement, nothing shall prohibit or interfere with the right of the Pelham Fire Department from utilizing the water loading station for emergency purposes. Any water consumed by the Fire Department in pursuance of this paragraph shall not be charged to Nicholas & Kerr.

In this agreement where a specific employee or officer of the Town is mentioned, such employee shall be interpreted to mean the incumbent of such office at such time or times as are applicable to give effect to the terms of the agreement.

IN WITNESS WHEREOF Nicholas & Kerr have hereunto affixed their hand and seal and the Town has hereunto affixed its corporate seal, duly attested by its proper officers in that behalf.

SIGNED, SEALED AND DELIVERED

In the Presence of

Thomas A. Kerr, M. Kerr

THE CORPORATION OF THE TOWN OF PELHAM

PER: *J. P. Wilson*

PER: *R. J. J.*

AGREEMENT BETWEEN A. SWAYZE AND THE PARTNERSHIP OF

MIKE NICHOLAS AND TOM KERR

This agreement, dated September 20/78, is binding for the period of two years between Aubrey Swayze herein referred to as the owner and Mike Nicholas and Tom Kerr herein referred to as the leasee. Beyond this, only the following mentioned clauses shall be honoured by the owner or leasee.

Item #1. The fee paid to the owner by the leasee shall be one hundred dollars (\$100.00) a month and shall be paid at the end of every month. Barring this, the owner has the right to discontinue this contract. However, the payment of this fee will allow the leasee to use said land to the full extent of this contract.

Item #2. The leasee shall receive the use of property measuring 30 feet 0 inches in width and 45 feet 6 inches in length (as located by enclosed plan) for the one and only purpose of a water loading station in exchange for the fee of \$100.00 a month.

Item #3. In leasing this land, the leasee agrees to maintain said property in no less than its present condition. The leasee also agrees to keep this land clear of snow so as to allow free and easy access to the water station. All maintenance pertaining to said water station and to the driveway on said land shall be the sole responsibility of the leasee.

Item #4. At the end of this contract, namely September 20, 1980, the leasee retains the right to again lease the land for an additional two years at a rate to be determined then. The terms of this contract shall apply to the contract signed on or before September 20, 1980.

(Item #5. The owner is held to the responsibility of notifying any partners or owners of his land of this agreement and that this agreement becomes condition of sale or partnership agreements.

Item #6. It is understood that the leasee will pay for the installation of the water station. However, it is also to be understood that the amount spent by the leasee for installation of water station shall be deducted from the first year's fee and that the remaining amount be forwarded to the owner in one lump sum for the first year only. The installation fee, however, will have to be backed by proof in the nature of bills.

Item #7. The leasee also agrees that the resulting water bill will be mailed to his house and that the owner is not liable for any such bills.

Item #8. The leasee does not assume responsibility for any damage to said property in event that the local Fire Department is in fault. It will be the responsibility of the owner to approach the Fire Department in case of such damage.

Both parties agree to all the terms of this contract.

OWNER

Aubrey Swartz

LEASEE

M. M. M. M.

Thomas A. Ken

WITNESSED BY

Gail Leppert

DATE

Sept. 20/78