

**CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2005-34**

**Being a by-law authorizing a Lease Agreement  
between The Corporation of the Town of Amherstburg  
and Fort Malden Pontiac Buick GMC Ltd.**

**WHEREAS** the Corporation of the Town of Amherstburg is desirous of leasing out a portion of the property known as Part Lot 3, Concession 1 Malden (Amherstburg), Parts 3 and 4 on Registered Plan 12R7530, Town of Amherstburg, County of Essex;

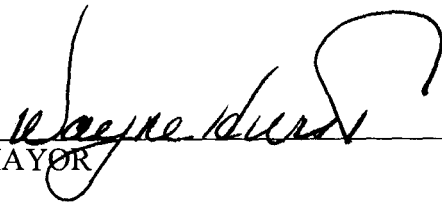
**WHEREAS** Fort Malden Pontiac Buick GMC Ltd. are proposing to lease the premises to park up to three trailers for use as office space for the business of the Licensee during the term commencing March 11, 2005 and ending on September 30, 2005.


**WHEREAS** the parties are desirous of entering into a lease agreement.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF  
THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Corporation of the Town of Amherstburg enter into a lease agreement with Fort Malden Buick GMC Ltd. which is attached as Schedule "A" to this by-law and forms part of this by-law.
2. That the Mayor and Clerk be authorized to sign the lease agreement between the Corporation of the Town of Amherstburg and Fort Malden Buick GMC Ltd.
3. That this by-law shall come into force and take effect on the final passing thereof.

Read a first, second, third and final time and finally passed this 29<sup>th</sup> day of March, 2005.

  
MAYOR

  
CLERK

**COPY**



The Corporation of The  
**Town of Amherstburg**

HILARY G. PAYNE, P.ENG.  
Chief Administrative Officer

Email: hpayne@amherstburg.ca

DAVID MAILLOUX, AMCT, B.Comm  
Clerk

Email: dmailoux@amherstburg.ca

**MEMO**

**TO: LOU ZARLENGA, PWM  
STEPHEN BROWN, CBO**

**FROM: CLERK**

**SUBJECT: LEASE AGREEMENT- FORT MALDEN PONTIAC BUICK GMC**

**DATE: APRIL 1, 2005**

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Enclosed, please find copy of Bylaw 2005-34 and Lease Agreement which was adopted on March 29, 2005 for your files.

Thanks.

A handwritten signature in cursive script, appearing to read "David Mailoux".

**DAVID MAILLOUX**  
Clerk

DM:bb

Encl.

**THIS LICENCE AGREEMENT** made this 3<sup>rd</sup> day of March, 2005

**BETWEEN:**

**The Corporation of the Town of Amherstburg**

(hereinafter referred to as the "Licensor")

and-

**Fort Malden Pontiac Buick GMC Ltd.**

(hereinafter referred to as the "Licensee")

**WHEREAS:**

1. The Licensor is the owner of the lands and premises known and described as Part Lot 3, Concession 1 Malden (Amherstburg), Parts 3 and 4 on Registered Plan 12R7530, Town of Amherstburg, County of Essex (the "Property");
2. The Licensor and the Licensee have agreed that the Licensee shall have a licence to park three (3) Trailers on a portion of the Property as described and in accordance with the terms hereof.

**NOW THEREFORE** this Agreement (the "Agreement") witnesses that in consideration of the premises and the obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Licensor and Licensee hereby agree as follows:

**1. Grant**

- (a) The Licensor hereby grants to the Licensee a licence (the "Licence") to use that (40' by 448.17') portion of the Property as shown and outlined on Schedule "A" attached hereto (the "Designated Area"). The Designated Area shall be used solely for the purpose of parking up to three (3) Trailers (12' x 60', 12' x 80' and 8' x 24' respectively) for use as office space for the business of the Licensee during the term commencing March 11<sup>th</sup>, 2005 and ending on September 30, 2005 (the "Term");
- (b) The Designated Area is accepted "as is, where is" by the Licensee.

- (c) the Licensee acknowledges that the Licensor has no obligations to delineate or separate the Designated Area from the remainder of the Property;
- (d) The Licensor shall be entitled to access to the Designated Area as reasonably required in connection with its use and operation of the balance of the Property. In exercising this right, the Licensor agrees to use all reasonable commercial efforts to minimize any interruption with the Licensee's use of the Designated Area;

## **2. Licence Fee**

- (a) The Licensee shall pay to the Licensor a licence fee (the "**Licence Fee**"), without deduction, abatement or set-off in the total aggregate amount of One (\$1.00) Dollar for the Term hereof payable upon execution of this Agreement;
- (b) The Licensee covenants and agrees to pay to the Licensor any taxes or other additional costs imposed on or incurred by the Licensor or the Property as a result of the grant of this Licence or as a result of the use by the Licensee of the Designated Area. It is intended that this Agreement is to be completely net and carefree to the Licensor, that the Licensor is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the use of the Designated Area or the contents thereof or the business carried on therein, and that the Licensee shall be responsible for and pay all charges, impositions, costs and expenses of every nature and kind relating to the Designated Area and the use thereof. The Licensee covenants to reimburse and pay to the Licensor its reasonable legal fees and disbursements incurred for the preparation of the within Agreement.

## **3. Licensee's Covenants**

- (a) The Licensee covenants and agrees with the Licensor that, throughout the Term:
  - (i) The Licensee shall observe all of the terms, covenants and conditions of this Agreement, including payment of the Licence Fee, taxes and other costs hereunder;
  - (ii) The Designated Area may be used only for the purposes specified and for no other purposes;
  - (iii) The Licensee shall be responsible for the construction, operation, administration, repair, maintenance and management of the Designated Area during the Term;

- (iv) The Licensee shall comply with all laws, directions, rules and regulations of all governmental authorities having jurisdiction and all requirements of all insurance companies in connection with the exercise of its rights hereunder. Without limitation, the Licensee shall comply with all environmental laws, directions, rules and regulations, and agrees not to contaminate the Property or allow any discharge of any contaminants of any nature into the Property;
- (v) Upon the termination of this Licence, the Licensee shall remove all of the improvements, parking facilities, vehicles and any other equipment from the Designated Area and return the Designated Area in the same state as it was at the beginning of the Term, subject only to reasonable wear and tear. If the Licensee does not complete such work and remove all such items within twenty-four (24) hours following the termination of this Licence, the Licensor may do so at the expense of the Licensee;
- (vi) The Licensee shall do nothing on or from the Designated Area and the Property which shall be or result in a nuisance; and
- (vii) The Licensee shall not act or fail to act in any manner that causes damage to the Designated Area or the Property;

#### **4. Insurance and Indemnity**

- (a) The Licensee shall maintain an insurance policy, including public liability and property damage insurance coverage, in an amount appropriate for the purposes or uses specified insurance coverage or policy shall name the Licensor as an additional insured. The Licensee shall provide evidence reasonably satisfactory to the Licensor that such insurance coverage is in force, and the policy shall require notification to the Licensor in advance of any material adverse change or cancellation of such policy.
- (b) The Licensee shall indemnify and save harmless the Licensor against all actions suits, claims, damages, costs and liabilities arising out of or as a result of:
  - (i) Any breach, violation or non-performance by the Licensee of the terms, covenants and obligations on the part of the Licensee set out in this Agreement;
  - (ii) Any damage to the Property occasioned by the use of the Designated Area by the Licensee, its employees, contractors,

invitees, customers and others for whom it is in law responsible; and

(iii) Any injury to or death of any person resulting from the use of the Designated Area by the Licensee, its employees, contractors, invitees, customers and others for whom it is in law responsible.

(c) The Licensee shall use the Designated Area at its sole risk, and the Licensor shall not be liable for any loss, injury or damage caused to persons using the Designated Area or to automobiles or their contents or any other property, the responsibility for insuring against any such loss, injury or damage being that of the Licensee who hereby waives, on behalf of itself and its insurers, any rights of subrogation against the Licensor. In addition and without limitation, the Licensee agrees that the Licensor, regardless of negligence or alleged negligence on the part of the Licensor or any breach of this Agreement by the Licensor and, notwithstanding anything else herein contained, shall not be liable for and hereby releases the Licensor from:

1. any and all claims, actions, causes of action, damages, demands for damages and other liabilities for or related to:

(i) any bodily injury, personal injury, illness or discomfort to or death of the Licensee or any of its employees, contractors, invitees, customers and others for whom it is in law responsible, in or about the Property; and

(ii) any loss or damage to all property in or about the Property owned by the Licensee or any of its employees, contractors, invitees, customers and others for whom it is in law responsible;

2. any act or omission (including theft, malfeasance or negligence) on the part of any agent, contractor or person from time to time employed by the Licensor to perform any maintenance or other work in or about the Property; and

3. any indirect or consequential damages including, but not limited to, loss or profit.

## **5. Default**

(a) Any of the following occurrences or acts shall constitute an event of default by the Licensor or Licensee (as applicable) under this Agreement:

- (i) Failure to make any payment of any sums herein required to be paid, where such failure shall continue for five (5) days after the other party shall have given the defaulting party notice specifying such failure;
  - (ii) Failure to perform any covenant or condition required to be performed or observed by such party hereunder, where such failure shall continue for fifteen (15) days after delivery by the other party of notice specifying such failure; and
  - (iii) The bankruptcy or taking the benefit of any legislation providing protection for insolvent parties or winding up or otherwise ceasing to exist.
- (b) In the event default shall occur and be continuing after any applicable curative period, the non-defaulting party, in addition to all other rights it may have, shall have the following rights:
- (i) To immediately terminate this Agreement and the Term by giving written notice of such termination to the defaulting party. Any payments for which the Licensee is liable under this Agreement shall thereupon be apportioned and paid in full and refunded, if necessary, to the date of such termination, and the Licensee shall immediately deliver possession of the Designated Area to the Licensor and the Licensor may re-enter and take possession thereof;
  - (ii) To perform the covenant or condition required to be performed or observed by the defaulting party (the costs of doing so shall be a debt from the defaulting party to the non-defaulting party and, if the Licensor is the defaulting party, may be set off against any future Licence Fee payments); and
  - (iii) If the Licensee is the defaulting party, upon written notice to the Licensee, the Licensor may re-enter the Designated Area.

## **6. Assignment**

- (a) The Licensee shall not assign this Agreement, in whole or in part, or enter into any sublicence or otherwise permit any other party to occupy the Designated Area or any part thereof without the written consent of the Licensor, which consent may be unreasonably or arbitrarily withheld.

- (b) This Agreement may be assigned by the Licensor in conjunction with a sale or financing of the Property. The Licensor shall cause any purchaser of the Property (which shall include a tenant of the whole of the Property) to assume its obligations herein. The Licensor shall not be liable for any obligations hereunder arising after any assumption of this Agreement by a purchaser of the Property.
- (c) Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

## **7. Notices**

- (a) Any demand, notice, direction or other communication made or give hereunder (in each case, "Communication") shall be in writing and shall be made or given by personal delivery, courier, facsimile transmission, or sent by registered mail, charges prepaid, addressed as follows:

To the Licensor:                   The Corporation of The Town of Amherstburg  
271 Sandwich Street South  
Amherstburg, Ontario  
N9V 2Z3

To the Licensee:                   432 Sandwich Street South  
Amherstburg, Ontario N9V 3V8

Or to such other address or facsimile number as either party may, from time to time, designate in accordance with this section.

- (b) Any communication made by personal delivery or by courier shall be conclusively deemed to have been given and received on the day of actual delivery thereof or, if such day is not a Business Day, on the first Business Day thereafter. Any communication made or given by facsimile on a Business Day before 5:00 p.m. (local time of the recipient) shall be conclusively deemed to have been given and received on such Business Day, and otherwise shall be conclusively deemed to have been given and received on the first Business Day following the transmittal thereof. Any communication that is mailed shall be conclusively deemed to have been given and received on the fifth Business Day following the date of mailing. When used in this Agreement, "Business Day" shall mean a day other than a Saturday, Sunday or any statutory holiday in the province in which the Property is located.



## 8. Miscellaneous

- (a) This Agreement constitutes the entire agreement of the parties with respect to the matters governed by it and supersedes all prior agreements and understandings, whether written or oral, relative to the subject matter hereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise, to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.
- (b) If the Licensee remains in possession of the Designated Area after the end of the Term with the consent of the Licensor and without the execution and delivery of a new agreement, there shall be no tacit renewal of this Agreement or renewal or extension of the Term, nor shall a licence from year to year be created but, notwithstanding any statutory provisions to the contrary, a monthly licence shall be created, which may be terminated by either party on one month's notice.
- (c) Unless the context otherwise requires, words importing the singular in number only shall include the plural and vice versa, words importing the use of gender shall include the masculine, feminine and neuter genders, and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.
- (d) Neither the Licensee nor anyone on the Licensee's behalf or claiming under the Licensee shall register this Agreement or any notice or caveat or other registration in respect thereof against the title to the Property.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**The Corporation of the Town of Amherstburg**

Per: Wayne Hines MAYOR

Challouf CLERK.  
I have authority to bind the Corporation.

**Fort Malden Pontiac Buick GMC Ltd.**

Per: Drew Clarke

Drew Clarke, President  
I have authority to bind the Corporation.