

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2009-94**

**Being a By-law Authorizing the execution of a Lease Agreement between the Corporation of the Town of Amherstburg and Waterbee Pools Limited**


**WHEREAS** Waterbee Pools Limited is the current registered and beneficial owner of the property known as Part of Lot 3, Concession 1, Malden and being Parts 1 to 3 on Reference Plan 12R-4277, in the Town of Amherstburg and County of Essex (the "Subject Property");


**AND WHEREAS** the Town has requested that Waterbee Pools Limited lease the Subject Property to the Town and Waterbee Pools Limited grant permission to the Town to use the Subject Property as a construction staging area for the Wastewater Treatment Plant Expansion;

**AND WHEREAS** the specifics of such Lease Agreement have been negotiated and are set out in the Lease Agreement attached to and forming part of this bylaw;

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

- 1) An Agreement between the Corporation of the Town of Amherstburg and Waterbee Pools Limited is attached hereto and is hereby approved and the Mayor and Clerk are hereby authorized to execute the Agreement on behalf of the municipality.
- 2) This By-law shall come into force and take effect immediately upon the final passing thereof.

  
MAYOR WAYNE HURST

  
CLERK, BRENDA M. PERCY

1<sup>st</sup> Reading – December 14, 2009

2<sup>nd</sup> Reading – December 14, 2009

3<sup>rd</sup> Reading – December 14, 2009

THIS LEASE made in duplicate this 1st day of January, 2010,

BETWEEN:

WATERBEE POOLS LIMITED, of the Town of Amherstburg and Province of Ontario, hereinafter called the "Lessor"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF AMHERSTBURG, of the said Town of Amherstburg and Province of Ontario hereinafter called the "Lessee"

OF THE SECOND PART

**WHEREAS** the Lessor is the current registered and beneficial owner of the property known as Part of Lot 3, Concession 1, Malden and being Parts 1 to 3 on Reference Plan 12R-4277 in the Town of Amherstburg and County of Essex (the Lessor's Property);

**AND WHEREAS** the Lessee has requested the Lessor lease the Lessor's property to the Lessee and the Lessor grant permission to the use of the Lessor's Property as a construction staging area for the Wastewater Treatment Plant Expansion as required by the Lessee;

**AND WHEREAS** the Lessor has resolved to lease and to grant such permission to the Lessee subject to the terms, covenants and conditions of this Lease;

**WITNESSETH** that in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto hereby agree with each other as follows:

#### ARTICLE I GRANT AND TERM

##### SECTION 1.01- LEASED PREMISES

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor demises and leases to the Lessee a portion of the Lessor's Property known as Part of Lot 3, Concession 1, Malden and being Parts 1 to 3 on Reference Plan 12R-4277 in the Town of Amherstburg and County of Essex, which portion is outlined in yellow and is more particularly set out in Schedule "A" attached hereto and forming a part of this Lease (hereinafter the Demised Premises).

The Lessor hereby leases the Demised Premises to the Lessee and grants permission to the Lessee and the Lessee shall have the right:

- (a) to install, erect, operate and maintain at its own expense all structures, laneways, access points and all other features associated with the use of the Demised Premises as a construction staging area for the Wastewater Treatment Plant Expansion; and,
- (b) to install appropriate culvert or upgrade the existing entrance culvert, if required, with permanent piped structure and backfill material and to fill in the ditch running approximately 118 feet North/South at the front of the Demised Premises and cause to be installed such equipment, gravel areas and construction fencing as may be necessary for the use of the Demised Premises as a construction staging area for the Wastewater Treatment Plant Expansion.

##### SECTION 1.02 - TERM OF LEASE

TO HAVE AND TO HOLD the Demised Premises for and during the term of two (2) years, to be computed from the 1st day of January, 2010 (herein called the "Lease Commencement Date") and fully to be completed and ended on the 31st day of December, 2011 save as hereinafter provided for earlier termination and any right of renewal. The expression "term" as used herein means the term hereby demised and any renewal or extension thereof.

Notwithstanding any term as set out herein the Lessee shall have the option, in its sole and unfettered discretion to amend the Lease Commencement Date to any other date to correspond with the commencement of the construction project for the Wastewater Treatment Plant Expansion and the term of the Lease to a term to correspond with the completion of the construction project for the Wastewater Treatment Plant Expansion, provided that the Lease Commencement Date shall be no later than July 1<sup>st</sup>, 2010, failing which this Agreement shall be null and void. In the event the Lessee exercises such option and determines the Lease Commencement Date to be a date other than January 1, 2010 the term of the

Lease shall run for a period of two (2) years from such newly determined Lease Commencement Date unless the term has also been amended by the Lessee pursuant to the provisions in this section in which event the term of the Lease shall run for such time period as amended and any rental payments required under the terms of this Lease shall be prorated and amended accordingly. The term of this Lease shall not exceed the time period required for the completion of the construction of the Wastewater Treatment Plant Expansion project.

## **ARTICLE II RENT AND MAINTENANCE**

### **SECTION 2.01- FIXED MINIMUM RENT**

The Lessee covenants and agrees to pay unto the Lessor from and after the Lease Commencement Date a fixed minimum rent in the sum of Ten Thousand Dollars (\$10,000.00) per year, plus Goods and Services taxes and/or Harmonized Sales Taxes, if applicable, being Eight Hundred Thirty-Three Dollars and thirty-three cents (\$833.33) per month, for the Demised Premises payable in semi-annual installments in advance in the sum of Five Thousand Dollars (\$5,000.00) each on the 1<sup>st</sup> day of January and July in each year of the term of the Lease without any prior demand therefor and without any deduction or set-off whatsoever, during the term of this Lease. In the event that the Lease Commencement Date or the term of the Lease have been amended pursuant to Section 1.02 of this Lease the rental payment dates hereunder shall be amended accordingly and the payments shall be prorated appropriately and made on the corresponding new Lease Commencement Date and each six month period thereafter. For clarification purposes in the event the Lease Commencement Date is amended to March 1, 2010 the rental payments hereunder shall be made on the first day of March and September of each year during the term of the Lease.

### **SECTION 2.02 - LESSEE TO BEAR EXPENSES OF MAINTENANCE**

In each lease year, or partial year as the case may be, the Lessee will be responsible for and will pay, in addition to the rentals specified in this Article II hereof, as further additional rent, all of the costs associated with cutting the grass on all of the Lessor's Property, and not limited only to the Demised Premises, as determined by the Lessee. The Lessee shall not be responsible for the payment of any other costs associated with annual general maintenance and upkeep of the Demised Premises with the exception of any costs associated with the use of the Demised Premises by the Lessee or its agents, employees or authorized personnel.

All of these additional costs and expenses to be born by the Lessee shall constitute additional rent for the Demised Premises whether or not the same be designated "additional rent" and the Lessee covenants to pay such additional rent.

## **ARTICLE III USE OF PREMISES BY LESSEE**

### **SECTION 3.01 - USE OF PREMISES**

The Demised Premises shall be used solely for the purposes of a construction staging area for the Wastewater Treatment Plant Expansion as required by the Lessee and in conjunction with the work required for the completion of such project and for no other use whatsoever without the consent of the Lessor. The Lessee shall not use or permit the use of the Demised Premises for any other business or purpose other than as hereinbefore provided in this Section. The Lessee shall satisfy itself that its use of the Demised Premises shall conform with the requirements of the appropriate municipal or regulatory authority.

## **ARTICLE IV SIGNS, FIXTURES, ALTERATIONS**

### **SECTION 4.01- INSTALLATION BY THE LESSEE**

The Lessee, with the exception of any alterations of the Demised Premises required for its use in accordance with Sections 1.01 and 3.01, shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any fixtures, signs, lighting, or make any changes to the Demised Premises without first obtaining the Lessor's written approval and consent, which consent shall not be unreasonably withheld. The Lessee shall present to the Lessor plans and specifications in form, content and such detail as the Lessor may reasonably require for such work at the time approval is sought.

The Lessee covenants that any work that may be done in respect of the Demised Premises by or on behalf of the Lessee shall not conflict or interfere with any work being done or about to be done by the Lessor in or about the Demised Premises, whether such conflict or interference shall arise in relation to

labour unions or otherwise and the Lessee shall obtain all requisite permits, licences and inspections in respect of any such work done by or on the Lessee's behalf.

**SECTION 4.02 - THE LESSEE SHALL DISCHARGE ALL LIENS**

The Lessee shall not suffer or permit any construction or other liens to be filed or placed or exist against the title of the Demised Premises nor against the Lessee's leasehold interest in the Demised Premises by reason of work, labour, services or materials supplied or claimed to have been supplied to the Lessee. If any construction lien shall at any time be filed against the Demised Premises, the Lessee shall cause the same to be discharged and registered within twenty-five (25) days after the date of filing the same.

**ARTICLE V  
INSURANCE AND INDEMNITY**

**SECTION 5.01 - LIABILITY INSURANCE**

The Lessee shall, during the entire term hereof, keep in full force and effect a policy of public liability and property damage insurance with companies qualified to do business in the Province of Ontario with respect to the Demised Premises, and any sidewalks in front of the Demised Premises in which the limit of public liability shall not be less than ONE MILLION (\$1,000,000) DOLLARS and in which the property damage liability shall not be less than ONE MILLION (\$1,000,000) DOLLARS.

**SECTION 5.02 - POLICIES**

All policies of insurance shall be in a company or companies authorized to do business in the Province of Ontario and upon terms and conditions satisfactory to the Lessor. The Lessor and the Lessee shall be named as the insured in all policies purchased by the Lessee and the interest of all mortgagees shall be noted therein. The Lessee shall deliver to the Lessor certificates of all policies which shall contain a clause requiring the insurer to give the Lessor and mortgagees fifteen (15) days written notice of cancellation of such policies.

**SECTION 5.03 - INDEMNIFICATION OF THE LESSOR**

The Lessee will indemnify the Lessor and save it harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury and/or damage to the property arising from or out of any occurrence in, upon or at the Demised Premises, the occupancy or use by the Lessee of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Lessee, its agents, contractors, employees, servants, licencees or invitees. In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then the Lessee shall protect and hold the Lessor harmless and shall pay all reasonable costs, expenses and solicitors and counsel fees on a solicitor and his own client basis incurred or paid by the Lessor in connection with such litigation.

**ARTICLE VI  
UTILITIES**

**SECTION 6.01- UTILITY CHARGES**

The Lessee shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in the Demised Premises by the Lessee. Whether caused by negligence, gross negligence or omission by the Lessor, in no event shall the Lessor be liable for any injury to the Lessee, its servants, agents, employees, customers and invitees or for any injury or damage to the Demised Premises or to any property of the Lessee, or to any property of any other person, firm or corporation on or about the Demised Premises caused by an interruption or failure in the supply of any such utilities to the Demised Premises.

**ARTICLE VII  
ACKNOWLEDGMENT OF TENANCY, ATTORNMENT, SUBORDINATION**

**SECTION 7.01 - ACKNOWLEDGMENT OF TENANCY**

The Lessee agrees to execute and deliver, within seven (7) calendar days of the request of the Lessor, a certificate and acknowledgment setting out:

- (a) that the Lease is in full force and effect and that the Lessee is using the Demised Premises;
- (b) that the Lease is unamended, or if amended, the particulars of such amendment;
- (c) that the Lessor is not in default, or if in default, the nature of such default;

d) that the Demised Premises are completed and are in good condition and repair, or such other information relating to the premises as the Lessor may request;

(e) such other matters as the Lessor may reasonably require.

#### **SECTION 7.02 - SUBORDINATION AND ATTORNMENT**

It is a condition of this Lease and the Lessee's rights granted hereunder that this Lease and all of the rights of the Lessee hereunder and under the Lease are subordinate to any and all mortgages, or other instruments of financing, refinancing or collateral financing, from time to time in existence against the Demised Premises. Upon request, the Lessee will subordinate this Lease and all of its rights hereunder and under the Lease in such form as the Lessor requires to any and all mortgages, or other instruments of financing, refinancing or collateral financing, as aforesaid, and will, if requested, attorn to the holder thereof or to the registered owners of the Demised Premises, as the case may be. Provided always that so long as the Lessee performs its covenants, its tenure as provided herein will be honoured by any mortgagee or like company referred to herein.

### **ARTICLE VIII ASSIGNMENT AND SUBLETTING**

#### **SECTION 8.01 - CONSENT REQUIRED**

The Lessee shall not have the right to assign or transfer or otherwise encumber the Lease to another person, firm, or corporation or sub-let the whole or any part of the Demised Premises without first obtaining Lessor's consent thereto, such consent shall not be arbitrarily withheld. It is further agreed notwithstanding any assignment or subletting that the Lessee named herein shall remain liable for all obligations under the Lease. Without limiting the generality of the foregoing, no assignment or sublease shall be effective and no consent shall be given unless the following provisions have been complied with:

- (i) There is not existing any default hereunder on the part of the Lessee;
- (ii) The assignee or sub-lessee has assumed in writing with the Lessor the due and punctual performance and observance of all the agreements, provisions, covenants and conditions hereof on the Lessee's part to be performed or observed from and after the execution and delivery of such assignments.

In the event that the Lessee assigns this Lease or sublets as aforesaid without the prior written consent of the Lessor, the Lessor may in its sole discretion terminate this Lease forthwith without notice. The consent by the Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against any assignment or subletting shall apply to subletting or assignment by operation of law. Notwithstanding any assignment or sublease, the Lessee shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

### **ARTICLE IX WASTE, GOVERNMENTAL REGULATION**

#### **SECTION 9.01 - WASTE OR NUISANCE**

The Lessee shall not commit or suffer to be committed any waste upon the Demised Premises or do or suffer any act or thing which may result in a nuisance to any other party.

### **ARTICLE X DESTRUCTION OF DEMISED PREMISES**

#### **SECTION 10.01 - TOTAL OR PARTIAL DESTRUCTION OF THE DEMISED PREMISES**

Provided and it is hereby expressly agreed that if during the term, the Demised Premises are totally or partially destroyed or damaged by fire or the elements, explosion, riot, impact by aircraft or vehicles, malicious damage, acts of God or the Queen's enemies or other perils the Lessee may at its option terminate this Lease by notice in writing to the other given within thirty (30) days of the date of such destruction or damage and in the event of such notice being so given this Lease shall cease and become null and void from the date of such destruction or damage and the Lessee shall immediately surrender the Demised Premises and all interest therein to the Lessor and the Lessor may re-enter and repossess the Demised Premises discharged of this Lease but if within the said period of thirty (30) days the Lessee shall have not give notice terminating this Lease as aforesaid or if within the said period the Lessor and Lessee shall agree not to give such notice then upon the expiration of the said period of 30 days or upon the Lessor and Lessee having agreed as aforesaid, whichever shall be the sooner, the Lessee shall with

reasonable promptitude proceed to repair or restore the Demised Premises to the condition required for the continued use of the Demised Premises by the Lessee. Notwithstanding that the Lessee may commence the repair or restoration of the Demised Premises the Lessee shall not be required to repair or restore any buildings or appurtenances on the Demised Premises that are the property of the Lessor.

## **ARTICLE XI DEFAULT OF THE LESSEE**

### **SECTION 11.01 - RIGHT TO RE-ENTER**

Provisions for re-entry by the Lessor on non payment of rent for five (5) days after the same is due or non performance of covenants.

### **SECTION 11.02 - RIGHT TO RELET**

Should the Lessor elect to re-enter, as herein provided or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Demised Premises, or any part thereof as agent for the Lessee for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its sole discretion may deem advisable; upon such reletting all rentals received by the Lessor from such reletting shall be applied, first, to the payment of the indebtedness other than rent due hereunder from the Lessee to the Lessor; second, to the payment of any costs and expenses of such reletting including brokerage fees and solicitors fees and of costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder the residue, if any, shall be held by the Lessor and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by the Lessee hereunder, the Lessee shall pay any such deficiency to the Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Demised Premises by the Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the Lessor may at any time thereafter elect to terminate this Lease for such previous breach, in addition to any other remedies it may have, it may recover from the Lessee all damages it may incur by reason of such breach, including the cost of recovering the Demised Premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the term hereof over the then reasonable rental value of the Demised Premises for the remainder of the term hereof, all of which amounts shall be immediately due and payable from the Lessee to the Lessor. In determining the rent which would be payable by the Lessee hereunder, subsequent to default the annual rent for each year of the unexpired term shall be equal to the average annual fixed minimum rent paid by the Lessee from the Lease Commencement Date to the time of default or during the preceding two (2) years, which ever period is shorter.

## **ARTICLE XII ACCESS BY THE LESSOR**

### **SECTION 12.01 - RIGHT OF ENTRY**

(a) The Lessor and any person authorized by the Lessor shall have the right to use, install, maintain and/or repair pipes, wires, ducts or other installations in, under or through the Demised Premises for or in connection with the supply of any services to the Demised Premises;

(b) When necessary by reason of accident or other cause or in order to make any repairs, alterations or improvements to the Demised Premises, the Lessor may cause such reasonable and temporary obstruction of access laneways or common areas as may be necessary and may interrupt or suspend the supply to the Demised Premises of electricity, water and other services where necessary and until said repairs, alterations, improvements and additions shall have been completed. There shall be no abatement in rent because of any such repairs, alterations, improvements or additions if such repairs are made with reasonable dispatch;

(c) The Lessor or its agents shall have the right to enter upon the Demised Premises at all reasonable times to view the state of repair, condition and use thereof and to make such alterations as it may deem advisable and the Lessor or its agents shall be allowed to take all material into and upon the Demised Premises that may be required therefore without the same constituting any eviction of the Lessee. The rent hereunder shall in no way abate while such repairs, alterations, improvements or additions are being made by reason of loss or interruption of the operations of the Lessee because of the execution of any such work;

(d) The Lessor shall not be liable to the Lessee for any interference or inconvenience caused by any additional construction or repairs permitted hereunder, provided such additional construction or repairs are carried out as expeditiously as is reasonably possible;

(e) Nothing in this Section contained however, shall be deemed or construed to impose upon the Lessor any obligations, responsibility or liability whatsoever, for the care, maintenance or repair of the Demised Premises or any part thereof, except as otherwise in this Lease specifically provided.

#### **ARTICLE XIII THE LESSEE'S PROPERTY AND OPERATIONS**

##### **SECTION 13.01 - TAXES ON LEASEHOLD**

The Lessee shall be responsible for and shall pay before delinquency all municipal, county, provincial or federal taxes assessed during the term of this lease against any leasehold interest or personal property of any kind, owned by or placed in, upon or about the Demised Premises by the Lessee.

##### **SECTION 13.02 - LOSS AND DAMAGE**

The Lessor shall not be liable for any loss, injury or damage from any cause whatsoever to the Lessee or to other persons or property wheresoever situate except where Lessor is responsible. Without limiting the generality of the foregoing, the Lessor shall not be liable for any such damage caused by anything done or omitted to be done by other persons on the Demised Premises, occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work.

##### **SECTION 13.03 - NOTICE BY LESSEE**

The Lessee shall give immediate notice to the Lessor in case of fire or accidents on the Demised Premises or of defects therein or in any fixtures or equipment thereon.

#### **ARTICLE XIV HOLDING OVER AND SUCCESSORS**

##### **SECTION 14.01 - HOLDING OVER**

In the event that the Lessee remains in possession of the Demised Premises after the end of the term hereof and without the execution and delivery of a notice of renewal if granted hereunder if a right of renewal is granted, there shall be no tacit renewal of this Lease and the term hereby granted and the Lessee shall be deemed to be occupying the Demised Premises as a tenant from month to month, and otherwise upon the same terms and conditions as are set forth in this Lease monthly at the same rental as was paid in the last year of the term, so far as applicable.

##### **SECTION 14.02 - SUCCESSORS**

All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; and if the Lessee is more than one person, they shall all be bound jointly and severally by the terms, covenants and agreements herein. Subject to Paragraph 8.01 herein, the Lessee shall not assign or otherwise transfer this Lease and all rights hereunder shall not enure to the benefit of any assignee or successor of the Lessee. This Lease shall enure to the benefit of the Lessor's successors and assigns. If the Demised Premises are sold, then the Lessor shall be released at the time of completion of such sale from all of its covenants and obligations set out in this Lease. If the Lessor makes a bona fide sale or otherwise disposes of the Demised Premises to a third party at any time during the term of the Lease, such sale or disposition shall expressly provide that the purchaser, from the Lessor, shall enter into and assume all of the rights, covenants and obligations of the Lessor as set out in this Lease, and shall be bound by all of the remaining terms and provisions herein for the remainder of the term.

#### **ARTICLE XV QUIET ENJOYMENT**

##### **SECTION 15.01- THE LESSOR'S COVENANT**

The Lessor covenants with the Lessee for quiet enjoyment. The Lessor further agrees to deliver to the Lessee on the Lease Commencement Date, or at the Lessee's request:

- (i) a waiver of subrogation from the Lessor's insurers;
- (ii) a non-disturbance agreement from the Lessor's mortgagee, setting out that for so long as the Lessee pays the rent and complies with the Lease, it may remain in possession of the Demised

Premises.

- (iii) a waiver of subrogation from the Lessor.

**ARTICLE XVI  
MISCELLANEOUS**

**SECTION 16.01 - WAIVER**

Failure by the Lessor to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach by the Lessee of any term, covenant or condition of this Lease, other than the failure of the Lessee to pay the particular rent so accepted, regardless of the Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor, unless such waiver be in writing by the Lessor.

**SECTION 16.02 - ENTIRE AGREEMENT**

This Lease and the Schedules if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Lessor and the Lessee concerning the Demised Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said Schedules, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Lessor or the Lessee unless reduced to writing and signed by them.

**SECTION 16.03 - FORCE MAJEURE**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour, troubles, inability to procure materials, failure of power, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein contained, the provisions of this Section 16.03 shall not operate to excuse the Lessee from the prompt and timely payment of fixed minimum rent, additional rent or any other payments required by the terms of this Lease, nor entitled the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

**SECTION 16.04 - NOTICES**

All notices or other documents required which may be given under this Lease shall be in writing duly signed by the party giving such notice and transmitted by registered or certified mail, telegraph or telex addressed as follows:

TO THE LESSEE: Town of Amherstburg  
271 Sandwich Street South  
Amherstburg, ON N9V 2A5  
Telephone: 519-736-0012 Facsimile: 519-736-5403  
Attention: Pamela Malott, Chief Administrative Officer  
E-mail: [pmalott@amherstburg.ca](mailto:pmalott@amherstburg.ca)

TO THE LESSOR: Waterbee Pools Limited  
2466 County Road 20, RR #5  
Harrow, ON N0R 1G0  
Attention: Ron Renaud

Any notice or document so given shall be deemed to have been received on the third business day following the date of mailing if sent by registered mail or certified mail, but shall be deemed to have been received on the next business day if transmitted by Telex or Telegram. Any party may from time to time by notice given as provided above, change its address for the purpose of this clause.

**SECTION 16.05 - PLACE FOR PAYMENT OF RENT**

The Lessee shall pay the rent, including all additional rent and all other payments that may be required, at the office of the Lessor specified in Section 16.04 hereof or to such manager at such place or places as



the Lessor may designate from time to time by notice in writing.

**SECTION 16.06 - REGISTRATION**

Lessee shall not register this Lease without the written consent of the Lessor. However, upon the request of either party hereto, the other party shall join in the execution of a memorandum or so called "short form" of this Lease for the purpose of registration. Said memorandum or short form shall describe parties, the Demised Premises and the terms of this Lease and shall be prepared and registered at the expense of the Lessee.

**SECTION 16.07 - GOVERNING LAW**

This Lease is to be governed by and construed in according with the laws of the Province of Ontario and the laws of Canada applicable therein.

**SECTION 16.08 - CAPTIONS AND SECTION NUMBERS**

The index, captions, section numbers, and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease, nor in any way affect this Lease,

**SECTION 16.09 - LESSOR TO INCLUDE REPRESENTATIVES**

Wherever the word "Lessor" is used in the present Lease, it shall be deemed to include the Lessor and its duly authorized representatives.

**SECTION 16.10 - PARTIAL INVALIDITY**

If any term, covenant or condition, of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and/or the application of such term covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

**SECTION 16.11 - NO OPTION**

The submission of this Lease for examination does not constitute a reservation of or option for the Demised Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by the Lessor and the Lessee.

**SECTION 16.12 - THE PLANNING ACT**

This Lease is entered into subject to the condition that it is to be effective only on obtaining the consent required under the Planning Act, R.S.O. 1980, c.379 as amended, if such consent is required. If any such consent is required it shall be obtained by the Lessor at the expense of the Lessee and until such consent is obtained and term hereof, including options, if any, shall be read as not exceeding twenty one (21) years less one day and in the event such consent is not obtained, the term hereof, including options, if any, shall not exceed twenty one (21) years less one day.

**SECTION 16.13 - TIME OF ESSENCE**

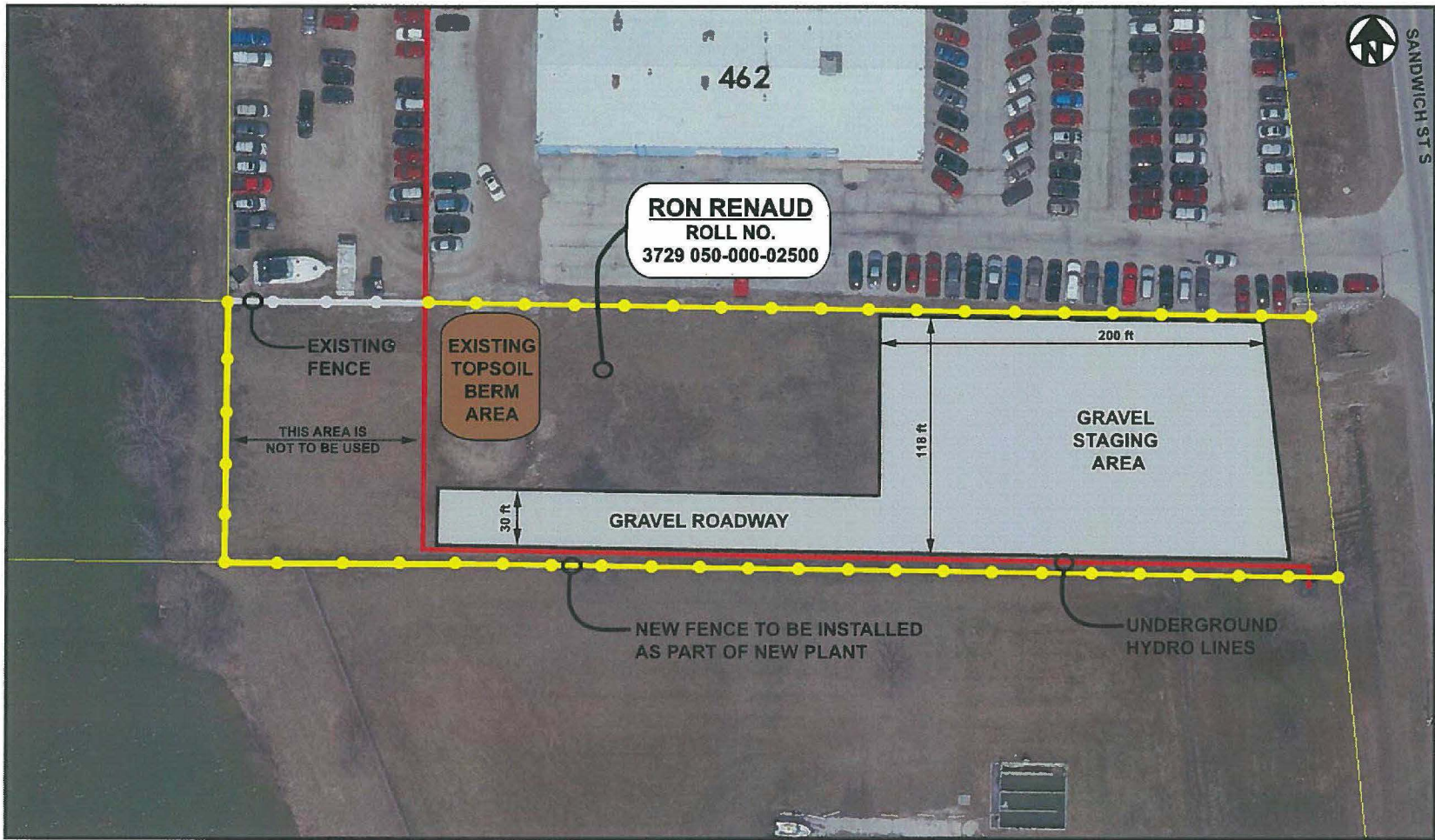
Time shall be of the essence of this Lease and every part thereof.

**IN WITNESS WHEREOF**, the Landlord and the Tenant have signed and sealed this Lease as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED**

in the presence of

)  
 ) **WATERBEE POOLS LIMITED**  
 )  
 ) Per:   
 ) Name: Ron Renaud  
 ) Title:  
 ) Authorized signing officer.  
 )  
 ) **THE CORPORATION OF**  
 ) **THE TOWN OF AMHERSTBURG**  
 )  
 ) Per:   
 ) Name: Wayne Hurst  
 ) Title: Mayor  
 ) Authorized signing officer.  
 )



Schedule "A" to Lease Agreement



# AMHERSTBURG WASTEWATER TREATMENT PLANT

STAGING AREA

OCTOBER 5, 2009

PWD-SW-07-021