

The Corporation of the Municipality of Brockton



By-Law 2020-053

Being a By-Law to Authorize the Signing of a Lease Agreement between 584653 Ontario Limited c/o David Zettler and the Corporation of the Municipality of Brockton for the Purpose of Leasing 50 East Ridge Road and 32 Cunningham Road in Walkerton

Whereas The Council for the Corporation of the Municipality of Brockton deems it expedient to enter an agreement with 584653 Ontario Limited c/o David Zettler with respect to leasing two municipal properties known as 50 East Ridge Road, Walkerton and 32 Cunningham Road, Walkerton and legally described as PT PARK LT 47 PL 162, PTS 2, 3, 4 & 5 3R9442; PT PARK LT 48 PL 162 & PT LTS 32-35 CON 1 NDR BRANT, PT 3R9442; S/T EASEMENT OVER PTS 3 & 4 3R9442 AS IN R382938; MUNICIPALITY OF BROCKTON; BEING ALL OF PIN# 33196-0532 (LT);

And Whereas the Corporation of the Municipality of Brockton is the owner of 50 East Ridge Road, Walkerton and 32 Cunningham Road, Walkerton former Town of Walkerton, Municipality of Brockton;

And Whereas 584653 Ontario Limited c/o David Zettler is desirous of leasing such premises under the Land Lease Agreement outlined in Schedule "A" attached hereto;

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That The Corporation of the Municipality of Brockton Council hereby enters into a tenancy agreement with 584653 Ontario Limited c/o David Zettler which is attached as "Schedule A" and forms part of this By-Law;
- 2.0 The execution by the Mayor and Clerk of said agreement dated April 28, 2020, between the Corporation of the Municipality of Brockton and 584653 Ontario Limited c/o David Zettler is hereby authorized, ratified, and confirmed.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "584653 Ontario Limited (Zettler) Lease Agreement By-Law".

Read, Enacted, Signed and Sealed this 28th day of April, 2020.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

LAND LEASE AGREEMENT

THIS LEASE (this "Lease") dated this 28th day of April, 2020

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF BROCKTON

A Municipal Corporation in the Province of Ontario
incorporated pursuant to the *Municipal Act, 2001*

(hereinafter called the "Landlord")

OF THE FIRST PART

-AND-

584653 Ontario Limited

(the "Tenants")

OF THE SECOND PART

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenants, the Tenants leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Landlord and Tenants to this Lease (the "Parties") agree as follows:

1. LEASED PROPERTY

- 1.1. The Landlord hereby leases to the Tenants, subject to all easements now existing or which the Landlord may grant in the future, the properties municipally known as 50 Eastridge Road, Walkerton, Ontario and 32 Cunningham Road, Walkerton, Ontario, and legally described as:

PT PARK LT 47 PL 162, PTS 2, 3, 4 & 5 3R9442; PT PARK LT 48 PL 162 & PT LTS 32-35 CON 1 NDR BRANT, PT 3R9442; S/T EASEMENT OVER PTS 3 & 4 3R9442 AS IN R382938; MUNICIPALITY OF BROCKTON; BEING ALL OF PIN# 33196-0532 (LT),

And more fully described in Schedule "A" attached hereto and hereinafter referred to as the "Demised Premises".

- 1.2. At the Landlord's sole discretion, upon written notice to the Tenant, the land included within the Demised Premises may be reduced, and such designated land be returned to the exclusive possession of the Landlord, (the "Recaptured Land") on the date provided within such written notice.

- 1.2.1. If the Recaptured Land, at the time when the written notice under this section is received by the Tenant, is seeded with crops as set forth in Section 5.1.3.1, and such crops cannot be harvested by the date it is returned to the Landlord's possession, the Landlord will pay to the Tenant in compensation the following:

The acreage planted with such crops, multiplied by the average bushel per acre produced of these types of crops by local farms in the Walkerton area, multiplied by

the price received by those local farms for these types of crop, for the calendar year in which the Recaptured Land was returned to the Landlord.

- 1.2.2. The rent payable by the Tenant to the Landlord under Section 3.1 will be adjusted to reflect the lesser acreage included in the Demised Premises. However, if compensation is paid under Section 1.2.1 above, no adjustment shall be made for the rent payable by the Tenants for the calendar year in which the Recaptured Land was returned to the Landlord.

2 TERM OF THE LEASE

21. The duration of this Lease, (the “Term”), subject to Section 2.2 below, is two (2) years, beginning on January 1, 2020 (the “Commencement Date”) and ending on the day of December 31st, 2022 (the “Termination Date”), unless other terminated in accordance with the provisions of this Lease.
22. At the sole option and discretion of the Tenants, the Term of this Lease may be renewed for a further two years as set out below:
- a) If written notice is not provided by the Tenant to the Landlord by December 1, 2022, of the exercising of this option to renew the term of this Lease until December 31st, 2023, any and all options contained within this Section, including but not limited for the period from January 1, 2024 to December 31, 2024, shall become null and void; and
 - b) If written noticed has been provided under subparagraph a) above, but further written notice is not provided by the Tenant to the Landlord by December 1, 2023, of the exercising of this option to renew the term of this Lease from January 1, 2024 to December 31, 2024, any and all options contained within this Section 2.2 shall become null and void.
23. Notwithstanding any other provision contained in this Lease, if the Landlord or the Tenant provides written notice to the other of terminating this Lease, it shall terminate at the end of the calendar year in which such notice was provided.
24. The Parties hereby expressly disclaim any intention to create, and nothing in this Lease shall be deemed to create, a partnership or joint venture between them and neither of the Parties hereto shall have authority to act for or to assume any obligation or responsibilities on behalf of the other except as otherwise expressly provided herein.

3 RENT

31. The Tenants shall pay to the Landlord annual rent for the Demised Property of \$90.00 per acre, being \$2,250.00 in total in relation to the twenty-five (25) workable acres, more or less, and described in Schedule “A”, which include Harmonized Sales Tax (“HST”), if applicable.
32. The Tenants shall pay the amount owed for rent in two installments to be made on the following days of the calendar year:
- a) May 1st, 2020, in the amount of five hundred (\$500.00) dollars; and

- b) On or before December 15th, in the amount of seventeen hundred and fifty (\$1,750.00) dollars.
33. Upon default in payment of any rent under this Lease by the Tenants, calculated from the due date of such payment thereof until it is fully satisfied, the Tenants shall pay to the Landlord interest on this amount, compounded monthly, of the lesser of the prime rate established by the Landlord's bank from time to time plus one percent per annum and the maximum rate permitted by applicable law.

4 LANDLORD'S COVENANTS, REPRESENTATIONS AND WARRANTIES

41. Subject to Tenants performing and fulfilling all of its obligations under this Lease, the Landlord covenants:
- a) To provide for the quiet enjoyment of the Demised Premises by the Tenants; and
 - b) To perform and fulfil the obligations of the Landlord provided within this Lease.
42. The Landlord shall maintain appropriate insurance in relation to the Demised Premises, including occupier's insurance for coverage for third-parties entering onto the Demised Premises, in accordance with any applicable law and which a prudent and reasonable landlord in similar circumstances would obtain.
43. The Landlord makes no representations or warranties regarding the Demised Premises, nor does the Landlord represent or make any warranties that any of the land which is the subject of this Lease is cultivated or suitable for farming. The Tenants acknowledges that it relying upon its own estimate and judgment.
44. The Landlord, its agents, and its employees shall not be liable for any damage to the Demised Premises or any property located thereon, for any damage caused by anything done or omitted to be done by any person or for damage caused to property, crops or other valuables of the Tenants.

5 TENANTS'S COVENANTS, REPRESENTATIONS AND WARRANTIES

- 5.1. The Tenants covenants to the fulfil all of its obligations under this Lease, including but not limited to:
- 5.1.1. **Rent.** The Tenants shall pay all amounts required under this Lease to the Landlord.
 - 5.1.2. **Use.**
 - 5.1.2.1. The Tenants shall not build any structure, barn, shed, fuel storage facility, or feed storage facility, temporary or permanent, without the written consent of the Landlord. The Tenants shall not remove, alter or change the style or position of any fences, without the consent of the Landlord in writing. At the end of the Term of this Lease, the Tenants shall be responsible for returning the property to its condition existing at the beginning of this Lease.

5.1.3. Farming Practices.

- 5.1.3.1. The Tenants shall grow on the Demised Premises crops consisting of soybeans and peas, rotated on a year-about basis, for the duration of this Lease. No other use is allowed by the Tenant under this Lease without the written consent of the Landlord.
- 5.1.3.2. The Tenants shall follow all accepted industry standards and practices for farming. All decisions, including with respect to cultivation, tilling or fertilizing, shall be in accordance with good farming practices. The Tenants shall employ adequate fertilizer to the Demised Premises to maintain proper crop nourishment, and shall, during the term, keep down, pull up or otherwise destroy noxious weeds of all kinds which may grow upon the Demised Premises. The Tenants shall not sow, or permit to be sown any grain infected by smut or containing any foul seeds or noxious weeds, and will not suffer or permit any such foul seeds or noxious weeds to go to seed on the Demised Premises. This clause shall not supersede the provisions contained in the *Weed Control Act*, R.S.O. 1980, Ch. 530 and all amendments thereto.
- 5.1.3.3. The Tenants shall comply with all applicable laws, regulations, and orders relating to the occupation or use of the Demised Premises.
- 5.1.3.4. The Tenants shall do what is reasonably necessary to control soil erosion and to abstain from any practice which will cause damage to the Demised Premises. The Tenants shall not remove sand, gravel, topsoil or minerals from the Demised Property. The Tenants shall also not permit or allow the accumulation of any waste material, debris, refuse or garbage on the Demised Premises.
- 5.1.3.5. The Tenants shall keep the mouths of all underdrains on the Demised Premises open and free from obstruction and in good running order at all times during the Lease, and will not suffer or permit such drains or the water-courses in any open ditches on the Demised Premises, to become obstructed, but will keep them free and clear for the escape of the water flowing therein.
- 5.1.3.6. The Tenants shall not cut down timber or trees of any kind, for any purpose whatsoever, unless consented to by the Landlord. The Tenants shall immediately report to the Landlord any circumstances where trees or shrubs have the appearance of being diseased or infected with insects.

5.1.4. Farming Costs.

- 5.1.4.1. The Tenants shall be responsible for payment of all of the costs and expenses associated with the Tenants' obligations hereunder directly to the appropriate party as they come due and shall, at the Landlord's request, provide the Landlord with copies of receipts or other proof acceptable to the Landlord that such costs have been paid.
- 5.1.4.2. If the Tenants fails to perform any obligation under this Lease or to pay any costs and expenses as set out herein, the Landlord may at its sole option and discretion, on ten (10) days written notice to the Tenants, perform such obligation or pay such amounts on behalf of the Tenants and the Tenants shall forthwith upon receipt of an invoice therefore reimburse the Landlord the costs of such action or the amount of such payment.

5.1.5. Insurance.

- 5.1.5.1. The Tenants shall maintain comprehensive general liability insurance applying to all operations of the Tenants and against claims for bodily injury, including death, and property damage or loss arising from the use or occupation of the Demised Premises, in at least the combined amount of two (2) million (\$2,000,000.00) dollars.
- 5.1.5.2. The policy of insurance for the Tenants shall contain the provision that it shall not be cancelled without the insurer providing the Landlord thirty (30) days' written notice stating when such cancellation shall be effective.
- 5.1.5.3. Evidence of the Tenants maintaining sufficient insurance as required by this Lease shall be provided to the Landlord upon request.
- 5.1.5.4. The Tenants shall not do, omit to do, or permit to be done anything which will cause or shall have the effect of causing the cost of the Landlord's insurance in respect of the Demised Premises and surrounding property to be increased at any time during the term or any policy of insurance on or relating to the Demised Premises and surrounding property to be subject to cancellation.

5.1.6. Indemnity.

- 5.1.6.1. The Tenants shall indemnify and save harmless the Landlord and its agents and employees from any and all liabilities, damages, costs, claims, suits, or actions growing or arising out of:
- a) Any breach, violation or non-performance of any covenant, condition, or agreement in this Lease set forth and contained on the part of the Tenants to be fulfilled, kept, observed and performed; and
 - b) Any injury to person or persons, including death, resulting at any time from anything occurring in or about the Demised Premises to the Tenants, its employees or its agents.
- 5.1.6.2. This indemnification by the Tenants shall survive the termination of this Lease.

6 OVERHOLDING

- 6.1. If the Tenants continues to occupy the Demised Premises without the written consent of the Landlord after the expiration or other termination of the term, then, without any further written agreement, the Tenants will be a month-to-month tenant at a minimum monthly rental equal to the rent payable under Section 3 and subject always to all of the other provisions of this Lease insofar as the same are applicable to a month-to-month tenancy and a tenancy from year-to-year shall not be created by implication of law. Nothing herein contained shall preclude the Landlord from taking action for recovery of possession of the Demised Premises.

7 LANDLORD RIGHTS OF INSPECTION AND PERFORMANCE

- 7.1. The Landlord or agent or employee may enter the Demised Premises to inspect same.
- 7.2. If the Tenants fails to observe, perform, or keep any of the provisions of this Lease to be observed, performed, or kept by it and such failure is not rectified within the time limits specified in this Lease, the Landlord may, but will not be obliged to, at its discretion and without prejudice, rectify the default of the Tenants.

73. The Landlord shall have the right to enter the Demised Premises for the purpose of correcting or remedying any default of the Tenants and to remain until the default has been corrected or remedied. The Tenants shall forthwith upon receipt of an invoice therefor reimburse the Landlord the cost of such action or the amount of such payment.
74. Any expenditure by the Landlord incurred in any correction of a default of the Tenants shall not be deemed to waive or release the Tenants' default or the Landlord's right to take any action as may be otherwise permissible under this Lease in the case of any default.

8 EVENTS OF DEFAULT AND BANKRUPTCY

81. Upon the occurrence of any of the following events (an "Event of Default"):
- a) The Tenants fail to pay any rent or other sums due hereunder when due, and such rent or other sums are not paid within five (5) days after notice is given by the Landlord of such non-payment;
 - b) The Tenants fail to observe, perform and keep each and every of the covenants, agreements and conditions herein contained to be observed, performed and kept by the Tenants and persists in the failure after ten (10) days' notice by the Landlord requiring the Tenants to remedy, correct, desist or comply (or such longer period as may be reasonably required to cure the breach given the nature of same); or
 - c) The Tenants abandons the Demised Premises during the Term without the Landlord's written consent, or the Tenants does or permits anything causing cancellation or threat of cancellation of the Landlord's insurance for the Demised Premises;

Then the Landlord may, at its option, and in addition to and without prejudice to all rights and remedies of the Landlord available to it either under this Lease or applicable, cumulative or otherwise:

- i) Demand that all rent payable for the calendar year in which the Event of Default occurred shall immediately become due and payable and the Landlord may immediately distrain for the same, together with any arrears then unpaid;
- ii) Without notice or any form of legal process, forthwith re-enter upon and take possession of the Demised Premises;
- iii) Seize and sell any crops sown and then growing, any equipment or other property of the Tenants on the Demised Premises and may apply the proceeds thereof to all rent to which the Landlord is then entitled under this Lease; or
- iv) Terminate this Lease by giving the Tenant ten (10) days prior written notice; such termination shall be without prejudice to the Landlord's right to damages;

And the Tenant shall pay to the Landlord forthwith upon demand all expenses of the Landlord in re-entering, terminating, collecting sums due or payable by the Tenant or realizing upon assets seized including legal fees on a solicitor and client basis.

82. If the terms hereby granted, or any of the crops, goods, or chattels of the Tenants, shall be at any time during the term of this Lease be:
- a) Seized or taken in execution or attachment by any creditor of the Tenants;
 - b) Subject to any Writ of Execution or attachment;

- c) At any time liable to seizure under any chattel mortgage; or
- d) Subject to the Tenants becoming bankrupt or insolvent and taking the benefit of any Act that may be in force for bankrupt or insolvent debtors;

Then the current applicable rent shall immediately become due and payable, and the term of this Lease, at the sole option of the Landlord, shall become forfeited by the Tenants. In every above case such rent shall be recoverable by the Landlord in the same manner as if they were rent in arrears.

- 83. The Tenants shall, immediately upon demand by the Landlord, remove or cause to be removed, and thereafter institute and diligently prosecute any action pertinent thereto, any builders' or other lien or claim of lien noted or filed against or otherwise constituting an encumbrance on any title of the Landlord. Without limiting the foregoing obligations of the Tenants, the Landlord may cause the same to be removed, in which case the Tenants shall pay to the Landlord forthwith, the cost thereof, including the Landlord's complete legal costs on a full indemnity basis.
- 84. Neither this Lease nor any interest of the Tenants herein nor any estate hereby created will pass or enure to the benefit of any trustee in bankruptcy or any receiver or any assignee for the benefit of creditors of the Tenants or otherwise by operation of law.

9. DISPUTE RESOLUTION

- 91. **Negotiation.** The Landlord and the Tenants shall endeavour to resolve any dispute which may arise between them with respect to this Lease by negotiation. The Parties hereby agree to negotiate, promptly and in good faith, any matter a party may wish to negotiate.
- 92. **Mediation.** The Landlord and the Tenants may agree to obtain the assistance of a mediator. The costs of any such mediator shall be shared equally by the Parties involved in the dispute. The Parties agree that no report of anything said or of any admission or communication made in the course of the negotiations or mediation shall be used as evidence or shall otherwise be admissible in any legal proceeding, except with the consent, in writing, of all of the parties involved in the dispute.
- 93. **Arbitration.** If in the opinion of the Landlord or the Tenants, acting reasonably, it is unlikely to expect the matter in dispute as between the Parties to be resolved by continued negotiations or continued mediation, or if the matter is of such a significant nature to warrant it being addressed otherwise, then it is to be submitted to binding arbitration pursuant to the *Arbitration Act* (Ontario), as amended. The sole arbitrator shall be appointed by agreement between the Parties or, in default of agreement, such arbitrator shall be appointed by a judge of the Superior Court of Justice. The binding arbitration shall be held in the Municipality of Brockton. The procedure to be followed shall be agreed by the Parties or, in default of agreement, determined by the arbitrator. The arbitrator shall have the power to proceed with the arbitration and to deliver his or her award notwithstanding the default by any Party in respect of any procedural order made by the arbitrator. The cost of such arbitrator shall be borne in accordance with the decision of the arbitrator. The decision arrived at shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction.

10. GENERAL

- 10.1. **Registration.** The Tenants shall not register this Lease without the prior written consent of the

Landlord.

102. **Assignment and Subletting.** The Tenants shall not assign or sublet their interest in this Lease, or any part of their interest in this Lease, nor grant any licence or part of the possession of the Demised Premises or transfer any other right or interest under this Lease without the Landlord's written consent.
103. **Assignment by Landlord on Sale of Property.** The Landlord may assign this Lease to a purchaser of the property including the Demised Premises with written notice to the Tenants.
104. **Governing Law.** This Agreement is governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that province, excluding the choice of law rules of that province.
105. **Sections and Headings.** The division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
106. **Notices.** Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Lease shall be in writing and shall be sufficiently given or made if served personally upon an officer of the party for whom it is intended, or couriered, or mailed by prepaid registered mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender, and in the case of:

(a) To the Landlord, addressed to it at:

Municipality of Brockton
 100 Scott Street
 P.O. Box 68
 Walkerton, ON N0G 2V0
 Attention: Clerk
 Fax: (519) 881-2991
 Email:

(b) To the Tenants, addressed to it at:

584653 Ontario Limited
 c/o Zettler
 871 Concession 2 SDR
 R.R. # 2 Walkerton, ON N0G 2V0

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if served personally, by telecopy or email, shall be deemed to be the date of delivery thereof, or if mailed as aforesaid, five (5) business days from mailing.

107. **Severability.** If any provision of this Lease or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provisions in any other jurisdiction or its applications to other parties or circumstances.

108. **Further Assurances.** The Landlord and the Tenants shall at all times and from time to time hereafter and upon every reasonable written request so to do, make, do, execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required for more effectually implementing and carrying out the true intent and meaning of this Lease.
109. **Remedies Cumulative.** The remedies of a party under this Lease are cumulative and the exercise by such party of any right or remedy for the default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which such party may be lawfully entitled for such default or breach. Any waiver by such party of the strict observance, performance or compliance by another party hereto of or with any term, covenant, condition or agreement herein contained, or any indulgence granted by a party hereto to another party hereto shall not be deemed to be a waiver of any subsequent default or breach by such other party, not entitle such other party to any similar indulgence.
- 10.10. **Successors.** This Lease is binding on, and enures to the benefit of, the Parties and their respective successors.
- 10.11. **Time of Essence.** Time is of the essence for this Lease.
- 10.12. **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties. There are no oral representations or warranties among the Parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both Parties.
- 10.13. **Independent Legal Advice.** Each of the Parties acknowledges that it has read and understands the terms and conditions of this Lease and acknowledges and agrees that it has had the opportunity to seek, and was not prevented or discouraged by any other party from seeking, any independent legal advice which it considered necessary before the execution and delivery of this Lease and that, if it did not avail itself of that opportunity before signing this Lease, it did so voluntarily without any undue pressure. A failure by a party to obtain independent legal advice shall not be used by it as a defence to the enforcement of its obligations under this Lease.
- 10.14. **Counterparts.** This Lease may be executed and delivered by counterparts with the same effect as if the Parties hereto have signed and delivered the same document. All counterparts shall be construed together and shall constitute one and the same agreement. Any delivery of an executed copy of this Lease by way of telecopy, facsimile or email transmission shall constitute delivery hereof.

[SECTION INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Indenture of Lease under their respective corporate seals, as of the date first written above.

LANDLORD

THE CORPORATION OF THE
MUNICIPALITY OF BROCKTON

By: _____
Name: Chris Peabody
Title: Mayor

By: _____
Name: Fiona Hamilton
Title: Clerk

We have the authority to bind the Corporation
of the Municipality of Brockton.

TENANTS

Witness

Name: ____

Witness

Name: _____

Schedule "A"

