Minute No. 461
Report – Standing Policy Committee on Property and Development – June 12, 2012

Item No. 6 Encroachment Agreement - 1585 Henderson Highway (North Kildonan Ward)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property Development and adopted the following:

1. That a proposed Encroachment Agreement in favour of Ukelish Enterprises Ltd. d/b/a Douglas Auto, for the continued operation of an automobile repair station located within the City owned right of way, shown as "Subject Property (Revised 2010), on attached Misc. Plan No. 7969/2, be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development – June 12, 2012

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 20, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 12, 2012, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement for the Operation of an Automobile Service Station located at 1585 Henderson Highway**

Critical Path: **Standing Police Committee on Property and Development**
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	M Ruta	D. Joshi, COO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Ukelish Enterprises Ltd. d/b/a Douglas Auto, for the continued operation of an automobile repair station located within the City owned right of way, shown as "Subject Property (Revised 2010), on attached Misc. Plan No. 7969/2, be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

City of Winnipeg Bylaw No. 692-74 which regulates the construction and maintenance of certain encroachments in streets, under General Regulations Clause 4(1)(d), provides that where an encroachment is of an unusual or commercial nature, the Director of Planning, Property and Development will negotiate a reasonable rental for recommendation to the CAO for subsequent referral to Council.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to lease the lands as shown on the attached Miscellaneous Plan No. 7969/2.

HISTORY

The subject property was acquired by the former Metro Corporation for future transportation purposes. The property has been leased to Ukelish Enterprises Ltd. for the operation of an automobile repair station since 1987. The most recent lease agreement was for a 5 year term at an annual rent of $8,400.00 plus realty taxes.

Recent construction of the Chief Peguis Trail necessitated a small change to the Tenant's leased area and prompted a review of the lease. The new agreement is for a 5 year term with a rental rate of $15,776.00 per annum plus realty taxes. The Tenant has agreed to these terms.

The Public Works Department has no objection to the proposed encroachment, subject to conditions as noted in Schedule A.

The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the terms and conditions.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** May 17, 2012

Project Name: **First Year of Program** **2012**

Proposed Encroachment Agreement for the Operation of an Automobile Service Station located at 1585 Henderson Hwy

	2012	2013	2014	2015	2016
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	8,388	15,776	15,776	15,776	7,888
Net Cost/(Benefit)	$ (8,388)	$ (15,776)	$ (15,776)	$ (15,776)	$ (7,888)
Less: Existing Budget Amounts	(8,388)	(15,776)	(15,776)	(15,776)	(7,888)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2012 consist of the $15,776/annum encroachment fee prorated for a July /12 commencement date + a one-time $500 admin fee. Revenues from 2012 onward consist of the encroachment fee only.

original signed by
Karen Ayotte
Acting Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Corporate Finance
Legal Services Department as to legal issues
Public Works Department

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate
Prepared by: Kelly Udell
Date: May 22, 2012
File No. 7422-1A

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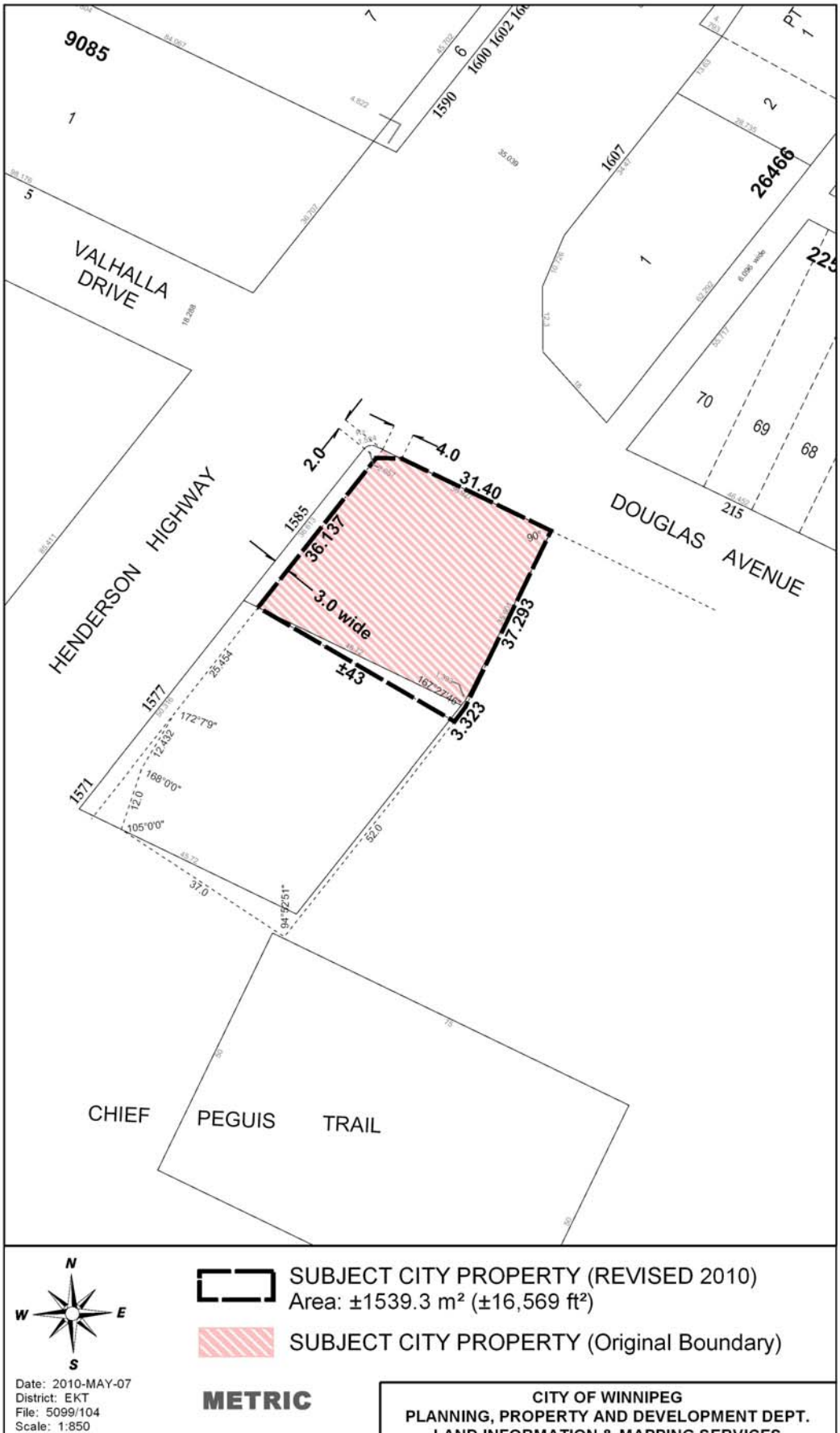

9085
1
5
VALHALLA DRIVE
7
6
1600 1602 16
1590
1607
1
2
26466
225
70
69
68
215
DOUGLAS AVENUE
HENDERSON HIGHWAY
2.0
4.0
31.40
1585
36.137
3.0 wide
37.293
±43
3.323
1577
1571
25.454
172°7'9"
12.432
168°0'0"
12.0
105°0'0"
52.0
37.0
94°52'51"
CHIEF PEGUIS TRAIL
N
W
E
S
SUBJECT CITY PROPERTY (REVISED 2010)
Area: ±1539.3 m² (±16,569 ft²)
SUBJECT CITY PROPERTY (Original Boundary)
Date: 2010-MAY-07
District: EKT
File: 5099/104
Scale: 1:850
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.

Schedule "A"

RECEIVED
CITY OF WINNIPEG
APR 16 2012
PLANNING, PROPERTY & DEVELOPMENT DEPARTMENT

Proposed Terms & Conditions
For Encroachment Agreement between the City of Winnipeg and Ukelish Enterprises Ltd.
Shown as "Subject City Property" on attached Misc. Plan 7969/2)

Landlord:	City of Winnipeg
Licensee:	Ukelish Enterprises Ltd. dba/Douglas Auto
Subject Property:	A portion of Chief Peguis Trail shown on the attached Misc. Plan 7969/2 identified as "Subject City Property" and hereinafter referred to as "Subject Property".
Area:	As shown on the attached Misc. Plan 7969/2
Use:	The Subject Property shall be used **as an automobile repair station only and for no other purposes whatsoever.**
Term:	Five (5) years commencing July 1, 2011.
Renewal:	One five (5) year option to renew, subject to a rental increase, to be based on market rates at the time the Licensee exercises its option to renew, which at no time shall be less than the previous rental rate.
Rent:	$1,314.67 plus GST per month ($15,776.00 plus GST per annum)
Admin Fee:	A one time administration fee of $500.00 plus GST
Taxes:	Licensee shall be responsible for all municipal taxes, school taxes, local improvements, license fees, business tax, etc. which may be charged in respect of the use and occupation of the Subject Property.
Cancellation:	Upon Ninety (90) days written notice by either party.
Insurance:	To indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Subject Property by the Licensee. To further safeguard the City, the Licensee shall purchase and keep in force, during the full term of the agreement, a Comprehensive General Liability Policy including but not limited to the following provisions: i) Commercial general liability insurance, in the amount of at least two million dollars ($2,000,000) inclusive, with The City of Winnipeg Added as an additional insured; such liability policy to also contain a cross-liability clause, Licensee's legal liability and products and completed operations cover; ii) An All Risk property insurance policy, for the full replacement cost insuring all buildings, contents, equipment and Licensee's improvements; Policy to include the City as an additional named insured; iii) If required, Boiler and Machinery Breakdown insurance policy, for the full replacement cost of the facility and all boilers, pressure

Schedule "A"

vessels (fired and unfired), air-conditioning equipment, mechanical and electrical equipment, transformers, electrical switch gears, motors, compressors, refrigeration equipment and miscellaneous electrical apparatus owned or operated by the Landlord; Policy to include the City of Winnipeg as an additional named insured;

iv) Automobile liability insurance for owned and non-owned automobiles used for or in connection with the Encroachment Agreement in the amount of at least two million dollars ($2,000,000) to remain in place at all times during the full term of the Encroachment Agreement; such insurance may be met through the commercial general liability cover where applicable;

All policies shall be taken out with insurers to and carrying on business in the Province of Manitoba;

Deductibles shall be borne by the Licensee;

The Licensee shall not cancel, or cause any such policy or policies to lapse without a minimum thirty (30) days prior written notice to the City;

The Licensee shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;

The Licensee shall file with the City an annual Certificate of Insurance in a form satisfactory to the City Solicitor;

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance to this Encroachment Agreement and for any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change.

Conditions: The development and maintenance of the Subject Property will be performed at the sole cost, expense and effort of the Licensee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Subject Property for the intended use.

The Licensee agrees to:

maintain at its own expense the land and building in a safe and tidy condition to the satisfaction of the City;

make necessary repairs to the building at its own expense;

repair and maintain the City's Equipment which consists of one (1) Devilbiss Compressor, complete with 3 horsepower motor, type VCF-5006 frame (Serial No. 278350) as required during the Term;

pay all operating costs pertaining to the use of the Subject property including, but not limited to, heat, hydro, gas, water and phone;

Schedule "A"

provide and pay for removal of snow and ice from the Subject Property;

comply with the rules and regulations set out by the City in Schedule "B" attached hereto as required during the Term;

comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Subject Property.

The Licensee will not construct or permit the construction of any building or structure whatsoever on the Subject Property, nor make any excavation therein or improvement thereon, without the written authority of the City's Director of Planning, Property and Development Department.

In the event that the Subject Property requires repair, the Licensee shall perform at its sole cost, expense and effort the required repairs within thirty (30) days of written notice provided by the City.

The Licensee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Subject Property for any use or purpose nor as to any environmental conditions which may exist. The Licensee takes the Subject Property on as "as is" basis.

The City shall have the right of access to the Subject Property at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Subject Property, and for doing any work to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances in or near to the Subject Property without being responsible for any damage occasioned thereby.

The City reserves the right for MTS Communications Inc., and Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Subject Property for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damaged occasioned thereby.

The Licensee shall not assign or sub-let or part with possession of all or any part of the Subject Property without the Licensee first obtaining the prior written consent of the City. In such event, the City in its sole discretion may cancel this agreement and enter into a new agreement. Further the Licensee acknowledges and agrees that upon its making application for such consent by the City the Licensee shall pay to the City a non-refundable administrative fee of two hundred and fifty dollars ($250.00) plus applicable GST, or such amount as may from time to time be determined by the City in its sole discretion acting reasonably.

Schedule "A"

The Licensee to indemnify and save harmless the City from and against any and all claims for damages which may arise out of the use of the premises by the Licensee.

In the event of the Licensee being in default of any Terms and Conditions contained herein, the agreement is subject to immediate cancellation by the City.

Upon termination or cancellation of the "Encroachment Agreement" the Licensee shall remove its property and improvements from the Subject Property and leave same in a condition satisfactory to the City. Should the Licensee default in so doing the City may remove the Licensee's property and improvements and restore the Subject Property at the sole risk and expense of the Licensee.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

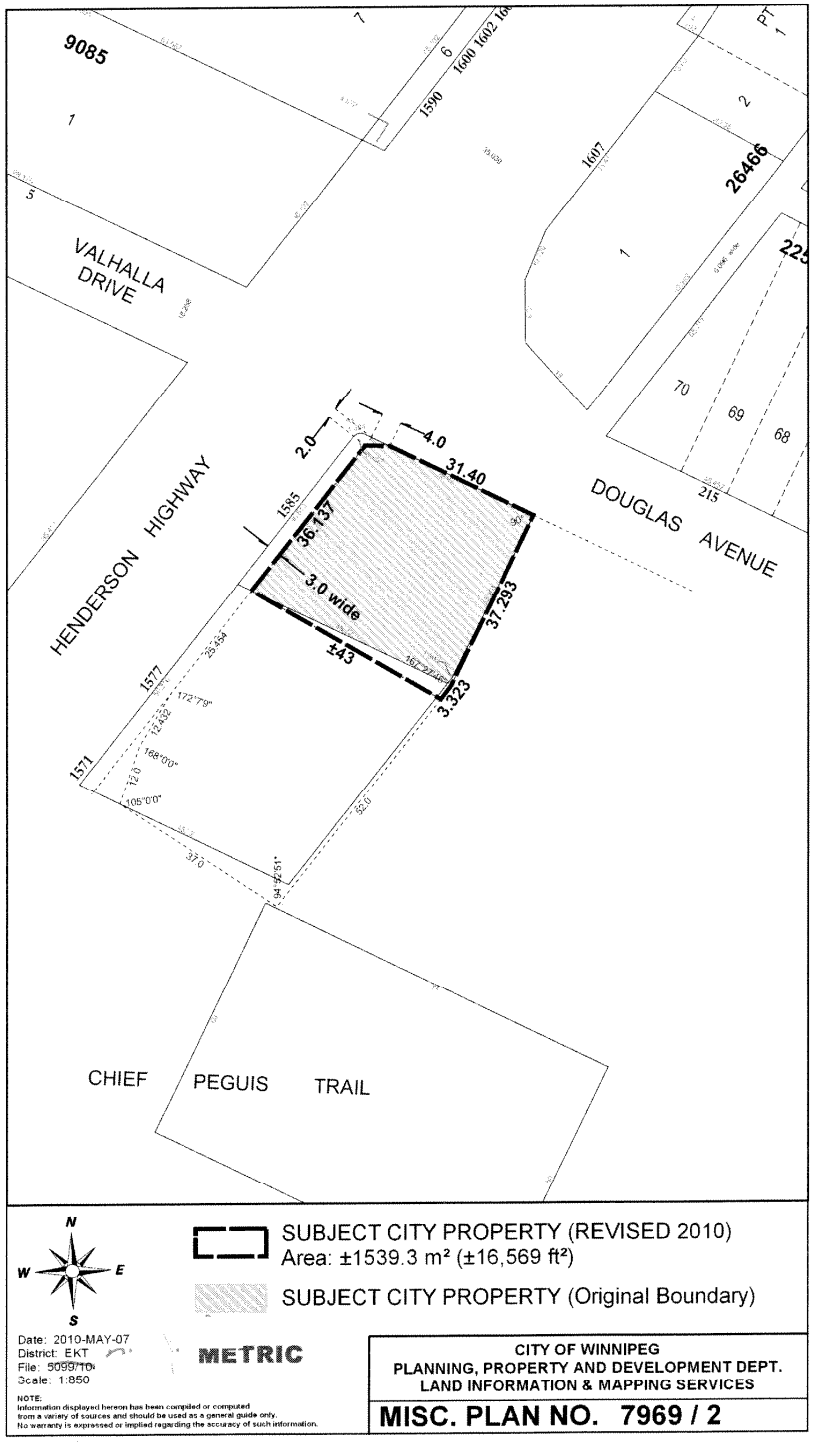
The Licensee shall enter into a formal agreement with the City embodying the foregoing Terms and Conditions and such other Terms and Conditions as the City Solicitor/Director of Legal Services deems necessary and in form satisfactory to the City Solicitor/Director of Legal Services.

Ukelish Enterprises Ltd., hereby acknowledges and agrees to enter into an Encroachment Agreement with the City of Winnipeg for the use of the area identified as "Subject City Property" on Misc. Plan 7969/2 attached in accordance with the Terms and Conditions as outlined herein on this Schedule "A".

Ukelish Enterprises Ltd.
(dba/Douglas Auto)

Mar 28/2012
Date

Schedule "A"


9085
VALHALLA DRIVE
HENDERSON HIGHWAY
DOUGLAS AVENUE
CHIEF PEGUIS TRAIL
26466
2.0
4.0
31.40
36.137
3.0 wide
37.293
±43
3.323
SUBJECT CITY PROPERTY (REVISED 2010)
Area: ±1539.3 m² (±16,569 ft²)
SUBJECT CITY PROPERTY (Original Boundary)
Date: 2010-MAY-07
District: EKT
File: 5099/10
Scale: 1:850
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 7969 / 2

Schedule "B"

Rules and Regulations

1. No awnings or other projections shall be attached to the outside walls of the Building. All curtains, blinds, shades or screens attached to or hung in, or used in connection with any window or door of the Building shall be subject to the approval of the Director of Planning, Property and Development. Window shading shall be kept closed on exterior windows when exposed to the sun.

2. No show cases or other articles shall be put in front of or affixes to any part of the exterior of the Building without the prior written consent of the Director.

3. The Licensee shall not mark, drill into or in any way deface any part of the Land or the Building. No boring, cutting or stringing of wires shall be permitted except with the prior written consent of the Director.

4. The Licensee shall not cause nor permit to be caused any unusual or objectionable odours to be produced upon or emanate from the Land or the Building.

5. The Licensee shall not bring or permit to be brought or kept on the Land or the Building any flammable, combustible or explosive fluid, chemical or substance, save and except such flammable, combustible or explosive fluid, chemical or substance as is used in the ordinary course of the permitted business conducted by the Licensee in, on, about and from the Land and the Building, namely, an automobile service station.

6. The water and wash closets and other plumbing fixtures shall no be used for any purposes other than those for which they were constructed and no sweepings, rubbish, rags or other substances shall be deposited therein. All damage resulting from any misuse of such fixtures shall be borne by the Licensee who, or whose servants, employees, agents, visitors or licensees shall have caused the same.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows on the Building, nor shall any changes be made in the existing locks or the mechanism thereof. Upon termination of this Agreement for any reason whatsoever, the Licensee will return to the Director, all keys to the Building either furnished to or otherwise procured by the Licensee and in the event of the loss of any keys so furnished, the Licensee shall pay to the City to cost thereof.

8. Except as may be otherwise approved by the City, the Licensee shall not use or permit any portion of the Land and the Building to be used for the possession, storage, manufacture or sale of liquor or narcotics in any form whatsoever.

9. The requirements of the Licensee shall be attended to only upon application to the Director. The Licensee's employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the Director.

10. The Licensee shall not install or permit the installation or use of any machine dispensing goods or foods for sale in the Building or permit the delivery of any food or beverage to the Building without the approval of the Director or in contravention of any regulations fixed or to be fixed by the City.