

**LEASE FOR STORAGE TANK AND EQUIPMENT  
AND PROPANE GASE SUPPLY AGREEMENT**

Dated:

Between: McCLEARY OIL CO., INC., 1266 N. Franklin St., Chambersburg, PA 17201 (“Lessor”)

And

\_\_\_\_\_ of \_\_\_\_\_ (“Customer”)

Quantity	Description of Equipment	Serial Number	Value

Location of Tank: \_\_\_\_\_

WITNESSETH:

1. Lease Term and Equipment.

1.1 In consideration of the mutual covenants and promises contained herein, Lessor hereby leases unto Customer for a period of one year, commencing the date of this Agreement and ending June 30, \_\_\_\_\_. The above described equipment (“Equipment”) shall be installed on the Customer’s premises within a reasonable time following the date both Customer and Lessor have signed this Agreement. The Equipment shall remain the personal property of Lessor even though it may be fastened or attached to Customer’s real estate and Customer will give the Lessor immediate notice of any attachment or other judicial process affecting any item of the Equipment. Customer will not store or permit to be stored in the Equipment any product other than Lessor’s products.

1.2 This Agreement shall automatically renew for successive terms of one year each after the initial term hereof unless terminated by either party upon 30 days written notice to the other party prior to the expiration of the then current term. If Customer violates any of the provisions contained herein or is in default in payment of any indebtedness due Lessor, the Lessor may terminate this Agreement at its option if the Customer has not cured such default within 10 days of written notice by Lessor to Customer. THERE WILL BE NO CREDIT FOR ANY REMAINING PRODCUT IN LEASED TANK WHEN REMOVED FROM SERVICE.

1.3 Customer will mark or otherwise identify the location of septic systems, leach pits, underground ponds and similar underground features as necessary to safely install the Equipment and to perform service and make deliveries.

1.4 Unless Customer gives written notice of an objection to Lessor within twenty-four (24) hours of the delivery and installation of the Equipment, Customer acknowledges and agrees that it shall be conclusively presumed that it has received the Equipment and that the same and the installation thereof is in good and acceptable condition, free of defects in material and workmanship.

1.5 Only Lessor and its agents and/or contractors may make any adjustments, connections or disconnections to the Equipment or remove or pump out the Equipment without the written permission of Lessor. If Customer violates this provision, Lessor, without prior notice to Customer, may remove the Equipment immediately from the Customer's property.

1.6 If applicable, once installed, any underground lines are owned by Customer who shall be responsible for the maintenance thereof and compliance with all applicable laws, codes and regulations as the same relate to such lines.

1.7 Customer will notify Lessor immediately if the any of the Equipment is damaged or malfunctioning. Repairs to or replacements of the Equipment caused by natural wear and tear or the elements shall be paid for by the Lessor, but if caused by the negligence or willful act of anyone other than the Lessor, Customer will pay the reasonable costs therefor, including, if replaced, the fair market value of the replaced Equipment, plus fifty percent (50%).

1.8 Lessor shall, at any and all times, have the right to enter into and on the premises where the Equipment may be located for the purpose of inspecting the same.

## 2. Supply of Propane Gas to Customer and Rental.

2.1 Lessor agrees to supply all of Customer's propane gas during the Term of this Lease in accordance with the terms and provisions hereof. Customer agrees that it shall use a minimum of \_\_\_\_\_ gallons of propane gas per lease year ("Minimum Use"). If Customer's annual Minimum Use is less than required for any year of the Term, Customer shall pay a Minimum Use Fee to Lessor of \$ \_\_\_\_\_. There is no minimum Use requirement for the initial term of this Agreement unless such term exceeds \_\_\_\_\_ months.

2.2 If Customer's annual Minimum Use is less than required for any year of the Term, Lessor may, in its sole discretion: (i) exchange the Equipment to other equipment more compatible with Customer's use or (ii) remove the Equipment from Customer's property and terminate this Agreement following thirty (30) days' written notice from Lessor to Customer so that Customer may have sufficient time to select a new supplier.

2.3 Customer will provide Lessor with safe, free and unimpeded access to the Equipment, including, but not limited to, access free of ice, snow, water, mud and other debris. Without prior notice, Lessor may enter Customer's property to deliver propane gas or to install, repair or service the Equipment or to perform any other services that it deems necessary for the safety and operation of the Equipment.

2.4 Lessor may refuse to render service at any time the Equipment is connected to service lines which do not comply with industry standards, or rules and regulations of governmental authorities, or are considered a hazard by Lessor in its reasonable estimation, or if Customer refuses to permit adequate inspection of the Equipment and connectors thereto.

## 3. Termination. If this Agreement is terminated by Lessor pursuant to the provisions of Section 4 below:

3.1 Customer will promptly surrender the Equipment to Lessor and Lessor and its agents and/or contractors are authorized to enter upon the Customer's premises and remove the Equipment without demand or legal process.

3.2 Customer shall pay Lessor a termination fee of \$ \_\_\_\_\_ and one of the following, as selected by Lessor: (a) the reasonable cost of removal of the tank (including but not limited to excavation and related work for underground tanks) or pump-out; (b) a handling charge or (c) buy-out of the Equipment at the prevailing retail value thereof.

3.3 Lessor will refund to Customer \$1.00 per gallon for the remaining propane in the tanks.

4. Default. If Customer is in default in payment of any sums due Lessor hereunder or breaches any of the other provisions hereof, including the requirement of Minimum Use set forth in Section 2.1 above, the Lessor may terminate this Agreement at its option if Customer has not cured such default within ten (10) days of written notice by Lessor to Customer. Upon an uncured default by Customer, there will be no credit for any remaining propane gas which is removed by Lessor from the Equipment.

5. Assignment. Without the prior written consent of Lessor, Customer will not assign, transfer, pledge or hypothecate this Lease or any interest in it.

6. Limitation of Liability. Lessor shall not be liable for any loss or damage which is incurred as a result of delay, strikes, storms, war emergencies, labor troubles, belated receipt of materials, fires, floods, water, Acts of God, or other circumstances beyond its control. Lessor shall not be liable for any damages by reason of failure or faulty operation of the Equipment or for any direct or consequential damages or losses resulting from the installation, operation or use of the products or Equipment furnished by Lessor.

7. Indemnification. Customer assumes the risk of liability arising from or pertaining to the possession, operation or use of the Equipment. Customer hereby agrees to indemnify, hold safe and harmless against, and defend Lessor from, any and all claims, costs, expenses, damage, and liabilities, including reasonable attorneys' fees, arising from or pertaining to the Customer's use, possession or operation of the Equipment.

8. Limitation of Liability.

8.1 Except as provided in this paragraph, under no circumstances will Lessor be liable for incidental, consequential or special damages, including without limitation damage to customer's plumbing, septic system, driveway, bridges, and/or landscaping. This limitation will apply regardless of whether a claim is made or a remedy is sought under contract, tort or product liability law. Customer's exclusive remedy for any loss sustained as a result of the temporary exhaustion of propane gas supply, where the customer participates in Lessor's automatic delivery program, is limited to actual damages in an amount not to exceed \$10,000 for any loss or property damage unless the exhaustion of propane gas is the result of circumstances beyond Lessor's control or knowledge, including, without limitation, an increase in usage by customer, replacement or addition of propane-powered appliances without prior notice to Lessor or due to lack of access to the equipment in which case Customer agrees it is entitled to no damages. In no event will Lessor be liable to Customer for damages as a result of the temporary exhaustion of propane where a residence is or becomes used as a vacation home or seasonal residence or which is otherwise not used year-round.

8.2 Customer acknowledges and accepts that during the installation, service and removal of the Equipment and provision of the gas service, Lessor will access the Premises using vehicles and equipment that may cause significant wear and tear on the surfaces of the Premises. CUSTOMER HEREBY WAIVES AND RELEASES LESSOR, AND LESSOR SHALL HAVE NO LIABILITY, FOR ANY DAMAGES CAUSE IN THE CONNECTION WITH THE INSTALLATION, SERVICE OR REMOVAL OF THE EQUIPMENT OR PROVISION OF THE GAS SERVICES (INCLUDING DAMAGE TO SURFACES DESCRIBED IN THE PREVIOUS SENTENCE), EXCEPT TO THE EXTENT CAUSED BY LESSOR'S INTENTIONAL MISCONDUCT. LESSOR IS NOT RESPONSIBLE FOR ANY DAMAGE CAUSED IN CONNECTION WITH THE BACKFILL, RESURFACING, OR RESTORING ANY PART OF THE PREMISES TO ITS PREVIOUS CONDITION WHEN ANY OF THE EQUIPMENT IS INSTALLED, SERVICED OR REMOVED. FURTHER, IN NO EVENT WILL LESSOR BE LIABLE FOR (A) ANY DIRECT DAMAGES ARISING UNDER OR RELATED TO THIS AGREEMENT IN EXCESS OF THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE DURING THE 12 MONTHS PRIOR TO THE CLAIM OR (B) ANY CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES ON ANY KIND.

9. Notices. Except as otherwise provided herein, notices, demands, requests, consents, approvals and other communications (collectively "notice") required or permitted to be given hereunder or which are to be given with respect to this Agreement shall be in writing and shall be given by personal service, express mail, Federal Express, or any other similar form of messenger, airborne/overnight delivery service or by certified or registered U. S. mail, postage prepaid, return receipt requested, addressed to the party to be so notified at the addresses set forth above.

10. Miscellaneous.

10.1 Concurrent Remedies. No right or remedy herein conferred on or reserved to the Lessor is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise and may be enforced concurrently therewith or from time to time.

10.2 Non-Waiver. No covenant or condition of this Agreement may be waived except by the written consent of the Lessor. Forbearance or indulgence by the Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Customer to which the same may apply, and, until complete performance by the Customer of any covenant or condition, the Lessor shall be entitled to invoke any remedy available to the Lessor under this Agreement or by law or in equity despite said forbearance or indulgence.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Lessor and the Customer and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter. It shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

10.4 Pennsylvania Law to Apply. This Agreement shall be construed under and in accordance with laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions, and all obligations of the Parties created hereunder are performable in Franklin County, Pennsylvania.

10.5 Legal Construction. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision never been contained herein.

10.6 Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the day and year first above written.

**Lessor: McCleary Oil Company, Inc.**

\_\_\_\_\_  
(Customer's Name – Please Print)

By \_\_\_\_\_  
Its Authorized Agent

\_\_\_\_\_  
(Customer's Signature)