

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF	)	BROWNFIELDS COVENANT
	)	NOT TO SUE AGREEMENT
FILTER SALES & SERVICE, INC. AND	)	
15 ADAMS STREET LLC	)	DEP RTN 3-00627

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue Agreement (this "Agreement") is made and entered into by and between the Office of the Attorney General (the "OAG"), on behalf of the Commonwealth of Massachusetts (the "Commonwealth") and Filter Sales & Service Inc. and 15 Adams Street LLC. (Collectively, Filter Sales & Service Inc. and 15 Adams Street LLC will be hereinafter referred to as "Filter Sales." Collectively, the OAG, on behalf of the Commonwealth, and Filter Sales will be hereinafter referred to as the "Parties.")

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, (the "MCP") and involves the remediation and redevelopment of 15 Adams Street, Burlington, MA (the "Filter Sales & Service Manufacturing Facility Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of Burlington, MA. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to Filter Sales and is predicated upon their compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, Response Action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage under common law, except for liability arising under a contract.

D. The Parties agree that Filter Sales's ability to conduct the Filter Sales & Service Manufacturing Facility Project, as proposed herein, may be contingent upon independent approval processes of other departments, agencies and instrumentalities of the federal, state and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the proposed project for such approval processes.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Burlington, MA.



## II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at 200 Portland Street, Boston, Massachusetts. Included within the OAG's authority is the authority to enter into Brownfields Covenants Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3), which provides liability relief under G.L. c. 21E, as amended.

B. Filter Sales & Service Inc. is a corporation, duly organized and existing pursuant to the general laws of the Commonwealth of Massachusetts located at 10 Roland Street, Charlestown, MA. 15 Adams Street LLC is a limited liability company, duly organized and existing pursuant to the general laws of the Commonwealth of Massachusetts, located at 10 Roland Street, Charlestown, MA. In accordance with this Agreement, Filter Sales & Service Inc. and 15 Adams Street LLC shall undertake the Filter Sales & Service Manufacturing Facility Project as discussed in Section IV, Paragraph A, subparagraph 2., below.

## III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3) and 940 CMR 23.00: Brownfields Covenants Not to Sue Agreements.

B. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The Filter Sales & Service Manufacturing Facility Project involves 6.5 acres of land with a 40,000 sq. ft., one-story brick building located at 15 Adams Street, Burlington. The Property is also known as the former Jerguson Gage and Valve Facility.

D. In 1986, White Consolidated Industries Inc. ("WCI"), a prior owner of the Property, initiated a site investigation that discovered chlorinated volatile organic compounds and oil product floating on the water table. In 1988, the Department of Environmental Protection ("DEP") received notice of these Releases and DEP assigned Release Tracking Number ("RTN") 3-00627 to the Releases of Oil and/or Hazardous Material released on the Property. In 1995, the Site was classified as a Tier IB disposal site under the MCP. In January 2000, WCI filed a RAO Class C Temporary Solution regarding RTN 3-00627. For purposes of this Agreement, the releases of Oil and/or Hazardous Material assigned RTN 3-00627 constitute the "Site," as further defined in 310 CMR 40.0006.



#### IV. COMMITMENTS AND OBLIGATIONS

NOW THEREFORE, in consideration of the representations made and promises exchanged by and between the Parties, each of them does hereby covenant and agree to the terms and conditions which follow.

##### A. REPRESENTATIONS AND COMMITMENTS

###### 1. By Filter Sales

Filter Sales represent that they are not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E. Filter Sales further represent that they are not now nor have they ever been previously affiliated with any person having such potential liability at the Site, except as set forth below. Thus, Filter Sales represents that they are an Eligible Person. Filter Sales also represents, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that Filter Sales's involvement with the Site has been limited to the following:

- a. Evaluating the Property for purposes of acquiring the Property;
- b. Negotiating to acquire the Property; and
- c. Communicating with the Commonwealth and local authorities with respect to the design and planning of improvement projects and various permitting issues with respect to the Property. Filter Sales represents that none of these activities has caused or contributed to the Release or threatened Release of an Oil and/or Hazardous Material at the Site under G.L. c. 21E.

2. Filter Sales agrees to the following terms and conditions, which terms and conditions are effective upon Filter Sales's acquiring title to 15 Adams Street, Burlington, Massachusetts, and written notice thereof to the AGO:

a. Filter Sales shall conduct the Filter Sales & Service Manufacturing Facility Project and provide significant public benefits by establishing its corporate headquarters at the Property and use best efforts to create 30 to 40 permanent jobs. A copy of Filter Sales's Conceptual Plan for the Project is attached hereto and incorporated into this Agreement as Exhibit 1.

b. Filter Sales shall either achieve and maintain, or arrange for the achievement and maintenance of, either a Permanent Solution or a Remedy Operation Status. In the meantime, Filter Sales shall maintain or arrange for the maintenance of the Class C RAO Temporary Solution in accordance with G.L. c. 21E and the MCP. Filter Sales shall cooperate with WCI's successor Electrolux Home Products Inc. and/or its successor ("Electrolux") so that



Electrolux can operate and maintain the response actions at the Property in accordance with G.L. c. 21E and the MCP. Filter Sales has submitted to the OAG an opinion demonstrating that a Permanent Solution is not feasible pursuant to 310 CMR 40.0860 and shall take, or arrange for, definitive and enterprising steps to be taken toward achieving a Permanent Solution pursuant to 310 CMR 40.1050(5). Filter Sales shall also conduct the Periodic Evaluations of the Temporary Solution every 5 years to assess whether or not achievement of a Permanent Solution is feasible pursuant to 310 CMR 40.1050(5), or arrange that such Periodic Evaluations be conducted. Filter Sales shall submit to DEP, or arrange for the submission of, operation and maintenance and/or monitoring reports every 6 months pursuant to 310 CMR 40.0891(5). Filter Sales shall cooperate fully with DEP. To cooperate fully means:

- i. including, without limitation, providing prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP;
  - ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;
  - iii. responding in a timely manner to any request made by the DEP or OAG to produce information as required pursuant to G.L. c. 21E;
  - iv. to the extent necessary (a) preventing the Exposure of people to Oil and/or Hazardous Material by fencing or otherwise preventing access to the Property; and (b) to containing any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container, upon obtaining knowledge of a Release or threat of Release of Oil and/or Hazardous Material; and
  - v. conducting Response Actions at the Site in accordance with the G.L. c 21E, the Standard of Care defined therein, and the MCP.
3. Filter Sales is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement Action arising under any applicable federal, state or local law or regulation.

## B. THE BROWNFIELDS COVENANT NOT TO SUE

### 1. Filter Sales

In consideration of the Representations and Commitments by Filter Sales set forth in Section IV, Paragraph A of this Agreement, and subject to Filter Sales's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 6, the Commonwealth covenants not to sue Filter Sales, pursuant to G.L. c. 21E, for Response Action costs, contribution, or injunctive relief for the Matters Addressed at the Property Addressed by this Agreement. This Covenant



shall vest on the effective date of this Agreement as defined in Section IV, Paragraph E, subparagraph 5. This Agreement shall not affect any liability established by contract. For purposes of this Agreement, the Property Addressed shall be the Site as defined in Section III, Paragraph D, and the Matters Addressed shall be defined as those Releases of Oil and/or Hazardous Material at the Site which are fully described and delineated in the existing Class C Response Action Outcome (“RAO”) statement and any subsequent Remedy Operation Status (“ROS”) or permanent solution RAO submitted to DEP with respect to the Site, so long as the Response Actions upon which the RAO(s) or ROS relies meet the Standard of Care in effect as of the time of submittal of the RAO(s) or ROS.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the real property interests of Filter Sales, or who are lessees or licensees of its successors and assigns (hereinafter the “Subsequent Owners and/or Operators”) having rights in the Property for which Filter Sales receive covenants herein, with respect to the Matters Addressed at the Property Addressed, as described in Section IV, Paragraph B, subparagraph 1 and 2, above. The liability relief available to such Subsequent Owner and/or Operator shall be subject to the same terms and conditions as those that apply to Filter Sales.

3. Duration of the Agreement

This Agreement shall be in effect unless the statutory protections available to Filter Sales or Subsequent Owners and/or Operators pursuant to G.L. c.21E, §5C, are otherwise in effect. This Agreement is subject to the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 6.

4. Reservations of Rights

The Brownfields Covenant Not to Sue shall not apply to the following:

- a. any new Release of Oil and/or Hazardous Material at, or from the Property that occurs after the date of execution of this Agreement;
- b. any Release of Oil and/or Hazardous Material which Filter Sales or any Subsequent Owner and/or Operator, causes or contributes to or causes to become worse than it otherwise would have been had Filter Sales or any Subsequent Owner and/or Operator not engaged in such activities;
- c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered as of the time of submittal of the existing Class C RAO, a subsequent ROS, or a Permanent Solution RAO to DEP that could have been discovered had an assessment of the



Site covered by or addressed in the RAO(s) or ROS been performed consistent with the Standard of Care, in effect as of the time of submittal of the RAO(s) or ROS;

d. any Release or Threat of Release of Oil and/or Hazardous Material from which there is a new Exposure that results from any Action or failure to act pursuant to G.L. 21E during Filter Sales's or Subsequent Owners's and/or Operators's ownership or operation of the Property;

e. any Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B above; and

f. any claims for damages for injury to, destruction of, or loss of natural resources and for the costs of any natural resource damage assessment.

5. Termination for Cause

a. In the event that the OAG or DEP determine that Filter Sales submitted materially false or misleading information as part of their Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.d. of this Section IV, below. A statement made by Filter Sales regarding the anticipated benefits or impacts of the proposed project will not be considered false or misleading for purposes of this subparagraph, if such statement was asserted in good faith at the time it was made.

b. In the event that the OAG or DEP determine that Filter Sales or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including but not limited to, failure to achieve and maintain (or failing to arrange for achieving and maintaining) the Permanent Solution or ROS at the Site, failure to respond (or failing to arrange for a response) in a timely manner to a Notice of Audit Finding or any such other Notice requiring additional work to achieve and/or maintain a Permanent Solution or ROS at the Site, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide Filter Sales or a Subsequent Owner and/or Operator, as appropriate, with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG may provide a reasonable period of time for Filter Sales or Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.



d. Termination of liability relief pursuant to this section shall not affect any defense that Filter Sales or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

e. The OAG and/or Filter Sales may terminate this Agreement by notice to the other if, for any reason Filter Slaes is not able to acquire title to 15 Adams Street, Burlington, Massachusetts, by December 10, 2003, or by a commercially reasonable period thereafter.

**C. COVENANT NOT TO SUE BY FILTER SALES OR SUBSEQUENT OWNER AND/OR OPERATOR**

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B of this Agreement, Filter Sales or a Subsequent Owner and/or Operator hereby covenant not to sue and not to assert any claims or causes of Action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to:

1. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of Response costs or for property damage pursuant to G.L. c. 21E;
2. any claims under the Fifth Amendment to the United States Constitution, or under the Massachusetts Constitution for any "takings," provided that such claims relate to the performance of response actions under G.L. c. 21E or CERCLA;
3. any claims arising out of Response Actions at the Property, including claims based on DEP's selection of Response Actions, oversight of Response Actions, or approval of plans for such activities;
4. any claims or causes of Action for interference with contracts, business relations or economic advantage; or
5. any claims for costs, attorneys fees, other fees or expenses incurred.

**D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES**

With regard to claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and 5, or third party claims brought pursuant to G.L. c. 21E for property damage claims under common law or G.L. c. 21E, §5, against Filter Sales or a Subsequent Owner and/or Operator, based solely on the their status as owner or operator of the Site, the Commonwealth and Filter Sales agree that they and a Subsequent Owner and/or Operator are entitled to such protection from such Actions or claims as provided by G.L. c. 21E



for the Matters Addressed at the Property Addressed; provided, however:

1. that Filter Sales has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3) and 940 CMR 23.06(1) as to the party making the claim;
2. that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement pursuant to 940 CMR 23.06(3); and
3. that the OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.
2. Should any term or condition of this Agreement or its application to any person or circumstance be found to be unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.
3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.
4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
5. The terms of this Agreement in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue for Filter Sales shall be effective as of the date the OAG executes this Agreement, subject to the conditions contained herein. The terms of this Agreement in Section IV, Paragraph D, with respect to the Contribution Protection and Rights of Affected Third Parties, are subject to the OAG's determination that Affected Third Parties have had an appropriate opportunity to join this Agreement. The OAG may modify or withdraw the provisions in Section IV, Paragraph D regarding the Contribution Protection and Rights of Affected Third Parties if comments received from Affected Third Parties disclose facts or considerations which indicate that such protection is inappropriate, improper or inadequate. The provisions of this Agreement in Section IV, Paragraph D with respect to the Contribution Protection and Rights of Affected Third Parties shall be effective as of the date the OAG issues written notice to the Parties that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties have had to join this Agreement. The OAG's written notice to the Parties with respect to the Contribution Protection and Rights of



Affected Third Parties will be Exhibit 2, to be attached hereto and incorporated into this Agreement.

6. The Commonwealth reserves the right to withdraw from this Agreement if comments received during the public comment period disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.



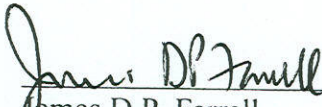
In the matter of the Filter Sales & Service, Inc. and 15 Adams Street, LLC  
Brownfields Covenant Not to Sue

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

FILTER SALES & SERVICE, INC. AND  
15 ADAMS STREET LLC

BY:

  
\_\_\_\_\_

James D.P. Farrell  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
200 Portland Street  
Boston, MA 02114

BY:

  
\_\_\_\_\_

Alan Ouellet  
10 Roland Street  
Charlestown, MA 02129

Date:

11/24/03

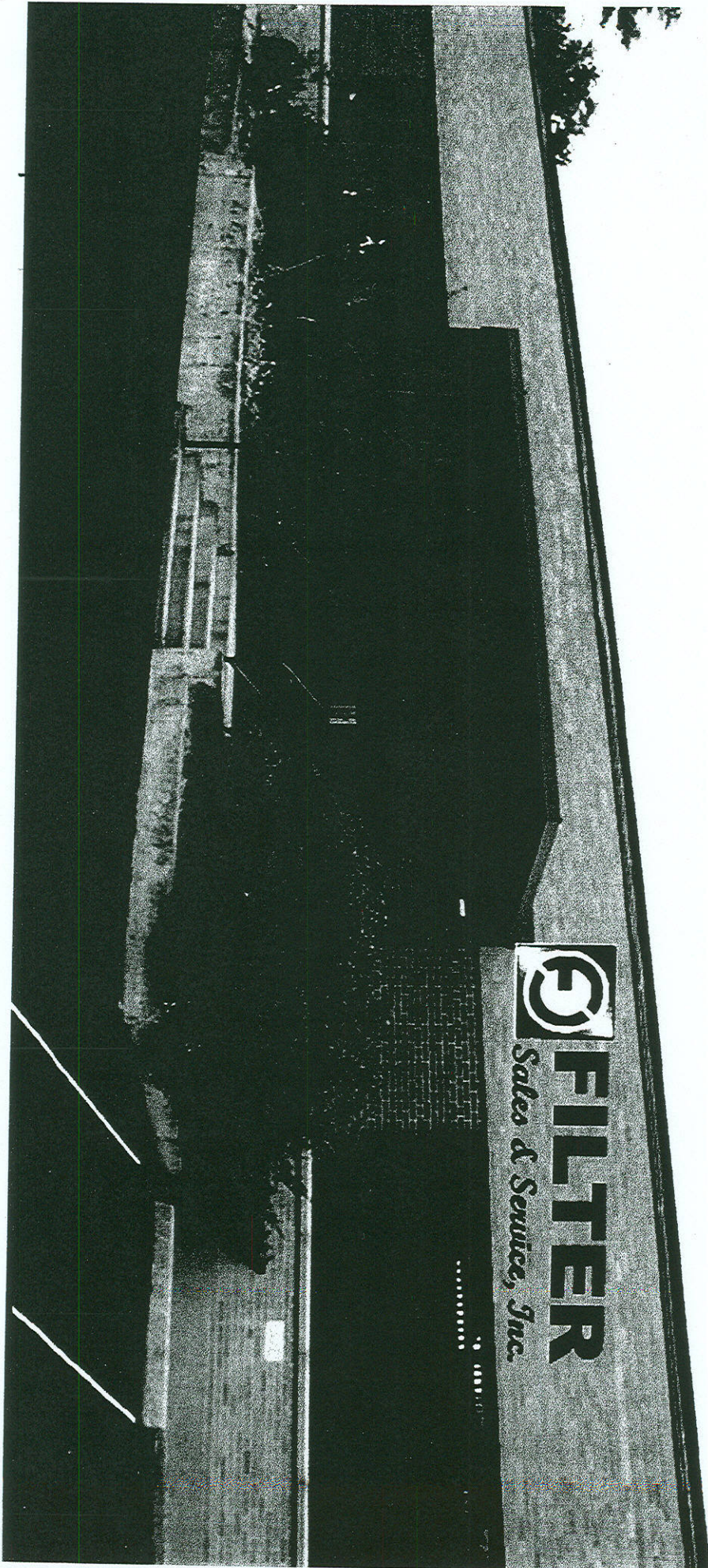
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**EXHIBIT 1**

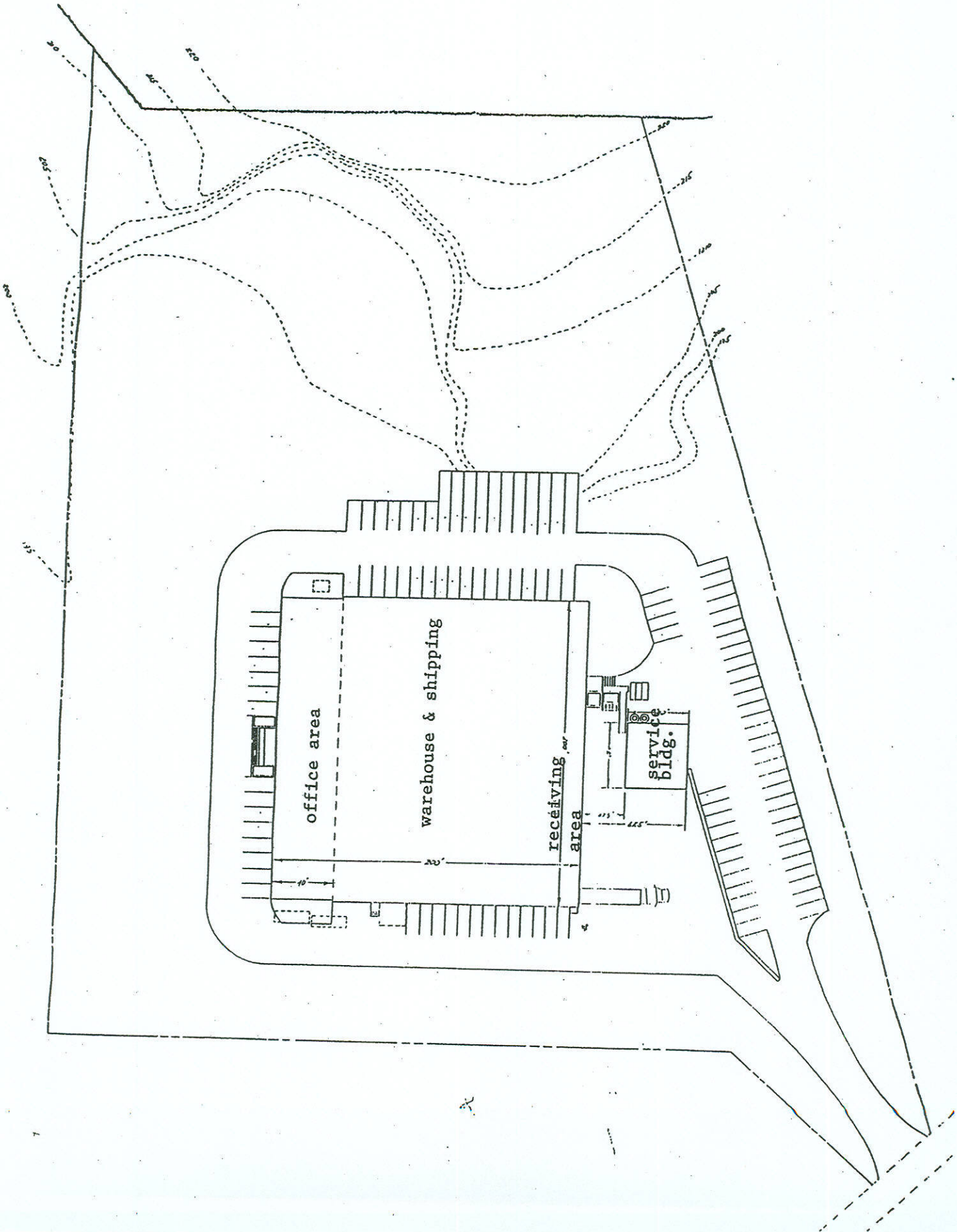




**FILTER**  
*Sales & Service, Inc.*

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Warehouse area

Air filters and hardware storage.