

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

- and -

**PEACE BRIDGE DUTY FREE INC.**

Respondent

**AFFIDAVIT OF BEN MILLS IN SUPPORT OF RESPONDENT'S CROSS-MOTION**

I, **Ben Mills**, of the City of Ottawa, in the Province of Ontario, **AFFIRM AND SAY THAT:**

1. I am a lawyer with the law firm Conlin Bedard LLP. I acted for Peace Bridge Duty Free Inc. ("**Duty Free**") in relation to its negotiations with the Buffalo and Fort Erie Public Bridge Authority ("**Authority**") that resulted in a building lease dated July 28<sup>th</sup>, 2016 ("**Lease**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I state the source of my information and belief, and, in all such cases, believe it to be true.

2. Capitalized terms not defined in this affidavit have the same meaning as in the Lease.

### **The Lease and Duty Free's concerns about reduced bridge traffic impacting its business**

3. Duty Free's business is premised on the Peace Bridge and the Canada-US border being open and there being sufficient traffic crossing the border to generate sales revenues to cover expenses, the most significant of which is Base Rent. Duty Free premised its bid for the Lease RFP on the basis of border traffic being consistent with the levels indicated in the Authority's RFP materials, and in particular the responses to questions 12 and 13 the RFP Questions and Answers. Attached as **Exhibits "A"** and **"B"** are the RFP Questions and Answers dated April 12<sup>th</sup>, 2016 and Appendix E of the RFP.

4. The minimum Base Rent payable under the Lease was predicated on expected sales, which were in turn dependent on traffic over the Peace Bridge. Duty Free recognized that it was taking a business risk with respect to its ability to extract revenue from the expected traffic flow that was crossing the Peace Bridge. However, in light of the obligation to pay minimum Base Rent, Duty Free was concerned about risks that could affect that traffic flow that were outside of its control.

5. Prior to executing the Lease, both parties recognized that an interruption at the Peace Bridge and/or changes in laws or regulations would impact Duty Free's sales, and could impact Duty Free's business and its ability to meet the requirement to pay the minimum Base Rent as set out in the Lease. However, the parties disagreed on how to address the issue of loss of sales by reason of the actions or omissions of third parties outside the influence or control of Duty Free.

6. In July 2016, Jim Pearce and Greg O'Hara on behalf of Duty Free met with representatives of the Authority, including Ron Rienas and Karen Costa, to discuss Duty Free's concerns regarding the potential of an interruption in normal bridge traffic that materially impacts Duty Free's business. I know this as Messrs. Pearce and O'Hara and I were in communication regarding these

discussions and how to best present Duty Free's concerns. I also had discussions with the Authority's lawyer, Graham Darling of Gowlings.

7. Because its revenues are directly tied to bridge traffic, Duty Free wanted to include in the Lease provisions regarding fluctuations in traffic levels on the bridge that would provide it some comfort that it would have sufficient business to pay minimum Base Rent due under the Lease and also wanted to include a provision that would address catastrophic events or changes in law.

8. With respect to changes in law, it is important to recognize that Duty Free's revenue are directly tied to the ability of traffic to cross the border and is directly tied to its ability to sell products duty-free, both of which are controlled by unique laws and regulations. The Authority refused to guarantee minimum traffic flows, but, on the basis of the correspondence noted below, recognized that there were circumstances involving unexpected events outside Duty Free's control that could impact Duty Free's ability to generate revenue and, in turn would require changes to the Lease, which would include adjustments to minimum Base Rent.

**The addition of 18.07 is to address rental adjustments in the event of changes in Applicable Laws that cause a material adverse effect on Duty Free's business operations**

9. Subsection 18.07 was not included in the original draft form of lease included by the Authority as part of the RFP process.

10. Rather, it was specifically added later during Lease negotiations as the factual matrix evolved based on concerns raised by Duty Free about its ability to pay minimum Base Rent in the event of a change in laws or regulations and/or any kind of bridge closure/partial closure that materially affected its business. Duty Free also sought to include rent abatements due to general

declines in annual vehicle traffic volume; but the Authority was not receptive to providing relief for that issue in the Lease.

11. In the same vein, the parties also considered how scheduled bridge refurbishment could impact travel and, thus, Duty Free's ability to generate revenue to cover Base Rent. However, I understand that this was addressed by there being a change to the remedial work (or at least to Duty Free's understanding of what remedial work was required) such that it no longer was seen as having an impact on bridge traffic.

12. Attached as **Exhibits "C" and "D"** respectively are the version of the lease provided as part of the RFP process and the final executed version of the Lease.

13. During the discussions between Duty Free and the Authority in mid-July 2016, Duty Free circulated to the Authority a number of proposed concerns and/or proposed revisions to the form of lease. Specifically, I am advised by Jim Pearce that he met with the Authority's representatives on July 18<sup>th</sup>, 2016 and provided a handout that included several issues Duty Free wanted to be addressed by the Authority before finalizing the Lease. These included the following:

Business disruption due to bridge closure-

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. **The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance.** For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. \$4,000,000 / 365 days).

...

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

- possible sharing the subsidizing of the rents payable by the Food Concessions



- insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- In the event that during the Term and should it be necessary, that issues arise (**something catastrophic**) **beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).** [emphasis added]

14. Attached as **Exhibit "E"** is a copy of the handout from the July 18<sup>th</sup>, 2016 meeting with Jim Pearce's handwritten notes.

15. I understand from Jim Pearce that the Authority was generally receptive to the concerns raised by Duty Free and there was agreement in principle that an interruption at the Peace Bridge and/or changes in regulations could impact sales such that the minimum Base Rent would need to be modified. However, the Authority was of the view that a number of the potential sources of disruption that were being discussed would be covered by business interruption insurance. The Authority did not want to include language in the Lease that could pre-empt recovery under business interruption insurance. Also, I understand from Jim Pearce that the Authority would not agree to any language that specified the quantum of minimum Base Rent abatement for what the Authority believed was an insurable risk.

16. Nonetheless, the Authority recognized that changes in Applicable Law could have a significant impact on Duty Free's ability to generate revenue to pay the Base Rent. As such, the Authority was agreeable to including subsection 18.07 in the Lease. The intended purpose of 18.07 was to provide a "safety valve" and create a basis on which the parties, acting reasonably, would engage in good faith negotiations to determine what adjustments needed to be made to the Lease to address any specific changes in Applicable Law. In terms of traffic volume decline caused

by changes in Applicable Laws that result in materially reduced Gross Sales, 18.07 was intended to prompt negotiations to adjust Rent in a way that was reasonable and proportionate to the magnitude of the effect of the change in Applicable Laws.

17. If, for example, tobacco products were no longer duty free, then there would have to be an adjustment to Base Rent as a primary revenue source is taken out. If the situation is one where the change has an immediate effect to decrease revenues but, with adjustments, revenues might expect to increase over time as adjustments are made, then the abatement would be formulated to allow for an incremental return to normal/expected rent levels as revenues increase.

18. On July 19<sup>th</sup>, 2016, the day after meeting with Jim Pearce and receiving his handout, Karen Costa, on behalf of the Authority, wrote to Duty Free's representatives (copying Ron Rienas) attaching the final version of the Lease. Attached as **Exhibit "F"** to this affidavit is a copy of Ms. Costa's July 19<sup>th</sup>, 2016 email.

19. In her July 19<sup>th</sup>, 2016 email, Ms. Costa noted that:

We reviewed the additional requests from yesterday and have accommodated the majority of your requests. There are a few, upon advice from counsel, that we will not consider.

...

**Business disruption due to bridge closure** - the lease requires you to insure for the risk of business interruption (Section XI). Your broker should ensure you have the proper coverage for this risk. **We will not include any rent abatement for an insurable risk.**

...

You have also requested we have further discussions on the following topics:

...

3. **Lease discussion in the event of a catastrophic event** - we reviewed the examples listed as catastrophic. **We agree that**

**changes in governmental regulations could materially impact the business and have added section 18.07 to the lease.** All other events listed were are routine events at a border crossing.  
[emphasis added]

20. In this email, Ms. Costa is confirming that subsection 18.07 was included in the Lease to address a situation where changes to governmental regulations that could materially impact the business and, thus, trigger the need for good faith adjustments to Duty Free's Rent to address the impact the regulatory changes are having on the business. In her email, Ms. Costa is pointing to subsection 18.07 in response to, and as a solution to, some of the concerns outlined in Jim Pearce's July 18<sup>th</sup>, 2016 handout.

21. Subsection 18.07 of the Lease was solely for Duty Free's protection and was to address a change in Applicable Laws that would prevent it from generating any or sufficient revenue to pay for minimum Base Rent.

22. I am advised by Jim Pearce PBA never raised the question of personal guarantees, and that doing so would be a "red line" Duty Free would not cross.

23. I do not recall there ever being any discussion or suggestion that the Authority would demand personal guarantees from the principals of Duty Free as a concession for the rent abatement contemplated by subsection 18.07. I expect that I would recall any such discussion as the Lease, as presented by the Authority, did not include a requirement for any personal guarantees and the inclusion of personal guarantees would have been a significant change.

24. I swear this affidavit to provide the factual matrix, including the discussions between the parties, that led to the execution of the Lease, and specifically with respect to subsection 18.07.

**SWORN (OR AFFIRMED)** remotely )  
 by way of video conference by Ben )  
 Mills stated as being located in the )  
 City of Ottawa, in the Province of )  
 Ontario, before Brendan Jones )  
 being in the City of Toronto, in the )  
 Province of Ontario on this 1st day of )  
 January, 2023, in accordance with )  
 O.Reg. 431/20, Administering the Oath )  
 or Declaration remotely. )



*A Commissioner for Taking Affidavits,*  
**BRENDAN JONES**

  
 \_\_\_\_\_  
**BEN MILLS**

THIS IS **EXHIBIT "A"** TO  
THE AFFIDAVIT OF **BEN MILLS**  
**SWORN REMOTELY** by Ben Mills being located in the  
City of Ottawa, in the Province of Ontario, before me at  
the City of Toronto, in the Province of Ontario, on  
January 1<sup>st</sup>, 2023, in accordance with O.Reg 431/20,  
administering Oath or Declaration Remotely

A handwritten signature in black ink, appearing to read "Bruce Jones", is written above a horizontal line.

Commissioner, etc.



In accordance with Section IIIc) of the Request for Proposals for a Canadian Duty Free Store Operator, the following questions were received and answered.

**1. Is this tender subject to the land border rules insisting on beneficial Canadian ownership or may foreign nationals submit bids?**

All Proponents must demonstrate their ability to obtain, and the selected Proponent must obtain, a license to operate a Duty Free Shop in Canada pursuant to CBSA licensing requirements. These requirements are found on the CBSA website (a portion of which is reproduced below). The Authority cannot answer any questions pertaining to CBSA's licensing process.

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-1072/page-1.html#h-4>

***“PART I***

***Licensing of Duty Free Shops***

***Issuance of Licence***

- **3 (1)** *For the purposes of section 24 of the Act and subject to subsection (6), a licence may be issued to any qualified person who makes an application in accordance with subsection (2) and who gives the security required under section 4.*
- **(2)** *The person shall submit the application for a licence in the prescribed form to the Commissioner.*
- **(3)** *A corporation is qualified to operate a duty free shop at a border crossing point if*
  - **(a)** *the corporation is incorporated in Canada;*
  - **(b)** *all the shares of the corporation are beneficially owned by*
    - **(i)** *a Canadian citizen or permanent resident,*
    - **(ii)** *another corporation that is incorporated in Canada all of whose shares are beneficially owned by a Canadian citizen or permanent resident, or*
    - **(iii)** *both a Canadian citizen or permanent resident and that other corporation; and*

- **(c)** the Canadian citizen or permanent resident referred to in paragraph (b)
  - **(i)** is of good character,
  - **(ii)** maintains their principal residence in Canada, and
  - **(iii)** resided in Canada for at least 183 days of the year before the year in which the corporation makes the application for the licence.
- **(4)** A person other than a corporation is qualified to operate a duty free shop at a border crossing point if the person
  - **(a)** is a Canadian citizen or a permanent resident;
  - **(b)** is of good character;
  - **(c)** maintains his principal residence in Canada; and
  - **(d)** resided in Canada for at least 183 days of the year preceding the year in which the person makes the application for the licence.
- **(5)** A person is qualified to operate a duty free shop at an airport or at a border crossing point if the person has been granted a lease or other right to occupy the place proposed as the duty free shop.
- **(6)** The Minister shall not issue a licence to an applicant unless
  - **(a)** the applicant meets the qualifications referred to in subsection (3) or (4) and subsection (5) in the case of a duty free shop at a border crossing point, or subsection (5) in the case of a duty free shop at an airport;
  - **(b)** [Repealed, SOR/96-153, s. 2]
  - **(c)** the applicant has sufficient financial resources to enable him to lease or purchase the place proposed to be operated as a duty free shop;
  - **(d)** the applicant has sufficient financial resources to enable him to provide the facilities, equipment and personnel required under these Regulations;
  - **(e)** an adequate range of goods is not available in, or adequate service is not provided by, any duty free shop already located in the area in which the proposed duty free shop is to be located;

- *(f) the establishment of a duty free shop will not impede the flow of traffic in the vicinity in which the proposed duty free shop is to be located; and*
- *(g) the Agency is able to provide customs services with respect to the proposed duty free shop.”*

**2. Does the Buffalo & Fort Erie Public Bridge Authority expect lease payments to be paid by the successful proponent regardless of whether said proponent has a Duty Free Shop license?**

All lease payments are expected to commence in conjunction with the commencement date of the Lease with the successful Proponent. The RFP process is designed to allow the Authority to determine the best value operator. Upon selection of the preferred operator the onus is solely on that preferred operator to produce a license issued by CBSA.

**3. Are the fixtures and furnishings (i.e., racking, millwork, furniture) owned by the current Duty Free tenant?**

The Authority does not own the fixtures and furnishings in the current duty free store. It is unknown to the Authority as to what entity owns the fixtures and furniture in the duty free store.

**4. On November 1, 2016, will the fixtures and furnishing that remain on-site become the property of the successful proponent?**

Based on the existing Lease, any free standing equipment, counters and display cases not removed from the premises by the current tenant within 10 days following the expiration of the lease become property of the Authority (as Landlord).

**5. Can you please provide a cost and breakdown of any additional services and any other assessments over and above the rent payments and property tax charged by the Buffalo & Fort Erie Public Bridge Authority to the current tenant for the past 3 years?**

The current lease requires that an annual marketing grant be paid to the Authority in the amount of approximately \$135,000.

**6. How are the property taxes allocated to the Leased Premises? Is there a separate assessment? There are two methods stated in the RFP for property tax calculations. Which method is currently utilized?**

Currently, the property taxes are allocated to the Leased Premises based on an assessment of all Authority property provided by MPAC. There is currently no separate assessment provided by MPAC for the Leased Premises. The methodology used by MPAC is “cost”.



**7. Does the Landlord have any repair or replacement obligations with respect to the building or lands comprising the Leased Premises?**

Landlord obligations related to repairs or replacements are as described in Appendix A of the RFP.

**8. Given that the Landlord insures the building and the Tenant is required to pay for the Landlord's insurance, who performs major repairs and replacements in the event of damage to the building? If the landlord is not responsible for the repairs, how does the tenant receive the insurance proceeds to effect the repairs?**

Parties responsible for major repairs and replacements are as stated in Appendix A of the RFP. All requirements as to insurance and use of proceeds is also as stated in Appendix A.

**9. What were the Landlord's Operating Costs charged to the Tenant under the lease in recent years? What were the Operating Costs comprised of? If there is a change in Operating Costs obligations for the Selected Proponent from the current tenancy agreement, what are the historical and/or anticipated Operating Expenses associated with that?**

There have been no Landlord Operating Costs charged to the tenant in the past 3 years. Tenant is responsible for all Operating Costs. Any Landlord Operating Costs would be as indicated in Appendix A of the RFP.

**10. What is the current environmental condition of the lands and building comprising the Leased Premises?**

There are no known environmental conditions and no environmental orders filed against the Leased Premises. Section 10.06 of Appendix A states that the Authority expressly releases the tenant from any environmental liability for any pre-existing contaminants as of the commencement date of the lease.

**11. During the RFP process, is there anything preventing potential Proponents from approaching the current sub-tenants with respect to continuance of their services after October 31, 2016, should the Selected Proponent differ from the current tenant? This would refer to any provisions or terms in any agreements between the Landlord and the Tenant and the Tenant and the Sub-Tenants.**

The Authority is not a party to Tenant-Sub Tenant agreements and cannot provide an answer to this question.

- 12. Appendix E of the RFP states that “annual duty free sales volumes during the past five (5) years have been in the range of \$20,000,000 - \$25,000,000.” Can the Bridge Authority clarify and confirm that the term “annual duty free sales volume” includes only retail sales from the operations, including the sales at the sub-tenant restaurants, can the Bridge Authority please provide more specific figures with respect to the volume of retail sales between duty free operations and sub-tenant restaurant operations?**

The term “annual duty free sales volumes” as included in Appendix E are the annual gross sales as defined in Appendix A of the RFP, Section 2.01 (rr).

- 13. It is not clear whether the traffic volumes noted on Page 5 of the RFP and in Appendix E represent both US to Canada as well as Canada to US traffic flows. As only Canada to US travelers are able to access the duty free plaza, can the Bridge Authority please clarify and confirm the Canada to US traffic figures – as this will give a more accurate picture of the volume of traveler traffic that is able to access the duty free plaza.**

Total traffic volumes included as Appendix E provides the scope of total vehicular traffic volume on the Peace Bridge, as the store is highly visible to traffic in both directions. Below is the breakout of the Canada to US vehicular traffic volumes for the historical periods originally provided.

Year	US Bound Volume		Yearly Average
	Passenger	Commercial	USD Exchange Rate
2010	2,374,962	642,462	1.031
2011	2,386,641	665,579	0.990
2012	2,369,772	671,759	1.000
2013	2,305,251	650,162	1.030
2014	2,163,780	650,711	1.100
2015	2,069,120	639,996	1.280

- 14. Page 5 of the RFP states that there is over 28,000 sf of retail space at the current duty free store. Yet, the store plans that are attached as Appendix H to the RFP indicate that while the building has a total area of over 28,000 sf there is only approximately 14,000 sf of retail space. According to the store plans in Appendix H, the remaining space appears to be for upstairs office space, warehouse, tenant space, food court and common area. Can the Bridge authority please clarify and confirm the total square footage of retail space?**

Total rentable square footage of the Leased Premises is 28,000 sf. Utilization of space within the Leased Premises rests with the tenant. Appendix H represents the current configuration of the Leased Premises.

THIS IS **EXHIBIT "B"** TO  
THE AFFIDAVIT OF **BEN MILLS**  
**SWORN REMOTELY** by Ben Mills being located in the  
City of Ottawa, in the Province of Ontario, before me at  
the City of Toronto, in the Province of Ontario, on  
January 1<sup>st</sup>, 2023, in accordance with O.Reg 431/20,  
administering Oath or Declaration Remotely

  
\_\_\_\_\_  
Commissioner, etc.

## Appendix E

### Historical Traffic Information

Below is the historical traffic for the past five (5) years at the Peace Bridge

Year	Volume		Yearly Average
	Passenger	Commercial	USD Exchange Rate
2010	4,768,254	1,249,471	1.031
2011	4,772,064	1,284,934	0.990
2012	4,747,023	1,295,595	1.000
2013	4,653,634	1,274,252	1.030
2014	4,340,338	1,277,645	1.100
2015	4,155,935	1,254,312	1.280

Historically, annual duty free sales volumes during the past five (5) years have been in the range of \$20,000,000 - \$25,000,000.

THIS IS **EXHIBIT "C"** TO  
THE AFFIDAVIT OF **BEN MILLS SWORN REMOTELY**  
by Ben Mills being located in the City of Ottawa, in the  
Province of Ontario, before me at the City of Toronto, in  
the Province of Ontario, on January 1<sup>st</sup>, 2023, in  
accordance with O.Reg 431/20, administering Oath or  
Declaration Remotely

  
\_\_\_\_\_  
Commissioner, etc.

# APPENDIX A

**BUILDING LEASE**

**BETWEEN**

**BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY**

**- AND -**

•

DRAFT

## TABLE OF CONTENTS

### Page

ARTICLE I BASIC LEASE TERMS,.....	2
1.01 Basic Lease Terms.....	2
ARTICLE II DEFINITIONS AND INTERPRETATION .....	3
2.01 Definitions.....	3
2.02 Net Lease .....	9
2.03 Extended Meanings.....	9
2.04 Entire Agreement.....	9
2.05 Governing Law .....	9
2.06 Time of the Essence.....	9
2.07 No Limitation.....	9
2.08 Headings and Captions .....	10
2.09 Severability .....	10
2.10 Successors and Assigns.....	10
2.11 No Partnership or Agency.....	10
2.12 Joint and Several Liability .....	10
2.13 Landlord as Agent.....	10
2.14 Interpretation.....	10
2.15 Reasonableness.....	11
2.16 Amendment and Waiver .....	11
ARTICLE III GRANT AND TERM.....	11
3.01 Demise .....	11
3.02 Commencement and Termination Date of Term .....	11
3.03 “As Is” Condition of Leased Premises.....	12
3.04 Delay in Possession.....	12
3.05 Restrictive Covenant.....	12
3.06 Right to Extend the Term.....	12
ARTICLE IV RENT .....	13

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.01 Covenant to Pay .....	13
4.02 Base Rent .....	13
4.03 Percentage Rent .....	13
4.04 Accrual of Rent .....	13
4.05 Rent and Payments Generally .....	14
4.06 Letter of Credit.....	14
ARTICLE V FINANCIAL INFORMATION .....	15
5.01 Monthly Statements .....	15
5.02 Annual Statements .....	16
5.03 Books and Records .....	16
5.04 Right to Examine .....	16
5.05 Audit .....	16
5.06 Tenant's Failure .....	17
ARTICLE VI PROPERTY TAXES AND OPERATING COSTS .....	17
6.01 Property Taxes Payable by the Tenant.....	17
6.02 Contesting Property Taxes.....	18
6.03 Business Taxes.....	18
6.04 Operating Costs.....	18
6.05 Payment of Operating Costs .....	20
ARTICLE VII UTILITIES .....	20
7.01 Charges for Utilities.....	20
7.02 Tenant Not to Overload Facilities.....	21
7.03 No Liability.....	21
ARTICLE VIII HVAC .....	21
8.01 HVAC System .....	21
8.02 Landlord's Right to Maintain / Repair HVAC System.....	21
8.03 Tenant's Responsibility .....	22
ARTICLE IX USE OF THE LEASED PREMISES .....	22
9.01 Use of the Leased Premises .....	22



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
9.02 Conduct and Operation of Business.....	22
9.03 Nuisance and Waste.....	23
9.04 Observance of Law .....	23
9.05 Additional Services of the Landlord .....	24
9.06 Traffic Direction .....	24
ARTICLE X TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY .....	24
10.01 Compliance with Environmental Laws and Environmental Approvals .....	24
10.02 Release of a Contaminant .....	24
10.03 Environmental Site Assessment.....	25
10.04 Tenant's Environmental Indemnity .....	25
10.05 Governmental Authority Requirements .....	25
10.06 Pre Existing Contaminants.....	26
10.07 Responsibility for Environmental Contaminants.....	26
ARTICLE XI INSURANCE AND INDEMNITY .....	26
11.01 Tenant's Insurance.....	26
11.02 Requirements of Insurance .....	28
11.03 Sign Insurance.....	28
11.04 Increase in Insurance Premiums.....	28
11.05 Cancellation of Insurance .....	29
11.06 Landlord's Insurance .....	29
11.07 Loss or Damage .....	30
11.08 Indemnification of the Landlord .....	30
ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS .....	31
12.01 Maintenance and Repairs and Replacement by the Tenant .....	31
12.02 Landlord's Approval of Alterations .....	32
12.03 Landlord's Inspection.....	32
12.04 Surrender of the Leased Premises.....	32
12.05 Repair where Tenant at Fault.....	33
12.06 Tenant Not to Overload Floors .....	33

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
12.07 Removal and Restoration by the Tenant.....	33
12.08 Notice of Defects .....	33
12.09 Liens.....	34
12.10 Signs and Advertising.....	34
ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION .....	34
13.01 Damage or Destruction to the Leased Premises .....	34
13.02 Rights to Termination .....	34
13.03 Certificate Conclusive.....	35
13.04 Insurance Proceeds.....	35
13.05 Landlord's Rights of Rebuilding.....	35
13.06 Negligence of the Tenant.....	35
13.07 Expropriation .....	36
ARTICLE XIV ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL.....	36
14.01 Transfers .....	36
14.02 Landlord's Option to Terminate.....	36
14.03 Consent Required.....	37
14.04 No Advertising of the Leased Premises.....	38
14.05 Corporate Ownership.....	38
14.06 Assignment or Transfer by the Landlord.....	39
ARTICLE XV ACCESS.....	39
15.01 Right to Show the Leased Premises.....	39
15.02 Emergencies.....	39
15.03 Access Not Re-entry .....	39
15.04 Roof Rights.....	39
15.05 Right to Install Solar Panels.....	41
ARTICLE XVI STATUS STATEMENT, ATTORNMENT AND SUBORDINATION.....	41
16.01 Status Statement.....	41
16.02 Subordination and Attornment.....	41

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
16.03 Financial Information.....	42
ARTICLE XVII DEFAULT .....	42
17.01 Event of Default.....	42
17.02 Rights of the Landlord .....	43
17.03 Expenses .....	44
17.04 Waiver of Exemption from Distress .....	45
17.05 Remedies Generally .....	45
ARTICLE XVIII MISCELLANEOUS.....	45
18.01 Rules and Regulations.....	45
18.02 Overholding .....	45
18.03 Notices .....	46
18.04 Registration.....	46
18.05 Quiet Enjoyment.....	46
18.06 Unavoidable Delay.....	46

***Execution Page***

**SCHEDULES :**

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE LANDS**

**SCHEDULE "B"**

**PLAN OF LEASED PREMISES**

**SCHEDULE "C"**

**RULES AND REGULATIONS**

THIS LEASE is dated as of the ● day of ●, 20●.

**B E T W E E N:**

**BUFFALO AND FORT ERIE PUBLIC BRIDGE  
AUTHORITY**, an entity created pursuant to an Act of the State of  
New York, with the consent of the United States Congress, and by  
an Act of the Government Of Canada

(the “**Landlord**”)

**AND:**

●  
(the “**Tenant**”)

**ARTICLE I  
BASIC LEASE TERMS**

**1.01 Basic Lease Terms**

(a) Landlord: Buffalo and Fort Erie Public Bridge Authority

Address of Landlord:

(b) Tenant:

Address of Tenant:

(c) Leased Premises: The Building and the portion of the Lands as identified in  
Schedule “B”.

(d) Term: 15 years.

(e) Commencement Date: November 1, 2016.

(f) Termination Date: October 31, 2031.

(g) Letter of Credit: \$500,000.

(h) Extension Options: One option to extend the term for an additional period of five  
years.

## ARTICLE II DEFINITIONS AND INTERPRETATION

### 2.01 Definitions

In this Lease and the schedules forming part of it, the following definitions apply:

- (a) **“Additional Rent”** means all money or charges which the Tenant is required to pay under this Lease (except Base Rent, Percentage Rent and Sales Taxes) whether or not they are designated “Additional Rent” whether or not they are payable to the Landlord or to third parties.
- (b) **“Additional Services”** means those services provided to the Tenant at its request, as additional services, which are not part of the services provided by the Landlord to the Tenant in accordance with the terms of this Lease and charged as Operating Costs including, but not limited to, maintenance, repair, janitorial or cleaning services. Additional Services also includes any services provided by the Landlord on behalf of the Tenant in respect of any obligations of the Tenant required under this Lease which the Tenant fails to observe and perform.
- (c) **“Adverse Effect”** means any one or more of:
  - (i) impairment of the quality of the natural environment for any use that can be made of it;
  - (ii) injury or damage to property or to plant or animal life;
  - (iii) harm or material discomfort to any Person;
  - (iv) an adverse effect on the health of any Person;
  - (v) impairment of the safety of any Person;
  - (vi) rendering any property or plant or animal life unfit for human use;
  - (vii) loss of enjoyment of a normal use of property; and
  - (viii) interference with the normal conduct of business.
- (d) **“Alterations”** has the meaning ascribed to that term in Section 12.02.
- (e) **“Applicable Laws”** means any statutes, laws, by-laws, regulations, ordinances and requirements of governmental and other public authorities having jurisdiction over or in respect of the Leased Premises or the Property, or any portion thereof, and all amendments thereto at any time and from time to time, and including but not limited to the Environmental Laws.
- (f) **“Architect”** means the architect, engineer or land surveyor named by the Landlord from time to time.

- (g) **“Base Rent”** means the annual base rent payable by the Tenant and described in Section 4.02.
- (h) **“Building”** means the building located on the Lands as shown on Schedule B as it exists from time to time.
- (i) **“Building Systems”** means: (i) the equipment, facilities and all systems, services and installations from time to time installed in or servicing the Leased Premises (or any portion thereof) including, but not limited to: mechanical (including plumbing, sprinkler, drainage and sewage) and electrical systems and appurtenances thereto; utilities (including, without limitation, electricity, water, hydro and gas), lighting, sprinkler, life safety (including fire prevention, communications, security and surveillance); computer (including environmental, security and lighting control); and (ii) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them.
- (j) **“Business Day”** means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.
- (k) **“Business Taxes”** means every tax, duty and licence fee which is levied, rated, charged or assessed against or in respect of the business carried on in the Leased Premises or in respect of the use or occupancy of the Leased Premises by the Tenant whether the taxes, rates, duties, assessments or licence fees are rated, charged or assessed by any Government Authority during the Term.
- (l) **“Claims”** means any threatened or actual claim, demand, action, cause of action, administrative order, requirement or proceeding, damage, loss, cost, fine, penalty, interest, liability and expense including, without limitation, reasonable engineering and legal fees and disbursements on a full indemnity basis.
- (m) **“Commencement Date”** means the date set out in Section 1.01(e).
- (n) **“Contaminants”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect and includes any waste, dangerous good, hazardous product, controlled substance or any other substance or thing regulated or reportable under any Environmental Laws.
- (o) **“Environmental Approvals”** means all applicable permits, licences, authorizations, consents, directions and approvals required by Governmental Authorities pursuant to Environmental Laws in respect of the Leased Premises and the equipment, structures, substances and activities located or carried on therein or thereon by the Tenant.

- (p) **“Environmental Laws”** means all existing and future federal, provincial and municipal laws, regulations, by-laws, ordinances, notices, orders, rules, protocols, policies, directions and guidelines and all present and future principles of common law and equity relating to the protection of the environment, including Contaminants, pollution and waste management.
- (q) **“Environmental Site Assessment”** or **“ESA”** includes a visual and instructive inspection of property, buildings, structures, soils, bedrock and groundwater, including the installation of monitoring and measurement devices, for the purpose of determining the presence of Contaminants or compliance with Environmental Laws.
- (r) **“Event of Default”** has the meaning ascribed to that term in Section 17.01.
- (s) **“Governmental Authorities”** means all applicable federal, provincial and municipal agencies, boards, tribunals, ministries, departments, inspectors, officials, employees, servants or agents having jurisdiction and **“Government Authority”** means any one of them.
- (t) **“HVAC System”** means the whole of any systems required for the supply of heating, ventilating or air-conditioning to the Building and the improvements, fixtures, appurtenances, equipment and systems associated with or required therefor and for the further processing and distribution or exhaust of air such as ducts, diffusers, reheat coils, controls and other apparatus and equipment therefor.
- (u) **“Landlord”** means the party named in Section 1.01(a) and all successors and assigns of such party.
- (v) **“Lands”** means the lands more particularly described in Schedule “A”.
- (w) **“Leased Premises”** means collectively the Building and the portion of the Lands as identified in Schedule “B”.
- (x) **“Leasehold Improvements”** means all fixtures, improvements, installations, Alterations and additions from time to time made, erected or installed by or on behalf of the Tenant or any former occupant of the Leased Premises, including cabling, trenches, concrete bases, doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding furniture and equipment not in the nature of fixtures.
- (y) **“Letter of Credit”** means the letter of credit described in Section 4.06.
- (z) **“Licence”** shall mean the licence, permission, registration, authorization, appointment, power, jurisdiction, or other similar right granted or conferred by the Government of Canada upon the Tenant and allowing the Tenant to operate a duty free shop at the Leased Premises.

- (aa) **"Mortgage"** means any mortgage or other security against the Leased Premises or the Landlord's interest in this Lease, from time to time.
- (bb) **"Mortgagee"** means the holder of any Mortgage from time to time.
- (cc) **"Operating Costs"** has the meaning ascribed to that term in Section 6.04.
- (dd) **"Percentage Rent"** means the percentage rent payable by the Tenant and described in Section 4.03
- (ee) **"Permitted Use"** means the operation of a duty free shop and related services (such as banking and travel related services).
- (ff) **"Person"** if the context allows, includes any person, firm, partnership or corporation, or any group of persons, firms, partnerships or corporations or any combination of them.
- (gg) **"Prime Rate"** means the annual rate of interest announced from time to time by the Canadian chartered bank chosen by the Landlord as the daily rate of interest used by such bank as a reference rate in setting rates of interest for Canadian dollar commercial loans and commonly referred to by such bank as its Canadian "prime rate".
- (hh) **"Property Taxes"** means all real property taxes, rates, duties, levies, fees, charges (including local improvement charges) and assessments, whether general or special, that are levied, rated, charged or assessed against the Lands, the Leased Premises or any part of it from time to time by any lawful taxing authority, whether federal, provincial, regional, municipal, school or otherwise and any taxes or other amounts which are imposed in lieu of, as a substitute for or in addition to, any of the foregoing whether or not similar to or of the foregoing character or not and whether or not in existence at the Commencement Date, and any such taxes levied or assessed against the Landlord on account of its ownership of the Lands or its interest in it, including capital taxes imposed on the Landlord and including taxes levied on the Landlord on account of rents payable by the Tenants, and all legal and other professional fees and interest and penalties on deferred payments incurred by the Landlord in contesting or appealing any Property Taxes.
- (ii) **"Release"** means, in respect of Contaminants, without limitation, a spill, leak, disposal, dumping, pumping, pouring, emission, emptying, discharge, deposit, injection, escape, release or leaching.
- (jj) **"Released Persons"** includes the Landlord, the property manager for the Leased Premises, if any, the Mortgagee and their respective directors, officers, employees, agents, contractors and other Persons for whom they are responsible in law.
- (kk) **"Rent"** means collectively the Base Rent, Percentage Rent and Additional Rent payable under this Lease.



- (ll) **“Rental Year”** means a period of time, the first Rental Year of the Term commencing on the Commencement Date, and ending on the last day of the month of December next following. After the first Rental Year each Rental Year of the Term will consist of a period of twelve (12) calendar months, but the last Rental Year of the Term will terminate on the Termination Date or earlier termination of the Term. Despite what is stated above, if the Landlord considers it necessary or convenient, it may from time to time, by written notice to the Tenant, specify an annual date from which each subsequent Rental Year is to commence for the purposes of any other provision of this Lease, and the Rental Year then current for that purpose or those purposes will terminate on the day immediately preceding the commencement of the new Rental Year.
- (mm) **“Rules and Regulations”** means the rules and regulations promulgated by the Landlord from time to time pursuant to the terms of this Lease.
- (nn) **“Sales Taxes”** means all goods and services, harmonized sales taxes, business transfer, value-added, national sales, multi-stage sales, sales, use or consumption taxes or other taxes of a similar nature imposed by any lawful taxing authority upon the Landlord or the Tenant with respect to Rent, this Lease, the rental of space pursuant to this Lease, or the goods and services provided by the Landlord to the Tenant, including, without limitation, the provision of administrative services to the Tenant hereunder.
- (oo) **“Tenant”** means the party named in Section 1.01(b). A reference to “Tenant” includes, where the context allows, the employees, agents, contractors, invitees and licensees of the Tenant, and any other Persons over whom the Tenant may reasonably be expected to exercise control, including but not limited to any and all sub-tenants, licensees or assignees of the Leased Premises or any portion thereof, and such other Persons for whom the Tenant is responsible at law.
- (pp) **“Tenant’s Audited Gross Sales”** shall mean a statement of the Tenant’s Gross Sales prepared and verified by the auditor of the Tenant in accordance with generally accepted auditing principles completed in a form and manner satisfactory to the Landlord acting reasonably.
- (qq) **“Tenant Construction Criteria”** means the criteria provided, upon request, by the Landlord to the Tenant from time to time setting out the construction criteria relating to Alterations and which may also provide for Landlord’s reasonable review and supervision fees.
- (rr) **“Tenant’s Gross Sales”** means the total dollar amount of all sales of goods or services made on or from the Leased Premises by the Tenant to the Tenant’s customers (and by any subtenant to the subtenant’s customers) during the specific period(s) of time referred to herein. In the case of currency exchange or financial services it shall mean the gross revenue derived from that service and not the total of the actual currency exchanged. Tenant’s Gross Sales includes but is not limited to:

(i) orders taken or received at the Leased Premises or any offsite sales outlet servicing the Leased Premises, whether by telephone, internet or other electronic means, or in writing or other form of communication and whether the orders are filled from the Leased Premises or elsewhere,

(ii) deposits not refunded to purchasers; and

(iii) all other receipts and receivables (including interest, instalment and finance charges) from business conducted in or from the Leased Premises,

whether the sales or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales are made by means or mechanical or other vending devices in the Leased Premises. Bank charges or uncollectible credit accounts or charges made by collection agencies will not be deducted and no allowances will be made for bad debts. Each charge or sale made on instalment or credit will be treated as a sale for the full selling price in the month for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

There shall be excluded or deducted, as the case may be, from the calculation of Tenant's Gross Sales:

- (i) all refunds of merchandise, the sale price of which has already been included in the Tenant's Gross Sales;
- (ii) all sales taxes, harmonized sales taxes, goods and services taxes, or any other taxes imposed in lieu thereof;
- (iii) discounts, allowances or credits given to the Tenant's customers;
- (iv) all interest, finance or carrying charges charged by the Tenant above the selling price to its customers, as incidental to the sale and with no profit to the Tenant; and
- (v) gift or merchandise certificates or cards provided that such gift or merchandise certificate or card shall be included in the calculation of Gross Sales at the time of their redemption on the Leased Premises.

(ss) **"Term"** means the period of time set out in Section 1.01(d).

(tt) **"Termination Date"** means the date set out in Section 1.01(f).

(uu) **"Transfer"** has the meaning ascribed to that term in Section 14.01.

(vv) **"Transferee"** has the meaning ascribed to that term in Section 14.01.

(ww) **"Unavoidable Delay"** means any delay by a party in the performance of its obligations under this Lease caused in whole or in part by any acts of God, strikes,

lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, unavailability of materials, breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented. Insolvency or lack of funds on the part of such party shall not constitute an unavoidable delay.

## **2.02 Net Lease**

This Lease is a completely carefree net lease to the Landlord. Except as otherwise stated in this Lease, the Landlord is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy of the Leased Premises, or the contents or the business carried on in the Leased Premises; and the Tenant will pay all charges, impositions, costs and expenses of every nature relating to the Leased Premises.

## **2.03 Extended Meanings**

Use of the neuter singular pronoun to refer to the Landlord or the Tenant is considered a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation, or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, will in all instances be assumed as though they were fully expressed.

## **2.04 Entire Agreement**

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein and this Lease and the schedules attached hereto constitute the entire agreement duly executed by the parties hereto.

## **2.05 Governing Law**

This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

## **2.06 Time of the Essence**

Time is of the essence of this Lease and each part of it.

## **2.07 No Limitation**

Any statement or provision in this Lease followed by words denoting inclusion or example, such as "including" or "such as", and then listing or referring to specific matters or items shall not be read so as to limit or restrict the generality of such statement or provision regardless of whether or

not words such as “without limitation” or “without limiting the generality of the foregoing” precede such list or reference.

## **2.08 Headings and Captions**

The table of contents, article numbers, article headings, section numbers and section headings in this Lease are inserted for convenience of reference only and are not to be considered when interpreting this Lease.

## **2.09 Severability**

Each provision of this Lease is distinct and severable. If any provision of this Lease, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Lease, or the legality, validity or enforceability of that provision in any other jurisdiction.

## **2.10 Successors and Assigns**

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns, subject to any requirement for consent by the Landlord hereunder.

## **2.11 No Partnership or Agency**

The Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or otherwise, or a joint venturer, or a member of a joint enterprise with the Tenant, and the relationship of principal and agent is not created as a result of the entering into of this Lease.

## **2.12 Joint and Several Liability**

The liability to pay Rent and perform all other obligations under this Lease of each Person signing this Lease as the Tenant where the Tenant is more than one Person, shall be deemed to be joint and several.

## **2.13 Landlord as Agent**

The Tenant agrees that the Landlord acts as agent or trustee for the Released Persons to the extent necessary to ensure that all exculpatory provisions and indemnities included in favour of the Released Persons in this Lease are enforceable by the Landlord against the Tenant.

## **2.14 Interpretation**

The Landlord and the Tenant agree that notwithstanding any rule of law or equity, presumption, principle of construction, law or statutory enactment to the contrary:

- (a) in any controversy, dispute, contest, arbitration, mediation or legal proceeding of any kind, including an action, lawsuit, motion, application, reference or appeal

regarding the interpretation, validity or enforcement of this Lease or any of its provisions, there shall be no inference, presumption or conclusion drawn whatsoever against either the Landlord or the Tenant by virtue of that party having drafted this Lease or any portion thereof or by virtue of this Lease being drawn using the Landlord's form;

- (b) any deletion of language or wording from this Lease prior to execution by the Landlord and the Tenant shall not be construed to have any particular meaning or to raise any presumption, construction or implication including, without limitation, any implication that by the deletion of certain language or wording, the Landlord and the Tenant intended to state the opposite of the deleted language or wording; and
- (c) the selection or use of any bold, italicized, underlined or coloured print in this Lease shall not be construed to have any particular meaning or to raise any presumption, construction or implication.

## **2.15 Reasonableness**

Except as may be otherwise specifically provided in this Lease, whenever the Landlord or the Tenant is required to use its discretion or to consent or approve any matter under this Lease, the Landlord and the Tenant agree that such discretion shall be reasonably exercised and that such approval or consent will not be unreasonably or arbitrarily withheld or delayed.

## **2.16 Amendment and Waiver**

No supplement, modification, amendment, waiver, discharge or termination of this Lease is binding unless it is executed in writing by the party to be bound. No waiver of, failure to exercise, or delay in exercising, any provision of this Lease constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

# **ARTICLE III GRANT AND TERM**

## **3.01 Demise**

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant rents from the Landlord the Leased Premises.

## **3.02 Commencement and Termination Date of Term**

The Tenant will have and hold the Leased Premises for and during the Term commencing on the Commencement Date and expiring on the Termination Date, unless terminated earlier pursuant to the provisions hereof.

### **3.03 “As Is” Condition of Leased Premises**

The Tenant agrees to accept the Leased Premises in an “as is, where is” condition, except as otherwise provided herein. The Tenant further agrees that, except as may be specifically set out herein, there is no promise, representation or undertaking binding upon the Landlord with respect to any alteration, remodelling or decoration of the Leased Premises or with respect to the installation of equipment or fixtures in the Leased Premises, or to prepare them or make them suitable for the Tenant's occupancy and use.

### **3.04 Delay in Possession**

Should the Tenant be delayed by any fault of the Landlord or any other reason (other than the fault of the Tenant) in taking possession of the Leased Premises at the start of the Commencement Date, then and only then shall the Commencement Date and the Term be postponed for the same number of days that the Tenant is delayed in taking possession of the Leased Premises. The Tenant acknowledges and agrees that such postponement shall be full settlement for any claims it might have against the Landlord for such delay.

### **3.05 Restrictive Covenant**

The Landlord hereby agrees that it shall not at any time during the Term, lease, sublease, licence or allow the occupation of any part of the Landlord's property located in Canada, servicing U.S. bound traffic, for any duty-free, banking, currency exchange or for any other retail operation, services or purposes which are or may be in any way competitive with the facilities and services offered within the Leased Premises.

### **3.06 Right to Extend the Term**

Provided that the Tenant: (i) is itself in physical occupation of the whole of the Leased Premises; (ii) has duly and regularly paid the Rent, (iii) is actively operating from the Premises and performs all of the covenants, provisos and agreements on the part of Tenant to be paid and performed in this Lease; and (iv) has given Landlord no less than twelve (12) months' written notice and no more than eighteen (18) months' written notice prior to the expiry date of the Term of its election to extend the Term, Tenant shall have the right and option to extend the Term for one (1) additional period of five (5) years (the “Extension Term”) upon the same terms and conditions as in this Lease except that there shall be no further right to extend the term. If Tenant elects to exercise its said option to extend, the Term shall be automatically extended for the Extension Term covered by the option so exercised. If Tenant shall fail to give notice in writing exercising its option to extend within the time stipulated in this section 3.06 the Tenant's rights to extend the Term of this Lease shall be null and void. There will be no further right to extend the Term beyond the Extension Term.

The parties shall execute a lease extension agreement prepared by the Landlord to reflect the terms of the Extension Term.

## **ARTICLE IV RENT**

### **4.01 Covenant to Pay**

The Tenant will pay Rent as provided in this Lease, together with all applicable Sales Taxes, duly and punctually by way of electronic funds transfer (“**EFT**”) from the Tenant’s bank account. The Tenant undertakes to execute and deliver concurrently with this Lease such documentation as may be required by the Landlord and its bank in order to effect payment of Rent by EFT. Any invoice sent by the Landlord to the Tenant pursuant to the provisions of this Lease, other than for pre-authorized monthly Rent payments, shall be paid for by cheque to the Landlord at its address set out in Section 1.01(a) or as the Landlord otherwise directs.

### **4.02 Base Rent**

The Tenant covenants and agrees to pay to the Landlord the annual Base Rent payable in twelve (12) equal monthly instalments on the first day of each month during the Term herein in advance together with all applicable taxes. For the first year of the Lease the Base Rent shall be \$2,500,000. The Base Rent for the second and each succeeding year of the Lease shall be the greater of: (i) the Base Rent paid in the immediately preceding year of the Lease; and (ii) seventy-five percent (75%) of the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately preceding year of the Lease.

### **4.03 Percentage Rent**

The Tenant covenants and agrees with the Landlord that if, during any month (including any broken calendar month) of the Term of the Lease, \_\_\_\_\_ percent (\_\_\_\_%) of the Tenant’s Gross Sales during such monthly period exceeds the monthly Base Rent for the same monthly period, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference together with all applicable taxes, to the Landlord as Percentage Rent.

The Tenant covenants and agrees with the Landlord that if, during any month (including any broken calendar month) of the Extension Term of the Lease, \_\_\_\_\_ percent (\_\_\_\_%) of the Tenant’s Gross Sales during such monthly period exceeds the monthly Base Rent for the same monthly period, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference together with all applicable taxes, to the Landlord as Percentage Rent.

The Landlord and the Tenant agree that any money required to be paid as Percentage Rent as set forth in the Lease shall be deemed to be Rent and be collectible as Rent and the Landlord shall have the same remedies in respect of arrears of Percentage Rent as it has in respect to arrears of Base Rent.

### **4.04 Accrual of Rent**

Rent shall be considered as accruing from day to day hereunder from the Commencement Date. If it is necessary for any reason to re-calculate such Rent for an irregular period during the relevant

Rental Year, an appropriate apportionment and adjustment shall be made on a per diem basis based upon a 365 day calendar year.

#### **4.05 Rent and Payments Generally**

All Rent and other payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this Lease, which are payable by the Tenant to the Landlord, shall:

- (a) be paid when due hereunder, without prior demand therefor and without any abatement, set-off, compensation or deduction whatsoever (except as otherwise specifically provided for in this Lease);
- (b) be applied towards amounts then outstanding hereunder in such manner as the Landlord determines in its sole discretion;
- (c) bear interest at a rate equal to twenty-four percent (24%) per annum, calculated and payable monthly from the date such Rent or other payments became due to and including the date of payment;
- (d) an administrative charge of \$150.00 will be charged in connection with any late payment or returned cheque to cover the Landlord's additional administration costs;
- (e) in addition the Tenant shall pay all Sales Taxes. The amount of such Sales Taxes will be calculated by the Landlord in accordance with the applicable legislation and will be paid to the Landlord (or to the lawful taxing authority, as the Landlord may direct) on the due date of the amounts in respect of which such Sales Taxes are payable. All such payments shall be made prior to the date that the same shall become due and payable and any interest and any penalties assessed as a result of any default in or late payment of same shall be the sole responsibility of the Tenant. Notwithstanding any other provision of this Lease, the amount payable by the Tenant under this section shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise; and
- (f) if the Commencement Date is on a day other than the first day of a calendar month or if the Term ends on any day other than the last day of the month, Rent for the fractions of a month at the Commencement Date and at the end of the Term shall be calculated on a pro rata basis.

#### **4.06 Letter of Credit**

The Tenant covenants that, on or before the Commencement Date, the Tenant shall deliver to the Landlord an irrevocable and unconditional letter of credit (the "**Letter of Credit**") in favour of Landlord issued by a Schedule 1 Canadian chartered bank in the amount of \$500,000.00, which shall be held by the Landlord during the Term and any Extension Term. The Letter of Credit shall be in such form as is approved in advance by the Landlord. If at any time during the Term or any Extension Term, the Tenant defaults in the payment of any Rent or other amounts payable under this Lease or in the performance of any of its other obligations under this Lease or if this Lease is



surrendered, terminated, disclaimed or repudiated whether by Landlord as a result of default of Tenant or in connection with any insolvency or bankruptcy of Tenant or otherwise, then Landlord at its option may, in addition to any and all other rights and remedies provided for in this Lease or at law, draw a portion of or all of the principal amount of the Letter of Credit, whereupon the proceeds thereof shall be applied to compensate Landlord for damages suffered by it as the result of Tenant's default, and the balance, if any, will be returned to the Tenant. If the Landlord draws all or part of the Letter of Credit, the Tenant shall provide the Landlord with a replacement Letter of Credit in the full amount of \$500,000 upon written demand from the Landlord to do so.

The rights of Landlord hereunder, in respect of the Letter of Credit, shall continue in full force and effect and shall not be waived, released, discharged, impaired or affected by reason of the release or discharge of Tenant in any receivership, bankruptcy, insolvency, winding-up or other creditors' proceedings including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors' Arrangement Act* (Canada), or the surrender, disclaimer, repudiation or termination of the Lease in any such proceedings and shall continue with respect to the periods prior thereto and thereafter as if the Lease had not been surrendered, disclaimed, repudiated, or terminated.

At the end of the Term or any Extension Term if applicable and provided that the Tenant is not then in default, which default remains uncured, under the terms of this Lease, the Landlord shall return the Letter of Credit, or the remaining balance of the Letter of Credit if it has been drawn upon in accordance with the terms hereof, to the Tenant.

## **ARTICLE V FINANCIAL INFORMATION**

### **5.01 Monthly Statements**

The Tenant shall furnish in writing to the Landlord by the fifth (5th) calendar day of the succeeding month, monthly statements of the Tenant's Gross Sales, patron counts, vehicle counts for the preceding month, and any other similar financial or statistical information which the Landlord may request. The monthly statement of the Tenant's Gross Sales shall: (i) state that the Tenant's Gross Sales as reported in the monthly statement is in accordance with the definition of Tenant's Gross Sales in Section 2.01(rr) (ii) contain a certification by the Tenant that the monthly statement is correct; (iii) is in the detail and form that the Landlord requires; and (iv) without limiting the requirements stated above, shows (1) the amount of Tenant's Gross Sales for the preceding month, (and fractional months, if any, at the commencement or end of the Term); (2) the amount of Tenant's Gross Sales for all preceding months of the Rental Year, (and fractional months, if any, at the commencement or end of the Term); and (3) the monthly payments made on account of Basic Rent and Percentage Rent for the Rental Year.

Failure of the Tenant to comply with this provision shall at the option of the Landlord constitute a default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies as herein provided.

## **5.02 Annual Statements**

The Tenant shall furnish in writing to the Landlord within thirty (30) calendar days of the end of each year of this Lease and any renewal thereof, the Tenant's Audited Gross Sales statements. Failure of the Tenant to comply with this provision shall at the option of the Landlord constitute a default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies as herein provided.

## **5.03 Books and Records**

The Tenant will keep in the Leased Premises or at its principal office in Canada, for at least four (4) years after the end of each Rental Year, adequate books and records kept in accordance with generally accepted accounting principles that show inventories and receipts of merchandise at the Leased Premises and daily receipts from all sales, charges, services and other transactions, in or from the Leased Premises made by the Tenant and any other Persons conducting business in or from the Leased Premises as well as sales tax returns, pertinent original sales records, and any other sales records that the Landlord reasonably requires and that would normally be examined by an accountant pursuant to accepted auditing standards in performing a detailed audit of Tenant's Gross Sales. The Tenant will also cause the records described above to be kept by all Persons doing business in or from the Leased Premises. The Tenant, and all other Persons conducting business in or from the Leased Premises, will record at the time of the sale, in the presence of the customer, all receipts from sales, charges, services or other transactions whether for cash or credit, in a cash register or registers having a sealed cumulative total and any other control features that are required by the Landlord.

## **5.04 Right to Examine**

The Tenant shall make available for inspection and audit by a representative of Landlord, at reasonable times during business hours, all such books, records and other information in order to allow Landlord to verify such statements of Tenant's Gross Sales and the inventories of merchandise at the Leased Premises. The Landlord and its authorized representatives may examine the Tenant's records and procedures during regular business hours, and may have a Person in the Leased Premises to check, verify and tabulate the Tenant's Gross Sales, or to examine accounting records and procedures including control features affecting the determination of the Tenant's Gross Revenue.

## **5.05 Audit**

The Landlord may, at reasonable times, cause a complete audit to be made of the Tenant's business and records relating to the calculation of the Tenant's Gross Sales. If the auditor reports that the Tenant's records and procedures are insufficient to permit a determination of the Tenant's Gross Sales for a Rental Year, or a part of a Rental Year, or that the Tenant is not complying with this ARTICLE V, the Landlord may deliver to the Tenant an estimate (which will be final and binding on the Tenant) of the Tenant's Gross Sales for the relevant period and the Tenant will immediately pay to the Landlord the amount shown in the estimate to be owing.

If any inspection or audit by Landlord reveals an understatement by Tenant of the Tenant's Gross Sales by more than two percent (2%) and such understatements occur twice or more within any

five-year period, Tenant shall pay Landlord on demand for the cost of each such inspection and audit, as well as five (5) times the amount by which Rent was understated or underpaid for each applicable period. If the Tenant substantially, continually or repeatedly fails to produce records and follow procedures sufficient to permit a determination of the Tenant's Gross Sales or if the Tenant's Gross Sales is understated by two percent (2%) or more on more than three (3) occasions, then in addition to any other remedies of the Landlord under this Lease or otherwise, the Landlord may terminate this Lease on five (5) days' prior written notice to the Tenant. Landlord must inspect and audit such records within two years after the date of each annual statement and Landlord's inspection and audit shall be limited to the period covered by such statement.

#### **5.06 Tenant's Failure**

If the Tenant fails to deliver a statement or an audit opinion required under this ARTICLE V within the time required, the Landlord may, on five (5) days' notice to the Tenant, employ an auditor to examine the Tenant's books and records to certify the amount of the Tenant's Gross Sales for the period related to the statement or the audit opinion, and the Tenant will pay to the Landlord, on demand, as Additional Rent the cost of the examination together with the sums shown by the examination to be owing on account of Percentage Rent with interest on the latter calculated from the date the statement or the audit opinion was required at five percent (5%) above the Prime Rate.

### **ARTICLE VI PROPERTY TAXES AND OPERATING COSTS**

#### **6.01 Property Taxes Payable by the Tenant**

The Tenant shall pay to the Landlord, as Additional Rent, all Property Taxes levied, rated, charged or assessed throughout the Term, on or in relation to the Leased Premises, or any part thereof, in accordance with the following:

- (a) payment shall be due in equal monthly installments over each taxation period or such shorter period as Landlord may reasonably require such that the Landlord will have received an amount sufficient to pay each installment of Property Taxes when due to the taxing authorities. Prior to the commencement of each taxation period, the Landlord shall estimate the amount of such equal monthly installments and notify the Tenant in writing of such estimate. From time to time during the taxation period, the Landlord may re-estimate the amounts payable for such taxation period, in which event the Landlord shall notify the Tenant in writing of such re-estimate and fix monthly installments for the remaining balance of such taxation period;
- (b) to the extent that a separate assessment and separate tax bill for Property Taxes in respect of the Leased Premises are not provided by the assessment and/or taxing authorities, the Tenant will pay a share of Property Taxes levied, rated, charged or assessed on or in relation to all of the Lands on such basis as the Landlord shall reasonably and equitably determine. To the extent the Leased Premises are assessed and billed separately with respect to any Property Taxes, then, at the election of the Landlord, the Tenant's share of such Property Taxes shall be computed on the basis of such separate assessments or apportionments; and

- (c) if the Landlord so directs, the Tenant shall pay Property Taxes directly to the taxing authorities. In that event, the Tenant shall make payment on or before the due date of each installment and shall provide to the Landlord on demand evidence of payment in the form of receipted bills.

## **6.02 Contesting Property Taxes**

Property Taxes, or the assessments in respect of Property Taxes which are the subject of any contest by Landlord or Tenant, shall nonetheless be payable in accordance with the foregoing provisions hereof, provided, however, that in the event Tenant shall have paid any amount in respect of Property Taxes in excess of the amount ultimately found payable as a result of the disposition of any such contest, and Landlord receives a refund in respect thereof, the appropriate amount of such refund shall be refunded to or, at the option of Landlord, credited to the account of Tenant. Landlord may contest any Property Taxes with respect to the Leased Premises or all or any part of the Lands and appeal any assessments related thereto and may withdraw any such contest or appeal or may agree with the relevant authorities on any settlement, compromise or conclusion in respect thereof and Tenant consents to Landlord's so doing. Tenant will co-operate with Landlord in respect of any such contest and appeal and shall make available to Landlord such information in respect thereof as Landlord requests. Tenant will execute forthwith on request all consents, authorizations or other documents as Landlord requests to give full effect to the foregoing.

Tenant will not contest any Property Taxes or appeal any assessments related to the Leased Premises or the Lands. However, provided Landlord is not otherwise contesting such assessment, Tenant may contest any separate assessment that relates solely to the Leased Premises, with the consent of Landlord, such consent not to be unreasonably withheld, provided that Tenant shall be solely responsible, and shall indemnify Landlord, for all costs, penalties or fees, relating to such contest, including without limitation, any resulting increase in Property Taxes. Tenant shall pay to Landlord forthwith upon demand such reasonable share as allocated by Landlord, acting reasonably, of all costs and expenses of any kind incurred by Landlord bona fide and acting reasonably in obtaining or attempting to obtain information in respect of or a reduction or re-allocation in respect of Property Taxes and any assessments related thereto including, without limitation, legal, appraisal, administration and overhead costs.

## **6.03 Business Taxes**

In each and every year during the Term, the Tenant shall either pay all Business Taxes as Additional Rent or discharge within fifteen (15) days after they become due and indemnify the Landlord from and against payment of, and any interest or penalty in respect of Business Taxes.

## **6.04 Operating Costs**

In each Rental Year, the Tenant will pay to the Landlord, as Additional Rent, the costs, expenses, fees, rentals, disbursements and outlays of every nature and kind paid, payable or incurred by or on behalf of the Landlord in owning, maintaining, repairing, replacing, operating, administering and managing the Leased Premises (the "**Operating Costs**"). The Operating Costs shall include,

without limitation or duplication, all of the following costs, expenses, fees, rentals, disbursements and outlays:

- (a) the cost of the Landlord's insurance premiums on lands, buildings, improvements, equipment and other property in the Leased Premises together with all amounts falling below the level of the Landlord's insurance deductibles which are paid by the Landlord in connection with claims made against it, including the costs of the insurance detailed in Section 10.06. The Landlord's insurance and costs of insurance may include, without limitation, (A) loss of insurable gross profits attributable to the perils insured against by the Landlord or commonly insured against by landlords, including loss of Rent and other amounts receivable from the Tenant pursuant to this Lease, (B) commercial general liability coverage including the exposure of personal injury, bodily injury and property damage occurrence, including all contractual obligations coverage and including actions of the employees, contractors, subcontractors and agents working on behalf of the Landlord and (C) costs and expenses for defending and payment of claims below deductibles;
- (b) accounting, auditing, legal and other professional and consulting fees relating to any reports or actions required to be taken by the Landlord under the terms of this Lease;
- (c) the cost of any and all environmental inspections and Environmental Site Assessments of the Leased Premises conducted by the Landlord from time to time which are not the responsibility of the Tenant;
- (d) the cost of any and all repairs, replacements (including major repairs and any repairs and replacements required to comply with all Applicable Laws, or the requirements of the Landlord's insurers), preventative and ongoing maintenance and operation, inspection, engineering and service contracts and consulting services, if any, relating to the Leased Premises;
- (e) all costs incurred in contesting or appealing Property Taxes with respect to the Leased Premises or related assessments, including legal, appraisal and other professional fees and administration and overhead related thereto;
- (f) all other direct and indirect costs and expenses of every kind, to the extent incurred in or allocable to the operation, supervision, administration or management of all or any part of the Leased Premises, or any of its appurtenances; and
- (g) Sales Taxes on the purchase of goods and services included in the calculation of Operating Costs to the extent that the Landlord has not recovered an input tax credit or refund in respect of the same; notwithstanding any other provision of this Lease, the amount payable by the Tenant under this paragraph shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise.

## **6.05 Payment of Operating Costs**

Before the commencement of each Rental Year, the Landlord will estimate the Operating Costs. The Tenant shall pay such estimated amount to the Landlord in equal consecutive monthly instalments, each in advance on the first day of each month during such Rental Year. The Landlord may from time to time during a Rental Year re-estimate any items of Operating Costs and may fix monthly instalments for the then remaining balance of the Rental Year so that such items will have been entirely paid during such Rental Year.

Within one hundred and twenty (120) days after the end of such Rental Year, the Landlord will determine and provide the Tenant with a statement in reasonable detail for the relevant Rental Year of the Operating Costs and Property Taxes. If the total of the monthly instalments paid by the Tenant in respect of estimated Operating Costs and Property Taxes for such Rental Year is less than the amount of Operating Costs and Property Taxes payable for such Rental Year shown on such statement, the Tenant shall pay the difference to the Landlord no later than the first day of the month immediately following the month in which the Tenant receives the statement. Provided that the Tenant is not in default, if the estimated amount of such monthly instalments paid is greater than the actual amount of Operating Costs and Property Taxes payable for such Rental Year, the difference shall be applied in reduction of future payments, if any, due under this Lease, or if no future payments are due, shall be refunded to the Tenant. Neither party may claim a re-adjustment in respect of Operating Costs and Property Taxes for a Rental Year except by written notice delivered to the other party within one year after the delivery date of the Landlord's statement of Operating Costs and Property Taxes.

## **ARTICLE VII UTILITIES**

### **7.01 Charges for Utilities**

The Tenant shall pay promptly when due all charges, costs, accounts and any other sums payable by reason of the supply of the utilities to the Leased Premises and shall indemnify the Landlord from and against payment of, and any interest or penalty, in respect of all such utilities. The Tenant, at its own cost and expense, shall procure each and every permit, licence or other authorization required pertaining to any work required in respect of utilities consumed in or for the Leased Premises. The Tenant acknowledges and agrees that in the event any such utility supplier requires as a condition of the utility supply, or as a condition of constructing any infrastructure or installing any equipment to enable the utility supplier to provide such utility for the Tenant's use or consumption, that an agreement or contract shall be entered with the utility supplier and/or that a letter of credit or other form of security be posted with or delivered to the utility supplier, the Tenant shall, upon the written request of the Landlord, execute and deliver such agreement in the Tenant's name to such supplier, and cause to be issued, at the Tenant's sole cost and in the Tenant's name and deliver such letter of credit or other security to such supplier. Should the Tenant fail to execute and deliver any such agreement or to cause to be issued and delivered such letter of credit or to pay such other security deposit, within twenty (20) days of receipt of the Landlord's written notice that it do so, the Landlord shall be entitled on behalf of and as lawful attorney for the Tenant to execute and deliver such agreement in the name of and on behalf of the Tenant, and to pay such deposit on behalf of the Tenant, and in such event the

Landlord's costs of so doing shall be payable by the Tenant forthwith upon demand as Additional Rent.

## **7.02 Tenant Not to Overload Facilities**

The Tenant shall not install any equipment which overloads the capacity of any utility, electrical or mechanical facilities in the Leased Premises. The Tenant agrees that if any changes proposed or use by the Tenant requires additional utility, electrical or mechanical facilities, the Landlord may, in its sole discretion, if they are available, elect to install them in accordance with plans and specifications to be approved in advance in writing by the Landlord and the cost thereof, together with an administration fee equal to fifteen percent (15%) of such cost, shall be payable on demand by the Tenant as Additional Rent.

## **7.03 No Liability**

In no event shall the Landlord be liable for any injury to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Leased Premises.

# **ARTICLE VIII HVAC**

## **8.01 HVAC System**

The Tenant shall be responsible, at its sole cost, for operating, maintaining, repairing and replacing the HVAC System throughout the Term. The Tenant covenants and agrees to take out and keep in force throughout the Term a standard servicing contract with a reputable company for the preventative maintenance and service of the HVAC System. Thirty (30) days prior to the end of each Rental Year (excluding the initial 2016 partial Rental Year), the Tenant will provide the Landlord with a certificate from a recognized, reputable heating and air-conditioning contractor approved in writing by the Landlord, stating that the HVAC System is in good working order. If such certificate is not provided, the Landlord may obtain such a certificate on behalf of the Tenant and if required, perform all necessary repairs and replacements to the HVAC System, and the cost of such certificate and work, together with an administration fee equal to fifteen percent (15%) of such cost, shall be payable by the Tenant to the Landlord as Additional Rent, forthwith on demand.

## **8.02 Landlord's Right to Maintain / Repair HVAC System**

In the event that the Tenant neglects or refuses to maintain and repair the heating, ventilating and/or air conditioning system and equipment serving the Leased Premises, then the Landlord, after five (5) days written notice to the Tenant during which period the Tenant has not commenced to maintain or repair the system and equipment, may maintain and repair the heating, ventilating and/or air conditioning system and equipment serving the Leased Premises and the Tenant shall reimburse the Landlord its costs and expenses of all such repairs, replacements to and maintenance and operation of the heating, ventilating and air conditioning equipment and systems which serve the Leased Premises in accordance with the terms of Article 7.5.

### **8.03 Tenant's Responsibility**

The Tenant will heat and ventilate the Leased Premises at all times throughout the Term in order to maintain reasonable conditions of temperature and humidity within the Leased Premises, in accordance with the terms of this Lease and all Applicable Laws.

## **ARTICLE IX USE OF THE LEASED PREMISES**

### **9.01 Use of the Leased Premises**

The Tenant shall not use the Leased Premises for any purpose other than the Permitted Use. The Tenant acknowledges that the Landlord is making no representations with respect to the zoning of the Property or the compliance therewith of the Tenant's Permitted Use and it shall be the Tenant's sole responsibility to satisfy itself in this regard.

### **9.02 Conduct and Operation of Business**

The Tenant shall occupy the Leased Premises during the Term of the Lease and shall continuously and actively carry on the Permitted Use in the whole of the Leased Premises. In the conduct of the Tenant's business pursuant to this Lease the Tenant shall:

- (a) operate its business 24 hours a day, seven days a week, 365 days a year with due diligence and efficiency and maintain an adequate staff to properly serve all customers;
- (b) observe and obey the reasonable rules and regulations of the Landlord promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operations of the Peace Bridge. Without limiting the generality of the foregoing, the Landlord, after consulting with the Tenant, may provide rules setting out where customers of the Tenant shall park their vehicles and may further provide for the orderly flow of traffic entering and exiting from the area of the Leased Premises provided such rules are reasonable and acceptable to the Tenant, acting reasonably. The Tenant agrees that it shall be responsible to provide any and all traffic direction required in or upon the Leased Premises.
- (c) abide by all reasonable rules and regulations and general policies formulated by the Landlord from time to time relating to the delivery of goods and merchandise to the Leased Premises;
- (d) not erect, maintain or display any signs or any advertising at or on the exterior of the Leased Premises without the prior written approval of the Landlord;
- (e) keep the Leased Premises clean, neat and free of hazards and fire dangers at all times;



- (f) perform all landscaping and maintenance of all outside areas, including cleaning, line painting, snow and ice clearing and removal and salting of sidewalks, driveways and parking facilities and all lawn and garden maintenance;
- (g) provide policing, supervision and security as required;
- (h) maintain proper lighting in the parking facilities;
- (i) take any and all action necessary to prevent any of its employees from affecting the orderly flow of traffic in or upon the Leased Premises or any other lands owned by the Landlord;
- (j) dispose of all waste or recyclable material at a location in the Leased Premises at such times and in such manner as may be directed by the Landlord from time to time and in accordance with Applicable Law;
- (k) obtain a Licence and maintain its Licence in good standing;
- (l) provide adequate public restrooms for the anticipated number of travelers using the Peace Bridge, including persons who may not be patrons of the duty free shop;
- (m) in the event that the Tenant's Licence is terminated, revoked or suspended for any period of Time, or has expired, the Tenant shall cause its Licence to be reinstated or renewed within 60 days of such termination, revocation, suspension or expiration; and
- (n) abide by any and all directives of Canada Border Services Agency in regards to the conduct of the Tenant's business.

### **9.03 Nuisance and Waste**

The Tenant shall not commit any waste upon, or damage to, the Leased Premises or commit any nuisance or other act or thing and will not perform any acts or carry on any practices which may damage the Leased Premises. The Tenant will not permit any odours, vapours, steam, water, vibrations, noises or other undesirable effects to emanate from the Leased Premises or any equipment or installation therein which, in the Landlord's opinion, are objectionable, and the Tenant will not cause any interference with the safety, comfort or convenience of the Landlord.

### **9.04 Observance of Law**

The Tenant shall, at its own expense, comply with all Applicable Laws affecting the Leased Premises or the use or occupation thereof including, without limitation, police, fire and health regulations and requirements of the fire insurance underwriters. The Tenant shall carry out modifications, alterations or changes to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which are required by any such authorities and shall keep its Licence in good standing.

#### **9.05 Additional Services of the Landlord**

The Tenant shall pay to the Landlord the costs of all Additional Services provided by the Landlord to the Tenant, together with an administration fee equal to fifteen percent (15%), forthwith on demand as Additional Rent.

#### **9.06 Traffic Direction**

In the event that the Landlord, after consultation with the Tenant, determines that additional traffic personnel are required as a result of the operations of Tenant, Landlord shall add such additional personnel as may be required, and Tenant and Landlord shall each pay one-half of the cost of such additional personnel.

### **ARTICLE X TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY**

#### **10.01 Compliance with Environmental Laws and Environmental Approvals**

The Tenant shall comply with all applicable Environmental Laws and shall obtain and comply with any Environmental Approvals that may be required for the Tenant's use of the Leased Premises. Without restricting the generality of the foregoing, the Tenant shall not use, generate, handle, transport, manufacture, refine, treat, store, remove, recycle or dispose of any Contaminant on the Leased Premises except in compliance with all applicable Environmental Laws.

#### **10.02 Release of a Contaminant**

- (a) In the event of a Release of a Contaminant at or from the Leased Premises other than in compliance with Environmental Laws, the Tenant shall immediately notify the Landlord of the Release and shall at its own expense, immediately retain a qualified environmental consultant acceptable to the Landlord, acting reasonably, to prepare a report assessing the full nature and extent of the Release and recommending the work plan to remediate the Release and to restore the Leased Premises, any affected abutting lands, as well as the natural environment, to the condition they were in before the Release, and the Tenant shall submit this report to the Landlord for the Landlord's approval acting reasonably.
- (b) Upon the Landlord's approval of the report and at the sole option of the Landlord, either the Tenant shall arrange for the implementation of the work plan, or the Landlord shall arrange for the implementation of the work plan, in either case at the cost of the Tenant, together with an administration fee of fifteen percent (15%) of such cost, which shall be payable as Additional Rent forthwith upon receipt of written demand for payment from the Landlord.
- (c) In the event that the Landlord, acting reasonably, does not approve of the report submitted by the Tenant, the Landlord shall retain a qualified environmental consultant to prepare a report, the cost of which plus an administration fee of fifteen percent (15%) of such cost, shall be borne by the Tenant. Upon the completion of the report, at the sole option of the Landlord, either the Tenant shall arrange for the

implementation of the work plan, or the Landlord shall arrange for the implementation of the work plan, in either case at the cost to the Tenant together with an administration fee of fifteen percent (15%) of such costs, which shall be payable as Additional Rent forthwith upon receipt of written demand for payment from the Landlord.

- (d) In addition, the Tenant shall be liable to the Landlord for loss of rent, loss of profits, or for any consequential, incidental, indirect, special or punitive damages of any kind resulting from the Release and any remediation required pursuant to this Section.

### **10.03 Environmental Site Assessment**

The Landlord and its agent shall have the right to enter upon the Leased Premises and conduct an Environmental Site Assessment from time to time. In the event the ESA discloses a Release, any apparent or imminent contravention of Environmental Laws or other matter requiring remediation or other action in order to prevent a Claim from arising for which the Tenant or any person for whom the Tenant is responsible at law, the Tenant shall pay for the ESA; in the event the ESA does not disclose such a Release or other condition, the cost of the ESA shall be paid for by the Landlord.

### **10.04 Tenant's Environmental Indemnity**

The Tenant hereby indemnifies and saves harmless the Released Persons from and against any and all Claims which may be made against the Released Persons as a direct or indirect result of the failure or neglect by the Tenant to comply with any Environmental Laws or Environmental Approvals in respect to the Leased Premises, as a direct or indirect result of the existence on, in, under or adjacent to the Leased Premises of any Contaminant attributable to the Tenant's use or occupation of the Leased Premises or as a result of any Claims made against the Tenant arising from or involving Environmental Laws. This indemnity shall survive the termination or surrender of this Lease or any renewal or extension thereof and shall continue in full force and effect without time limit.

### **10.05 Governmental Authority Requirements**

If any Governmental Authority having jurisdiction shall lawfully require the investigation, monitoring or remediation of any Contaminant used, held, released, discharged, abandoned or placed upon the Leased Premises or Released into the environment by the Tenant, then the Tenant shall, at its own expense, subject to Section 10.02, carry out all lawfully required work and shall provide to the Landlord full information with respect to all such work and comply with all applicable Environmental Laws with respect to such work. At the option of the Landlord, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant and that cost and expense plus an administration fee equal to fifteen percent (15%) shall be paid to the Landlord forthwith on demand as Additional Rent.

## **10.06 Pre Existing Contaminants**

The Landlord hereby releases the Tenant from liability to the Released Persons for any and all Claims which may be made against the Released Persons as a result of the existence as at the Commencement Date of any Contaminant on, in, under or adjacent to the Leased Premises.

## **10.07 Responsibility for Environmental Contaminants**

- (a) Despite any statutory provision or rule of law to the contrary, any Contaminants brought to or resulting from activities carried out on the Leased Premises during the Term or any renewal or extension thereof shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord despite the degree of affixation of the Contaminants or the goods contained in the Contaminants to the Leased Premises and despite the expiry, repudiation, disclaimer or earlier termination of this Lease; and, at the option of the Landlord, to the extent there is non-compliance with applicable Environmental Laws, any substance, including soil and groundwater contaminated by such Contaminants shall become the property of the Tenant.
- (b) The Tenant covenants and agrees to carry out at the request of the Landlord at its own cost and expense, remediation of all Contamination of the Leased Premises arising out of the Tenant's uses or occupation thereof so that the soil and groundwater condition of the Leased Premises and any affected areas beyond the Leased Premises or property owned or controlled by a third party, complies with remediation criteria set out in guidelines, policies, criteria or otherwise established under Environmental Laws. Risk assessment will not be used unless agreeable to the Landlord. This covenant shall survive the Termination Date.
- (c) At the option of the Landlord, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant and that cost and expense plus an administration fee equal to fifteen percent (15%) shall be paid to the Landlord forthwith on demand as Additional Rent; but having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work.
- (d) The obligations of the Tenant hereunder relating to Contaminants shall survive any assignment, expiry, repudiation, disclaimer or earlier termination of this Lease. To the extent that the performance of those obligations requires access to or entry upon the Leased Premises, the Tenant shall have such entry and access after such expiry, repudiation, disclaimer or earlier termination only at such times and upon such terms and conditions as the Landlord may reasonably from time to time specify.

## **ARTICLE XI INSURANCE AND INDEMNITY**

### **11.01 Tenant's Insurance**

The Tenant will obtain and maintain the following insurance throughout the Term and any renewal or extension thereof:

- (a) "All risks" (including flood and earthquake) property insurance for the full replacement cost, insuring (a) all property owned by the Tenant, or for which the Tenant is responsible, and located within the Leased Premises including, but not limited to, fittings, fixtures, additions, alterations, partitions and all other Leasehold Improvements, and (b) the Tenant's furniture, inventory and equipment;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount equal to at least the replacement cost of the property with respect to all boilers and machinery owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises;
- (c) Business interruption insurance for a minimum period of twenty-four (24) months or such longer period that will reimburse the Tenant for direct and indirect loss of earnings and profit attributable to damage caused by the perils insured against under Subsections (a) and (b) above, and other perils insured by prudent tenants, or attributable to prevention of access to the Leased Premises by civil authorities;
- (d) Commercial general liability insurance under a standard commercial general liability form which shall include coverage against bodily injury, including death, and property damage. Such insurance shall:
  - (i) include extensions such as personal injury, blanket contractual liability, employers liability, owner's and contractor's protective liability, cross liability, severability of interests coverage, breach of warranty clause and non-owned automobile insurance;
  - (ii) cover the Tenant's use of the Leased Premises, including all of the Tenant's activities and operations therein and any other Persons performing work on behalf of the Tenant, and those for whom the Tenant is responsible at law;
  - (iii) be written on an "occurrence" form with inclusive limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence or such higher limits as the Landlord may require from time to time;
  - (iv) include tenant's legal liability insurance covering the perils of "all risks" for the replacement cost of the Leased Premises, including loss of use thereof; and
  - (v) include standard automobile insurance covering third party liability with limits of liability not less than One Million Dollars (\$1,000,000.00) per accident, plus accident benefits, for all automobiles owned or operated by or on behalf of the Tenant; and
- (e) Any other form of insurance the Tenant, the Landlord or its Mortgagee may require from time to time, in form, in amounts insured, and for perils or risks insured against, which a prudent tenant would insure.

## **11.02 Requirements of Insurance**

- (a) The policies required under Sections 11.01(a), 11.01(b), 11.01(c) and 11.01(d) above will also contain a waiver of all subrogation rights which the Tenant's insurers may have against the Released Persons whether or not the damage is caused by their act, error, omission or negligence.
- (b) All policies will:
  - (i) be placed with insurers acceptable to the Landlord, in a form acceptable to the Landlord;
  - (ii) name the Released Persons and such other Persons as the Landlord may designate from time to time, as additional insureds;
  - (iii) be primary, and not excess or contributing with any other insurance available to the Landlord;
  - (iv) provide for deductibles which are acceptable to the Landlord;
  - (v) not be invalidated as respects the interests of the Released Persons, or any of them, by reason of any breach or violation of warranty, representation, declaration or condition contained in the policies, or any of them; and
  - (vi) contain a condition by insurers to notify the Released Persons in writing not less than thirty (30) days before any cancellation or material change in policy conditions is effected.
- (c) The Tenant will deliver certificates of insurance duly executed by the Tenant's insurers or their duly authorized representatives, evidencing that all such insurance described above is in full force and effect prior to going into occupancy of the Leased Premises and thereafter at least thirty (30) days prior to the expiry of the then current term of the insurance. Such certificates must confirm the limits and special conditions of such insurance as required by this Section. No review or approval by the Landlord of any such insurance certificates shall operate to derogate from or diminish the Landlord's rights under this Lease.

## **11.03 Sign Insurance**

The Tenant shall insure and keep insured, at its expense, all signs relating to the Tenant's business placed or erected on the exterior of the Leased Premises for and in its name and in the name of the Landlord. The Tenant waives any right of complaint as to the form and location of the Landlord's existing signs.

## **11.04 Increase in Insurance Premiums**

The Tenant will comply promptly with all requirements of the Insurer's Advisory Organization and of each insurer pertaining to the Leased Premises. If the occupancy of the Leased Premises,

the conduct of business in the Leased Premises or any acts or omissions of the Tenant in the Leased Premises, or any part thereof, cause an increase in premiums for the insurance carried from time to time by the Landlord on the Leased Premises, the Tenant shall pay the increase as Additional Rent immediately after invoices for the additional premiums are rendered by the Landlord.

#### **11.05 Cancellation of Insurance**

If any insurance policy on the Leased Premises is cancelled, or threatened by the insurer to be cancelled, or if the coverage under any insurance policy is reduced in any way by the insurer because of the use or occupation of any part of the Leased Premises by the Tenant or by any occupant of the Leased Premises, and if the Tenant fails to remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice by the Landlord, the Landlord may either: (a) re-enter and take possession of the Leased Premises immediately by leaving upon the Leased Premises a notice of its intention to do so, following which the Landlord will have the same rights and remedies as are contained in Article XVII; or (b) enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage, and the Tenant will immediately pay the costs and expenses to the Landlord, together with an administration fee equal to fifteen percent (15%) of such costs and expenses, which costs and expenses may be collected by the Landlord as Additional Rent, and the Landlord will not be liable for any damage or injury caused to any property of the Tenant or others located on the Leased Premises as the result of the entry. Such an entry by the Landlord is not a re-entry or a breach of any covenant for quiet enjoyment.

#### **11.06 Landlord's Insurance**

The Landlord will obtain and maintain the following insurance throughout the Term of this Lease and any renewal or extension thereof:

- (a) insurance on the Building and improvements and equipment contained therein owned or leased by Landlord or which Landlord desires to insure against damage by fire and extended perils coverage in those reasonable amounts and with those reasonable reductions that would be carried by a prudent owner of a reasonably similar premises, having regard to size, age and location;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount equal to at least the replacement cost of the boilers and machinery owned by the Landlord, including the HVAC System;
- (c) public liability and property damage insurance with respect to the Landlord's operations in the Leased Premises, in those reasonable amounts and with those reasonable deductibles, that would be carried by a prudent owner of a reasonably similar premises, having regard to size, age and location; and
- (d) such other forms of insurance which the Landlord or the Mortgagee considers advisable from time to time.

Despite this Section 11.06, and regardless of any contribution by the Tenant to the costs of insurance premiums: (i) the Tenant is not relieved of any liability arising from or contributed to by its negligence or its wilful acts or omissions; and (ii) no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord and the Tenant has no right to receive any proceeds of any such insurance policies. The costs of the Landlord's insurance under this Section 11.06 will be included in Operating Costs.

#### **11.07 Loss or Damage**

None of the Released Persons shall be liable for any death or injury from or out of any occurrence in, upon, at or relating to the Leased Premises, or damage to property of the Tenant or of others located on the Leased Premises, and will not be responsible for any loss of or damage to any property of the Tenant or others from any cause whatsoever, whether or not the death, injury, loss or damage results from the negligence of the Released Persons, or any of them. Without limiting the generality of the foregoing, the Released Persons will not be liable for any injury or damage to Persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, subsurface of any floor or ceiling or from the street or any other place, or from any dampness or by any other cause whatsoever. None of the Released Persons shall be liable for any damage caused by occupants of adjacent property, or the public, or caused by construction or by any private, public or quasi public work. All of the property of the Tenant kept or stored on the Leased Premises shall be kept or stored at the risk of the Tenant only, and the Tenant will indemnify the Released Persons and save them harmless from any claims arising out of any damages to that property including, but not limited to, any subrogation claims by the Tenant's insurers.

#### **11.08 Indemnification of the Landlord**

Despite anything to the contrary contained in this Lease, the Tenant will indemnify the Released Persons and save them harmless from and against any and all Claims (including loss of Rent payable by the Tenant under this Lease), in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon or at the Leased Premises, or the occupancy or use by the Tenant of the Leased Premises, or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. If a Released Person, without fault on its part, is made a party to any litigation commenced by or against the Tenant, then the Tenant will protect, indemnify and hold the Released Person harmless and will pay all costs, expenses and reasonable legal fees (on a substantial indemnity basis) incurred or paid by the Released Person in connection with that litigation. The Tenant will also pay all costs, expenses and legal fees (on a substantial indemnity basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease, unless a court decides otherwise. This indemnity will survive the Termination Date.



**ARTICLE XII**  
**MAINTENANCE, REPAIRS AND ALTERATIONS**

**12.01 Maintenance and Repairs and Replacement by the Tenant**

The Tenant shall, throughout the Term and any extension or renewal thereof, at its sole cost, keep the Leased Premises in a first class condition, as required by the Landlord. The Tenant shall, at its sole cost and expense, maintain, repair and replace, as required, the following:

- (a) the whole of the Leased Premises including, but not limited to, entrances, and all glass, windows and doors, including their frames and mouldings;
- (b) all signs (both interior and exterior), partitions, trade fixtures and Alterations located in or upon the Leased Premises;
- (c) the exterior areas of and facilities on the lands included in the Leased Premises which include, without limitation, the parking areas, driveways, sidewalks, loading areas, concrete aprons, curbs, gutters, access points, control gates, security barriers or fences, landscaped areas;
- (d) the structural components of the Building including, without limitation, the roof (including the roof deck and roof membrane), foundations, interior walls, interior concrete slab floors and exterior walls; and
- (e) all Building Systems.

If any of the foregoing repairs or replacements (excluding repairs or replacement of the HVAC System) are of a capital nature that are required as a result of the useful life of a capital asset coming to an end and are capable of being amortized by the Landlord according to generally accepted accounting principles, the Tenant may request that same be paid for by the Landlord and charged back to Tenant as Additional Rent with the costs of such items to be amortized over such period as determined by Landlord, provided that such determination is made in accordance with generally accepted accounting principles, on a straight line basis to zero and interest to be calculated and paid annually during the Term on the unamortized cost of such items in respect of which amortization is included at 4% per annum in excess of the Prime Rate. For greater certainty, capital repairs do not include (i) repairs necessary to keep an asset in as good working condition as such asset was as of the Commencement Date (reasonable wear and tear excepted); (ii) any wear on or elimination of parking lot lines, black topping or asphalt sealing, or tarring or asphaltting of cracks or holes or asphaltting of less than the entire of the driveway or parking lot; or (iii) any replacement of glass in the windows.

The Landlord shall cooperate with the Tenant so that in the performance of the Tenant's covenants in this Section 12.01 and the Tenant will have the benefit of any warranties held by the Landlord in respect of the Building.

## **12.02 Landlord's Approval of Alterations**

- (a) Except as provided in Section 12.02(b), the Tenant will not make any repairs, alterations, replacements, Leasehold Improvements or improvements (collectively the “**Alterations**”) to the Leased Premises without first obtaining the Landlord's prior written approval. Prior to commencing any Alterations, the Tenant will submit to the Landlord: (i) details of the proposed Alterations including drawings and specifications; (ii) any indemnification or security against liens, costs, damages and expenses the Landlord requires; and (iii) evidence that the Tenant has obtained the necessary consents, permits, licences and inspections from all governmental authorities having jurisdiction.
- (b) The Tenant shall not be required to obtain the Landlord's prior written approval for any minor decorations to the interior of the Building.
- (c) Alterations shall be performed at the Tenant's sole cost in a good and workmanlike manner by competent workmen whose labour union affiliations are compatible with others employed by the Landlord and its contractors, in accordance with the drawings and specifications approved by the Landlord and subject to the reasonable restrictions imposed by the Landlord, all in accordance with the Tenant Construction Criteria.
- (d) Despite anything to the contrary contained in this Section, the Landlord may, at its option, complete the Alterations. Upon completion of the Alterations, the Tenant will pay to the Landlord, upon demand, as Additional Rent, the cost of the Alterations as well as any fees related thereto as may be set out from time to time in the Tenant Construction Criteria, together with an administration fee equal to fifteen percent (15%) of such costs.

## **12.03 Landlord's Inspection**

The Tenant permits the Landlord and its agents, upon reasonable prior notice to the Tenant and during normal business hours (except in emergency) of the Tenant without interference to the operations of the Tenant, to enter the Leased Premises to examine the condition, management and operation thereof. In addition to the Tenant's obligations under Section 12.01, the Tenant shall effect the maintenance and carry out any work referred to in that Section in accordance with notice from the Landlord following its inspection. The failure to give the notice does not relieve the Tenant from its obligations under Section 12.01.

## **12.04 Surrender of the Leased Premises**

On the Termination Date or earlier termination of the Term, the Tenant shall peaceably surrender up the Leased Premises to the Landlord in first class condition, will deliver all of the keys for the Leased Premises to the Landlord and will inform the Landlord of all combinations of locks, safes and vaults, if any, in the Leased Premises. The Tenant shall also remove its trade fixtures and the Leasehold Improvements in accordance with the provisions of Section 12.07 at the Termination Date or earlier termination of the Term.

### **12.05 Repair where Tenant at Fault**

Despite anything to the contrary contained in this Lease, if the Leased Premises or any part thereof, requires repair or replacement because of the act of the Tenant, the cost of such repair or replacement, together with an administration fee equal to fifteen percent (15%) of such cost, shall be paid by the Tenant to the Landlord as Additional Rent on demand.

### **12.06 Tenant Not to Overload Floors**

The Tenant will not bring upon the Leased Premises, or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use might in the opinion of the Landlord damage the Leased Premises and shall not at any time overload the floors of the Building.

### **12.07 Removal and Restoration by the Tenant**

- (a) Any Leasehold Improvements made by the Tenant, or made by the Landlord on the Tenant's behalf, immediately shall become the property of the Landlord and will not be removed from the Leased Premises except that: (i) the Tenant may, during the Term, in the usual course of its business, and with the prior written consent of the Landlord, remove the trade fixtures which it has installed, but only if they have become excess for the Tenant's purposes or if the Tenant is substituting new and similar trade fixtures, and the Tenant is not in default under this Lease; (ii) the Tenant will, at the expiration of the Term, at its cost, remove all of its trade fixtures installed in the Leased Premises and those Leasehold Improvements which the Landlord requires to be removed; and all Contaminants required pursuant to ARTICLE X.
- (b) The Tenant will repair any damage to the Leased Premises caused by the installation or removal of the items described in subsection (a) above. This obligation will survive the Termination Date or earlier termination of the Term.
- (c) If the Tenant does not remove any of the items described in subsection (a) which it is required to remove, the Landlord may do so and the Tenant will pay the Landlord's removal, disposal, sale and storage charges. Any Leasehold Improvements or other items not removed shall, at the Landlord's option, become the property of the Landlord and may be removed from the Leased Premises and sold or disposed of by the Landlord in such manner as it deems advisable.
- (d) The parties agree that the Tenant's trade fixtures do not include any of the following: (i) the HVAC System; (ii) floor coverings, ceilings, partitioning and draperies; (iii) light fixtures; (iv) washroom fixtures and hot water tank; (v) electrical service including any transformer; (vi) internal stairways; (vii) show windows and doors; and (viii) signs, all of which are Leasehold Improvements.

### **12.08 Notice of Defects**

The Tenant will notify the Landlord of any damage to, or deficiency or defect in, the Leased Premises, and any equipment, utility systems or installations located therein or thereon,

immediately following the date the Tenant becomes aware of such damage, deficiency or defect, whether or not the Landlord has an obligation to repair the damage, or remedy the deficiency or defect.

#### **12.09 Liens**

The Tenant will promptly pay its contractors, material men, suppliers and workmen and will do everything necessary to ensure that no lien is registered against the Leased Premises or against the Landlord's interest in the Leased Premises, or against the Tenant's interest in the Leased Premises. If such a lien is made, filed or registered on title to the Leased Premises, the Tenant will discharge it, or cause it to be discharged, immediately, at the Tenant's expense. If the Tenant fails to discharge any such lien as required herein, the Landlord, in addition to its other remedies hereunder, at law or in equity may, but shall not be required to, discharge the lien by paying the amount claimed into court, together with any security for costs, or by paying the amount claimed directly to the lien claimant and the amount so paid, together with all related costs and expenses, including solicitor's fees (on a substantial indemnity basis) and an administration fee equal to fifteen percent (15%) of such costs and expenses, all of which shall be payable by the Tenant on demand as Additional Rent.

#### **12.10 Signs and Advertising**

The Tenant shall not paint, affix or display any sign, picture, advertisement, notice, lettering or decoration on any part of the exterior of or in any part of the Building without, in each case, the prior written approval of the Landlord. All signs erected by the Tenant shall comply with all Applicable Laws.

### **ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION**

#### **13.01 Damage or Destruction to the Leased Premises**

Subject to the following, if the Building, or any portion thereof, are damaged or destroyed by fire or by other casualty, Rent shall abate in proportion to the area of that portion of the Building which, in the opinion of the Architect, is thereby rendered unfit for the purposes of the Tenant until the Building is repaired and rebuilt, and the Landlord shall repair and rebuild the Leased Premises. Notwithstanding the foregoing, if the Tenant has caused or contributed to the damage or destruction, it shall not be entitled to any abatement of Rent. Rent shall recommence to be payable one (1) day after the Landlord notifies the Tenant that the Tenant may reoccupy the Building for the purpose of undertaking its work.

#### **13.02 Rights to Termination**

Notwithstanding Section 13.01:

- (a) if the Building or any portion thereof are damaged or destroyed by any cause whatsoever and cannot be rebuilt within one hundred and eighty (180) days of the damage or destruction, the Landlord may, instead of rebuilding the Building, terminate this Lease by giving to the Tenant notice of termination within thirty (30)

days after the occurrence of such damage or destruction and thereupon Rent shall be apportioned and paid to the date of the occurrence of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord; and

- (b) if the Building shall, at any time, be wholly or partially damaged or destroyed to the extent that twenty-five percent (25%) or more of the Building has become unfit for use, the Landlord may elect, within thirty (30) days from the date of the occurrence of such damage or destruction, to terminate this Lease on thirty (30) days' notice to the Tenant, in which event Rent shall remain payable until the date of termination (unless it has abated under Section 13.01).

### **13.03 Certificate Conclusive**

Any decisions regarding the extent to which the Leased Premises have become unfit for use or the length of time required to complete any repair or reconstruction shall be made by the Architect whose decision shall be final and binding upon the parties.

### **13.04 Insurance Proceeds**

Notwithstanding Sections 13.01 and 13.02, in the event of damage or destruction occurring by reason of any cause in respect of which proceeds of insurance are insufficient to pay for the costs of rebuilding the Building, or are not payable to or received by the Landlord, or in the event that any Mortgagee or other Person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for such purpose, or in the event that the Landlord is not able to obtain all necessary approvals and permits from Governmental Authorities to enable it to rebuild the Building, the Landlord may elect, on written notice to the Tenant, within thirty (30) days following the occurrence of such damage or destruction, to terminate this Lease, and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord in accordance with the Landlord's notice.

### **13.05 Landlord's Rights of Rebuilding**

In performing any reconstruction or repair, the Landlord may use drawings, designs, plans and specifications other than those used in the original construction of the Building and may alter or relocate the Building. The Landlord shall have no obligation to grant to the Tenant any allowances or inducements to which it may have been granted at the beginning of the Term, and shall not be required to repair any damage to Leasehold Improvements (which include the HVAC System), fixtures, chattels the Tenant's trade fixtures or any other property of the Tenant.

### **13.06 Negligence of the Tenant**

Notwithstanding anything to the contrary contained in this Lease, if any damage or destruction by fire or other casualty to all or any part of the Leased Premises is due to the fault or the negligence of the Tenant, the Tenant shall be liable for all costs and damages incurred or suffered by the Landlord without prejudice to any other rights and remedies of the Landlord and without prejudice to the rights of subrogation of the Landlord's insurer.

### **13.07 Expropriation**

If all or any part of the Leased Premises is taken or expropriated by any lawful expropriating authority, or purchased under threat of such taking, or if part of the Leased Premises is taken so that substantial alteration or reconstruction of the Building is necessary or desirable as a result thereof, this Lease shall automatically terminate on the date on which the expropriating authority takes possession. Upon any such taking or purchase, the Landlord shall be entitled to receive and retain the entire award or consideration for the affected lands and improvements, and the Tenant shall not have, and shall not advance, any claim against the Landlord for the value of the Tenant's property or its leasehold estate or the unexpired Term, or for costs of removal or relocation, or business interruption expense or any other damages arising out of such taking or purchase. Nothing herein shall give the Landlord any interest in or preclude the Tenant from seeking and recovering on its own account from the expropriating authority any award or compensation attributable to the taking or purchase of the Tenant's improvements, chattels or trade fixtures, or the removal, relocation or interruption of its business. If any such award made or compensation paid to either party specifically includes an award or amount for the other, the party first receiving the same shall promptly account therefor to the other.

## **ARTICLE XIV ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL**

### **14.01 Transfers**

The Tenant shall not assign this Lease in whole or in part, sublet all or any part of the Leased Premises or part with or share possession of all or any part of the Leased Premises to any Person, mortgage, charge or encumbrance of this Lease or the Leased Premises or any part of the Leased Premises or other arrangement under which either this Lease or the Leased Premises become security for any indebtedness or other obligation (in each case, a **"Transfer"** and any such assignee, sub-tenant, occupant or any other Person to whom a Transfer is to be made is a **"Transferee"**) without the Landlord's prior written consent, which consent, subject to the Landlord's termination right set out in Section 13.02, shall not be unreasonably withheld. At the time the Tenant requests the Landlord's consent to a Transfer, the Tenant shall provide the Landlord with a true copy of the offer and any information the Landlord may require with regard to the reputation, financial standing and business of the proposed Transferee, together with payment of a non-refundable Landlord's administrative fee as determined from time to time by the Landlord (which fee is currently One Thousand, Two Hundred and Fifty Dollars (\$1,250.00) plus applicable Sales Taxes). This restriction on Transfer also applies to any Transfer by operation of law.

### **14.02 Landlord's Option to Terminate**

Within thirty (30) days following the date the Tenant requests the Landlord to consent to a Transfer and provides all the information required by the Landlord in order to consider such request, the Landlord shall notify the Tenant in writing (i) whether or not it elects to terminate this Lease or such part of it as is the subject of the Transfer and (ii) the date of such termination of this lease, if applicable. If the Landlord elects to terminate this Lease or such part of it as is the subject of the

Transfer, the Tenant shall, within fifteen (15) days after receipt of the Landlord's notice of its election to terminate, notify the Landlord whether it shall: (i) refrain from the Transfer; or (ii) accept the termination of this Lease or such part of it as is the subject of the Transfer. If the Tenant fails to deliver its notice within the fifteen (15) day period, this Lease, or such part of it as is the subject of the Transfer, shall be terminated upon the date for termination provided for in the Landlord's notice. If the Transfer relates only to part of the Leased Premises, and this Lease is terminated as to that part, then the Tenant shall be required, at its sole cost and expense and subject to the terms of Section 12.02, to demise the Leased Premises to permit such termination to occur. If the Tenant advises the Landlord that it intends to refrain from the Transfer, then the Landlord's election to terminate this Lease, or such part of it as is the subject of the Transfer, will have no effect.

#### **14.03 Consent Required**

- (a) The Landlord shall not be considered to be unreasonably withholding its consent, and may, whether or not it would otherwise be considered unreasonable, refuse to give its consent, if its reason or reasons for doing so is or are based upon all or any of the following factors:
  - (i) any factor which a court of law would consider to be reasonable;
  - (ii) the Tenant is in default under this Lease, whether or not an Event of Default has occurred;
  - (iii) the proposed Transfer does or could result in violation or breach of any covenants or restrictions affecting the Lands;
  - (iv) the Transferee does not have a good credit rating, is not of substantial means, is not capable of financing its acquisition of the Tenant's business and this Lease on terms and conditions at least as favourable as those originally obtained by the Tenant or has a history of unsuccessful business operations in the business conducted on the Leased Premises;
  - (v) the Transferee previously has been bankrupt or insolvent or has defaulted under the terms of any lease for industrial, commercial or office premises whether leased from the Landlord or other parties; or
  - (vi) any Mortgagee, whose consent is required, refuses to consent to the Transfer for whatever reason.
- (b) Upon any Transfer, the Landlord may collect Rent from the Transferee and apply the net amount collected to the Rent required to be paid under this Lease, but no acceptance by the Landlord of any payments by a Transferee shall be construed as a waiver of any right of the Landlord, or the acceptance of the Transferee as tenant or a release of the Tenant from the performance of its obligations under this Lease. Any document effecting the Transfer of this Lease and every document consenting to the Transfer shall be prepared by the Landlord or its solicitors and the legal costs and other expenses in connection with such documents shall be paid to the Landlord

by the Tenant upon demand, as Additional Rent, in addition to the administration fee described in Section 14.01.

- (c) Any Transfer shall be subject to the following conditions:
- (i) the Transferee and the Tenant shall promptly execute an agreement agreeing with the Landlord whereby the Transferee shall be bound by all the Tenant's obligations under this Lease as if the Transferee had originally executed this Lease as tenant and the Tenant shall agree to remain jointly and severally liable with the Transferee on this Lease and any renewals or extensions thereof and will not be released from any obligations under this Lease as amended from time to time;
  - (ii) if the Transferee agrees to pay the Tenant or any Person any amount in excess of the Rent payable under this Lease or provides any other benefit in each case in consideration for the Transfer, the Tenant shall pay such excess amount or an amount equal to such benefit to the Landlord at the same time as the Rent is due and payable hereunder; and
  - (iii) the Tenant shall pay for all of the Landlord's reasonable legal costs incurred to approve and complete all agreements necessitated by the Transfer.

#### **14.04 No Advertising of the Leased Premises**

The Tenant shall not advertise the whole or any part of the Leased Premises or this Lease for the purpose of a Transfer and will not permit any broker or other Person to do so on its behalf.

#### **14.05 Corporate Ownership**

- (a) If the Tenant is a corporation, any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription from time to time of all or any part of the corporate shares of the Tenant, or of any holding body corporate or subsidiary body corporate of the Tenant, or any corporation which is an affiliated body corporate of or is associated with the Tenant (as those terms are defined in the *Canada Business Corporations Act*, as amended, which results in any change in the present effective voting control of the Tenant by the Person holding that voting control at the date of execution of this Lease (or at the date of a Transfer to a corporation) shall be considered to be a Transfer to which Section 14.01 of this Lease apply. The Tenant shall make all corporate books and records of the Tenant available to the Landlord for inspection at all reasonable times.
- (b) Section 14.05(a) does not apply to the Tenant as long as: (i) the Tenant is a public corporation whose shares are traded and listed on any recognized stock exchange in Canada or the United States; or (ii) the Tenant is a private corporation and is controlled by a public corporation described in item (i).



#### 14.06 Assignment or Transfer by the Landlord

If the Landlord sells, leases or otherwise disposes of the Leased Premises, or if it assigns this Lease or any interest of the Landlord in it, then, to the extent that the purchaser, transferee or assignee assumes the obligation of the Landlord under this Lease, the Landlord shall, without further agreement, be released from all liability with respect to the Landlord's obligations under this Lease. In addition, upon the Landlord transferring any outstanding Letter of Credit to the purchaser, transferee or assignee, the Landlord shall be released from all liability to the Tenant in connection therewith.

### ARTICLE XV ACCESS

#### 15.01 Right to Show the Leased Premises

The Landlord and its agents have the right to enter the Leased Premises at all times to show them to prospective tenants.

#### 15.02 Emergencies

If the Tenant is not personally present to permit an entry into the Leased Premises at any time when for any reason an entry is necessary or permitted, the Landlord or its agents may forcibly enter them without liability and without affecting this Lease.

#### 15.03 Access Not Re-entry

Any entry by the Landlord on the Leased Premises in accordance with the provisions of this Lease shall not be considered a re-entry or a breach of covenant for quiet enjoyment.

#### 15.04 Roof Rights

- (a) The Landlord may at any time, and from time to time, prior to or during the Term, grant a licence (a **"Roof licence"**) to third parties (individually a **"Roof Licensee"**) for the purpose of installing, operating and maintaining equipment (**"Roof-Top Equipment"**) on the roof of the Building, it being understood and agreed that the Roof-Top Equipment does not include any part of the HVAC System. Without limiting the rights which the Landlord may grant to the Roof Licensee, the Roof Licensee shall:
  - (i) be entitled to have such access to the Leased Premises at times agreed upon by the Tenant, the Tenant hereby agreeing to act reasonably in dealing with a Roof Licensee's request for such access, as it may require in order to install, operate, maintain and repair the Roof-Top Equipment. For greater certainty, the foregoing right shall apply to the Roof Licensee's employees, servants, agents, contractors and those Persons for whom the Roof Licensee is responsible in law (collectively, the **"Roof Licensee's Employees"**);
  - (ii) be entitled to:

- (1) sell or otherwise deal with any good or service generated or provided by the Roof-Top Equipment in such manner as a Roof Licensee may determine; and
- (2) install such equipment and wiring and cabling as may be required so that goods or services generated or provided by the Roof-Top Equipment can be distributed off-site of the Property; and
- (iii) be under no obligation to sell or otherwise make available to the Tenant any good or service generated or provided by the Roof-Top Equipment.

The Tenant shall not interfere with the exercise by the Roof Licensee of any rights granted to it by the Landlord.

- (b) If the Landlord grants a Licence to a Roof Licensee, then upon the commencement of the installation of the Roof-Top Equipment on the roof of the Building:
  - (i) the Tenant will have no further maintenance, repair or replacement obligations with respect to any damage to the Leased Premises caused by the Roof Licensee or the Roof Licensee's Employees; and
  - (ii) the Landlord shall thereafter be responsible, at its sole cost, for repairing all damage:
    - (1) caused to the roof (including, without limitation, the roof membrane) by the Roof-Top Equipment, including, without limitation, repairing all leaks in the roof caused by the Roof-Top Equipment; and
    - (2) to the Leased Premises caused by the Roof Licensee or the Roof Licensee's Employees, the Landlord and its contractors being entitled to have such access to the Leased Premises as may be required in order to carry out repair of any such damage.
- (c) except as set out in Section 15.04(b)(ii), the Landlord shall have no liability whatsoever for and the Tenant hereby releases the Landlord from all Claims arising out of damages, injuries (including, without limitation, bodily injuries) or losses (including without limitation, loss of life) caused or contributed to by the Roof-Top Equipment, the Roof Licensee or the Roof Licensee's Employees; and
- (d) if the Roof-Top Equipment is subsequently removed from the roof of the Building, the Landlord will (at its sole cost) repair all damage to the roof of the Building caused by the installation and removal of the Roof-Top Equipment and thereafter the provisions of Section 15.04(b) shall cease to have effect.

### **15.05 Right to Install Solar Panels**

The Landlord shall be entitled to have such access to the Leased Premises at times agreed upon by the Tenant, the Tenant hereby agreeing to act reasonably in dealing with the Landlord's request for such access, as it may require in order to install, operate, maintain and repair solar panels on the roof of the Building. The Landlord will not disturb the operation of the Tenant's business any more than is reasonably necessary in the circumstances while carrying on such work, but will not be liable for any damages, whether direct, indirect or consequential, to any Person or property in respect of any temporary interference with or denial of access during the performance of such work, or in any other way in respect of the performance of such work, or for failure to perform such work.

## **ARTICLE XVI STATUS STATEMENT, ATTORNMENT AND SUBORDINATION**

### **16.01 Status Statement**

Within ten (10) days after a written request by the Landlord, the Tenant shall deliver, in a form supplied by the Landlord, a status statement or certificate to any Mortgagee or purchaser of the Leased Premises, or to the Landlord, stating the following:

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements) or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the Commencement Date;
- (c) the date to which Rent has been paid under this Lease;
- (d) whether or not there is any existing default by the Tenant in the payment of any Rent or other monies due and owing under this Lease, and whether or not there is any existing or alleged default by either party under this Lease with respect to which a notice of default has been served and if there is any such default, specifying the nature and extent of it;
- (e) whether there are any set-offs, defences or counter claims against enforcement of the obligations to be performed by the Tenant under this Lease; and
- (f) with reasonable particularity, details respecting the Tenant's financial standing and corporate organization.

### **16.02 Subordination and Attornment**

The Tenant's rights under this Lease are subordinate to any Mortgages registered on title to the Lands, or any part thereof, from time to time. Upon request, the Tenant shall subordinate this Lease and all of its rights under it, in the form the Landlord requires, to any such Mortgage, and if requested, the Tenant shall attorn to the Mortgagee. The Tenant shall, if possession is taken under,

or any proceedings are brought for the foreclosure of, or the power of sale is exercised under any Mortgage granted by the Landlord or otherwise in existence against the Leased Premises, attorn to the Mortgagee, and recognize the Mortgagee, as the Landlord under this Lease.

### **16.03 Financial Information**

- (a) The Tenant shall, upon request, provide the Landlord with such information as to the financial standing and corporate organization of the Tenant and the Indemnifier as the Landlord or the Mortgagee requires. Failure of the Tenant to comply with the Landlord's request shall be a default under this Lease.
- (b) Without limiting the generality of the foregoing, the Tenant and the Indemnifier shall provide the Landlord with their respective most recent annual financial statements immediately upon request and in any event within one hundred and twenty (120) days of the end of each fiscal year of the Tenant and the Indemnifier.
- (c) The Tenant agrees to provide to the Landlord prompt notice of any impending financial difficulties of it or the Indemnifier that could lead to a secured creditor exercising, or providing notice of an intention to exercise, its remedies, including a notice under Section 244 of the *Bankruptcy and Insolvency Act* (Canada).

## **ARTICLE XVII DEFAULT**

### **17.01 Event of Default**

An "**Event of Default**" shall be considered to have occurred when any one or more of the following happens:

- (a) the Tenant fails to pay any Rent when it is due whether or not written notice of the failure is given from the Landlord to the Tenant;
- (b) the Tenant fails to observe or perform any other of the terms, covenants, conditions or agreements contained in this Lease and such failure continues for ten (10) days after notice from the Landlord to the Tenant specifying the failure (except as set out in paragraphs (c)–(n), both inclusive, below where the Landlord shall have no obligation to provide such notice to the Tenant);
- (c) the Term or any of the goods, chattels or fixtures of the Tenant on the Leased Premises are seized or taken in execution or attached by any creditor;
- (d) a writ of execution or sequestration is issued against the goods, chattels or fixtures of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in a Transfer approved by the Landlord;

- (f) the Tenant sells or disposes of the goods, chattels or fixtures or removes them or any of them from the Leased Premises without complying with Section 12.07;
- (g) the Tenant abandons or attempts to abandon the Leased Premises or the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord;
- (h) the Leased Premises are used by any Person other than those Persons entitled to use them under this Lease;
- (i) the Tenant makes an assignment for the benefit of creditors or commits any act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada) or any successor of it, or becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors;
- (j) an order is made for the winding up or liquidation of the Tenant, or the Tenant voluntarily commences winding-up procedures for liquidation;
- (k) an order or appointment is made for a receiver or a receiver and manager of all of the assets or undertaking of the Tenant;
- (l) any insurance policy covering any part of the Leased Premises is, or is threatened to be, cancelled or adversely changed or the premium cost is, or may be, significantly increased as a result of any act or omission by the Tenant or any person for whom the Tenant is responsible in law;
- (m) the Tenant's Licence is revoked, suspended or terminated; or
- (n) any default or event of default occurs under any lease or agreement to lease relating to other properties owned by the Landlord, leased to or occupied by the Tenant or any Person related to the Tenant.

## **17.02 Rights of the Landlord**

Upon the occurrence of any Event of Default the following provisions apply:

- (a) The Landlord may terminate this Lease by notice to the Tenant, or re-enter the Leased Premises and repossess them and, in either case, enjoy them as of its former estate and the Landlord may remove all Persons and property from the Leased Premises and the property may be sold or disposed of by the Landlord as it considers advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being guilty of trespass or being liable for any loss or damage which may be occasioned thereby.
- (b) If the Landlord elects to re-enter the Leased Premises as provided in this Section, or if it takes 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 those alterations and repairs which are necessary in order to re-let the Leased Premises or any part of them for a term (which may be for a term extending beyond the Term) and at a rent and upon those other terms, covenants and conditions which the Landlord, in its discretion, considers advisable. Upon each reletting, the rent received by the Landlord from the reletting shall be applied first to the payment of any indebtedness other than Rent due under this Lease from the Tenant to the Landlord; second to the payment of any costs and expenses of the reletting including brokerage fees and solicitors' fees and the costs of the alterations and repairs; third to the payment of Rent due and unpaid under this Lease; and the residue, if any, shall be held by the Landlord and applied towards payment of future Rent as it becomes due under this Lease. If the rent received from the reletting during any month is less than the Rent to be paid during that month by the Tenant under this Lease, the Tenant will pay the deficiency, which shall be calculated and paid monthly in advance on or before the first day of each month. No re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant. Despite any reletting without termination, the Landlord may at any time afterwards elect to terminate this Lease for the previous breach. If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of the breach including, without limitation, the costs of recovering the Leased Premises, solicitors' fees (on a substantial indemnity basis) and the worth, at the time of the termination, of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid under this Lease for the remainder of the Term over the then reasonable rental value of the Leased Premises for the remainder of the Term.

- (c) The Landlord may remedy, or attempt to remedy, the default of the Tenant and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein or thereon, in which case all the Landlord's costs and expenses, together with an administration fee of fifteen percent (15%) of such costs and expenses, shall be payable on demand by the Tenant as Additional Rent. The Landlord will not be liable for any loss or damage resulting from any action or entry by the Landlord under this Subsection 17.02(c) and will not be considered to have breached any covenant for quiet enjoyment.
- (d) The Landlord may recover from the Tenant the full amount of the current month's instalment of Rent together with the next three (3) months' instalments of Rent, all of which shall be deemed to be accruing on a day-to-day basis, and shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for such accelerated Rent together with any other Rent arrears.

### **17.03 Expenses**

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms,

covenants or conditions contained in this Lease on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all the expenses incurred in connection with it, including solicitor's fees (on a substantial indemnity basis), unless a court otherwise awards.

#### **17.04 Waiver of Exemption from Distress**

Despite anything to the contrary contained in this Lease or the provisions of applicable legislation, none of the goods and chattels of the Tenant on the Leased Premises at any time and from time to time during the Term, or any extension or renewal thereof, shall be exempt from levy by distress for Rent in arrears and the Tenant hereby waives any rights it has or might otherwise have under any such applicable legislation in that regard. If any claim is made for such an exemption by the Tenant, or if distress is made by the Landlord, this Section may be pleaded as an estoppel against the Tenant in any action brought to test the right of the levying upon any of those goods which are named as exempted in any sections of any applicable legislation.

#### **17.05 Remedies Generally**

The exercise by the Landlord of any particular remedy does not preclude the Landlord from exercising any other remedy in respect of the occurrence of an Event of Default. No remedy shall be exclusive or dependant upon any other remedy, and the Landlord may from time to time exercise one or more of its remedies generally or in combination, those remedies being cumulative and not alternative.

### **ARTICLE XVIII MISCELLANEOUS**

#### **18.01 Rules and Regulations**

The Rules and Regulations set out in Schedule "C" attached hereto form part of this Lease and the Tenant shall comply with and observe such Rules and Regulations throughout the Term. The Tenant's failure to comply with and observe the Rules and Regulations shall be a default under this Lease in the same manner as if the Rules and Regulations were set out as covenants in this Lease. The Landlord may from time to time establish new Rules and Regulations or amend, supplement or terminate the existing Rules and Regulations. Notice of the Rules and Regulations and any amendments, supplements or termination thereof, shall be given to the Tenant and the Tenant shall comply with and observe same from the date upon which it is so notified. The Rules and Regulations shall not conflict with or contradict the other provisions of this Lease.

#### **18.02 Overholding**

If the Tenant remains in possession of the Leased Premises after the end of the Term, or any renewal or extension thereof, without having executed and delivered a new lease, it shall be considered to be occupying the Leased Premises as a tenant from month-to-month on the same terms and conditions as are set out in this Lease, except that it shall be liable for payment of Rent at the rate equal to 150% of the Base Rent and Percentage Rate which it was responsible for paying during the last month of the Term, or any renewal or extension thereof, together with Additional

Rent as set out in this Lease. In addition, the Landlord may exercise all of its rights and remedies under this Lease and at law to remove the Tenant from the Leased Premises.

### **18.03 Notices**

Any notice, demand, request, consent or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by registered mail postage prepaid and shall be addressed: (a) if to the Landlord at the address set out in Section 1.01(a) or to such other Person or at such other address as the Landlord designates by written notice; (b) if to the Tenant, at the address set out in Section 1.01(b) or at such other address as the Tenant designates by written notice. If there is more than one Tenant, any notice under this Lease may be given by or to any one of them and will have the same effect as if given by or to all of them. Any notice, demand, request, consent or other instrument shall be conclusively deemed to have been given or made on the day upon which the notice, demand, request, consent or other instrument is delivered, or, if mailed, then seventy-two (72) hours following the date of mailing and the time period referred to in the notice begins to run from the time of delivery or seventy-two (72) hours following the date of mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving the notice and upon the giving of that notice, the address specified in it shall be considered to be the address of the party for the giving of notices under this Lease. If the postal service is interrupted or is substantially delayed, or is threatened to be interrupted, any notice, demand, request, consent or other instrument will only be delivered in person.

### **18.04 Registration**

The Tenant will not register this Lease or any notice thereof on title to the Lands without the prior written consent of the Landlord and the Landlord's approval of the form and content of such registration.

### **18.05 Quiet Enjoyment**

Provided the Tenant pays the Rent and other sums provided for under this Lease, and observes and performs all of the terms, covenants, and conditions on its part to be observed and performed, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the Term without hindrance or interruption by the Landlord or any other Person lawfully claiming by, through or under the Landlord subject, however, to the terms, covenants and conditions of this Lease.

### **18.06 Unavoidable Delay**

Notwithstanding anything to the contrary contained in this Lease, if any party hereto is *bona fide* delayed or hindered in or prevented from performance of any term, covenant or act required hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within an appropriate time period after the expiration of the period of such delay. However, the provisions of this Section 18.06 do not operate to excuse the Tenant from the prompt payment of Rent and any other payments required by this Lease.

[END OF PAGE]



IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**BUFFALO AND FORT ERIE PUBLIC  
BRIDGE AUTHORITY**

Per \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Compact

● **TENANT**

Per \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

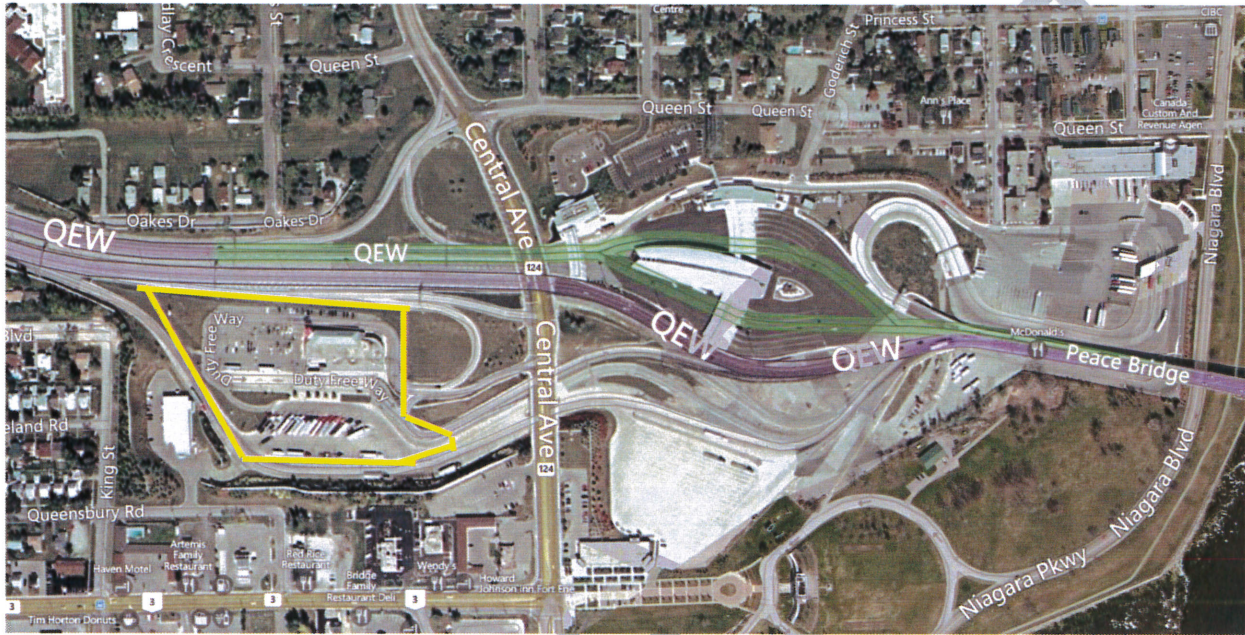
I have the authority to bind the Corporation

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF THE LANDS**

PT LT 229-233 PL 519, PT LT 166-180 PL 519, PT DOUGLAS ST PL 505, PT LANE PL 519 ABUTTING LT 229-233, PT MAIN ST PL 519 CLOSED BY R0691414, R0458946, BB98631 & R0114588, PT LT 221-223 PL 519, LT 224, 225, 226 PT LT 227 PL 519, PT FOURTH ST PL 519, PT WADSWORTH ST PL 505 CLOSED BY R0691414, LT 81-91 PL 519, LANE PL 519 ABUTTING LT 81 TO 88 & LT 88 TO 91 CLOSED BY BB57684, LT 116-126 PL 519, LANE PL 519 ABUTTING LT 119 TO 126 & 116 TO 119 CLOSED BY BB30073 & R0143454 LT 181-195 PL 519, LANE PL 519 ABUTTING LT 181-195 CLOSED BY R0691414, LT 55-85 PL 524, PT PRICELAND RD PL 524 CLOSED BY R0221079, LT 1-4 PL 505 E/S DOUGLAS ST, LT 5 PL 505 N/S GARRISON RD, PT LT 6 PL 505 N/S GARRISON RD, PT LT 7 PL 505 W/S WADSWORTH ST, LT 8-10 PL 505 W/S WADSWORTH ST, LT 1-4 PL 505 E/S WADSWORTH ST, PT LT 5-8 PL 505 W/S NORTH ST, PT QUEENSBURY RD PL 524 CLOSED BY R0691414 PT 1, 2, 5, 6, 7, 8, 9, 10, 11, 12 59R10134, PT 1, 2, 3, 12 59R8848, PT 1 59R9201, AS IN R0655269, R0660595, R0658993 EXCEPT PT 1 59R11984, S/T BB29712, S/T R0485157, S/T R0486298, S/T R0486299, S/T R0688285, S/T R0688286, S/T R0688288, T/W R0655269; FORT ERIE E.

Being all of PIN 64220-0290 (LT)

**SCHEDULE "B"**  
**LEASED PREMISES PLAN**



**SCHEDULE "C"**  
**RULES AND REGULATIONS**

1. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Building without the approval of the Landlord and subject to any conditions imposed by the Landlord.
2. The washrooms and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting from misuse shall be borne by the Tenant by whom or whose agents, servants, or employees cause the damage. The Tenant shall not let the water run unless it is in actual use, and shall not deface or mark any part of the Building.
3. No one shall use the Building for sleeping apartments or residential purposes, or for the storage of personal effects or articles not required for business purposes.

THIS IS **EXHIBIT "D"** TO  
THE AFFIDAVIT OF **BEN MILLS**  
**SWORN REMOTELY** by Ben Mills being located in the  
City of Ottawa, in the Province of Ontario, before me at  
the City of Toronto, in the Province of Ontario, on  
January 1<sup>st</sup>, 2023, in accordance with O.Reg 431/20,  
administering Oath or Declaration Remotely

  
\_\_\_\_\_  
Commissioner, etc.

**BUILDING LEASE**

**BETWEEN**

**BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY**

**- AND -**

**PEACE BRIDGE DUTY FREE INC.**

ARTICLE I BASIC LEASE TERMS .....	7
1.01 Basic Lease Terms .....	7
ARTICLE II DEFINITIONS AND INTERPRETATION .....	7
2.01 Definitions.....	7
2.02 Net Lease .....	14
2.03 Extended Meanings.....	14
2.04 Entire Agreement .....	14
2.05 Governing Law .....	14
2.06 Time of the Essence .....	14
2.07 No Limitation.....	14
2.08 Headings and Captions .....	15
2.09 Severability .....	15
2.10 Successors and Assigns.....	15
2.11 No Partnership or Agency.....	15
2.12 Joint and Several Liability .....	15
2.13 Landlord as Agent.....	15
2.14 Interpretation.....	15
2.15 Reasonableness .....	16
2.16 Conflict with Schedules .....	16
2.17 Amendment and Waiver .....	16
ARTICLE III GRANT AND TERM .....	16
3.01 Demise .....	16
3.02 Commencement and Termination Date of Term .....	17
3.03 “As Is” Condition of Leased Premises.....	17
3.04 Delay in Possession.....	17
3.05 Restrictive Covenant .....	17
3.06 Right to Extend the Term.....	17
ARTICLE IV RENT .....	18
4.01 Covenant to Pay .....	18
4.02 Base Rent .....	18
4.03 Percentage Rent .....	18

4.04	Accrual of Rent .....	19
4.05	Rent and Payments Generally .....	20
4.06	Letter of Credit.....	20
ARTICLE V FINANCIAL INFORMATION .....		21
5.01	Monthly Statements .....	21
5.02	Annual Statements .....	21
5.03	Traffic Reports .....	22
5.04	Books and Records .....	22
5.05	Right to Examine .....	22
5.06	Audit .....	23
5.07	Confidentiality .....	23
5.08	Tenant's Failure .....	23
ARTICLE VI PROPERTY TAXES AND OPERATING COSTS .....		24
6.01	Property Taxes Payable by the Tenant.....	24
6.02	Contesting Property Taxes .....	24
6.03	Business Taxes.....	25
6.04	Operating Costs.....	25
6.05	Payment of Operating Costs .....	26
ARTICLE VII UTILITIES .....		27
7.01	Charges for Utilities.....	27
7.02	Tenant Not to Overload Facilities.....	27
7.03	No Liability .....	27
ARTICLE VIII HVAC .....		28
8.01	HVAC System .....	28
8.02	Landlord's Right to Maintain / Repair HVAC System.....	28
8.03	Tenant's Responsibility .....	28
ARTICLE IX USE OF THE LEASED PREMISES .....		28
9.01	Use of the Leased Premises .....	28
9.02	Conduct and Operation of Business.....	29
9.03	Nuisance and Waste .....	30
9.04	Observance of Law .....	30
9.05	Additional Services of the Landlord .....	30
9.06	Traffic Direction .....	30



ARTICLE X TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY .....	31
10.01 Compliance with Environmental Laws and Environmental Approvals .....	31
10.02 Release of a Contaminant .....	31
10.03 Environmental Site Assessment.....	32
10.04 Tenant's Environmental Indemnity .....	32
10.05 Governmental Authority Requirements .....	32
10.06 Pre Existing Contaminants.....	32
10.07 Responsibility for Environmental Contaminants.....	32
ARTICLE XI INSURANCE AND INDEMNITY .....	33
11.01 Tenant's Insurance.....	33
11.02 Requirements of Insurance .....	34
11.03 Sign Insurance.....	35
11.04 Increase in Insurance Premiums .....	35
11.05 Cancellation of Insurance .....	35
11.06 Landlord's Insurance .....	36
11.07 Loss or Damage .....	36
11.08 Indemnification of the Landlord .....	37
ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS .....	37
12.01 Maintenance and Repairs and Replacement by the Tenant .....	37
12.02 Landlord's Approval of Alterations .....	38
12.03 Landlord's Inspection .....	39
12.04 Surrender of the Leased Premises.....	39
12.05 Repair where Tenant at Fault.....	39
12.06 Tenant Not to Overload Floors .....	39
12.07 Removal and Restoration by the Tenant.....	39
12.08 Tenant Capital Expenditures and Improvements .....	40
12.09 Notice of Defects .....	40
12.10 Liens.....	40
12.11 Signs and Advertising .....	41
ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION .....	41
13.01 Damage or Destruction to the Leased Premises .....	41
13.02 Rights to Termination .....	41
13.03 Certificate Conclusive.....	42

13.04 Insurance Proceeds.....	42
13.05 Landlord's Rights of Rebuilding .....	42
13.06 Negligence of the Tenant .....	42
13.07 Expropriation .....	42
ARTICLE XIV ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL .....	43
14.01 Transfers .....	43
14.02 Landlord's Option to Terminate .....	43
14.03 Consent Required.....	44
14.04 No Advertising of the Leased Premises.....	45
14.05 Corporate Ownership .....	45
14.06 Assignment or Transfer by the Landlord .....	45
ARTICLE XV ACCESS.....	46
15.01 Right to Show the Leased Premises.....	46
15.02 Emergencies .....	46
15.03 Access Not Re-entry .....	46
15.04 Roof Rights .....	46
15.05 Right to Install Solar Panels.....	47
ARTICLE XVI STATUS STATEMENT, ATTORNMENT AND SUBORDINATION.....	48
16.01 Status Statement.....	48
16.02 Subordination and Attornment.....	48
16.03 Financial Information.....	48
ARTICLE XVII DEFAULT .....	49
17.01 Event of Default.....	49
17.02 Rights of the Landlord .....	50
17.03 Expenses .....	51
17.04 Waiver of Exemption from Distress .....	51
17.05 Remedies Generally .....	52
ARTICLE XVIII MISCELLANEOUS.....	52
18.01 Rules and Regulations.....	52
18.02 Overholding .....	52
18.03 Notices .....	52
18.04 Registration .....	53

18.05	Quiet Enjoyment .....	53
18.06	Landlord's Co-Operation and Access .....	53
18.07	Regulatory Changes .....	53
18.08	Unavoidable Delay.....	53

***Execution Page***

**SCHEDULES:**

<b>SCHEDULE "A"</b>	<b>LEGAL DESCRIPTION OF THE LANDS</b>
<b>SCHEDULE "B"</b>	<b>PLAN OF LEASED PREMISES</b>
<b>SCHEDULE "C"</b>	<b>RULES AND REGULATIONS</b>
<b>SCHEDULE "D"</b>	<b>TENANT'S PROPOSAL</b>

**THIS LEASE** is dated as of the ● day of ●, 2016.

**B E T W E E N:**

**BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY**, an entity created pursuant to an Act of the State of New York, with the consent of the United States Congress, and by an Act of the Government Of Canada

(the "**Landlord**")

**AND:**

**PEACE BRIDGE DUTY FREE INC.**, a corporation incorporated under the laws of the Province of Ontario

(the "**Tenant**")

## **ARTICLE I BASIC LEASE TERMS**

### **1.01 Basic Lease Terms**

- (a) Landlord: Buffalo and Fort Erie Public Bridge Authority

Address of Landlord:

- (b) Tenant: Peace Bridge Duty Free Inc.

Address of Tenant:

- (c) Leased Premises: The Building and the portion of the Lands as identified in Schedule "B".
- (d) Term: 15 years.
- (e) Commencement Date: November 1, 2016.
- (f) Termination Date: October 31, 2031.
- (g) Letter of Credit: \$50,000.
- (h) Extension Options: One option to extend the term for an additional period of five years.

## **ARTICLE II DEFINITIONS AND INTERPRETATION**

### **2.01 Definitions**

In this Lease and the schedules forming part of it, the following definitions apply:

- (a) **"Additional Rent"** means all money or charges which the Tenant is required to pay under this Lease (except Base Rent, Percentage Rent and Sales Taxes) whether or not they are designated "Additional Rent" whether or not they are payable to the Landlord or to third parties.
- (b) **"Additional Services"** means those services provided to the Tenant at its request, as additional services, which are not part of the services provided by the Landlord to the Tenant in accordance with the terms of this Lease and charged as Operating Costs including, but not limited to, maintenance, repair, janitorial or cleaning services. Additional Services also includes any services provided by the Landlord on behalf of the Tenant in respect of any obligations of the Tenant required under this Lease which the Tenant fails to observe and perform.
- (c) **"Adverse Effect"** means any one or more of:

- (i) impairment of the quality of the natural environment for any use that can be made of it;
  - (ii) injury or damage to property or to plant or animal life;
  - (iii) harm or material discomfort to any Person;
  - (iv) an adverse effect on the health of any Person;
  - (v) impairment of the safety of any Person;
  - (vi) rendering any property or plant or animal life unfit for human use;
  - (vii) loss of enjoyment of a normal use of property; and
  - (viii) interference with the normal conduct of business.
- (d) “**Alterations**” has the meaning ascribed to that term in Section 12.02.
- (e) “**Applicable Laws**” means any statutes, laws, by-laws, regulations, ordinances and requirements of governmental and other public authorities having jurisdiction over or in respect of the Leased Premises or the Property, or any portion thereof, and all amendments thereto at any time and from time to time, and including but not limited to the Environmental Laws.
- (f) “**Architect**” means the architect, engineer or land surveyor named by the Landlord from time to time.
- (g) “**Base Rent**” means the annual base rent payable by the Tenant and described in Section 4.02.
- (h) “**Building**” means the building located on the Lands as shown on Schedule B as it exists from time to time.
- (i) “**Building Systems**” means: (i) the equipment, facilities and all systems, services and installations from time to time installed in or servicing the Leased Premises (or any portion thereof) including, but not limited to: mechanical (including plumbing, sprinkler, drainage and sewage) and electrical systems and appurtenances thereto; utilities (including, without limitation, electricity, water, hydro and gas), lighting, sprinkler, life safety (including fire prevention, communications, security and surveillance); computer (including environmental, security and lighting control); and (ii) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them.

- (j) “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.
- (k) “**Business Taxes**” means every tax, duty and licence fee which is levied, rated, charged or assessed against or in respect of the business carried on in the Leased Premises or in respect of the use or occupancy of the Leased Premises by the Tenant whether the taxes, rates, duties, assessments or licence fees are rated, charged or assessed by any Government Authority during the Term.
- (l) “**Claims**” means any threatened or actual claim, demand, action, cause of action, administrative order, requirement or proceeding, damage, loss, cost, fine, penalty, interest, liability and expense including, without limitation, reasonable engineering and legal fees and disbursements on a full indemnity basis.
- (m) “**Commencement Date**” means the date set out in Section 1.01(e).
- (n) “**Contaminants**” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect and includes any waste, dangerous good, hazardous product, controlled substance or any other substance or thing regulated or reportable under any Environmental Laws.
- (o) “**Environmental Approvals**” means all applicable permits, licences, authorizations, consents, directions and approvals required by Governmental Authorities pursuant to Environmental Laws in respect of the Leased Premises and the equipment, structures, substances and activities located or carried on therein or thereon by the Tenant.
- (p) “**Environmental Laws**” means all existing and future federal, provincial and municipal laws, regulations, by-laws, ordinances, notices, orders, rules, protocols, policies, directions and guidelines and all present and future principles of common law and equity relating to the protection of the environment, including Contaminants, pollution and waste management.
- (q) “**Environmental Site Assessment**” or “**ESA**” includes a visual and instructive inspection of property, buildings, structures, soils, bedrock and groundwater, including the installation of monitoring and measurement devices, for the purpose of determining the presence of Contaminants or compliance with Environmental Laws.
- (r) “**Event of Default**” has the meaning ascribed to that term in Section 17.01.
- (s) “**Extension Term**” has the meaning ascribed to that term in Section 3.06.
- (t) “**Governmental Authorities**” means all applicable federal, provincial and municipal agencies, boards, tribunals, ministries, departments, inspectors, officials, employees, servants or agents having jurisdiction and “**Government Authority**” means any one of them.

- (u) **“HVAC System”** means the whole of any systems required for the supply of heating, ventilating or air-conditioning to the Building and the improvements, fixtures, appurtenances, equipment and systems associated with or required therefor and for the further processing and distribution or exhaust of air such as ducts, diffusers, reheat coils, controls and other apparatus and equipment therefor.
- (v) **“Landlord”** means the party named in Section 1.01(a) and all successors and assigns of such party.
- (w) **“Lands”** means the lands more particularly described in Schedule “A”.
- (x) **“Leased Premises”** means collectively the Building and the portion of the Lands as identified in Schedule “B”.
- (y) **“Leasehold Improvements”** means all fixtures, improvements, installations, Alterations and additions from time to time made, erected or installed by or on behalf of the Tenant or any former occupant of the Leased Premises, including cabling, trenches, concrete bases, doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding furniture and equipment not in the nature of fixtures.
- (z) **“Letter of Credit”** means the letter of credit described in Section 4.06.
- (aa) **“Licence”** shall mean the licence, permission, registration, authorization, appointment, power, jurisdiction, or other similar right granted or conferred by the Government of Canada upon the Tenant and allowing the Tenant to operate a duty free shop at the Leased Premises.
- (bb) **“Mortgage”** means any mortgage or other security against the Leased Premises or the Landlord's interest in this Lease, from time to time.
- (cc) **“Mortgagee”** means the holder of any Mortgage from time to time.
- (dd) **“Operating Costs”** has the meaning ascribed to that term in Section 6.04.
- (ee) **“Percentage Rent”** means the percentage rent payable by the Tennant and described in Section 4.03
- (ff) **“Permitted Use”** means the operation of a duty free shop and related services (such as banking and travel related services).
- (gg) **“Person”** if the context allows, includes any person, firm, partnership or corporation, or any group of persons, firms, partnerships or corporations or any combination of them.
- (hh) **“Prime Rate”** means the annual rate of interest announced from time to time by the Canadian chartered bank chosen by the Landlord as the daily rate of interest used by such bank as a reference rate in setting rates of interest for Canadian dollar

commercial loans and commonly referred to by such bank as its Canadian “prime rate”.

- (ii) “**Property Taxes**” means all real property taxes, rates, duties, levies, fees, charges (including local improvement charges) and assessments, whether general or special, that are levied, rated, charged or assessed against the Lands, the Leased Premises or any part of it from time to time by any lawful taxing authority, whether federal, provincial, regional, municipal, school or otherwise and any taxes or other amounts which are imposed in lieu of, as a substitute for or in addition to, any of the foregoing whether or not similar to or of the foregoing character or not and whether or not in existence at the Commencement Date, and any such taxes levied or assessed against the Landlord on account of its ownership of the Lands or its interest in it, including capital taxes imposed on the Landlord and including taxes levied on the Landlord on account of rents payable by the Tenants, and all legal and other professional fees and interest and penalties on deferred payments incurred by the Landlord in contesting or appealing any Property Taxes.
- (jj) “**Release**” means, in respect of Contaminants, without limitation, a spill, leak, disposal, dumping, pumping, pouring, emission, emptying, discharge, deposit, injection, escape, release or leaching.
- (kk) “**Released Persons**” includes the Landlord, the property manager for the Leased Premises, if any, the Mortgagee and their respective directors, officers, employees, agents, contractors and other Persons for whom they are responsible in law.
- (ll) “**Rent**” means collectively the Base Rent, Percentage Rent and Additional Rent payable under this Lease.
- (mm) “**Rental Year**” means a period of time, the first Rental Year of the Term commencing on the Commencement Date and ending on October 31, 2017. After the first Rental Year each Rental Year of the Term will consist of a period of twelve (12) calendar months, but the last Rental Year of the Term will terminate on the Termination Date or earlier termination of the Term. Despite what is stated above, if the Landlord considers it necessary or convenient, it may from time to time, by written notice to the Tenant, specify an annual date from which each subsequent Rental Year is to commence for the purposes of any other provision of this Lease, and the Rental Year then current for that purpose or those purposes will terminate on the day immediately preceding the commencement of the new Rental Year.
- (nn) “**Rules and Regulations**” means the rules and regulations promulgated by the Landlord from time to time pursuant to the terms of this Lease.
- (oo) “**Sales Taxes**” means all goods and services, harmonized sales taxes, business transfer, value-added, national sales, multi-stage sales, sales, use or consumption taxes or other taxes of a similar nature imposed by any lawful taxing authority upon the Landlord or the Tenant with respect to Rent, this Lease, the rental of space pursuant to this Lease, or the goods and services provided by the Landlord to the



Tenant, including, without limitation, the provision of administrative services to the Tenant hereunder.

- (pp) **“Tenant”** means the party named in Section 1.01(b). A reference to “Tenant” includes, where the context allows, the employees, agents, contractors, invitees and licensees of the Tenant, and any other Persons over whom the Tenant may reasonably be expected to exercise control, including but not limited to any and all sub-tenants, licensees or assignees of the Leased Premises or any portion thereof, and such other Persons for whom the Tenant is responsible at law.
- (qq) **“Tenant’s Audited Gross Sales”** shall mean a statement of the Tenant’s Gross Sales prepared and verified by the auditor of the Tenant in accordance with generally accepted auditing principles completed in a form and manner satisfactory to the Landlord acting reasonably.
- (rr) **“Tenant Construction Criteria”** means the criteria provided, upon request, by the Landlord to the Tenant from time to time setting out the construction criteria relating to Alterations and which may also provide for Landlord’s reasonable review and supervision fees.
- (ss) **“Tenant’s Gross Sales”** means the total dollar amount of all sales of goods or services made on or from the Leased Premises by the Tenant to the Tenant’s customers (and by any subtenant to the subtenant’s customers) during the specific period(s) of time referred to herein. In the case of currency exchange or financial services it shall mean the gross revenue derived from that service and not the total of the actual currency exchanged. In the case of ticket sales, it shall mean the gross revenue derived from the service and not the total face value of actual ticket sales. In the case of Travel Services, it shall mean the gross revenue derived from the Travel Services and not the total face value of any accommodation booking or travel ticket sales. Tenant’s Gross Sales includes but is not limited to:

- (i) orders taken or received at the Leased Premises or any offsite sales outlet servicing the Leased Premises, whether by telephone, internet or other electronic means, or in writing or other form of communication and whether the orders are filled from the Leased Premises or elsewhere,

- (ii) deposits not refunded to purchasers; and

- (iii) all other receipts and receivables from sales or services (including interest, instalment and finance charges) from business conducted in or from the Leased Premises,

whether the sales or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales are made by means or mechanical or other vending devices in the Leased Premises. Bank charges or uncollectible credit accounts or charges made by collection agencies will not be deducted and no allowances will be made for bad debts. Each charge or sale made on instalment or credit will be treated as a sale for the full selling price in the month

for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

There shall be excluded or deducted, as the case may be, from the calculation of Tenant's Gross Sales:

- (i) all refunds of merchandise, the sale price of which has already been included in the Tenant's Gross Sales;
  - (ii) all sales taxes, harmonized sales taxes, goods and services taxes, or any other taxes imposed in lieu thereof;
  - (iii) discounts, allowances or credits given to the Tenant's customers;
  - (iv) all interest, finance or carrying charges charged by the Tenant above the selling price to its customers, as incidental to the sale and with no profit to the Tenant;
  - (v) gift or merchandise certificates or cards provided that such gift or merchandise certificate or card shall be included in the calculation of Gross Sales at the time of their redemption on the Leased Premises;
  - (vi) any sales of the Tenant's used fixtures, chattels or other equipment out of the ordinary course of business; and
  - (vii) transfers of merchandise between any of the Tenant's other stores
- (tt) **"Tenant's Proposal"** means the Tenant's proposal for capital expenditures for the Leased Premises and for the general operation and management of the duty free shop from the Leased Premises as detailed in Schedule "D".
- (uu) **"Term"** means the period of time set out in Section 1.01(d).
- (vv) **"Termination Date"** means the date set out in Section 1.01(f).
- (ww) **"Transfer"** has the meaning ascribed to that term in Section 14.01.
- (xx) **"Transferee"** has the meaning ascribed to that term in Section 14.01.
- (yy) **"Travel Services"** means providing services for booking reservations at hotels, inns, campsites and other accommodations and for selling or reserving travel tickets.
- (zz) **"Unavoidable Delay"** means any delay by a party in the performance of its obligations under this Lease caused in whole or in part by any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, unavailability of materials,

breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented. Insolvency or lack of funds on the part of such party shall not constitute an unavoidable delay.

## **2.02 Net Lease**

This Lease is a completely carefree net lease to the Landlord. Except as otherwise stated in this Lease, the Landlord is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy of the Leased Premises, or the contents or the business carried on in the Leased Premises; and the Tenant will pay all charges, impositions, costs and expenses of every nature relating to the Leased Premises.

## **2.03 Extended Meanings**

Use of the neuter singular pronoun to refer to the Landlord or the Tenant is considered a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation, or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, will in all instances be assumed as though they were fully expressed.

## **2.04 Entire Agreement**

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein and this Lease and the schedules attached hereto constitute the entire agreement duly executed by the parties hereto.

## **2.05 Governing Law**

This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

## **2.06 Time of the Essence**

Time is of the essence of this Lease and each part of it.

## **2.07 No Limitation**

Any statement or provision in this Lease followed by words denoting inclusion or example, such as “including” or “such as”, and then listing or referring to specific matters or items shall not be read so as to limit or restrict the generality of such statement or provision regardless of whether or not words such as “without limitation” or “without limiting the generality of the foregoing” precede such list or reference.

## **2.08 Headings and Captions**

The table of contents, article numbers, article headings, section numbers and section headings in this Lease are inserted for convenience of reference only and are not to be considered when interpreting this Lease.

## **2.09 Severability**

Each provision of this Lease is distinct and severable. If any provision of this Lease, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Lease, or the legality, validity or enforceability of that provision in any other jurisdiction.

## **2.10 Successors and Assigns**

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns, subject to any requirement for consent by the Landlord hereunder.

## **2.11 No Partnership or Agency**

The Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or otherwise, or a joint venturer, or a member of a joint enterprise with the Tenant, and the relationship of principal and agent is not created as a result of the entering into of this Lease.

## **2.12 Joint and Several Liability**

The liability to pay Rent and perform all other obligations under this Lease of each Person signing this Lease as the Tenant where the Tenant is more than one Person, shall be deemed to be joint and several.

## **2.13 Landlord as Agent**

The Tenant agrees that the Landlord acts as agent or trustee for the Released Persons to the extent necessary to ensure that all exculpatory provisions and indemnities included in favour of the Released Persons in this Lease are enforceable by the Landlord against the Tenant.

## **2.14 Interpretation**

The Landlord and the Tenant agree that notwithstanding any rule of law or equity, presumption, principle of construction, law or statutory enactment to the contrary:

- (a) in any controversy, dispute, contest, arbitration, mediation or legal proceeding of any kind, including an action, lawsuit, motion, application, reference or appeal regarding the interpretation, validity or enforcement of this Lease or any of its provisions, there shall be no inference, presumption or conclusion drawn whatsoever against either the Landlord or the Tenant by virtue of that party having

drafted this Lease or any portion thereof or by virtue of this Lease being drawn using the Landlord's form;

- (b) any deletion of language or wording from this Lease prior to execution by the Landlord and the Tenant shall not be construed to have any particular meaning or to raise any presumption, construction or implication including, without limitation, any implication that by the deletion of certain language or wording, the Landlord and the Tenant intended to state the opposite of the deleted language or wording; and
- (c) the selection or use of any bold, italicized, underlined or coloured print in this Lease shall not be construed to have any particular meaning or to raise any presumption, construction or implication.

## **2.15 Reasonableness**

Except as may be otherwise specifically provided in this Lease, whenever the Landlord or the Tenant is required to use its discretion or to consent or approve any matter under this Lease, the Landlord and the Tenant agree that such discretion shall be reasonably exercised and that such approval or consent will not be unreasonably or arbitrarily withheld or delayed.

## **2.16 Conflict with Schedules**

Any conflict or inconsistency between the provisions contained in the Schedules of this Lease and the provisions contained elsewhere in the Lease will be resolved in favour of the provisions contained elsewhere in the Lease.

## **2.17 Amendment and Waiver**

No supplement, modification, amendment, waiver, discharge or termination of this Lease is binding unless it is executed in writing by the party to be bound. No waiver of, failure to exercise, or delay in exercising, any provision of this Lease constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

# **ARTICLE III GRANT AND TERM**

## **3.01 Demise**

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant rents from the Landlord the Leased Premises.

### **3.02 Commencement and Termination Date of Term**

The Tenant will have and hold the Leased Premises for and during the Term commencing on the Commencement Date and expiring on the Termination Date, unless terminated earlier pursuant to the provisions hereof.

### **3.03 “As Is” Condition of Leased Premises**

The Tenant agrees to accept the Leased Premises in an “as is, where is” condition, except as otherwise provided herein. The Tenant further agrees that, except as may be specifically set out herein, there is no promise, representation or undertaking binding upon the Landlord with respect to any alteration, remodelling or decoration of the Leased Premises or with respect to the installation of equipment or fixtures in the Leased Premises, or to prepare them or make them suitable for the Tenant's occupancy and use.

### **3.04 Delay in Possession**

Should the Tenant be delayed by any fault of the Landlord or any other reason (other than the fault of the Tenant) in taking possession of the Leased Premises at the start of the Commencement Date, then and only then shall the Commencement Date and the Term be postponed for the same number of days that the Tenant is delayed in taking possession of the Leased Premises. The Tenant acknowledges and agrees that such postponement shall be full settlement for any claims it might have against the Landlord for such delay.

### **3.05 Restrictive Covenant**

The Landlord hereby agrees that it shall not at any time during the Term, lease, sublease, licence or allow the occupation of any part of the Landlord's property located in Canada, servicing U.S. bound traffic, for any duty-free, banking, currency exchange or for any other retail operation, services or purposes which are or may be in any way competitive with the facilities and services offered within the Leased Premises.

### **3.06 Right to Extend the Term**

Provided that the Tenant: (i) is itself in physical occupation of the whole of the Leased Premises; (ii) has duly and regularly paid the Rent, (iii) is actively operating from the Premises and performs all of the covenants, provisos and agreements on the part of Tenant to be paid and performed in this Lease; and (iv) has given Landlord no less than twelve (12) months' written notice and no more than eighteen (18) months' written notice prior to the expiry date of the Term of its election to extend the Term, Tenant shall have the right and option to extend the Term for one (1) additional period of five (5) years (the “Extension Term”) upon the same terms and conditions as in this Lease except that there shall be no further right to extend the term. If Tenant elects to exercise its said option to extend, the Term shall be automatically extended for the Extension Term covered by the option so exercised. If Tenant shall fail to give notice in writing exercising its option to extend within the time stipulated in this section 3.06 the Tenant's rights to extend the Term of this Lease shall be null and void. There will be no further right to extend the Term beyond the Extension Term.

The parties shall execute a lease extension agreement prepared by the Landlord to reflect the terms of the Extension Term.

## **ARTICLE IV RENT**

### **4.01 Covenant to Pay**

The Tenant will pay Rent as provided in this Lease, together with all applicable Sales Taxes, duly and punctually by way of electronic funds transfer (“**EFT**”) from the Tenant’s bank account. The Tenant undertakes to execute and deliver concurrently with this Lease such documentation as may be required by the Landlord and its bank in order to effect payment of Rent by EFT. Any invoice sent by the Landlord to the Tenant pursuant to the provisions of this Lease, other than for pre-authorized monthly Rent payments, shall be paid for by cheque to the Landlord at its address set out in Section 1.01(a) or as the Landlord otherwise directs.

### **4.02 Base Rent**

The Tenant covenants and agrees to pay to the Landlord the annual Base Rent payable in twelve (12) equal monthly instalments on the first day of each month during the Term herein in advance together with all applicable taxes. For the first year of the Lease the Base Rent shall be \$4,000,000. The Base Rent for the second year and each succeeding year of the Lease shall be the greater of (i) \$4,000,000 or (ii) 75% of the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately preceding Rental Year.

### **4.03 Percentage Rent**

The Tenant covenants and agrees with the Landlord that the following Percentage Rent rates will apply for the initial Term of this Lease and for any Extension Term.

Annual Gross Sales	Percentage
\$0 - \$20,000,000	20%
\$20,000,000 - \$25,000,000	22%
>\$25,000,000	24%

The Tenant covenants and agrees with the Landlord that for each month (including any broken calendar month) of the Term or Extension Term, if applicable, the above percentage rates will be applied to the Tenant’s Gross Sales during such monthly period (with the applicable percentage rate based on the Tenant’s year to date Gross Sales for the then current Rental Year). If, during any month (including any broken calendar month) of the Term or the Extension Term the

calculation of Percentage Rent in such monthly period (based on the Tenant's year to date Gross Sales for the then current Rental Year) exceeds (i) the Base Rent payable for such period (based on the year to date Base Rent payable for the then current Rental Year) plus (ii) the amount of Percentage Rent previously paid by the Tenant for the then current Rental Year, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference together with all applicable taxes, to the Landlord as Percentage Rent.

The Landlord and the Tenant agree that any money required to be paid as Percentage Rent as set forth in the Lease shall be deemed to be Rent and be collectible as Rent and the Landlord shall have the same remedies in respect of arrears of Percentage Rent as it has in respect to arrears of Base Rent.

For clarity, below is an example of the calculation of Base Rent and Percentage Rent in accordance with Sections 4.02 and 4.03 of the Lease:

Year	Gross sales	75% PY rent Calculation	Base rent Minimum	Calculated annual % rent	Additional % Rent due	Total rent Due
1	\$ 24,000,000		\$ 4,000,000	\$ 4,880,000	\$ 880,000	\$ 4,880,000
2	\$ 26,000,000	\$ 3,660,000	\$ 4,000,000	\$ 5,340,000	\$ 1,340,000	\$ 5,340,000
3	\$ 35,000,000	\$ 4,005,000	\$ 4,000,000	\$ 7,500,000	\$ 3,495,000	\$ 7,500,000
4	\$ 24,000,000	\$ 5,625,000	\$ 4,000,000	\$ 4,880,000	\$ -	\$ 5,625,000
5	\$ 22,000,000	\$ 4,218,750	\$ 4,000,000	\$ 4,440,000	\$ 221,250	\$ 4,440,000
6	\$ 20,000,000	\$ 3,330,000	\$ 4,000,000	\$ 4,000,000	\$ -	\$ 4,000,000

In the example above Base Rent and Percentage Rent would be as follows: in year one of the Lease Base Rent is \$4,000,000 and Percentage Rent is \$880,000; in year two Base Rent would be \$4,000,000 and Percentage Rent would be \$1,340,000; in year three Base Rent would be \$4,005,000 and Percentage Rent would be \$3,495,000; in year four Base Rent would be \$5,625,000 and Percentage Rent would be \$0; in year five Base Rent would be \$4,218,750 and Percentage Rent would be \$221,250; and in year six Base Rent would be \$4,000,000 and there would be no Percentage Rent.

In year four, because the annual calculated Percentage Rent is less than the Base Rent for that year, no additional Percentage Rent would be due. In year five, Base Rent is \$4,218,750 (greater of \$4,000,000 or 75% of prior year total rent). The total calculated Percentage Rent for year five is \$4,440,000. Because the calculated Percentage Rent is greater than the Base Rent, the difference of \$221,250 would be due as Percentage Rent for that year.

#### 4.04 Accrual of Rent

Rent shall be considered as accruing from day to day hereunder from the Commencement Date. If it is necessary for any reason to re-calculate such Rent for an irregular period during the relevant Rental Year, an appropriate apportionment and adjustment shall be made on a per diem basis based upon a 365 day calendar year.



#### **4.05 Rent and Payments Generally**

All Rent and other payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this Lease, which are payable by the Tenant to the Landlord, shall:

- (a) be paid when due hereunder, without prior demand therefor and without any abatement, set-off, compensation or deduction whatsoever (except as otherwise specifically provided for in this Lease);
- (b) be applied towards amounts then outstanding hereunder in such manner as the Landlord determines in its sole discretion;
- (c) bear interest at a rate equal to twenty-four percent (24%) per annum, calculated and payable monthly from the date such Rent or other payments became due to and including the date of payment;
- (d) an administrative charge of \$150.00 will be charged in connection with any late payment or returned cheque to cover the Landlord's additional administration costs;
- (e) in addition the Tenant shall pay all Sales Taxes. The amount of such Sales Taxes will be calculated by the Landlord in accordance with the applicable legislation and will be paid to the Landlord (or to the lawful taxing authority, as the Landlord may direct) on the due date of the amounts in respect of which such Sales Taxes are payable. All such payments shall be made prior to the date that the same shall become due and payable and any interest and any penalties assessed as a result of any default in or late payment of same shall be the sole responsibility of the Tenant. Notwithstanding any other provision of this Lease, the amount payable by the Tenant under this section shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise; and
- (f) if the Commencement Date is on a day other than the first day of a calendar month or if the Term ends on any day other than the last day of the month, Rent for the fractions of a month at the Commencement Date and at the end of the Term shall be calculated on a pro rata basis.

#### **4.06 Letter of Credit**

The Tenant covenants that, on or before the Commencement Date, the Tenant shall deliver to the Landlord an irrevocable and unconditional letter of credit or other form of cash collateral security satisfactory to the Landlord (the "**Letter of Credit**") in favour of Landlord issued by a Schedule 1 Canadian chartered bank in the amount of \$50,000.00, which shall be held by the Landlord during the Term and any Extension Term. The Letter of Credit shall be in such form as is approved in advance by the Landlord. If at any time during the Term or any Extension Term, the Tenant defaults in the payment of any Rent or other amounts payable under this Lease or in the performance of any of its other obligations under this Lease or if this Lease is surrendered, terminated, disclaimed or repudiated whether by Landlord as a result of default of Tenant or in connection with any insolvency or bankruptcy of Tenant or otherwise, then Landlord at its option

may, in addition to any and all other rights and remedies provided for in this Lease or at law, draw a portion of or all of the principal amount of the Letter of Credit, whereupon the proceeds thereof shall be applied to compensate Landlord for damages suffered by it as the result of Tenant's default, and the balance, if any, will be returned to the Tenant. If the Landlord draws all or part of the Letter of Credit, the Tenant shall provide the Landlord with a replacement Letter of Credit in the full amount of \$50,000 upon written demand from the Landlord to do so.

The rights of Landlord hereunder, in respect of the Letter of Credit, shall continue in full force and effect and shall not be waived, released, discharged, impaired or affected by reason of the release or discharge of Tenant in any receivership, bankruptcy, insolvency, winding-up or other creditors' proceedings including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors' Arrangement Act* (Canada), or the surrender, disclaimer, repudiation or termination of the Lease in any such proceedings and shall continue with respect to the periods prior thereto and thereafter as if the Lease had not been surrendered, disclaimed, repudiated, or terminated.

At the end of the Term or any Extension Term if applicable and provided that the Tenant is not then in default, which default remains uncured, under the terms of this Lease, the Landlord shall return the Letter of Credit, or the remaining balance of the Letter of Credit if it has been drawn upon in accordance with the terms hereof, to the Tenant.

## **ARTICLE V FINANCIAL INFORMATION**

### **5.01 Monthly Statements**

The Tenant shall furnish in writing to the Landlord by the tenth (10th) calendar day of the succeeding month, monthly statements of the Tenant's Gross Sales, patron counts, vehicle counts for the preceding month, and any other similar financial or statistical information which the Landlord may request. The monthly statement of the Tenant's Gross Sales shall: (i) state that the Tenant's Gross Sales as reported in the monthly statement is in accordance with the definition of Tenant's Gross Sales in Section 2.01(ss) (ii) contain a certification by the Tenant that the monthly statement is correct; (iii) is in the detail and form that the Landlord requires; and (iv) without limiting the requirements stated above, shows (1) the amount of Tenant's Gross Sales for the preceding month, (and fractional months, if any, at the commencement or end of the Term); (2) the amount of Tenant's Gross Sales for all preceding months of the Rental Year, (and fractional months, if any, at the commencement or end of the Term); and (3) the monthly payments made on account of Basic Rent and Percentage Rent for the Rental Year.

Failure of the Tenant to comply with this provision shall at the option of the Landlord constitute a default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies as herein provided.

### **5.02 Annual Statements**

The Tenant shall furnish in writing to the Landlord within forty five (45) calendar days of the end of each year of this Lease and any renewal thereof, the Tenant's Audited Gross Sales statements. Failure of the Tenant to comply with this provision shall at the option of the Landlord constitute a

default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies as herein provided.

If the total of the Percentage Rent paid by the Tenant in respect of a Rental Year is less than the amount of Percentage Rent payable for such Rental Year calculated based on the Tenant's Audited Gross sales statement delivered in accordance with this Section 5.02, the Tenant shall pay the difference to the Landlord no later than the first day of the month immediately following the month in which the Landlord receives the statement. Provided that the Tenant is not in default, if the Percentage Rent paid is greater than the actual amount of Percentage Rent payable for such Rental Year, the difference shall be applied in reduction of future payments, if any, due under this Lease, or if no future payments are due, shall be refunded to the Tenant.

### **5.03 Traffic Reports**

The Landlord shall provide the Tenant with a copy of the daily bridge traffic counts for the Peace Bridge.

### **5.04 Books and Records**

The Tenant will keep in the Leased Premises or at its principal office in Canada, for at least four (4) years after the end of each Rental Year, adequate books and records kept in accordance with generally accepted accounting principles that show inventories and receipts of merchandise at the Leased Premises and daily receipts from all sales, charges, services and other transactions, in or from the Leased Premises made by the Tenant and any other Persons conducting business in or from the Leased Premises as well as sales tax returns, pertinent original sales records, and any other sales records that the Landlord reasonably requires and that would normally be examined by an accountant pursuant to accepted auditing standards in performing a detailed audit of Tenant's Gross Sales. The Tenant will also cause the records described above to be kept by all Persons doing business in or from the Leased Premises. The Tenant, and all other Persons conducting business in or from the Leased Premises, will record at the time of the sale, in the presence of the customer, all receipts from sales, charges, services or other transactions whether for cash or credit, in a cash register or registers having a sealed cumulative total and any other control features that are required by the Landlord.

### **5.05 Right to Examine**

The Tenant shall make available for inspection and audit by a representative of Landlord, at reasonable times during business hours, all such books, records and other information in order to allow Landlord to verify such statements of Tenant's Gross Sales and the inventories of merchandise at the Leased Premises. The Landlord and its authorized representatives may examine the Tenant's records and procedures during regular business hours, and may have a Person in the Leased Premises to check, verify and tabulate the Tenant's Gross Sales, or to examine accounting records and procedures including control features affecting the determination of the Tenant's Gross Revenue.

## **5.06 Audit**

The Landlord may, at reasonable times, cause a complete audit to be made of the Tenant's business and records relating to the calculation of the Tenant's Gross Sales completed by an auditor who shall be a chartered accountant or other accredited public accountant independent of the Landlord. If the auditor reports that the Tenant's records and procedures are insufficient to permit a determination of the Tenant's Gross Sales for a Rental Year, or a part of a Rental Year, or that the Tenant is not complying with this ARTICLE V, the Landlord may deliver to the Tenant an estimate (which will be final and binding on the Tenant) of the Tenant's Gross Sales for the relevant period and the Tenant will immediately pay to the Landlord the amount shown in the estimate to be owing.

If any inspection or audit by Landlord reveals an understatement by Tenant of the Tenant's Gross Sales by more than two percent (2%) and such understatements occur twice or more within any five-year period, Tenant shall pay Landlord on demand for the cost of each such inspection and audit, as well as five (5) times the amount by which Rent was understated or underpaid for each applicable period. If the Tenant substantially, continually or repeatedly fails to produce records and follow procedures sufficient to permit a determination of the Tenant's Gross Sales or if the Tenant's Audited Gross Sales is understated by two percent (2%) or more on more than three (3) occasions, then in addition to any other remedies of the Landlord under this Lease or otherwise, the Landlord may terminate this Lease on five (5) days' prior written notice to the Tenant. Landlord must inspect and audit such records within two years after the date of each annual statement and Landlord's inspection and audit shall be limited to the period covered by such statement.

## **5.07 Confidentiality**

The Landlord undertakes to treat the financial information of the Tenant provided to the Landlord under this Lease as strictly confidential and not to divulge such financial information to any person, firm, corporation or other entity (other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information and who shall be obligated to treat all such financial information confidential). The confidentiality obligations under this Section 5.07 shall not apply to: (i) information which is generally available to the public; (ii) information which after disclosure by the Landlord becomes generally available to the public, otherwise than through any act or omission on the part of the Landlord; or (iii) information which the Landlord is obligated to disclose by law.

## **5.08 Tenant's Failure**

If the Tenant fails to deliver a statement or an audit opinion required under this ARTICLE V within the time required, the Landlord may, on five (5) days' notice to the Tenant, employ an auditor to examine the Tenant's books and records to certify the amount of the Tenant's Gross Sales for the period related to the statement or the audit opinion, and the Tenant will pay to the Landlord, on demand, as Additional Rent the cost of the examination together with the sums shown by the examination to be owing on account of Percentage Rent with interest on the latter calculated from the date the statement or the audit opinion was required at five percent (5%) above the Prime Rate.

## **ARTICLE VI PROPERTY TAXES AND OPERATING COSTS**

### **6.01 Property Taxes Payable by the Tenant**

The Tenant shall pay to the Landlord, as Additional Rent, all Property Taxes levied, rated, charged or assessed throughout the Term, on or in relation to the Leased Premises, or any part thereof, in accordance with the following:

- (a) payment shall be due in equal monthly installments over each taxation period or such shorter period as Landlord may reasonably require such that the Landlord will have received an amount sufficient to pay each installment of Property Taxes when due to the taxing authorities. Prior to the commencement of each taxation period, the Landlord shall estimate the amount of such equal monthly installments and notify the Tenant in writing of such estimate. From time to time during the taxation period, the Landlord may re-estimate the amounts payable for such taxation period, in which event the Landlord shall notify the Tenant in writing of such re-estimate and fix monthly installments for the remaining balance of such taxation period;
- (b) to the extent that a separate assessment and separate tax bill for Property Taxes in respect of the Leased Premises are not provided by the assessment and/or taxing authorities, the Tenant will pay a share of Property Taxes levied, rated, charged or assessed on or in relation to all of the Lands on such basis as the Landlord shall reasonably and equitably determine. To the extent the Leased Premises are assessed and billed separately with respect to any Property Taxes, then, at the election of the Landlord, the Tenant's share of such Property Taxes shall be computed on the basis of such separate assessments or apportionments; and
- (c) if the Landlord so directs, the Tenant shall pay Property Taxes directly to the taxing authorities. In that event, the Tenant shall make payment on or before the due date of each installment and shall provide to the Landlord on demand evidence of payment in the form of receipted bills.

### **6.02 Contesting Property Taxes**

Property Taxes, or the assessments in respect of Property Taxes which are the subject of any contest by Landlord or Tenant, shall nonetheless be payable in accordance with the foregoing provisions hereof, provided, however, that in the event Tenant shall have paid any amount in respect of Property Taxes in excess of the amount ultimately found payable as a result of the disposition of any such contest, and Landlord receives a refund in respect thereof, the appropriate amount of such refund shall be refunded to or, at the option of Landlord, credited to the account of Tenant. Landlord may contest any Property Taxes with respect to the Leased Premises or all or any part of the Lands and appeal any assessments related thereto and may withdraw any such contest or appeal or may agree with the relevant authorities on any settlement, compromise or conclusion in respect thereof and Tenant consents to Landlord's so doing. Tenant will co-operate with Landlord in respect of any such contest and appeal and shall make available to Landlord such information in respect thereof as Landlord requests. Tenant will execute forthwith on request all

consents, authorizations or other documents as Landlord requests to give full effect to the foregoing.

Tenant will not contest any Property Taxes or appeal any assessments related to the Leased Premises or the Lands. However, provided Landlord is not otherwise contesting such assessment, Tenant may contest any separate assessment that relates solely to the Leased Premises, with the consent of Landlord, such consent not to be unreasonably withheld, provided that Tenant shall be solely responsible, and shall indemnify Landlord, for all costs, penalties or fees, relating to such contest, including without limitation, any resulting increase in Property Taxes. Tenant shall pay to Landlord forthwith upon demand such reasonable share as allocated by Landlord, acting reasonably, of all costs and expenses of any kind incurred by Landlord bona fide and acting reasonably in obtaining or attempting to obtain information in respect of or a reduction or re-allocation in respect of Property Taxes and any assessments related thereto including, without limitation, legal, appraisal, administration and overhead costs.

### **6.03 Business Taxes**

In each and every year during the Term, the Tenant shall either pay all Business Taxes as Additional Rent or discharge within fifteen (15) days after they become due and indemnify the Landlord from and against payment of, and any interest or penalty in respect of Business Taxes.

### **6.04 Operating Costs**

In each Rental Year, the Tenant will pay to the Landlord, as Additional Rent, the costs, expenses, fees, rentals, disbursements and outlays of every nature and kind paid, payable or incurred by or on behalf of the Landlord in owning, maintaining, repairing, replacing, operating, administering and managing the Leased Premises (the “**Operating Costs**”). The Operating Costs shall include, without limitation or duplication, all of the following costs, expenses, fees, rentals, disbursements and outlays:

- (a) the cost of the Landlord's insurance premiums on lands, buildings, improvements, equipment and other property in the Leased Premises together with all amounts falling below the level of the Landlord's insurance deductibles which are paid by the Landlord in connection with claims made against it, including the costs of the insurance detailed in Section 10.06. The Landlord's insurance and costs of insurance may include, without limitation, (A) loss of insurable gross profits attributable to the perils insured against by the Landlord or commonly insured against by landlords, including loss of Rent and other amounts receivable from the Tenant pursuant to this Lease, (B) commercial general liability coverage including the exposure of personal injury, bodily injury and property damage occurrence, including all contractual obligations coverage and including actions of the employees, contractors, subcontractors and agents working on behalf of the Landlord and (C) costs and expenses for defending and payment of claims below deductibles;

- (b) accounting, auditing, legal and other professional and consulting fees relating to any reports or actions required to be taken by the Landlord under the terms of this Lease;
- (c) the cost of any and all environmental inspections and Environmental Site Assessments of the Leased Premises conducted by the Landlord from time to time which are not the responsibility of the Tenant;
- (d) the cost of any and all repairs, replacements (including major repairs and any repairs and replacements required to comply with all Applicable Laws, or the requirements of the Landlord's insurers), preventative and ongoing maintenance and operation, inspection, engineering and service contracts and consulting services, if any, relating to the Leased Premises;
- (e) all costs incurred in contesting or appealing Property Taxes with respect to the Leased Premises or related assessments, including legal, appraisal and other professional fees and administration and overhead related thereto;
- (f) all other direct and indirect costs and expenses of every kind, to the extent incurred in or allocable to the operation, supervision, administration or management of work or maintenance at all or any part of the Leased Premises, or any of its appurtenances; and
- (g) Sales Taxes on the purchase of goods and services included in the calculation of Operating Costs to the extent that the Landlord has not recovered an input tax credit or refund in respect of the same; notwithstanding any other provision of this Lease, the amount payable by the Tenant under this paragraph shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise.

#### **6.05 Payment of Operating Costs**

Before the commencement of each Rental Year, the Landlord will estimate the Operating Costs. The Tenant shall pay such estimated amount to the Landlord in equal consecutive monthly instalments, each in advance on the first day of each month during such Rental Year. The Landlord may from time to time during a Rental Year re-estimate any items of Operating Costs and may fix monthly instalments for the then remaining balance of the Rental Year so that such items will have been entirely paid during such Rental Year.

Within one hundred and twenty (120) days after the end of such Rental Year, the Landlord will determine and provide the Tenant with a statement in reasonable detail for the relevant Rental Year of the Operating Costs and Property Taxes. If the total of the monthly instalments paid by the Tenant in respect of estimated Operating Costs and Property Taxes for such Rental Year is less than the amount of Operating Costs and Property Taxes payable for such Rental Year shown on such statement, the Tenant shall pay the difference to the Landlord no later than the first day of the month immediately following the month in which the Tenant receives the statement. Provided that the Tenant is not in default, if the estimated amount of such monthly instalments paid is greater than the actual amount of Operating Costs and Property Taxes payable for such Rental Year, the

difference shall be applied in reduction of future payments, if any, due under this Lease, or if no future payments are due, shall be refunded to the Tenant. Neither party may claim a re-adjustment in respect of Operating Costs and Property Taxes for a Rental Year except by written notice delivered to the other party within one year after the delivery date of the Landlord's statement of Operating Costs and Property Taxes.

## **ARTICLE VII UTILITIES**

### **7.01 Charges for Utilities**

The Tenant shall pay promptly when due all charges, costs, accounts and any other sums payable by reason of the supply of the utilities to the Leased Premises and shall indemnify the Landlord from and against payment of, and any interest or penalty, in respect of all such utilities. The Tenant, at its own cost and expense, shall procure each and every permit, licence or other authorization required pertaining to any work required in respect of utilities consumed in or for the Leased Premises. The Tenant acknowledges and agrees that in the event any such utility supplier requires as a condition of the utility supply, or as a condition of constructing any infrastructure or installing any equipment to enable the utility supplier to provide such utility for the Tenant's use or consumption, that an agreement or contract shall be entered with the utility supplier and/or that a letter of credit or other form of security be posted with or delivered to the utility supplier, the Tenant shall, upon the written request of the Landlord, execute and deliver such agreement in the Tenant's name to such supplier, and cause to be issued, at the Tenant's sole cost and in the Tenant's name and deliver such letter of credit or other security to such supplier. Should the Tenant fail to execute and deliver any such agreement or to cause to be issued and delivered such letter of credit or to pay such other security deposit, within twenty (20) days of receipt of the Landlord's written notice that it do so, the Landlord shall be entitled on behalf of and as lawful attorney for the Tenant to execute and deliver such agreement in the name of and on behalf of the Tenant, and to pay such deposit on behalf of the Tenant, and in such event the Landlord's costs of so doing shall be payable by the Tenant forthwith upon demand as Additional Rent.

### **7.02 Tenant Not to Overload Facilities**

The Tenant shall not install any equipment which overloads the capacity of any utility, electrical or mechanical facilities in the Leased Premises. The Tenant agrees that if any changes proposed or use by the Tenant requires additional utility, electrical or mechanical facilities, the Landlord may, in its sole discretion, if they are available, elect to install them in accordance with plans and specifications to be approved in advance in writing by the Landlord and the cost thereof, together with an administration fee equal to fifteen percent (15%) of such cost, shall be payable on demand by the Tenant as Additional Rent.

### **7.03 No Liability**

In no event shall the Landlord be liable for any injury to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses



or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Leased Premises.

## **ARTICLE VIII HVAC**

### **8.01 HVAC System**

The Tenant shall be responsible, at its sole cost, for operating, maintaining, repairing and replacing the HVAC System throughout the Term. The Tenant covenants and agrees to take out and keep in force throughout the Term a standard servicing contract with a reputable company for the preventative maintenance and service of the HVAC System. Thirty (30) days prior to the end of each Rental Year (excluding the initial 2016 partial Rental Year), the Tenant will provide the Landlord with a certificate from a recognized, reputable heating and air-conditioning contractor approved in writing by the Landlord, stating that the HVAC System is in good working order. If such certificate is not provided, the Landlord may obtain such a certificate on behalf of the Tenant and if required, perform all necessary repairs and replacements to the HVAC System, and the cost of such certificate and work, together with an administration fee equal to fifteen percent (15%) of such cost, shall be payable by the Tenant to the Landlord as Additional Rent, forthwith on demand.

### **8.02 Landlord's Right to Maintain / Repair HVAC System**

In the event that the Tenant neglects or refuses to maintain and repair the heating, ventilating and/or air conditioning system and equipment serving the Leased Premises, then the Landlord, after five (5) days written notice to the Tenant during which period the Tenant has not commenced to maintain or repair the system and equipment, may maintain and repair the heating, ventilating and/or air conditioning system and equipment serving the Leased Premises and the Tenant shall reimburse the Landlord its costs and expenses of all such repairs, replacements to and maintenance and operation of the heating, ventilating and air conditioning equipment and systems which serve the Leased Premises in accordance with the terms of Section 9.05.

### **8.03 Tenant's Responsibility**

The Tenant will heat and ventilate the Leased Premises at all times throughout the Term in order to maintain reasonable conditions of temperature and humidity within the Leased Premises, in accordance with the terms of this Lease and all Applicable Laws.

## **ARTICLE IX USE OF THE LEASED PREMISES**

### **9.01 Use of the Leased Premises**

The Tenant shall not use the Leased Premises for any purpose other than the Permitted Use. The Tenant acknowledges that the Landlord is making no representations with respect to the zoning of the Property or the compliance therewith of the Tenant's Permitted Use and it shall be the Tenant's sole responsibility to satisfy itself in this regard.

## **9.02 Conduct and Operation of Business**

The Tenant shall occupy the Leased Premises during the Term of the Lease and shall continuously and actively carry on the Permitted Use in the whole of the Leased Premises. In the conduct of the Tenant's business pursuant to this Lease the Tenant shall:

- (a) operate its business 24 hours a day, seven days a week, 365 days a year with due diligence and efficiency and maintain an adequate staff to properly serve all customers;
- (b) observe and obey the reasonable rules and regulations of the Landlord promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operations of the Peace Bridge. Without limiting the generality of the foregoing, the Landlord, after consulting with the Tenant, may provide rules setting out where customers of the Tenant shall park their vehicles and may further provide for the orderly flow of traffic entering and exiting from the area of the Leased Premises provided such rules are reasonable and acceptable to the Tenant, acting reasonably. The Tenant agrees that it shall be responsible to provide any and all traffic direction required in or upon the Leased Premises.
- (c) abide by all reasonable rules and regulations and general policies formulated by the Landlord from time to time relating to the delivery of goods and merchandise to the Leased Premises;
- (d) not erect, maintain or display any signs or any advertising at or on the exterior of the Leased Premises without the prior written approval of the Landlord, such approval not to be unreasonably withheld;
- (e) keep the Leased Premises clean, neat and free of hazards and fire dangers at all times;
- (f) perform all landscaping and maintenance of all outside areas, including cleaning, line painting, snow and ice clearing and removal and salting of sidewalks, driveways and parking facilities and all lawn and garden maintenance;
- (g) provide policing, supervision and security as required;
- (h) maintain proper lighting in the parking facilities;
- (i) take any and all action necessary to prevent any of its employees from affecting the orderly flow of traffic in or upon the Leased Premises or any other lands owned by the Landlord;
- (j) dispose of all waste or recyclable material at a location in the Leased Premises at such times and in such manner as may be directed by the Landlord from time to time and in accordance with Applicable Law;

- (k) obtain a Licence and maintain its Licence in good standing;
- (l) provide adequate public restrooms for the anticipated number of travelers using the Peace Bridge, including persons who may not be patrons of the duty free shop;
- (m) in the event that the Tenant's Licence is terminated, revoked or suspended for any period of Time, or has expired, the Tenant shall cause its Licence to be reinstated or renewed within 60 days of such termination, revocation, suspension or expiration;
- (n) operate and manage the business at the Leased Property in a manner consistent with the Tenant's Proposal; and
- (o) abide by any and all directives of Canada Border Services Agency in regards to the conduct of the Tenant's business.

### **9.03 Nuisance and Waste**

The Tenant shall not commit any waste upon, or damage to, the Leased Premises or commit any nuisance or other act or thing and will not perform any acts or carry on any practices which may damage the Leased Premises. The Tenant will not permit any odours, vapours, steam, water, vibrations, noises or other undesirable effects to emanate from the Leased Premises or any equipment or installation therein which, in the Landlord's opinion, are objectionable, and the Tenant will not cause any interference with the safety, comfort or convenience of the Landlord.

### **9.04 Observance of Law**

The Tenant shall, at its own expense, comply with all Applicable Laws affecting the Leased Premises or the use or occupation thereof including, without limitation, police, fire and health regulations and requirements of the fire insurance underwriters. The Tenant shall carry out modifications, alterations or changes to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which are required by any such authorities and shall keep its Licence in good standing.

### **9.05 Additional Services of the Landlord**

The Tenant shall pay to the Landlord the costs of all Additional Services provided by the Landlord to the Tenant, together with an administration fee equal to fifteen percent (15%), forthwith on demand as Additional Rent.

### **9.06 Traffic Direction**

In the event that the Landlord, after consultation with the Tenant, determines that additional traffic personnel are required as a result of the operations of Tenant, Landlord shall add such additional personnel as may be required, and Tenant and Landlord shall each pay one-half of the cost of such additional personnel.

**ARTICLE X**  
**TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY**

**10.01 Compliance with Environmental Laws and Environmental Approvals**

The Tenant shall comply with all applicable Environmental Laws and shall obtain and comply with any Environmental Approvals that may be required for the Tenant's use of the Leased Premises. Without restricting the generality of the foregoing, the Tenant shall not use, generate, handle, transport, manufacture, refine, treat, store, remove, recycle or dispose of any Contaminant on the Leased Premises except in compliance with all applicable Environmental Laws.

**10.02 Release of a Contaminant**

- (a) In the event of a Release of a Contaminant at or from the Leased Premises other than in compliance with Environmental Laws, the Tenant shall immediately notify the Landlord of the Release and shall at its own expense, immediately retain a qualified environmental consultant acceptable to the Landlord, acting reasonably, to prepare a report assessing the full nature and extent of the Release and recommending the work plan to remediate the Release and to restore the Leased Premises, any affected abutting lands, as well as the natural environment, to the condition they were in before the Release, and the Tenant shall submit this report to the Landlord for the Landlord's approval acting reasonably.
- (b) Upon the Landlord's approval of the report and at the sole option of the Landlord, either the Tenant shall arrange for the implementation of the work plan, or the Landlord shall arrange for the implementation of the work plan, in either case at the cost of the Tenant, together with an administration fee of fifteen percent (15%) of such cost, which shall be payable as Additional Rent forthwith upon receipt of written demand for payment from the Landlord.
- (c) In the event that the Landlord, acting reasonably, does not approve of the report submitted by the Tenant, the Landlord shall retain a qualified environmental consultant to prepare a report, the cost of which plus an administration fee of fifteen percent (15%) of such cost, shall be borne by the Tenant. Upon the completion of the report, at the sole option of the Landlord, either the Tenant shall arrange for the implementation of the work plan, or the Landlord shall arrange for the implementation of the work plan, in either case at the cost to the Tenant together with an administration fee of fifteen percent (15%) of such costs, which shall be payable as Additional Rent forthwith upon receipt of written demand for payment from the Landlord.
- (d) In addition, the Tenant shall be liable to the Landlord for loss of rent, loss of profits, or for any consequential, incidental, indirect, special or punitive damages of any kind resulting from the Release and any remediation required pursuant to this Section.

### **10.03 Environmental Site Assessment**

The Landlord and its agent shall have the right to enter upon the Leased Premises and conduct an Environmental Site Assessment from time to time. In the event the ESA discloses a Release, any apparent or imminent contravention of Environmental Laws or other matter requiring remediation or other action in order to prevent a Claim from arising for which the Tenant or any person for whom the Tenant is responsible at law, the Tenant shall pay for the ESA; in the event the ESA does not disclose such a Release or other condition, the cost of the ESA shall be paid for by the Landlord.

### **10.04 Tenant's Environmental Indemnity**

The Tenant hereby indemnifies and saves harmless the Released Persons from and against any and all Claims which may be made against the Released Persons as a direct or indirect result of the failure or neglect by the Tenant to comply with any Environmental Laws or Environmental Approvals in respect to the Leased Premises, as a direct or indirect result of the existence on, in, under or adjacent to the Leased Premises of any Contaminant attributable to the Tenant's use or occupation of the Leased Premises or as a result of any Claims made against the Tenant arising from or involving Environmental Laws. This indemnity shall survive the termination or surrender of this Lease or any renewal or extension thereof and shall continue in full force and effect without time limit.

### **10.05 Governmental Authority Requirements**

If any Governmental Authority having jurisdiction shall lawfully require the investigation, monitoring or remediation of any Contaminant used, held, released, discharged, abandoned or placed upon the Leased Premises or Released into the environment by the Tenant, then the Tenant shall, at its own expense, subject to Section 10.02, carry out all lawfully required work and shall provide to the Landlord full information with respect to all such work and comply with all applicable Environmental Laws with respect to such work. At the option of the Landlord, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant and that cost and expense plus an administration fee equal to fifteen percent (15%) shall be paid to the Landlord forthwith on demand as Additional Rent.

### **10.06 Pre Existing Contaminants**

The Landlord hereby releases the Tenant from liability to the Released Persons for any and all Claims which may be made against the Released Persons as a result of the existence as at the Commencement Date of any Contaminant on, in, under or adjacent to the Leased Premises.

### **10.07 Responsibility for Environmental Contaminants**

- (a) Despite any statutory provision or rule of law to the contrary, any Contaminants brought to or resulting from activities carried out on the Leased Premises during the Term or any renewal or extension thereof shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord despite the degree of affixation of the Contaminants or the goods contained in the Contaminants to the Leased Premises and despite the expiry, repudiation,

disclaimer or earlier termination of this Lease; and, at the option of the Landlord, to the extent there is non-compliance with applicable Environmental Laws, any substance, including soil and groundwater contaminated by such Contaminants shall become the property of the Tenant.

- (b) The Tenant covenants and agrees to carry out at the request of the Landlord at its own cost and expense, remediation of all Contamination of the Leased Premises arising out of the Tenant's uses or occupation thereof so that the soil and groundwater condition of the Leased Premises and any affected areas beyond the Leased Premises or property owned or controlled by a third party, complies with remediation criteria set out in guidelines, policies, criteria or otherwise established under Environmental Laws. Risk assessment will not be used unless agreeable to the Landlord. This covenant shall survive the Termination Date.
- (c) At the option of the Landlord, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant and that cost and expense plus an administration fee equal to fifteen percent (15%) shall be paid to the Landlord forthwith on demand as Additional Rent; but having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work.
- (d) The obligations of the Tenant hereunder relating to Contaminants shall survive any assignment, expiry, repudiation, disclaimer or earlier termination of this Lease. To the extent that the performance of those obligations requires access to or entry upon the Leased Premises, the Tenant shall have such entry and access after such expiry, repudiation, disclaimer or earlier termination only at such times and upon such terms and conditions as the Landlord may reasonably from time to time specify.

## **ARTICLE XI INSURANCE AND INDEMNITY**

### **11.01 Tenant's Insurance**

The Tenant will obtain and maintain the following insurance throughout the Term and any renewal or extension thereof:

- (a) "All risks" (including flood and earthquake) property insurance for the full replacement cost, insuring (a) all property owned by the Tenant, or for which the Tenant is responsible, and located within the Leased Premises including, but not limited to, fittings, fixtures, additions, alterations, partitions and all other Leasehold Improvements, and (b) the Tenant's furniture, inventory and equipment;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount equal to at least the replacement cost of the property with respect to all boilers and machinery owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises;

- (c) Business interruption insurance for a minimum period of twenty-four (24) months or such longer period that will reimburse the Tenant for direct and indirect loss of earnings and profit attributable to damage caused by the perils insured against under Subsections (a) and (b) above, and other perils insured by prudent tenants, or attributable to prevention of access to the Leased Premises by civil authorities;
- (d) Commercial general liability insurance under a standard commercial general liability form which shall include coverage against bodily injury, including death, and property damage. Such insurance shall:
  - (i) include extensions such as personal injury, blanket contractual liability, employers liability, owner's and contractor's protective liability, cross liability, severability of interests coverage, breach of warranty clause and non-owned automobile insurance;
  - (ii) cover the Tenant's use of the Leased Premises, including all of the Tenant's activities and operations therein and any other Persons performing work on behalf of the Tenant, and those for whom the Tenant is responsible at law;
  - (iii) be written on an "occurrence" form with inclusive limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence or such higher limits as the Landlord may require from time to time;
  - (iv) include tenant's legal liability insurance covering the perils of "all risks" for the replacement cost of the Leased Premises, including loss of use thereof; and
  - (v) include standard automobile insurance covering third party liability with limits of liability not less than One Million Dollars (\$1,000,000.00) per accident, plus accident benefits, for all automobiles owned or operated by or on behalf of the Tenant; and
- (e) Any other form of insurance the Tenant, the Landlord or its Mortgagee may require from time to time, in form, in amounts insured, and for perils or risks insured against, which a prudent tenant would insure.

## **11.02 Requirements of Insurance**

- (a) The policies required under Sections 11.01(a), 11.01(b), 11.01(c) and 11.01(d) above will also contain a waiver of all subrogation rights which the Tenant's insurers may have against the Released Persons whether or not the damage is caused by their act, error, omission or negligence.
- (b) All policies will:
  - (i) be placed with insurers acceptable to the Landlord, in a form acceptable to the Landlord;

- (ii) name the Released Persons and such other Persons as the Landlord may designate from time to time, as additional insureds;
  - (iii) be primary, and not excess or contributing with any other insurance available to the Landlord;
  - (iv) provide for deductibles which are acceptable to the Landlord;
  - (v) not be invalidated as respects the interests of the Released Persons, or any of them, by reason of any breach or violation of warranty, representation, declaration or condition contained in the policies, or any of them; and
  - (vi) contain a condition by insurers to notify the Released Persons in writing not less than thirty (30) days before any cancellation or material change in policy conditions is effected.
- (c) The Tenant will deliver certificates of insurance duly executed by the Tenant's insurers or their duly authorized representatives, evidencing that all such insurance described above is in full force and effect prior to going into occupancy of the Leased Premises and thereafter at least thirty (30) days prior to the expiry of the then current term of the insurance. Such certificates must confirm the limits and special conditions of such insurance as required by this Section. No review or approval by the Landlord of any such insurance certificates shall operate to derogate from or diminish the Landlord's rights under this Lease.

### **11.03 Sign Insurance**

The Tenant shall insure and keep insured, at its expense, all signs relating to the Tenant's business placed or erected on the exterior of the Leased Premises for and in its name and in the name of the Landlord. The Tenant waives any right of complaint as to the form and location of the Landlord's existing signs.

### **11.04 Increase in Insurance Premiums**

The Tenant will comply promptly with all requirements of the Insurer's Advisory Organization and of each insurer pertaining to the Leased Premises. If the occupancy of the Leased Premises, the conduct of business in the Leased Premises or any acts or omissions of the Tenant in the Leased Premises, or any part thereof, cause an increase in premiums for the insurance carried from time to time by the Landlord on the Leased Premises, the Tenant shall pay the increase as Additional Rent immediately after invoices for the additional premiums are rendered by the Landlord.

### **11.05 Cancellation of Insurance**

If any insurance policy on the Leased Premises is cancelled, or threatened by the insurer to be cancelled, or if the coverage under any insurance policy is reduced in any way by the insurer because of the use or occupation of any part of the Leased Premises by the Tenant or by any occupant of the Leased Premises, and if the Tenant fails to remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after



notice by the Landlord, the Landlord may either: (a) re-enter and take possession of the Leased Premises immediately by leaving upon the Leased Premises a notice of its intention to do so, following which the Landlord will have the same rights and remedies as are contained in Article XVII; or (b) enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage, and the Tenant will immediately pay the costs and expenses to the Landlord, together with an administration fee equal to fifteen percent (15%) of such costs and expenses, which costs and expenses may be collected by the Landlord as Additional Rent, and the Landlord will not be liable for any damage or injury caused to any property of the Tenant or others located on the Leased Premises as the result of the entry. Such an entry by the Landlord is not a re-entry or a breach of any covenant for quiet enjoyment.

#### **11.06 Landlord's Insurance**

The Landlord will obtain and maintain the following insurance throughout the Term of this Lease and any renewal or extension thereof:

- (a) insurance on the Building and improvements and equipment contained therein owned or leased by Landlord or which Landlord desires to insure against damage by fire and extended perils coverage in those reasonable amounts and with those reasonable reductions that would be carried by a prudent owner of a reasonably similar premises, having regard to size, age and location;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount equal to at least the replacement cost of the boilers and machinery owned by the Landlord, including the HVAC System;
- (c) public liability and property damage insurance with respect to the Landlord's operations in the Leased Premises, in those reasonable amounts and with those reasonable deductibles, that would be carried by a prudent owner of a reasonably similar premises, having regard to size, age and location; and
- (d) such other forms of insurance which the Landlord or the Mortgagee considers advisable from time to time.

Despite this Section 11.06, and regardless of any contribution by the Tenant to the costs of insurance premiums: (i) the Tenant is not relieved of any liability arising from or contributed to by its negligence or its wilful acts or omissions; and (ii) no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord and the Tenant has no right to receive any proceeds of any such insurance policies. The costs of the Landlord's insurance under this Section 11.06 will be included in Operating Costs.

#### **11.07 Loss or Damage**

None of the Released Persons shall be liable for any death or injury from or out of any occurrence in, upon, at or relating to the Leased Premises, or damage to property of the Tenant or of others located on the Leased Premises, and will not be responsible for any loss of or damage to any property of the Tenant or others from any cause whatsoever, whether or not the death, injury, loss

or damage results from the negligence of the Released Persons, or any of them. Without limiting the generality of the foregoing, the Released Persons will not be liable for any injury or damage to Persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, subsurface of any floor or ceiling or from the street or any other place, or from any dampness or by any other cause whatsoever. None of the Released Persons shall be liable for any damage caused by occupants of adjacent property, or the public, or caused by construction or by any private, public or quasi public work. All of the property of the Tenant kept or stored on the Leased Premises shall be kept or stored at the risk of the Tenant only, and the Tenant will indemnify the Released Persons and save them harmless from any claims arising out of any damages to that property including, but not limited to, any subrogation claims by the Tenant's insurers.

#### **11.08 Indemnification of the Landlord**

Despite anything to the contrary contained in this Lease, the Tenant will indemnify the Released Persons and save them harmless from and against any and all Claims (including loss of Rent payable by the Tenant under this Lease), in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon or at the Leased Premises, or the occupancy or use by the Tenant of the Leased Premises, or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. If a Released Person, without fault on its part, is made a party to any litigation commenced by or against the Tenant, then the Tenant will protect, indemnify and hold the Released Person harmless and will pay all costs, expenses and reasonable legal fees (on a substantial indemnity basis) incurred or paid by the Released Person in connection with that litigation. The Tenant will also pay all costs, expenses and legal fees (on a substantial indemnity basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease, unless a court decides otherwise. This indemnity will survive the Termination Date.

### **ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS**

#### **12.01 Maintenance and Repairs and Replacement by the Tenant**

The Tenant shall, throughout the Term and any extension or renewal thereof, at its sole cost, keep the Leased Premises in a first class condition, as required by the Landlord. The Tenant shall, at its sole cost and expense, maintain, repair and replace, as required, the following:

- (a) the whole of the Leased Premises including, but not limited to, entrances, and all glass, windows and doors, including their frames and mouldings;
- (b) all signs (both interior and exterior), partitions, trade fixtures and Alterations located in or upon the Leased Premises;
- (c) the exterior areas of and facilities on the lands included in the Leased Premises which include, without limitation, the parking areas, driveways, sidewalks, loading

areas, concrete aprons, curbs, gutters, access points, control gates, security barriers or fences, landscaped areas;

- (d) the structural components of the Building including, without limitation, the roof (including the roof deck and roof membrane), foundations, interior walls, interior concrete slab floors and exterior walls; and
- (e) all Building Systems.

If any of the foregoing repairs or replacements (excluding repairs or replacement of the HVAC System) are of a capital nature that are required as a result of the useful life of a capital asset coming to an end and are capable of being amortized by the Landlord according to generally accepted accounting principles, the Tenant may request that same be paid for by the Landlord and charged back to Tenant as Additional Rent with the costs of such items to be amortized over such period as determined by Landlord, provided that such determination is made in accordance with generally accepted accounting principles, on a straight line basis to zero and interest to be calculated and paid annually during the Term on the unamortized cost of such items in respect of which amortization is included at 4% per annum in excess of the Prime Rate. For greater certainty, capital repairs do not include (i) repairs necessary to keep an asset in as good working condition as such asset was as of the Commencement Date (reasonable wear and tear excepted); (ii) any wear on or elimination of parking lot lines, black topping or asphalt sealing, or tarring or asphaltting of cracks or holes or asphaltting of less than the entire of the driveway or parking lot; or (iii) any replacement of glass in the windows.

The Landlord shall cooperate with the Tenant so that in the performance of the Tenant's covenants in this Section 12.01 and the Tenant will have the benefit of any warranties held by the Landlord in respect of the Building.

## **12.02 Landlord's Approval of Alterations**

- (a) Except as provided in Section 12.02(b), the Tenant will not make any repairs, alterations, replacements, Leasehold Improvements or improvements (collectively the "**Alterations**") to the Leased Premises without first obtaining the Landlord's prior written approval. Prior to commencing any Alterations, the Tenant will submit to the Landlord: (i) details of the proposed Alterations including drawings and specifications; (ii) any indemnification or security against liens, costs, damages and expenses the Landlord requires; and (iii) evidence that the Tenant has obtained the necessary consents, permits, licences and inspections from all governmental authorities having jurisdiction.
- (b) The Tenant shall not be required to obtain the Landlord's prior written approval for any minor decorations to the interior of the Building.
- (c) Alterations shall be performed at the Tenant's sole cost in a good and workmanlike manner by competent workmen, in accordance with the drawings and specifications approved by the Landlord and subject to the reasonable restrictions imposed by the Landlord, all in accordance with the Tenant Construction Criteria.

- (d) Despite anything to the contrary contained in this Section, the Landlord may, at its option, complete the Alterations. Upon completion of the Alterations, the Tenant will pay to the Landlord, upon demand, as Additional Rent, the cost of the Alterations as well as any fees related thereto as may be set out from time to time in the Tenant Construction Criteria, together with an administration fee equal to fifteen percent (15%) of such costs,

### **12.03 Landlord's Inspection**

The Tenant permits the Landlord and its agents, upon reasonable prior notice to the Tenant and during normal business hours (except in emergency) of the Tenant without interference to the operations of the Tenant, to enter the Leased Premises to examine the condition, management and operation thereof. In addition to the Tenant's obligations under Section 12.01, the Tenant shall effect the maintenance and carry out any work referred to in that Section in accordance with notice from the Landlord following its inspection. The failure to give the notice does not relieve the Tenant from its obligations under Section 12.01.

### **12.04 Surrender of the Leased Premises**

On the Termination Date or earlier termination of the Term, the Tenant shall peaceably surrender up the Leased Premises to the Landlord in first class condition, will deliver all of the keys for the Leased Premises to the Landlord and will inform the Landlord of all combinations of locks, safes and vaults, if any, in the Leased Premises. The Tenant shall also remove its trade fixtures and the Leasehold Improvements in accordance with the provisions of Section 12.07 at the Termination Date or earlier termination of the Term.

### **12.05 Repair where Tenant at Fault**

Despite anything to the contrary contained in this Lease, if the Leased Premises or any part thereof, requires repair or replacement because of the act of the Tenant, the cost of such repair or replacement, together with an administration fee equal to fifteen percent (15%) of such cost, shall be paid by the Tenant to the Landlord as Additional Rent on demand.

### **12.06 Tenant Not to Overload Floors**

The Tenant will not bring upon the Leased Premises, or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use might in the opinion of the Landlord damage the Leased Premises and shall not at any time overload the floors of the Building.

### **12.07 Removal and Restoration by the Tenant**

- (a) Any Leasehold Improvements made by the Tenant, or made by the Landlord on the Tenant's behalf, immediately shall become the property of the Landlord and will not be removed from the Leased Premises except that: (i) the Tenant may, during the Term, in the usual course of its business, and with the prior written consent of the Landlord, remove the trade fixtures which it has installed, but only if they have become excess for the Tenant's purposes or if the Tenant is substituting new and similar trade fixtures, and the Tenant is not in default under this Lease; (ii) the

Tenant will, at the expiration of the Term, at its cost, remove all of its trade fixtures installed in the Leased Premises and those Leasehold Improvements which the Landlord requires to be removed; and all Contaminants required pursuant to ARTICLE X.

- (b) The Tenant will repair any damage to the Leased Premises caused by the installation or removal of the items described in subsection (a) above. This obligation will survive the Termination Date or earlier termination of the Term.
- (c) If the Tenant does not remove any of the items described in subsection (a) which it is required to remove, the Landlord may do so and the Tenant will pay the Landlord's removal, disposal, sale and storage charges. Any Leasehold Improvements or other items not removed shall, at the Landlord's option, become the property of the Landlord and may be removed from the Leased Premises and sold or disposed of by the Landlord in such manner as it deems advisable.
- (d) The parties agree that the Tenant's trade fixtures do not include any of the following: (i) the HVAC System; (ii) floor coverings, ceilings, partitioning and draperies; (iii) light fixtures; (iv) washroom fixtures and hot water tank; (v) electrical service including any transformer; (vi) internal stairways; (vii) show windows and doors; and (viii) signs, all of which are Leasehold Improvements.

#### **12.08 Tenant Capital Expenditures and Improvements**

The Tenant shall, in compliance with the provisions contained in this Lease, complete the capital expenditures and Leasehold Improvements that are detailed in the Tenant's Proposal, which is attached to this Lease (as Schedule D) for purposes of outlining the proposed capital expenditures and Leasehold Improvements.

#### **12.09 Notice of Defects**

The Tenant will notify the Landlord of any damage to, or deficiency or defect in, the Leased Premises, and any equipment, utility systems or installations located therein or thereon, immediately following the date the Tenant becomes aware of such damage, deficiency or defect, whether or not the Landlord has an obligation to repair the damage, or remedy the deficiency or defect.

#### **12.10 Liens**

The Tenant will promptly pay its contractors, material men, suppliers and workmen and will do everything necessary to ensure that no lien is registered against the Leased Premises or against the Landlord's interest in the Leased Premises, or against the Tenant's interest in the Leased Premises. If such a lien is made, filed or registered on title to the Leased Premises, the Tenant will discharge it, or cause it to be discharged, immediately, at the Tenant's expense. If the Tenant fails to discharge any such lien as required herein, the Landlord, in addition to its other remedies hereunder, at law or in equity may, but shall not be required to, discharge the lien by paying the amount claimed into court, together with any security for costs, or by paying the amount claimed directly to the lien claimant and the amount so paid, together with all related costs and expenses,

including solicitor's fees (on a substantial indemnity basis) and an administration fee equal to fifteen percent (15%) of such costs and expenses, all of which shall be payable by the Tenant on demand as Additional Rent.

### **12.11 Signs and Advertising**

The Tenant shall not paint, affix or display any sign, picture, advertisement, notice, lettering or decoration on any part of the exterior of or in any part of the Building without, in each case, the prior written approval of the Landlord, such approval not to be unreasonably withheld. All signs erected by the Tenant shall comply with all Applicable Laws.

## **ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION**

### **13.01 Damage or Destruction to the Leased Premises**

Subject to the following, if the Building, or any portion thereof, are damaged or destroyed by fire or by other casualty, Rent shall abate in proportion to the area of that portion of the Building which, in the opinion of the Architect, is thereby rendered unfit for the purposes of the Tenant until the Building is repaired and rebuilt, and the Landlord shall repair and rebuild the Leased Premises. Notwithstanding the foregoing, if the Tenant has caused or contributed to the damage or destruction, it shall not be entitled to any abatement of Rent. Rent shall recommence to be payable one (1) day after the Landlord notifies the Tenant that the Tenant may reoccupy the Building for the purpose of undertaking its work.

### **13.02 Rights to Termination**

Notwithstanding Section 13.01:

- (a) if the Building or any portion thereof are damaged or destroyed by any cause whatsoever and cannot be rebuilt within one hundred and eighty (180) days of the damage or destruction, the Landlord may, instead of rebuilding the Building, terminate this Lease by giving to the Tenant notice of termination within thirty (30) days after the occurrence of such damage or destruction and thereupon Rent shall be apportioned and paid to the date of the occurrence of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord; and
- (b) if the Building shall, at any time, be wholly or partially damaged or destroyed to the extent that twenty-five percent (25%) or more of the Building has become unfit for use, the Landlord may elect, within thirty (30) days from the date of the occurrence of such damage or destruction, to terminate this Lease on thirty (30) days' notice to the Tenant, in which event Rent shall remain payable until the date of termination (unless it has abated under Section 13.01).

### **13.03 Certificate Conclusive**

Any decisions regarding the extent to which the Leased Premises have become unfit for use or the length of time required to complete any repair or reconstruction shall be made by the Architect whose decision shall be final and binding upon the parties.

### **13.04 Insurance Proceeds**

Notwithstanding Sections 13.01 and 13.02, in the event of damage or destruction occurring by reason of any cause in respect of which proceeds of insurance are insufficient to pay for the costs of rebuilding the Building, or are not payable to or received by the Landlord, or in the event that any Mortgagee or other Person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for such purpose, or in the event that the Landlord is not able to obtain all necessary approvals and permits from Governmental Authorities to enable it to rebuild the Building, the Landlord may elect, on written notice to the Tenant, within thirty (30) days following the occurrence of such damage or destruction, to terminate this Lease, and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord in accordance with the Landlord's notice.

### **13.05 Landlord's Rights of Rebuilding**

In performing any reconstruction or repair, the Landlord may use drawings, designs, plans and specifications other than those used in the original construction of the Building and may alter or relocate the Building. The Landlord shall have no obligation to grant to the Tenant any allowances or inducements to which it may have been granted at the beginning of the Term, and shall not be required to repair any damage to Leasehold Improvements (which include the HVAC System), fixtures, chattels the Tenant's trade fixtures or any other property of the Tenant.

### **13.06 Negligence of the Tenant**

Notwithstanding anything to the contrary contained in this Lease, if any damage or destruction by fire or other casualty to all or any part of the Leased Premises is due to the fault or the negligence of the Tenant, the Tenant shall be liable for all costs and damages incurred or suffered by the Landlord without prejudice to any other rights and remedies of the Landlord and without prejudice to the rights of subrogation of the Landlord's insurer.

### **13.07 Expropriation**

If all or any part of the Leased Premises is taken or expropriated by any lawful expropriating authority, or purchased under threat of such taking, or if part of the Leased Premises is taken so that substantial alteration or reconstruction of the Building is necessary or desirable as a result thereof, this Lease shall automatically terminate on the date on which the expropriating authority takes possession. Upon any such taking or purchase, the Landlord shall be entitled to receive and retain the entire award or consideration for the affected lands and improvements, and the Tenant shall not have, and shall not advance, any claim against the Landlord for the value of the Tenant's property or its leasehold estate or the unexpired Term, or for costs of removal or relocation, or business interruption expense or any other damages arising out of such taking or purchase. Nothing herein shall give the Landlord any interest in or preclude the Tenant from seeking and

recovering on its own account from the expropriating authority any award or compensation attributable to the taking or purchase of the Tenant's improvements, chattels or trade fixtures, or the removal, relocation or interruption of its business. If any such award made or compensation paid to either party specifically includes an award or amount for the other, the party first receiving the same shall promptly account therefor to the other.

## **ARTICLE XIV**

### **ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL**

#### **14.01 Transfers**

The Tenant shall not assign this Lease in whole or in part, sublet all or any part of the Leased Premises or part with or share possession of all or any part of the Leased Premises to any Person, mortgage, charge or encumbrance of this Lease or the Leased Premises or any part of the Leased Premises or other arrangement under which either this Lease or the Leased Premises become security for any indebtedness or other obligation (in each case, a “**Transfer**” and any such assignee, sub-tenant, occupant or any other Person to whom a Transfer is to be made is a “**Transferee**”) without the Landlord’s prior written consent, which consent, subject to the Landlord’s termination right set out in Section 14.02, shall not be unreasonably withheld. At the time the Tenant requests the Landlord’s consent to a Transfer, the Tenant shall provide the Landlord with a true copy of the offer and any information the Landlord may require with regard to the reputation, financial standing and business of the proposed Transferee, together with payment of a non-refundable Landlord’s administrative fee as determined from time to time by the Landlord (which fee is currently One Thousand, Two Hundred and Fifty Dollars (\$1,250.00) plus applicable Sales Taxes). This restriction on Transfer also applies to any Transfer by operation of law.

#### **14.02 Landlord’s Option to Terminate**

Within thirty (30) days following the date the Tenant requests the Landlord to consent to a Transfer and provides all the information required by the Landlord in order to consider such request, the Landlord shall notify the Tenant in writing (i) whether or not it elects to terminate this Lease or such part of it as is the subject of the Transfer and (ii) the date of such termination of this lease, if applicable. If the Landlord elects to terminate this Lease or such part of it as is the subject of the Transfer, the Tenant shall, within fifteen (15) days after receipt of the Landlord’s notice of its election to terminate, notify the Landlord whether it shall: (i) refrain from the Transfer; or (ii) accept the termination of this Lease or such part of it as is the subject of the Transfer. If the Tenant fails to deliver its notice within the fifteen (15) day period, this Lease, or such part of it as is the subject of the Transfer, shall be terminated upon the date for termination provided for in the Landlord’s notice. If the Transfer relates only to part of the Leased Premises, and this Lease is terminated as to that part, then the Tenant shall be required, at its sole cost and expense and subject to the terms of Section 12.02, to demise the Leased Premises to permit such termination to occur. If the Tenant advises the Landlord that it intends to refrain from the Transfer, then the Landlord’s election to terminate this Lease, or such part of it as is the subject of the Transfer, will have no effect.



### 14.03 Consent Required

- (a) The Landlord shall not be considered to be unreasonably withholding its consent, and may, whether or not it would otherwise be considered unreasonable, refuse to give its consent, if its reason or reasons for doing so is or are based upon all or any of the following factors:
  - (i) any factor which a court of law would consider to be reasonable;
  - (ii) the Tenant is in default under this Lease, whether or not an Event of Default has occurred;
  - (iii) the proposed Transfer does or could result in violation or breach of any covenants or restrictions affecting the Lands;
  - (iv) the Transferee does not have a good credit rating, is not of substantial means, is not capable of financing its acquisition of the Tenant's business and this Lease on terms and conditions at least as favourable as those originally obtained by the Tenant or has a history of unsuccessful business operations in the business conducted on the Leased Premises;
  - (v) the Transferee previously has been bankrupt or insolvent or has defaulted under the terms of any lease for industrial, commercial or office premises whether leased from the Landlord or other parties; or
  - (vi) any Mortgagee, whose consent is required, refuses to consent to the Transfer for whatever reason.
- (b) Upon any Transfer, the Landlord may collect Rent from the Transferee and apply the net amount collected to the Rent required to be paid under this Lease, but no acceptance by the Landlord of any payments by a Transferee shall be construed as a waiver of any right of the Landlord, or the acceptance of the Transferee as tenant or a release of the Tenant from the performance of its obligations under this Lease. Any document effecting the Transfer of this Lease and every document consenting to the Transfer shall be prepared by the Landlord or its solicitors and the legal costs and other expenses in connection with such documents shall be paid to the Landlord by the Tenant upon demand, as Additional Rent, in addition to the administration fee described in Section 14.01.
- (c) Any Transfer shall be subject to the following conditions:
  - (i) the Transferee and the Tenant shall promptly execute an agreement agreeing with the Landlord whereby the Transferee shall be bound by all the Tenant's obligations under this Lease as if the Transferee had originally executed this Lease as tenant and the Tenant shall agree to remain jointly and severally liable with the Transferee on this Lease and any renewals or extensions thereof and will not be released from any obligations under this Lease as amended from time to time;

- (ii) if the Transferee agrees to pay the Tenant or any Person any amount in excess of the Rent payable under this Lease or provides any other benefit in each case in consideration for the Transfer, the Tenant shall pay such excess amount or an amount equal to such benefit to the Landlord at the same time as the Rent is due and payable hereunder; and
- (iii) the Tenant shall pay for all of the Landlord's reasonable legal costs incurred to approve and complete all agreements necessitated by the Transfer.

#### **14.04 No Advertising of the Leased Premises**

The Tenant shall not advertise the whole or any part of the Leased Premises or this Lease for the purpose of a Transfer and will not permit any broker or other Person to do so on its behalf.

#### **14.05 Corporate Ownership**

- (a) If the Tenant is a corporation, any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription from time to time of all or any part of the corporate shares of the Tenant, or of any holding body corporate or subsidiary body corporate of the Tenant, or any corporation which is an affiliated body corporate of or is associated with the Tenant (as those terms are defined in the *Canada Business Corporations Act*, as amended, which results in any change in the present effective voting control of the Tenant by the Person holding that voting control at the date of execution of this Lease (or at the date of a Transfer to a corporation) shall be considered to be a Transfer to which Section 14.01 of this Lease apply. The Tenant shall make all corporate books and records of the Tenant available to the Landlord for inspection at all reasonable times.
- (b) Section 14.05(a) does not apply to the Tenant as long as: (i) the Tenant is a public corporation whose shares are traded and listed on any recognized stock exchange in Canada or the United States; or (ii) the Tenant is a private corporation and is controlled by a public corporation described in item (i).
- (c) The Tenant represents and warrants to and in favour of the Landlord that it has provided to the Landlord a certificate of an officer of the Tenant showing the current ownership and effective voting control of the Tenant as at the date hereof.

#### **14.06 Assignment or Transfer by the Landlord**

If the Landlord sells, leases or otherwise disposes of the Leased Premises, or if it assigns this Lease or any interest of the Landlord in it, then, to the extent that the purchaser, transferee or assignee assumes the obligation of the Landlord under this Lease, the Landlord shall, without further agreement, be released from all liability with respect to the Landlord's obligations under this Lease. In addition, upon the Landlord transferring any outstanding Letter of Credit to the purchaser, transferee or assignee, the Landlord shall be released from all liability to the Tenant in connection therewith.

## **ARTICLE XV ACCESS**

### **15.01 Right to Show the Leased Premises**

The Landlord and its agents have the right to enter the Leased Premises at all times to show them to prospective tenants.

### **15.02 Emergencies**

If the Tenant is not personally present to permit an entry into the Leased Premises at any time when for any reason an entry is necessary or permitted, the Landlord or its agents may forcibly enter them without liability and without affecting this Lease.

### **15.03 Access Not Re-entry**

Any entry by the Landlord on the Leased Premises in accordance with the provisions of this Lease shall not be considered a re-entry or a breach of covenant for quiet enjoyment.

### **15.04 Roof Rights**

- (a) The Landlord may at any time, and from time to time, prior to or during the Term, grant a licence (a “**Roof licence**”) to third parties (individually a “**Roof Licensee**”) for the purpose of installing, operating and maintaining equipment (“**Roof-Top Equipment**”) on the roof of the Building, it being understood and agreed that the Roof-Top Equipment does not include any part of the HVAC System. Without limiting the rights which the Landlord may grant to the Roof Licensee, the Roof Licensee shall:
  - (i) be entitled to have such access to the Leased Premises at times agreed upon by the Tenant, the Tenant hereby agreeing to act reasonably in dealing with a Roof Licensee’s request for such access, as it may require in order to install, operate, maintain and repair the Roof-Top Equipment. For greater certainty, the foregoing right shall apply to the Roof Licensee’s employees, servants, agents, contractors and those Persons for whom the Roof Licensee is responsible in law (collectively, the “**Roof Licensee’s Employees**”);
  - (ii) be entitled to:
    - (1) sell or otherwise deal with any good or service generated or provided by the Roof-Top Equipment in such manner as a Roof Licensee may determine; and
    - (2) install such equipment and wiring and cabling as may be required so that goods or services generated or provided by the Roof-Top Equipment can be distributed off-site of the Property; and

- (iii) be under no obligation to sell or otherwise make available to the Tenant any good or service generated or provided by the Roof-Top Equipment.

The Tenant shall not interfere with the exercise by the Roof Licensee of any rights granted to it by the Landlord.

- (b) If the Landlord grants a Licence to a Roof Licensee, then upon the commencement of the installation of the Roof-Top Equipment on the roof of the Building:
  - (i) the Tenant will have no further maintenance, repair or replacement obligations with respect to any damage to the Leased Premises caused by the Roof Licensee or the Roof Licensee's Employees; and
  - (ii) the Landlord shall thereafter be responsible, at its sole cost, for repairing all damage:
    - (1) caused to the roof (including, without limitation, the roof membrane) by the Roof-Top Equipment, including, without limitation, repairing all leaks in the roof caused by the Roof-Top Equipment; and
    - (2) to the Leased Premises caused by the Roof Licensee or the Roof Licensee's Employees, the Landlord and its contractors being entitled to have such access to the Leased Premises as may be required in order to carry out repair of any such damage.
- (c) except as set out in Section 15.04(b)(ii), the Landlord shall have no liability whatsoever for and the Tenant hereby releases the Landlord from all Claims arising out of damages, injuries (including, without limitation, bodily injuries) or losses (including without limitation, loss of life) caused or contributed to by the Roof-Top Equipment, the Roof Licensee or the Roof Licensee's Employees; and
- (d) if the Roof-Top Equipment is subsequently removed from the roof of the Building, the Landlord will (at its sole cost) repair all damage to the roof of the Building caused by the installation and removal of the Roof-Top Equipment and thereafter the provisions of Section 15.04(b) shall cease to have effect.

#### **15.05 Right to Install Solar Panels**

The Landlord shall be entitled to have such access to the Leased Premises at times agreed upon by the Tenant, the Tenant hereby agreeing to act reasonably in dealing with the Landlord's request for such access, as it may require in order to install, operate, maintain and repair solar panels on the roof of the Building. The Landlord will not disturb the operation of the Tenant's business any more than is reasonably necessary in the circumstances while carrying on such work.

**ARTICLE XVI**  
**STATUS STATEMENT, ATTORNMENT AND SUBORDINATION**

**16.01 Status Statement**

Within ten (10) days after a written request by the Landlord, the Tenant shall deliver, in a form supplied by the Landlord, a status statement or certificate to any Mortgagee or purchaser of the Leased Premises, or to the Landlord, stating the following:

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements) or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the Commencement Date;
- (c) the date to which Rent has been paid under this Lease;
- (d) whether or not there is any existing default by the Tenant in the payment of any Rent or other monies due and owing under this Lease, and whether or not there is any existing or alleged default by either party under this Lease with respect to which a notice of default has been served and if there is any such default, specifying the nature and extent of it;
- (e) whether there are any set-offs, defences or counter claims against enforcement of the obligations to be performed by the Tenant under this Lease; and
- (f) with reasonable particularity, details respecting the Tenant's financial standing and corporate organization.

**16.02 Subordination and Attornment**

The Tenant's rights under this Lease are subordinate to any Mortgages registered on title to the Lands, or any part thereof, from time to time. Upon request, the Tenant shall subordinate this Lease and all of its rights under it, in the form the Landlord requires, to any such Mortgage, and if requested, the Tenant shall attorn to the Mortgagee. The Tenant shall, if possession is taken under, or any proceedings are brought for the foreclosure of, or the power of sale is exercised under any Mortgage granted by the Landlord or otherwise in existence against the Leased Premises, attorn to the Mortgagee, and recognize the Mortgagee, as the Landlord under this Lease.

**16.03 Financial Information**

- (a) The Tenant shall, upon request, provide the Landlord with such information as to the financial standing and corporate organization of the Tenant as the Landlord or the Mortgagee requires. Failure of the Tenant to comply with the Landlord's request shall be a default under this Lease.

- (b) Without limiting the generality of the foregoing, the Tenant shall provide the Landlord with its most recent audited annual financial statements immediately upon request and in any event within one hundred and twenty (120) days of the end of each fiscal year of the Tenant.
- (c) The Tenant agrees to provide to the Landlord prompt notice of any impending financial difficulties that could lead to a secured creditor exercising, or providing notice of an intention to exercise, its remedies, including a notice under Section 244 of the *Bankruptcy and Insolvency Act* (Canada).

## **ARTICLE XVII**

### **DEFAULT**

#### **17.01 Event of Default**

An “**Event of Default**” shall be considered to have occurred when any one or more of the following happens:

- (a) the Tenant fails to pay any Rent when it is due and such failure continues for five (5) days after notice from the Landlord to the Tenant of such failure;
- (b) the Tenant fails to observe or perform any other of the terms, covenants, conditions or agreements contained in this Lease and such failure continues for ten (10) days after notice from the Landlord to the Tenant specifying the failure (except as set out in paragraphs (c)–(n), both inclusive, below where the Landlord shall have no obligation to provide such notice to the Tenant);
- (c) the Term or any of the goods, chattels or fixtures of the Tenant on the Leased Premises are seized or taken in execution or attached by any creditor;
- (d) a writ of execution or sequestration is issued against the goods, chattels or fixtures of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in a Transfer approved by the Landlord;
- (f) the Tenant sells or disposes of the goods, chattels or fixtures or removes them or any of them from the Leased Premises without complying with Section 12.07;
- (g) the Tenant abandons or attempts to abandon the Leased Premises or the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord;
- (h) the Leased Premises are used by any Person other than those Persons entitled to use them under this Lease;
- (i) the Tenant makes an assignment for the benefit of creditors or commits any act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada) or any

successor of it, or becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors;

- (j) an order is made for the winding up or liquidation of the Tenant, or the Tenant voluntarily commences winding-up procedures for liquidation;
- (k) an order or appointment is made for a receiver or a receiver and manager of all of the assets or undertaking of the Tenant;
- (l) any insurance policy covering any part of the Leased Premises is, or is threatened to be, cancelled or adversely changed or the premium cost is, or may be, significantly increased as a result of any act or omission by the Tenant or any person for whom the Tenant is responsible in law;
- (m) the Tenant's Licence is revoked, suspended or terminated; or
- (n) any default or event of default occurs under any lease or agreement to lease relating to other properties owned by the Landlord, leased to or occupied by the Tenant or any Person related to the Tenant.

## **17.02 Rights of the Landlord**

Upon the occurrence of any Event of Default the following provisions apply:

- (a) The Landlord may terminate this Lease by notice to the Tenant, or re-enter the Leased Premises and repossess them and, in either case, enjoy them as of its former estate and the Landlord may remove all Persons and property from the Leased Premises and the property may be sold or disposed of by the Landlord as it considers advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being guilty of trespass or being liable for any loss or damage which may be occasioned thereby.
- (b) If the Landlord elects to re-enter the Leased Premises as provided in this Section, or if it takes 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 those alterations and repairs which are necessary in order to re-let the Leased Premises or any part of them for a term (which may be for a term extending beyond the Term) and at a rent and upon those other terms, covenants and conditions which the Landlord, in its discretion, considers advisable. Upon each reletting, the rent received by the Landlord from the reletting shall be applied first to the payment of any indebtedness other than Rent due under this Lease from the Tenant to the Landlord; second to the payment of any costs and expenses of the reletting including brokerage fees and solicitors' fees and the costs of the alterations and repairs; third to the payment of Rent due and unpaid under this Lease; and the residue, if any, shall be held by the Landlord and applied towards payment of future Rent as it becomes due under this Lease. If the rent received from the reletting during any month is less than the Rent to be

paid during that month by the Tenant under this Lease, the Tenant will pay the deficiency, which shall be calculated and paid monthly in advance on or before the first day of each month. No re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant. Despite any reletting without termination, the Landlord may at any time afterwards elect to terminate this Lease for the previous breach. If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of the breach including, without limitation, the costs of recovering the Leased Premises, solicitors' fees (on a substantial indemnity basis) and the worth, at the time of the termination, of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid under this Lease for the remainder of the Term over the then reasonable rental value of the Leased Premises for the remainder of the Term.

- (c) The Landlord may remedy, or attempt to remedy, the default of the Tenant and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein or thereon, in which case all the Landlord's costs and expenses, together with an administration fee of fifteen percent (15%) of such costs and expenses, shall be payable on demand by the Tenant as Additional Rent. The Landlord will not be liable for any loss or damage resulting from any action or entry by the Landlord under this Subsection 17.02(c) and will not be considered to have breached any covenant for quiet enjoyment.
- (d) The Landlord may recover from the Tenant the full amount of the current month's instalment of Rent together with the next three (3) months' instalments of Rent, all of which shall be deemed to be accruing on a day-to-day basis, and shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for such accelerated Rent together with any other Rent arrears.

### **17.03 Expenses**

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms, covenants or conditions contained in this Lease on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all the expenses incurred in connection with it, including solicitor's fees (on a substantial indemnity basis), unless a court otherwise awards.

### **17.04 Waiver of Exemption from Distress**

Despite anything to the contrary contained in this Lease or the provisions of applicable legislation, none of the goods and chattels of the Tenant on the Leased Premises at any time and from time to time during the Term, or any extension or renewal thereof, shall be exempt from levy by distress for Rent in arrears and the Tenant hereby waives any rights it has or might otherwise have under any such applicable legislation in that regard. If any claim is made for such an exemption by the



Tenant, or if distress is made by the Landlord, this Section may be pleaded as an estoppel against the Tenant in any action brought to test the right of the levying upon any of those goods which are named as exempted in any sections of any applicable legislation.

### **17.05 Remedies Generally**

The exercise by the Landlord of any particular remedy does not preclude the Landlord from exercising any other remedy in respect of the occurrence of an Event of Default. No remedy shall be exclusive or dependant upon any other remedy, and the Landlord may from time to time exercise one or more of its remedies generally or in combination, those remedies being cumulative and not alternative.

## **ARTICLE XVIII MISCELLANEOUS**

### **18.01 Rules and Regulations**

The Rules and Regulations set out in Schedule "C" attached hereto form part of this Lease and the Tenant shall comply with and observe such Rules and Regulations throughout the Term. The Tenant's failure to comply with and observe the Rules and Regulations shall be a default under this Lease in the same manner as if the Rules and Regulations were set out as covenants in this Lease. The Landlord may from time to time establish new Rules and Regulations or amend, supplement or terminate the existing Rules and Regulations. Notice of the Rules and Regulations and any amendments, supplements or termination thereof, shall be given to the Tenant and the Tenant shall comply with and observe same from the date upon which it is so notified. The Rules and Regulations shall not conflict with or contradict the other provisions of this Lease.

### **18.02 Overholding**

If the Tenant remains in possession of the Leased Premises after the end of the Term, or any renewal or extension thereof, without having executed and delivered a new lease, it shall be considered to be occupying the Leased Premises as a tenant from month-to-month on the same terms and conditions as are set out in this Lease, except that it shall be liable for payment of Rent at the rate equal to 150% of the Base Rent and Percentage Rate which it was responsible for paying during the last month of the Term, or any renewal or extension thereof, together with Additional Rent as set out in this Lease. In addition, the Landlord may exercise all of its rights and remedies under this Lease and at law to remove the Tenant from the Leased Premises.

### **18.03 Notices**

Any notice, demand, request, consent or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by registered mail postage prepaid and shall be addressed: (a) if to the Landlord at the address set out in Section 1.01(a) or to such other Person or at such other address as the Landlord designates by written notice; (b) if to the Tenant, at the address set out in Section 1.01(b) or at such other address as the Tenant designates by written notice. If there is more than one Tenant, any notice under this Lease may be given by or to any one of them and will have the same effect as if given by or to all of them. Any notice, demand, request, consent or other instrument shall be conclusively deemed to have been given or made on

the day upon which the notice, demand, request, consent or other instrument is delivered, or, if mailed, then seventy-two (72) hours following the date of mailing and the time period referred to in the notice begins to run from the time of delivery or seventy-two (72) hours following the date of mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving the notice and upon the giving of that notice, the address specified in it shall be considered to be the address of the party for the giving of notices under this Lease. If the postal service is interrupted or is substantially delayed, or is threatened to be interrupted, any notice, demand, request, consent or other instrument will only be delivered in person.

#### **18.04 Registration**

The Tenant will not register this Lease or any notice thereof on title to the Lands without the prior written consent of the Landlord and the Landlord's approval of the form and content of such registration.

#### **18.05 Quiet Enjoyment**

Provided the Tenant pays the Rent and other sums provided for under this Lease, and observes and performs all of the terms, covenants, and conditions on its part to be observed and performed, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the Term without hindrance or interruption by the Landlord or any other Person lawfully claiming by, through or under the Landlord subject, however, to the terms, covenants and conditions of this Lease.

#### **18.06 Landlord's Co-Operation and Access**

The Landlord will make commercially reasonable efforts to assist the Tenant with any reasonable request for co-operation in increasing the revenue to be generated from the Leased Premises, provided that such requests do not result in any interference with the Landlord's operations. The Landlord shall co-operate in order to allow vehicular traffic including cars, trucks and motor coaches, free and open access to the duty free shop operated at the Leased Premises.

#### **18.07 Regulatory Changes**

In the event an unanticipated introduction of or a change in any Applicable Laws causes a material adverse effect on the business operations of the Tenant at the Leased Premises, the Landlord agrees to consult with the Tenant to discuss the impact of such introduction of or change in Applicable Laws to the Lease.

#### **18.08 Unavoidable Delay**

Notwithstanding anything to the contrary contained in this Lease, if any party hereto is *bona fide* delayed or hindered in or prevented from performance of any term, covenant or act required hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within an appropriate time period after the expiration of the period of such delay. However, the provisions of this Section 18.06 do not operate to excuse the Tenant from the prompt payment of Rent and any other payments required by this Lease.

**[END OF PAGE]**

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first above written.

**BUFFALO AND FORT ERIE PUBLIC  
BRIDGE AUTHORITY**

Per \_\_\_\_\_  
Name:  
Title:

Per \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Compact  
**PEACE BRIDGE DUTY FREE INC.**

Per \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF THE LANDS**

PT LT 229-233 PL 519, PT LT 166-180 PL 519, PT DOUGLAS ST PL 505, PT LANE PL 519 ABUTTING LT 229-233, PT MAIN ST PL 519 CLOSED BY R0691414, R0458946, BB98631 & R0114588, PT LT 221-223 PL 519, LT 224, 225, 226 PT LT 227 PL 519, PT FOURTH ST PL 519, PT WADSWORTH ST PL 505 CLOSED BY R0691414, LT 81-91 PL 519, LANE PL 519 ABUTTING LT 81 TO 88 & LT 88 TO 91 CLOSED BY BB57684, LT 116-126 PL 519, LANE PL 519 ABUTTING LT 119 TO 126 & 116 TO 119 CLOSED BY BB30073 & R0143454 LT 181-195 PL 519, LANE PL 519 ABUTTING LT 181-195 CLOSED BY R0691414, LT 55-85 PL 524, PT PRICELAND RD PL 524 CLOSED BY R0221079, LT 1-4 PL 505 E/S DOUGLAS ST, LT 5 PL 505 N/S GARRISON RD, PT LT 6 PL 505 N/S GARRISON RD, PT LT 7 PL 505 W/S WADSWORTH ST, LT 8-10 PL 505 W/S WADSWORTH ST, LT 1-4 PL 505 E/S WADSWORTH ST, PT LT 5-8 PL 505 W/S NORTH ST, PT QUEENSBURY RD PL 524 CLOSED BY R0691414 PT 1, 2, 5, 6, 7, 8, 9, 10, 11, 12 59R10134, PT 1, 2, 3, 12 59R8848, PT 1 59R9201, AS IN R0655269, R0660595, R0658993 EXCEPT PT 1 59R11984, S/T BB29712, S/T R0485157, S/T R0486298, S/T R0486299, S/T R0688285, S/T R0688286, S/T R0688288, T/W R0655269; FORT ERIE E.

Being all of PIN 64220-0290 (LT)

**SCHEDULE “B”  
LEASED PREMISES PLAN**

**SCHEDULE "C"**  
**RULES AND REGULATIONS**

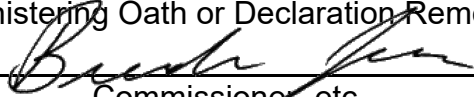
1. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Building without the approval of the Landlord and subject to any conditions imposed by the Landlord.
2. The washrooms and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting from misuse shall be borne by the Tenant by whom or whose agents, servants, or employees cause the damage. The Tenant shall not let the water run unless it is in actual use, and shall not deface or mark any part of the Building.
3. No one shall use the Building for sleeping apartments or residential purposes, or for the storage of personal effects or articles not required for business purposes.

**SCHEDULE “D”**  
**TENANT’S PROPOSAL**





THIS IS **EXHIBIT "E"** TO  
THE AFFIDAVIT OF by **BEN MILLS**  
**SWORN REMOTELY** by Ben Mills being located in the  
City of Ottawa, in the Province of Ontario, before me at  
the City of Toronto, in the Province of Ontario, on  
January 1<sup>st</sup>, 2023, in accordance with O.Reg 431/20,  
administering Oath or Declaration Remotely

  
\_\_\_\_\_  
Commissioner, etc.

July 18 Landlord

Clarity items

2.01 (ss) Tenant's Gross Sales - as an example, hotel reservations for Erie PA are a great marketing draw and currently we don't process but may be a possibility

✓ - add Travel Services - "Ticket Sales and Travel Services"

✓ (iii) to clarify so not to include non-sales or service items such as investment income, etc

- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises..."

4.03 Percentage Rent

- for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown

✓ - suggested - "the calculation of Accumulated YTD Percentage Rent exceeds the Accumulated YTD Monthly Base rent for the same period, then the Tenant will pay....." ✓

Art 5 Financial Information - the traffic counts are extremely important to our marketing and decision-making

✓ - add - continue to receive the daily bridge traffic counts

5.05 Audit

✓ - add "auditor chosen to be professional, independent and acting reasonably"

5.06 Confidentiality

✓ - add - "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential)"

yes  
OK Schedule "B" - is this for a map of the Leased Premises ?

OK  
No Schedule "D" - in addition to our proposal add a copy of the RFP ?

✓ Schedule "E" - would like deleted - will have a proper legal document sent to PBA asap and any future changes we acknowledge we will get consent and are obligated to report  
- concern is this shouldn't be part of the lease as others (outside parties) may seek or need access to the lease and this may become more public that we desire

Typo's - 8.02 - no "Art 7.5"  
14.01 - "13.02" s/b "14.02"

Explanations

2 6.04 (f) - *include normal wages + costs*  
*support documentation of costs*

2 15.04 Roof Rights - add subject to the Tenant's right of quiet enjoyment

2 15.05 - Solar Panels - yes agree but delete second sentence

*15.03*  
*what's the plan*

*- something not covered*  
*- percentage but not > Done*

Business disruption due to bridge closure -

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. \$4,000,000 / 365 days).

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

✓ - possible sharing the subsidizing of the rents payable by the Food Concessions

✓ - insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

18.07  
OK - in the event that during the Term and should it be necessary, that issues arise (something catastrophic) beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

THIS IS **EXHIBIT "F"** TO  
THE AFFIDAVIT OF **BEN MILLS**  
**SWORN REMOTELY** by Ben Mills being located in the  
City of Ottawa, in the Province of Ontario, before me at  
the City of Toronto, in the Province of Ontario, on  
January 1<sup>st</sup>, 2023, in accordance with O.Reg 431/20,  
administering Oath or Declaration Remotely

  
\_\_\_\_\_  
Commissioner, etc.

**From:** [Jim Pearce](#)  
**To:** [Ben Mills](#)  
**Subject:** FW: PBDF Lease  
**Date:** July 19, 2016 11:53:16 AM  
**Attachments:** [Duty Free Shop Building Lease-EDC LAW-1389402-v18B.PDF](#)  
[Duty Free Shop Building Lease-EDC LAW-1389402-v18.pdf](#)  
**Importance:** High

---

---

From: Karen L. Costa [<mailto:klc@peacebridge.com>]  
Sent: Tuesday, July 19, 2016 11:47 AM  
To: JIM PEARCE;jimp9999@gmail.com  
Cc: Karen L. Costa;Ron Rienas  
Subject: PBDF Lease  
Importance: High

Hi Jim –

Please find attached a redlined (18B) copy and a clean copy of the Lease (18).

We reviewed the additional requests from yesterday and have accommodated the majority of your requests. There are a few, upon advice from counsel, that we will not consider.

· 15.04 – Roof Rights and quiet enjoyment. There is a quiet enjoyment clause in the lease. That is sufficient.

· Schedule D – it is not appropriate to include the actual RFP as an attachment to the lease. Your Proposal is included as a reference to the lease as the representations made in the Proposal were the basis for your group being selected as the successful Proponent. Including your Proposal as a Schedule to the lease provides assurance that the representations will be carried out.

· Business disruption due to bridge closure – the lease requires you to insure for the risk of business interruption (Section XI). Your broker should ensure you have the proper coverage for this risk. We will not include any rent abatement for an insurable risk.

You have also requested we have further discussions on the following topics:

1. Possible sharing the subsidizing of the rents payable by the food concessions – their gross sales are to be included in the calculation of Tenant Gross Sales as defined in Section 2.01 (ss)

2. Insurance clauses – we have agreed to have our insurance broker meet with you insurance broker so that they can help determine the proper insurance is carried. All insurance coverages will comply to the lease Section XI as it is currently written.

3. Lease discussion in the event of a catastrophic event – we reviewed the examples listed as catastrophic. We agree that changes in governmental regulations could materially impact the business and have added section 18.07 to the lease. All other events listed were are routine events at a border crossing.

Jim, we very much would like to get this wrapped up in the next few days so that the motion to approve the lease can be brought to our July board meeting. This will ensure that we are complying with the 30 day negotiation period as defined in the RFP. The 30 day period ends this week. In your proposal your group clearly indicated that you accepted the form of lease in the RFP as is with no changes. This fact was considered in the scoring of your proposal. The PBA has acted in good faith in considering your requests and has agreed to the vast majority of them. We consider our negotiations complete and the attached lease to be the final version.

I hope that your group can agree to execute the lease so that we can move forward for another 20 years.

Thanks!

Karen

Karen L. Costa, CPA

Finance Manager  
Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213

klc@peacebridge.com <<mailto:klc@peacebridge.com>> | T 905-994-3679 | T 716-884-8638 | F 905-871-9940 | F 716-884-2089

For up to the hour traffic conditions, visit [mobile.peacebridge.com](http://mobile.peacebridge.com) <<http://mobile.peacebridge.com>>

This communication is intended solely for the addressee(s) and contains information that is privileged, confidential, and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. If received in error, please notify us immediately by return e-mail.

**ROYAL BANK OF CANADA**

Applicant

and

Court File No. CV-21-00673084-00CL

**PEACE BRIDGE DUTY FREE INC.**

Respondent

Email address of recipient: See Service List

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF BEN MILLS**

**BLANEY MCMURTRY LLP**

Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto, ON, M5C 3G5

**David T. Ullmann** (LSO #42357I)

Tel: (416) 596-4289

Email: [dullmann@blaney.com](mailto:dullmann@blaney.com)

**John Wolf** (LSO #30165B)

Email: [jwolf@blaney.com](mailto:jwolf@blaney.com)

**Brendan Jones** (LSO #56821F)

Email: [bjones@blaney.com](mailto:bjones@blaney.com)

**Alexandra Teodorescu** (LSO #63889D)

Email: [ateodorescu@blaney.com](mailto:ateodorescu@blaney.com)

Lawyers for the Respondent