

JDE# 1026025 3060628

STANDARD LAND LEASE
CANADIAN NATIONAL RAILWAY COMPANY

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THIS LEASE made this 1st day of May, A.D. 2005.

B E T W E E N: **CANADIAN NATIONAL RAILWAY COMPANY,** a
corporation having its head office at 935, de La Gauchetière Street
West, 9th Floor, Montréal, Québec, H3B 2M9,

(hereinafter called "the Lessor")

A N D: **CORPORATION OF THE CITY OF BUFFALO,**
City Hall, Room 502, Buffalo, NY 14202

(hereinafter called "the Lessee")

1. PREMISES

In consideration of the rents, covenants, and conditions hereinafter reserved and contained, the Lessor does lease unto the Lessee that parcel of land of the Lessor located at Black Rock, Buffalo, in the State of New York, located on the Lessor's Stamford Subdivision at Mile 0.30 (hereinafter referred to as the "leased premises"), as shown on Schedule "A" attached hereto and forming part hereof, subject to the following terms, covenants and conditions. The leased premises is to include the road approaches on either side of the bridge and that portion of the Black Rock Swing Bridge which exists solely for the purpose of carrying vehicular traffic. All bridge abutments, handrailing, road grating and structural members, which are required solely for the purpose of carrying vehicular traffic, are to be considered as part of the leased premises.

2. TERM AND RENT

2.01 Term

TO HAVE AND TO HOLD the leased premises for a term of ninety-nine (99) years commencing on the 1st day of May, A.D. 2005, and to be fully complete and ended on the 30th day of April, A.D. 2105, unless sooner terminated by written notice as herein provided, hereinafter referred to as the "term".

2.02 Reserved

2.03 Rental Payment

The Lessee shall pay to the Lessor, without any deduction, set off, or abatement whatsoever, a one-time payment of \$10.00 for this lease.

2.04 Reserved

2.05 Reserved

2.06 Reserved

2.07 Reserved

3. **LESSOR'S COVENANTS**

The Lessor covenants with the Lessee that the Lessee paying the rent hereby reserved, and otherwise observing and performing its covenants and obligations as provided or reserved herein, shall (subject to the provisions of this Lease) quietly and peaceably hold and enjoy the leased premises and all other rights demised or granted hereunder, without any hindrance or interruption by the Lessor or any one claiming through or under the Lessor, provided Lessee's activities do not interfere with the operations or other structures of Lessor.

4. **LESSEE'S COVENANTS**

4.01 Condition of Leased Premises

It is understood and agreed that the leased premises are being leased to the Lessee "as is". The Lessee has satisfied itself as to the condition of the leased premises and their fitness for the use intended. The Lessee acknowledges that it has inspected the leased premises and conducted an independent investigation of current and past uses of such leased premises and that the Lessee has not relied on any representations by the Lessor concerning any condition of the leased premises, environmental or otherwise. The Lessor makes no representations or warranties whatsoever regarding the fitness of the leased premises for any particular use or regarding the presence or absence upon or under such leased premises or any surrounding or neighbouring lands of, or the leakage or likely leakage or emission from or onto the leased premises of, any toxic, hazardous, dangerous or potentially dangerous substance or condition.

4.02 Use

- (a) Subject to any rules, regulations or direction of the Lessor, at any time made or given, the leased premises shall be used and occupied by the Lessee, in a lawful manner, solely for the purpose of providing vehicular access to Squaw Island and maintaining the portion of the Black Rock Bridge that provides vehicular access as set forth herein.
- (b) The Lessee shall during the currency of the tenancy keep the leased premises in a clean and neat condition satisfactory to the Lessor and not, without the prior consent of the Lessor, incidental with the above permitted use, use the leased premises or allow the leased premises to be used, even on a temporary basis, for the storage of refuse, salvage, garbage, waste or other items which the Lessor may consider to be objectionable or a nuisance.

4.03 Compliance with Statutes

The Lessee shall comply with any and all applicable federal, provincial and municipal statutes, regulations, orders or by-laws now and hereinafter in force, affecting the leased premises, the goods and property placed or stored thereon, the business transacted

thereon and the use of the leased premises by the Lessee.

4.04 Reserved

4.05 Lessee to Repair

The Lessee shall, during the term, sufficiently repair and maintain and keep the leased premises and the improvements erected or to be erected thereon in good and substantial repair. In the event of the destruction thereof by any cause whatsoever, the Lessee shall immediately notify the Lessor in writing of such occurrence, and the Lessee shall at the option of the Lessor, acting reasonably, either immediately rebuild the same or terminate this Lease effective ninety (90) days after such destruction. In the event of such termination, the Lessee shall clear the leased premises and leave same in a neat, clean and level condition satisfactory to the Lessor, in accordance with the provisions of Section 4.07 and Section 4.12 hereof. The structure being leased must be maintained to support the design loading for the truck traffic using this bridge. The allowable load limit must be posted on both sides of the Premises and monitoring carried out to ensure these limits are being respected. All repair work must be approved by the Lessor prior to it being performed to verify its impact on the bridge structure which is supporting the structure being leased to the Lessee. The Lessor will continue to carry out periodic inspections of the leased portion of the bridge, and any deficiencies must be rectified by the Lessee.

4.06 Conformity of Construction

The Lessee shall not construct, erect or place, or cause to be constructed, erected or placed on the leased premises any improvements, including but not limited to any building, structure, and any other work of a physical character (hereinafter referred to as "improvements"), without the written consent of the Lessor and if required by the Lessor, the Lessee shall submit to the Lessor all plans and specifications for the improvements. The Lessee shall ensure that such improvements shall conform with all existing U.S. federal, state and municipal laws in force at the time of construction of such improvements.

The Lessee acknowledges that the Lessor will not authorize any structural changes which affect, in a negative way, the Lessor's bridge which is supporting the structure being leased to the Lessee.

4.07 Environmental Obligations

- (a) The Lessee shall immediately carry out all measures which the Lessor, reasonably, considers necessary to keep the leased premises free and clear of all environmental contaminants or residue (hereinafter referred to as "environmental contamination") resulting from or occurring during the Lessee's occupation or use of the leased premises, such condition to be confirmed (at the option of the Lessor and at the sole expense of the Lessee) by a post-termination environmental inspection/audit of the leased premises to be carried out by the Lessor. The Lessee shall be solely responsible for the cost of all work carried out to correct any environmental contamination which occurs on the leased premises, or which occurs on other lands as a result of the Lessee's occupation or use of the leased premises.

Notwithstanding the foregoing, in the event that the Lessor at any time during the Term suspects that a potential source of environmental contamination may be either present on the Leased Premises or at risk of escaping from or onto the Leased Premises to or from adjoining lands, the Lessor, notwithstanding the provisions of Section 3 hereof, shall have the right to enter upon the Leased Premises at all reasonable times and from time to time, following reasonable notice to the Lessee, in order to inspect the Leased Premises and conduct or require the Lessee to

conduct, at the Lessee's expense, such tests as may be required to verify the condition of the Leased Premises. The Lessee shall, at its expense, take any and all action as shall be required to prevent such environmental contamination from occurring or escaping from or onto the Leased Premises.

- (b) If the Lessee fails to correct any environmental contamination to the satisfaction of the Lessor and any public authority having jurisdiction, the Lessor may perform such work by its employees or agents. The Lessor may charge the Lessee from time to time for all the costs incurred by the Lessor in correcting such environmental contamination, plus fifteen percent (15%) for overhead, and the Lessee shall pay the Lessor's invoice or invoices for such costs within thirty (30) days of receipt of each invoice. In the event such remedial work is carried out by any public authority, the cost of such work shall be borne by the Lessee.
- (c) The Lessee shall comply with the provisions of any federal, provincial or municipal laws applicable to the leased premises with respect to maintaining a clean environment. If any public authority having jurisdiction with respect to environmental protection, or fire protection, requires the installation of equipment or apparatus on the leased premises to improve the environment or to improve fire protection facilities, then the Lessee shall promptly install such equipment or apparatus or take such measures as may be required by such public authority. The Lessee shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority.
- (d) Upon the termination of this Lease, the Lessee shall leave the leased premises in a clean and tidy condition free of any environmental contamination resulting from or occurring during the Lessee's occupation or use of the leased premises. If the Lessee has installed any facility on or under the leased premises, the Lessee shall remove such facility and contents by the date of termination of this Lease, unless the Lessor consents in writing to such facility remaining on the leased premises. The Lessee shall have the burden of proving that any environmental contamination has not resulted from or occurred during its occupation or use of the leased premises.
- (e) The responsibility of the Lessee to the Lessor with respect to the environmental obligations contained herein shall continue to be enforceable by the Lessor notwithstanding the termination of this Lease.

4.08 Snow and Ice Removal

The Lessee shall be responsible for the removal of snow and ice from the leased premises and any other areas which the Lessee has the privilege to use under this Lease, including shared roadways, sufficient for the Lessee's own purposes. In no event shall the Lessee plow or deposit (or cause or permit to be so plowed or deposited) snow and ice upon the adjacent lands and rights-of-way of the Lessor or adjacent municipal roadways, nor shall the Lessee in any way interfere with the Lessor's own snow removal operations.

4.09 Assignment

The Lessee shall not assign, transfer or sublet any part of the leased premises, without the prior written consent of the Lessor, such consent not to be unreasonably withheld. The Lessee shall furnish the Lessor with a duplicate original of the said assignment or agreement to sublease.

No assignment or sublease of this Lease shall be effective until the Lessee or the Lessee's Assignee shall have first paid the Lessor its reasonable costs in connection with such assignment or sublease.

4.10 Indemnification of Lessor

The Lessee will indemnify and save harmless the Lessor, its servants or agents from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in, upon or at the leased premises, or the occupancy or use by the Lessee of the leased premises or any part thereof; or occasioned wholly or in part by any act, omission, negligence or misconduct of the Lessee, its agents, contractors, employees, servants, licensees or concessionaires or any of them permitted by the Lessee to be on the leased premises.

4.11 Loss and Damage

The Lessee covenants with the Lessor that the Lessor, its servants or agents, shall not be liable for death or injury or for damage to property of the Lessee or of others located on the leased premises, nor for the loss of or damage to any property of the Lessee or of others by theft or otherwise, from any cause whatsoever, it being expressly agreed that this Section 4.11 excludes damages, loss or injury resulting from the negligence of the Lessor, its servants or agents.

4.12 Surrender of Premises

The Lessee shall, prior to the expiration or sooner determination of the term, demolish and remove from the leased premises all Lessee's improvements and fixtures, as well as any chattels located thereon, and fill and compact all excavations thereon with gravel or clean fill, and peaceably surrender and yield up to the Lessor the leased premises in a neat, clean and level condition free and clear of all waste materials, erections and things thereon not belonging to the Lessor, all to the reasonable satisfaction of the Lessor. If the Lessee shall not so remove such buildings, improvements, fixtures and chattels, the Lessor, at its option and in its sole discretion, may:

- (a) enforce such removal; or
- (b) as agent of the Lessee, carry out such work and the Lessee shall pay to the Lessor all costs and expenses incurred in so doing, and the Lessor shall be entitled to recover from the Lessee the costs thereof together with a fee for supervision of carrying out such work in an amount equal to fifteen percent (15%) of the costs of so doing; or
- (c) allow same to remain on the leased premises and upon Notice of Declaration of Ownership by the Lessor, such buildings, improvements, fixtures and chattels shall become the sole property of the Lessor without any right to the Lessee to have compensation therefor.

The Lessee's obligation to observe or perform this covenant shall survive the expiration or the termination of this Lease.

Until such time as the leased premises are cleared to the satisfaction of the Lessor or Notice of Declaration of Ownership has been given pursuant to paragraph 4.12(c) above, the Lessor shall be entitled to claim as liquidated damages (and not as a penalty) an amount equivalent to the rents, taxes and any other monies payable hereunder.

4.13 Insurance

Lessee is self-insured for all obligations and liabilities that may arise pursuant to this lease.

5. DEFAULT

5.01 Right to Re-enter

If the Lessee fails to perform any of the terms, conditions or covenants of this Lease to be observed or performed by the Lessee, or if re-entry is permitted under any other terms of this Lease, then the Lessor, in addition to any other right or remedy it may have, will have the right of immediate re-entry and may remove all persons and property from the leased premises and the property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of the Lessee, all without service of notice or resort to legal process and without being deemed guilty of trespass or conversion, or becoming liable for loss or damage occasioned thereby.

5.02 Bankruptcy of Lessee

If the term of the Lease or any of the goods and chattels or improvements of the Lessee on the leased premises at any time during the term are seized or taken in execution or attachment by a creditor of the Lessee, or if the Lessee makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of an Act now or hereafter in force for bankrupt or insolvent debtors, or if an order is made for the winding-up of the Lessee, or if the Lessee abandons or vacates or attempts to abandon or vacate the leased premises or sells or disposes of goods or chattels, or the improvements, if any, of the Lessee, or removes them or any of them from the leased premises so that there would not in the event of abandonment, vacating, sale or disposal, be sufficient assets on the leased premises subject to distress to satisfy all rentals due or accruing due hereunder, then and in every such case, in addition to the remedies herein provided, the balance of the rental due over the remaining term of the Lease ("the accelerated rent") shall immediately become due and payable and the Lessor may re-enter and take possession of the leased premises as though the Lessee or the servants of the Lessee or any other occupant of the leased premises were holding over after the expiration of the term of the Lease, and the Lease, at the option of the Lessor, will forthwith become forfeited and determined. In every one of the cases above mentioned the accelerated rent will be recoverable by the Lessor in the same manner as the rents hereby reserved and as if rents were in arrears and the option will be deemed to have been exercised if the Lessor or its agents give notice to that effect to the Lessee.

6. MISCELLANEOUS

6.01 Right of Entry and Licenses

- (a) The Lessor, its servants or agents, may at all times enter upon the leased premises, or enter any building or improvement situated thereon for the purpose of viewing the state of repair, conditions and use of the leased premises, or to perform any work or repair thereon, or for purposes of access across the canal.
- (b) It is understood that all or a portion of the leased premises is subject to the existence of licenses or agreements for utilities, telecommunications or licenses of a similar nature. The Lessor reserves the right to grant to others in the future such similar licenses or agreements. The Lessee agrees to allow any and all authorized personnel to enter upon the leased premises for the purpose of constructing, maintaining and repairing such power, telephone, telecommunications lines, in accordance with such agreements. Any relocation or alteration of such facilities by the Lessee would be at the sole cost of the Lessee.

6.02 Railway Operations

- (a) The Lessee covenants with the Lessor not to obstruct or interfere with the operation, maintenance and use of any railway track or with any works of the Lessor in the vicinity of the leased premises. In particular, and without restricting the generality of the foregoing, the Lessee will observe all applicable legislative or regulatory requirements covering vertical clearance from base of rail and horizontal clearance from gauge side of nearest rail.
- (b) The leased premises may be subject to inconveniences resulting from railway operations in close proximity thereto, particularly resulting from noise, vibrations or fumes. The Lessee will hold the Lessor harmless of any claims of whatsoever nature consequent to any such inconveniences and hereby waives any claims he may have resulting therefrom, including for any constraints in peaceful enjoyment.
- (c) In no event shall the Lessor be liable for damage by fire arising directly or indirectly from sparks from locomotives or other railway equipment of the Lessor, whether caused by the negligence of the Lessor, its servants or agents, or otherwise, all such risks being assumed by the Lessee.

6.03 Fencing

If required by the Lessor at its sole discretion, the Lessee shall, at its risk and expense, construct a fence of a quality satisfactory to the Lessor and in accordance with the Lessor's specifications and instructions, which shall be provided to the Lessee in writing, to separate the leased premises, or a portion thereof, from the Lessor's adjacent property.

6.04 Reserved

6.05 Non-Registration of Lease

The Lessee covenants and agrees with the Lessor that, except where the Lessor's consent has been obtained, it will not register or cause to be registered or permit to be registered this Lease or any Notice thereof at any time in any Registry Office or Land Titles Office or file or register, or permit or cause to be filed or registered any caveat or encumbrance against the title to the leased premises, and in the event that this Lease or a caveat is at any time so filed or registered, the Lessee will, upon the request of the Lessor, forthwith withdraw, discharge and release or cause to be forthwith withdrawn and released such registration at its own expense.

6.06 Net Lease

It is agreed by the Lessor and the Lessee that the rentals reserved to the Lessor under this Lease shall be net to the Lessor, and shall be clear of all taxes, rates, duties, assessment, costs, charges, utilities charges and insurance premiums arising from or relating to the leased premises, and that the Lessee will pay all of the foregoing, together with all expenses of every nature and kind whatsoever relating to the leased premises and the Lessee covenants with the Lessor accordingly, provided that nothing of the foregoing contained shall require the Lessee to pay income taxes and corporation taxes which are the responsibility of the Lessor.

6.07 Prohibited Goods

The Lessee shall not use, handle, keep or store, or permit to be used, handled, kept or stored in or upon the leased premises, without the written consent of the Lessor, any goods of an explosive, dangerous, toxic or inflammable nature or character, or goods which may, for any reason, be deemed objectionable by the Lessor, nor shall the leased premises be

used in any way which the Lessor considers objectionable.

6.08 Roadways

It is understood and agreed that portions of the leased premises may consist of roadways or rights-of-way used by the Lessor or third parties for the purpose of gaining access to adjoining land, and the Lessee agrees that such roadways or rights-of-way may be used for such purpose, jointly with the Lessee. The Lessor hereby confers the right and authority and imposes the obligation upon the Lessee to insure that such usage by the Lessee is reasonable at all times, and that the Lessee shall not use such roadways or rights-of-way for storage or parking but that same shall be kept clear at all times for vehicular traffic. The Lessee shall be responsible for the maintenance, including snow removal, and liability related to the use of such roadways.

6.09 Reserved

6.10 Drainage

- (a) The Lessee shall construct and thereafter maintain, repair or reconstruct upon the leased premises, or upon such of the Lessor's lands as the Lessor shall direct, such culverts, ditches, catch-basins, drains, or other works as the Lessor shall, in its sole discretion, deem appropriate, necessary or adequate to properly and without damage thereto drain those lands of the Lessor adjacent to or in the vicinity of the leased premises. Without in any way limiting the generality of the foregoing, the Lessee shall so use the leased premises such that water shall not be accumulated or stored thereon, and that the drainage works shall be sufficient to adequately drain the leased premises and those lands of the Lessor adjacent to or in the vicinity of the leased premises.
- (b) The Lessee shall not in the use of the leased premises obstruct any existing water course, or impair in any way the usefulness of any existing ditches, culverts or drainage works now or hereafter upon those lands of the Lessor adjacent to or in the vicinity of the leased premises.
- (c) It is a condition of this Lease that all drainage works on or about the leased premises shall be constructed and thereafter maintained to the satisfaction of the Lessor's Engineer and that before any work of constructing or re-constructing such drainage works the approval in writing of the Lessor's Engineer as to the type and adequacy of the drainage works contemplated shall have first been obtained.

6.11 Time

Time shall be of the essence of this Lease.

6.12 Applicable Law

This Lease shall be construed pursuant to the laws of the Province or state in which the leased premises are situated, as well as any federal legislation that may be applicable.

6.13 Successors and Assigns

This Lease extends to and binds the respective heirs, executors, administrators, successors and assigns of the parties hereto as the case may be.

6.14 Waiver

The waiver by the Lessor of a breach of a term, covenant or condition herein contained will not be deemed to be a waiver of the term, covenant or condition of a subsequent breach of the same or another term, covenant or condition herein contained. The subsequent acceptance of rent by the Lessor will not be deemed to be a waiver of a preceding breach by the Lessee of a term, covenant or condition of this Lease, other than the failure of the Lessee to pay the particular rent accepted, regardless of the Lessor's knowledge of the preceding breach at the time of acceptance of the rent. No covenant, term or condition of this Lease will be deemed to have been waived by the Lessor unless the waiver is in writing signed by the Lessor.

6.15 Notices

- (a) Any notice to be given under this Lease shall be in writing and shall be validly given if delivered, transmitted by facsimile or mailed by prepaid certified mail to the parties as follows:

The Lessor:

CANADIAN NATIONAL RAILWAY COMPANY
1 Administration Road
Concord, Ontario
L4K 1B9
Fax No.: (905)760-5010

The Lessee:

THE CORPORATION OF THE CITY OF BUFFALO
City Hall, Room 502, Buffalo, NY 14202
Attention: Mr. Dan Kruez, City Engineer
Fax No.: (716) 851-5584

or to such other person or address as either party may designate by notice given in accordance with this Lease. Notice shall be deemed to have been initially given on the third (3rd) day following the mailing thereof, or in the case of delivery on the date of delivery or in the case of facsimile transmission on the first (1st) business day following the date it was sent.

- (b) Any communication relating to Force Majeure, or any matter of an emergency or operating nature, may be given by any reasonable means. If given verbally or by telephone, such communication shall be confirmed in writing or by electronic communication which can produce a written copy.

6.16 Interpretation

- (a) The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one lessee, and to corporations, associations, partnerships or individuals, males or females, in all cases will be assumed as though in each case fully expressed.
- (b) In this Lease "herein," "hereof," "hereby," "hereunder," "hereto," "hereinafter" and similar expressions refer to this Lease and not to any particular paragraph, clause or other portion thereof, unless there is something in the subject matter or context inconsistent therewith and the parties agree that all of the provisions of this Lease are to be construed as covenants and agreements as though words importing such covenants and agreements were used in each separate paragraph hereof, and that should any provision or provisions of this Lease be illegal or not enforceable it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said provision or provisions had never been included.

6.17 Representations

The Lessee hereby accepts the Lessor's title to the leased premises and the rights herein granted and agrees that nothing in this Lease expressed or implied shall operate or have effect as any warranty, guarantee, or covenant of title.

6.18 Entire Agreement

The leased premises are taken by the Lessee without any representation of any kind other than those contained in this Lease on the part of the Lessor or its agent. This Lease contains all of the terms, covenants, conditions and agreements between the parties hereto and any addition to or alteration of or changes in this Lease to be binding must be made in writing and signed by both parties.

The Lessee hereby accepts this Lease of the leased premises to be held by it as Lessee subject to the terms, covenants and conditions above set forth.

7. **SCHEDULES**

The provisions of the following Schedules attached hereto shall form part of this Lease as if the same were embodied herein: Schedule A - Description of Leased Premises (or descriptive plan)

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

SIGNED AND DELIVERED

In the presence of:

Witness

**CANADIAN NATIONAL RAILWAY
COMPANY**

Per: _____

Name:
Title:

Andris Baders
Manager, Real Estate &
Business Development

**SIGNED, SEALED AND
DELIVERED**

in the presence of:

Carole Beth
COMMISSIONER OF DEEDS
in and for the City of Buffalo, N. Y.
My Commission Expires Dec. 31, 2006

CORPORATION OF THE CITY OF BUFFALO

Per: _____

Name:
Title:

JOSEPH N. GIAMBRA
COMMISSIONER D.P.W.

(affix corporate seal)

Schedule 'A'

