

EXPLANATION OF CONSENT AGENDA ITEM E. 2. b.(4) March 22, 2017

ITEM:

Consideration of approving an Agreement Regarding Leases, consenting to leasehold mortgage refinancing and Assignment of Rents and Security Agreement between Ambassador Services Inc. and Branch Banking and Trust Company (BB&T) as well as approving Termination Agreement with existing lender (TD Bank). The documents have been reviewed and approved by General Counsel and Port Attorney. (Scott Shepard)

EXPLANATION:

Ambassador Services, Inc. is refinancing a loan in the amount of \$8,775,000.00 with BB&T Bank secured by a Leasehold mortgage. The Bank is requesting the Port Authority consent to the Assignment Regarding Leases and Rent and Security Agreement.

At closing the current loan between ASI and TD Bank will be terminated.

Staff Recommends Approval

Prepared by Scott Shepard

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Prepared by and Return to:
Donald A. Nohrr, Esq.
GrayRobinson, P.A.
1795 West NASA Blvd.
Melbourne, FL 32901

AGREEMENT REGARDING LEASES

This Agreement is executed as of March _____, 2017 by and among CANAVERAL PORT AUTHORITY (“Landlord”), whose address is 445 Challenger Road, Suite 301, Cape Canaveral, Florida, 32920; and BRANCH BANKING AND TRUST COMPANY (“Lender”), whose address is 158 N. Harbor City Blvd., Ste. 401, Melbourne, Florida 32934, Attn: Lori A. Baldwin; and AMBASSADOR SERVICES, INC. (“Tenant”), whose address is 9025 N. Atlantic Ave., Cape Canaveral, Florida 32920.

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement dated September 19, 2012 recorded at Official Records Book 6695, Page 2775, in the Public Records of Brevard County, Florida, as amended by that certain First Amendment to Lease Agreement dated March 20, 2015 recorded at Official Records Book 7326, Page 1967 in the Public Records of Brevard County, Florida (together, the “Lease”) covering the real property located in Brevard County, Florida more particularly described on Exhibit “A” attached hereto (the “Property”); and

WHEREAS, Landlord, at the request of Tenant and Lender is willing to provide this estoppel agreement as part of Lenders loan transaction with Tenant, which loan is secured, in part, by a lien granted by Tenant upon Tenant’s rights and interests in and under the Leases on the Property.

NOW, THEREFORE, for and in consideration of the premises, and for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereby represent, covenant and agree as follows:

1. Landlord consents to the execution and delivery by Tenant to Lender of the Leasehold Mortgage and Assignment of Rents and Security Agreement from Tenant to Lender in the amount of \$8,775,000.00 to be recorded in the public records of Brevard County, Florida (the “Mortgage”) covering Tenant’s leasehold interest in and to the Property. Landlord also consents to the execution and delivery by Tenant, and the filing and/or recording in the appropriate public records, of such additional documents and instruments as Lender may deem necessary or desirable to establish, perfect and maintain a lien upon and against Tenant’s leasehold interests, including, but not limited to, Uniform Commercial Code financing statements and such other documents, instruments and agreements as Lender may hereafter deem necessary or desirable in connection with the creation, grant, maintenance or enforcement of said lien, including, but not limited to, any such documents and instruments executed in connection with any renewal, extension and/or modification of such lien.

2. Both Landlord and Tenant represent that no default under the terms of the Lease by either party thereto has occurred and is continuing at this time, nor does there exist any condition or event which with notice, the passage of time, or both would constitute a default by either party thereunder.

3. In the event of a default by Tenant under the Lease, Landlord shall give written notice thereof to Lender at the address indicated above (or such other address as Lender may indicate by notice hereafter to Landlord in writing) and Lender shall have the right to cure such default or failure within thirty (30) days following Lender's receipt of such notice. Landlord shall not take any action with respect to such failure under the Lease, including, without limitation, any action intended to terminate, rescind or avoid the Lease or Tenant's tenancy or possession thereunder, for such period of thirty (30) days after Lender's receipt of such written notice; provided, however, that in the case of any nonmonetary default which cannot with diligence be cured within said 30-day period, if Lender shall proceed promptly to initiate measures to cure such failure and thereafter prosecute the curing of such failure with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity. Without limiting the foregoing, Landlord agrees that no event of default and no termination of the Lease in connection therewith shall be effective unless notice shall first have been given to Lender in accordance with the terms of this Agreement.

With respect to defaults by Tenant that are not capable of or subject to cure by Lender pursuant to the preceding paragraph, so long as Lender pays or causes to be paid any rent, taxes or other monetary obligations of Tenant due under the Lease as the same becomes due or are in arrears, and initiates steps to acquire Tenant's interest in the Leases by foreclosure or other appropriate means and prosecutes the same to completion with diligence and continuity (unless such action is stayed or enjoined), Landlord shall not terminate the Lease and the Lender shall be entitled to a sufficient time period (including any period during which the Lender's actions are stayed or enjoined) to complete its steps to acquire Tenant's interest in the Lease.

4. In the event Lender shall ever become the owner of the rights and interests of Tenant in and to the Property and Lease by reason of judicial foreclosure or other proceedings brought by Lender to enforce its rights under the Mortgage, or through any other means or manner in connection with the Loan, Lender shall be deemed to be Tenant's successor and assignee under the Lease and shall be entitled to all rights, benefits and privileges of the Tenant under the Lease; and Landlord and Lender shall be bound to each other under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any renewal or extension period thereof duly exercised as required by the Lease, all without the need to execute any further instruments on the part of Landlord, Tenant or Lender to make such succession and assignment effective and binding.

5. This Agreement and the Lease may not be withdrawn, amended or modified except by a written agreement executed by Landlord, Tenant and Lender.

Witness: *GENOVIA CORNEP*

Ambassador Services, Inc.
By: *Brian A. Hubert*
Brian A. Hubert, President

Witness: *Aranka Eller*

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 13 day of MARCH, 2017 by Brian A. Hubert, as President of Ambassador Services, Inc. [] who is personally known to me or [] who has produced in person as identification.



SUZANNE G. KHOURY
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF077370
Expires 7/21/2020

Suzanne G. Khoury
SUZANNE G. KHOURY (Print Name)
NOTARY PUBLIC, State of FLA
My Commission Expires:

07/21/2020

Branch Banking and Trust Company

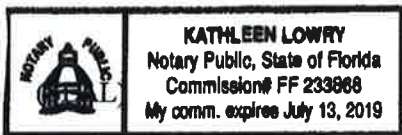
Witness: *Kathleen Lowry*

By: *Lori A. Baldwin*
Lori A. Baldwin, Vice President

Witness: *Gina Perry*

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 10 day of March, 2017 by Lori A. Baldwin, as Vice President of Branch Banking and Trust Company [] who is personally known to me or [] who has produced _____ as identification.



Kathleen Lowry
Kathleen Lowry (Print Name)
NOTARY PUBLIC, State of Florida
My Commission Expires:

Exhibit "A"

**PROPERTY DESCRIPTION
FOR
LEASE #306 - AMBASSADOR SERVICES, INC.**

**9025, 9035, 9037, and 9055 Pompano Street AND
9025, 9027, 9039, 9041, 9043, and 9045 Herring Street AND Old Tropicana Lease
Cape Canaveral, Florida**

Four parcels of land lying in Section 11, Township 24 South, Range 37 East, Brevard County, Florida, and being more particularly described as follows:

Parcel 1- 9025, 9035, 9037, and 9055 Pompano Street:

Commence at the Southwest corner of Section 11, said Township and Range; thence North 00°17'00" West, along the west line of said Section 11, a distance of 35.14 feet; thence North 89°53'00" East, a distance of 182.74 feet to the POINT OF BEGINNING; said point being at Station 231+15.02, Range 1501.21 in the Canaveral Harbor Grid System.

From said POINT OF BEGINNING, thence North 00°07'00" West, a distance of 726.21 feet to the south right-of-way of Pompano Street; thence North 89°53'00" East, a distance of 240.00 feet; thence South 00°07'00" East, a distance of 726.21 feet; thence South 89°53'00" West, a distance of 240.00 feet to the POINT OF BEGINNING.

Said parcel containing 4.00 acres (174,240 square feet) more or less and being subject to any easements and/or rights-of way of record.

Parcel 2 — 9025 and 9027 Herring Street:

Commence at the Southwest corner of Section 11, said Township and Range; thence North $00^{\circ}17'00''$ West, along the west line of said Section 11, a distance of 110.68 feet; thence North $89^{\circ}53'00''$ East, a distance of 492.72 feet to the POINT OF BEGINNING; said point being at Station 228+05.26, Range 1425.97 in the Canaveral Harbor Grid System.

From said POINT OF BEGINNING, thence North $00^{\circ}07'00''$ West, a distance of 410.00 feet; thence North $89^{\circ}53'00''$ East, a distance of 350.00 feet; thence South $00^{\circ}07'00''$ East, a distance of 410.00 feet; thence South $89^{\circ}53'00''$ West, a distance of 350.00 feet to the POINT OF BEGINNING.

Said parcel containing 3.29 acres (143,500 square feet) more or less and being subject to any easements and/or rights-of way of record.

Parcel 3 — 9039, 9041, 9043, and 9045 Herring Street:

Commence at the Southwest corner of Section 11, said Township and Range; thence North $00^{\circ}17'00''$ West, along the west line of said Section 11, a distance of 598.91 feet; thence North $89^{\circ}53'00''$ East, a distance of 535.91 feet to the POINT OF BEGINNING; said point being at Station 227+63.49, Range 937.74 in the Canaveral Harbor Grid System; said point being the southwest corner of Warehouses 2, 3, 4 and the tin warehouse.

From said POINT OF BEGINNING, thence with and along said warehouses the following four courses: North $00^{\circ}04'19''$ West, a distance of 381.76 feet; thence South $89^{\circ}52'40''$ East, a distance of 300.31 feet; thence South $00^{\circ}09'51''$ West, a distance of 381.64 feet; thence North $89^{\circ}54'02''$ West, a distance of 299.77 feet to the POINT OF BEGINNING.

Said parcel containing 2.63 acres (114,512 square feet) more or less and being subject to any easements and/or rights-of way of record.

Parcel 4 — Old Tropicana Lease:

Commence at the Southwest corner of Section 11, said Township and Range; thence North 00°17'00" West, along the west line of said Section 11, a distance of 208.29 feet; thence North 89°53'00" East, a distance of 890.56 feet to the POINT OF BEGINNING; said point being at Station 224+07.69, Range 1328.36 in the Canaveral Harbor Grid System.

From said POINT OF BEGINNING, thence North 00°07'00" West, a distance of 698.85 feet; thence North 89°53'00" East, a distance of 846.56 feet; thence South 09°23'20" West, parallel with the centerline of Herring Street, a distance of 725.96 feet to an intersection with an 8 foot chain link security fence; thence with and along said security fence the following seventeen courses: North 80°50'57" West, a distance of 13.90 feet; thence South 09°17'45" West, a distance of 34.24 feet; thence South 28°52'39" West, a distance of 8.13 feet; thence South 63°33'15" West, a distance of 41.51 feet; thence South 24°37'14" West, a distance of 25.64 feet; thence South 54°21'43" West, a distance of 30.70 feet; thence South 12°54'05" West, a distance of 28.90 feet; thence South 69°17'42" West, a distance of 56.36 feet; thence South 65°04'24" West, a distance of 33.32 feet; thence South 58°11'22" West, a distance of 19.76 feet; thence South 74°48'36" West, a distance of 55.29 feet; thence North 35°19'49" West, a distance of 17.93 feet; thence North 65°35'17" West, a distance of 78.99 feet; thence South 54°30'28" West, a distance of 76.98 feet; thence North 43°55'50" West, a distance of 32.19 feet; thence North 56°57'47" West, a distance of 36.63 feet; thence North 66°29'37" West, a distance of 23.21 feet to a point of intersection with the north side of a concrete sidewalk;

Thence North 76°51'58" West along said north line, a distance of 161.96 feet; thence North 00°36'28" West, a distance of 105.28 feet to a point 5.00 feet south of an existing concrete block reefer warehouse; thence South 89°23'34" West, parallel to and 5.00 feet south of said warehouse, a distance of 92.94 feet; thence North 00°07'00" West, a distance of 5.00 feet to the POINT OF BEGINNING.

Said parcel containing 14.77 acres (643,469 square feet) more or less and being subject to any easements and rights-of-way of record. Easements include, but are not limited to, the 25-foot wide easement along Christopher Columbus Drive (old A1A) being the East 25 feet of the parcel and the 35-foot wide easement for construction, operation, and maintenance of petroleum pipelines, described as follows:

Commence at the southwest corner of Section 11, Township 24 South, Range 37 East; thence Easterly along the South line of said Section 11 a distance of 1464.75 feet to the EASEMENT POINT OF BEGINNING. Thence North $32^{\circ}52'30''$ West, a distance of 636.00 feet; thence North $33^{\circ}27'16''$ West, a distance of 426.24 feet; thence South $00^{\circ}17'00''$ East, a distance of 63.99 feet; thence South $33^{\circ}27'16''$ East, a distance of 372.50 feet; thence South $32^{\circ}52'30''$ West, a distance of 740.96 feet; thence South $82^{\circ}24'20''$ East, a distance of 43.19 feet to the West right-of-way of Old Highway Al A; thence North $09^{\circ}16'00''$ East, along said Westerly right-of-way, a distance of 35.01 feet; thence North $82^{\circ}24'20''$ West, a distance of 28.06 feet; thence North $32^{\circ}52'30''$ West, a distance of 89.00 feet to the EASEMENT POINT OF BEGINNING.

TERMINATION AGREEMENT

**BETWEEN
CANAVERAL PORT AUTHORITY
AND
TD BANK, N.A.
AND
AMBASSADOR SERVICES, INC.**

THIS TERMINATION AGREEMENT (this "Agreement") made this ____ day of March, 2017 by and between the **CANAVERAL PORT AUTHORITY** ("Landlord"), **TD BANK, N.A.** ("Lender") , and **AMBASSADOR SERVICES INC.** ("Tenant").

WHEREAS, Landlord, Lender and Tenant entered into that certain Agreement Regarding Leases ("Agreement") dated December 7, 2012 as recorded in Official Records Book 6755, Page 2485 of the Public Records of Brevard County, Florida; and

WHEREAS, Landlord consented to Tenant obtaining a Leasehold Mortgage from Lender, which Leasehold Mortgage was recorded in Official Records Book 6755 at Page 1667, along with an Assignment of Leases and Rents recorded in Official Records Book 6755 at Page 1717, and a U.C.C.-1 Financing Statement recorded in Official Records Book 6755 at Page 1734, all in the Public Records of Brevard County, Florida; and

WHEREAS, Tenant is in the process of refinancing the Leasehold Mortgage with a new Lender **BRANCH BANKING & TRUST COMPANY** ("New Lender"); and

WHEREAS, as part of the refinancing Tenant's indebtedness to Lender will be paid in full, and the Leasehold Mortgage, Assignment of Rents, and U.C.C.-1 Financing filings will be satisfied, which satisfaction shall be placed upon the Public Records of Brevard County, Florida; and

WHEREAS, as part of the approval process by Landlord, the parties are entering into this Agreement to acknowledge and confirm the upcoming refinancing.

NOW, THEREFORE, Landlord, Lender, and Tenant agree as follows:

1. The above recitals are hereby incorporated and made a part of this Agreement.
2. Tenant as part of its refinancing with New Lender agrees that at the closing it shall pay off in full its indebtedness to Lender, and Lender in return for payment in full will satisfy the existing Leasehold Mortgage, Assignment of Rents, and U.C.C.-1 Financing filings and place such satisfaction on the Public Records of Brevard County, Florida.
3. Lender and Tenant are providing this Termination Agreement to Landlord as part of its request to Landlord to approve the refinancing of the existing indebtedness to Lender and consent to the placement of a new Leasehold Mortgage.

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

[SIGNATURE PAGES TO FOLLOW]

Signed, sealed and delivered in the presence of:

CANAVERAL PORT AUTHORITY

Witness: _____

By: _____
Thomas W. Weinberg, Chairman

Witness: _____

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____, as _____ of Canaveral Port Authority [] who is personally known to me or [] who has produced _____ as identification.

(SEAL)

(Print Name)
NOTARY PUBLIC, State of _____
My Commission Expires: _____


[Signature]
Witness: GENORIE LOMELI

Aranka Eller
Witness: Aranka Eller

Ambassador Services, Inc.
By: [Signature]
Brian A. Hubert, President

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 13 day of MARCH, 2017 by Brian A. Hubert, as President of Ambassador Services, Inc. [] who is personally known to me or [] who has produced in person as identification.


(SEAL) SUZANNE G. KHOURY
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF977370
Expires 7/21/2020

[Signature]
SUZANNE G. KHOURY (Print Name)
NOTARY PUBLIC, State of FLA
My Commission Expires: 07/21/2020

[Signature]
Witness: ALICE ESPOSITO

[Signature]
Witness: Carla Leonard

TD Bank

By: [Signature]
Name: FELIPE LOZANO
Title: VICE PRESIDENT

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 13th day of March, 2017 by Felipe Lozano as VP of TD Bank who is personally known to me who has produced _____ as identification.



[Signature]
Carla Leonard (Print Name)
NOTARY PUBLIC, State of Florida
My Commission Expires:
4/19/20