



City of  
**Peterborough**

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**To:** **Members of the General Committee**

**From:** **Richard Freymond**  
**Commissioner of Corporate and Legislative Services**

**Meeting Date:** **May 13, 2019**

**Subject:** **Report CLSOCS19-005**  
**Second Lease Amendment and Extension Agreement**  
**200 Jameson Drive**

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## **Purpose**

This report recommends that the City extend the term of a sublease by the City to General Motors Financial of Canada, Ltd. respecting the property known municipally as 200 Jameson Drive, Peterborough.

## **Recommendations**

That Council approve the recommendations outlined in Report CLSOCS19-005 dated May 13, 2019, of the Commissioner of Corporate and Legislative Services as follows:

- a) That the term of a sublease by The Corporation of the City of Peterborough to General Motors Financial of Canada, Ltd. respecting the property known municipally as 200 Jameson Drive, Peterborough be extended on the terms and conditions as outlined in Report CLSOCS19-005; and
- b) That the Mayor and Clerk be authorized to execute a lease amendment and extension agreement in a form acceptable to the City Solicitor.

## **Budget and Financial Implications**

The City leases the property known municipally as 200 Jameson Drive ("Property") from Jameson Portfolio Inc. for a 25-year term ending July 31, 2026 ("Head Lease").

General Motors Financial of Canada, Ltd. (formerly known as Americredit Financial Services of Canada Ltd., the “Subtenant”) subleases the Property from the City (“Sublease”).

Pursuant to the Head Lease, the City is obligated to pay “Rent” comprised of “Basic Rent” plus “Base Operating Costs”. The Head Lease is currently in its “Third Period” (August 1, 2016 to July 31, 2021) of its 25-year term. Basic Rent under the Head Lease for the Third Period has been set at \$13.47 per square foot but the City is only collecting from the Subtenant \$10.54 per square foot for Basic Rent plus Base Operating Costs. The Property’s “Rentable Area” is 89,404 square feet. Accordingly, until the expiry of the Sublease term on July 31, 2019, the annual shortfall to the City on account of Basic Rent is \$261,953.72: (89,404 square feet X (\$13.47 - \$10.54)). As this extension was anticipated, the 2019 Operating Budget included a provision of \$152,808 representing the impact in 2019.

During the proposed extended term of the Sublease, the Subtenant would pay to the City the full “Basic Rent” plus Base Operating Costs that the City is obliged to pay under the terms of the Head Lease thereby eliminating the annual shortfall to the City for the extended term of the Sublease.

## Background

The City is the tenant of the Property for the 25-year term ending July 31, 2026. The Subtenant subleases the Property from the City pursuant to the Sublease.

Appendix A is a copy of Report OCS10-002 that recommended that Council approve an extension of the term of the Sublease from August 1, 2011 to July 31, 2019. Council approved the recommendation on April 12, 2010. Report OCS10-002 provides the background respecting the Head Lease and the circumstances leading to Council’s approval of the extension of the term of the Sublease to July 31, 2019.

The Subtenant has requested a further extension of the Sublease on the following terms:

Term: Seven year extension from August 1, 2019 to July 30, 2026.

Rent: Rent under the extended term of the Sublease is to be equal to “Rent” under the Head Lease.

Early Termination: Subtenant may terminate the Sublease as at July 31, 2022 or July 31, 2024 provided the Subtenant provides the City with six (6) months’ prior written notice.

Indemnification: General Motors Financial Company, Inc. (formerly known as AmeriCredit Corp.) will also sign the amendment and extension agreement to indemnify the City respecting all non-payment of rent and non-observance by the Subtenant of any of the terms and conditions of the Sublease.

It is recommended that Council approve the extension of the Sublease for the following reasons:

- There are currently no alternative proposals to sublease the Property from the City.
- Unless the Sublease is extended, the City remains at risk for the entirety of its obligations under the Head Lease from August 1, 2019 to July 31, 2026.
- Under the proposed terms, for the period August 1, 2019 to at least the first potential early termination date (July 31, 2022), the City will no longer be subsidizing the difference between the City's obligation to pay "Basic Rent" under the Head Lease (\$13.47 per square foot until July 31, 2021) and the related portion of rent that the City has been collecting under the Sublease (\$10.47 per square foot).
- The risk of early termination on July 31, 2022 or July 31, 2024 of an extended term of the Sublease is preferable to certain termination of the Sublease on July 31, 2019 if the term of the Sublease is not extended.

## Summary

The City is obligated as tenant under the Head Lease until July 31, 2026. The term of the Sublease expires July 31, 2019. The Subtenant has requested an extension of the term of the Sublease to the end of the term of the Head Lease. The Subtenant will pay rent that would eliminate the shortfall between annual Basic Rent paid by the City on the Head Lease and the related portion of rent that the City has collected under the Sublease. The Subtenant requests two early termination rights.

Submitted by,

Richard Freymond  
Commissioner of Corporate and Legislative Services

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Attachments:

Appendix A - Report OCS10-002



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**TO:** **Members of the Committee of the Whole**

**FROM:** **Patricia Lester, City Solicitor, Director of Legal Services**  
**Brian Horton, Senior Director of Corporate Services**

**MEETING DATE:** **February 22, 2010**

**SUBJECT:** **Report OCS10-002**  
**Lease Amendment and Extension Agreement – 200 Jameson Drive**

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## **PURPOSE**

A report to recommend the City enter into a Lease Amendment and Extension Agreement with AmeriCredit for 200 Jameson Drive.

## **RECOMMENDATIONS**

That Council approve the recommendations outlined in Report OCS10-002 dated February 22, 2010 of the City Solicitor, Director of Legal Services and Senior Director of Corporate Services:

- a) That the City enter into a Lease Amendment and Extension Agreement between the Corporation of the City of Peterborough and AmeriCredit; and
- b) That a by-law be enacted authorizing the Mayor and City Clerk to execute and seal the necessary agreements.

## **BUDGET AND FINANCIAL IMPLICATIONS**

Under the proposed Sublease extension, AmeriCredit will pay \$10.54 psf Base Rent to the City, but the City will continue to pay the Head Landlord \$12.809 psf. The resulting \$2.269 psf difference times the 89,404 total square footage of the building equates to a \$202,859 annual amount that must be raised by taxation. Should AmeriCredit not continue to lease subsequent to 2016, than \$1.014 million is payable by AmeriCredit. Taxes of \$2.5 million have been collected as a result of the decision in 2000.

## **BACKGROUND**

### **Head Lease**

On October 30, 2000, Council passed By-law No. 00-140, authorizing the City to lease an 89,404 square foot building located at 200 Jameson Drive, for 25 years (the “Head Lease”) from Signum Corporation (Signum).

During the initial 10-year term (Aug 1, 2001 to July 31, 2011) lease payments the City paid to the Head Landlord, were to include Base Rent at \$12.809 per square foot, plus actual Operating Costs incurred including applicable property taxes, and the amortized cost of leasehold improvements and real estate commissions.

In each of three subsequent 5-year periods, the Head Lease allowed for an adjustment to the \$12.809 Base Rent based to 90% of Market rental in effect, but the rate had to be at least equal to the initial \$12.809 figure.

Actual Operating Costs would continue to be applicable. Real estate commissions incurred for any renewal discussions were to be amortized over the renewal periods.

### **Sublease**

By-law No. 00-140 also authorized the City to sublet the lands to AmeriCredit Service Center Ltd. for a term of 10 years (the “Sublease”), upon the same terms and conditions as were contained in the Head Lease and with options to renew for three subsequent 5-year periods. AmeriCredit was under no obligation, however, to renew for any of the periods beyond the initial 10-year term.

AmeriCredit Corp. is a leading independent automobile finance company located in the United States that provides financing solutions to approximately 900,000 customers, indirectly through auto dealers across North America.

Located in Peterborough, AmeriCredit Financial Services of Canada Ltd. is a Customer Contact Center that operates at 200 Jameson Drive, with 435 employees, where Account Representatives collect payments on delinquent accounts.

### **Potential Liability**

By Council agreeing to lease 200 Jameson for a 25-year period, and entering into a Sublease agreement with AmeriCredit for only a 10-year period, the Council assumed an element of risk. If AmeriCredit were to leave at any time after the 10-year period, the City would still be required to pay the Base Rent plus Operating Costs in effect for the balance of the term. Over the remaining 180 months (15 years) the liability is estimated to be \$39.5 Million. The City would of course attempt to find another tenant to offset the payments it is obligated to pay the Head Landlord.

The potential liability has been referenced in the Notes to the City's Annual Financial Statements since 2002. In the 2004 and 2005 Operating Budget, Council set aside \$125,000 each year to provide minimal funds for the contingent liability. In 2007, however, Council drew \$150,000 from the reserve to lower the 2007 tax levy that year. Currently there is \$100,000 balance in reserve.

### **Sale of Property & Tax Assessment**

In 2004 Signum sold the property for \$17.97 million to Jameson Portfolio Inc.

The operating cost component of the lease includes property taxes. Taxes on the property have been based on Current Value Assessment ("CVA") as determined by MPAC, municipal tax rates as determined by City Council through the annual budget process, education tax rates as regulated by the Province, and capping calculations also as regulated by the Province.

The property was assessed at \$9.2 million for the 2004 taxation year and initially at the same \$9.2 million for the 2005 tax year. Because the property had sold for \$17.97 million during 2004, however, the City appealed the \$9.2 million assessed value for 2005, and it was eventually set at \$17.97 million for the 2005 tax year. Despite the significant increase in CVA, the increase in net taxes payable by AmeriCredit were limited due to tax capping calculations in effect.

Some of the key numbers for the 2001- 2009 tax years are set out in Table 1, attached to this report as Appendix A.

## **Lease Extension Discussions**

AmeriCredit informed City staff that because of the general state of the US economy – and particularly in the auto industry, the relative high value of the Canadian dollar compared to the US dollar, and the increased level of property taxes payable on 200 Jameson, costs to operate in Canada had escalated in comparison to their three other facilities in the United States.

GPAEDC staff worked with AmeriCredit to take advantage of the Ontario Apprenticeship Tax Credits. These credits which are a 25% provincial refundable tax credit on salaries, wages and benefits paid to new apprentices to help offset employer's costs, could result in a net benefit of between \$2.3 and \$4.7 million depending on the number of employees who participate.

Staff met with AmeriCredit representatives in September and explained the municipality's inability to provide property tax concessions under the anti-bonusing provisions of Section 106 of the *Municipal Act, 2001*. Staff also indicated that any reduction in Base Rent given to AmeriCredit would result in an expense to the City, as the Head Landlord was not obligated to reduce the City's lease payments under the Head Lease. In addition the Base Rent could not be less than market rent for a similar building.

## **Lease Amendment and Extension Terms**

Staff has continued negotiations with both AmeriCredit and the Head Landlord and have conducted a comprehensive financial analysis; a review of similar Class "A" facilities and lease rate comparables. The following are the terms that have been agreed upon by the parties:

Term: 8 year extension from August 1, 2011 to July 31, 2019.

Rent: Base Rent of \$10.54 per square foot (Market Rent)  
Base Operating Costs to be based on actual cost incurred

Cancellation  
Rights: If AmeriCredit exercises its right to terminate the agreement in July 2016 it will pay the City \$1,014,735.60 (being the difference between \$10.54 and \$12.809 (\$2.269) x square footage from August 1, 2011 to July 31, 2016).

Expansion Option: AmeriCredit may exercise the right to extend the lease term from 2019 to 2026



## SUMMARY

It is recommended that the City enter into a lease amending and extension agreement with AmeriCredit.

Submitted by,

Patricia Lester  
City Solicitor and Director of Legal Services

Brian Horton  
Senior Director of Corporate  
Services

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Appendix A –

**CVA and Tax History**  
**200 Jameson Drive**  
**For the Years 2001-2009**

**CVA and Tax History**  
**200 Jameson Drive**  
**For the Years 2001-2009**

1. Property sold Jan 14, 2004 for \$17,970,000
2. \* Assessments were appealed for those years by the City as too low based on the sale value
3. \*\* 2009 CVA to be changed by MPAC to this figure - corresponding taxes have been estimated