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

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 JIM PEARCE

I, **Jim Pearce**, of the Town of Fort Erie, in the Province of Ontario, **AFFIRM AND SAY THAT:**

1. I am the general manager as well as an officer holding the position of Secretary/Treasurer of Peace Bridge Duty Free Inc. ("**Duty Free**"). 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 have stated the source of my information and belief, and, in all such cases, believe it to be true.

2. I have reviewed my affidavit sworn December 12th, 2021, and I affirm it to be true.

3. Capitalized terms not defined in this affidavit have the same meaning as in the notice of cross-motion and in the Lease ("Lease" is as defined in the notice of cross-motion and my affidavit sworn December 12th, 2021).

4. I make this affidavit to provide the court with evidence of events impacting this tenancy since my December 12th, 2021 affidavit; in response to the Authority's motion seeking to lift the existing stay of proceedings to allow it to terminate the Lease; and in support of Duty Free's cross-motion to stay the Authority's motion seeking to lift the existing stay of proceedings to allow it to terminate the Lease, until the Base Rent issue is determined; and in support of Duty Free's request for a determination of what, if any, Base Rent is owing under the Lease from March 2020, along with related relief set out in the notice of cross-motion.

Duty Free's position

5. Duty Free has operated a duty-free shop at the Leased Premises since 1986. It has paid approximately $84 million in base rent to the Authority during that time up to March 2020. Since the current Lease came into force on November 1st, 2016, until the onset of Covid-19, Duty Free paid the Authority approximately $13.6 million in Base Rent.

6. Prior to the Covid-19 emergency shutdown, Duty Free owed no monies to the Authority and during its time in business has been a faithful and dependable tenant.

7. On January 14, 2022, Duty Free's lawyers, Blaney McMurtry LLP, wrote to the Authority's lawyers setting out issues between the parties at that time and Duty Free's position. At that time, Ontario was largely shut down due to the spread of the Omicron variant and the Federal government (with a 50% stake in the Authority) had specifically requested that Canadians not travel internationally. At that time, Duty Free's Gross Sales since opening in September 2021, were approximately 35% of pre-closure sales. Duty Free was paying (and continues to pay) Additional Rent plus the greater of (a) monthly basic rent in the sum of 20% of the Tenant's actual Gross Sales and (b) any government rental assistance received ("**Normal Rent**").

8. The Normal Rent paid by Duty Free has been accepted and deposited by the Authority throughout the emergency Border Restriction.

9. Duty Free believes that during the emergency Border Restrictions period, and until the Canadian side Peace Bridge border traffic returns to pre-Covid-19 levels that 20% of Duty Free's Gross Sales is a fair and reasonable basic rent because 20% of the Duty Free's Gross Sales is the basis upon which minimum Base Rent is calculated in subsection 3.04 of the Lease.

> Attached hereto and marked as **Exhibit "A"** is a true copy of the letter from Blaney McMurtry LLP to Gowling WLG dated January 14th, 2022 and subsequent emails between counsel

Border Restrictions

10. Duty Free's retail store business was crippled by U.S.-Canada emergency border restriction legislation and related regulations and requirements as a result of the Covid-19 pandemic that have restricted and impacted the Peace Bridge border crossing ("**Border Restrictions**").

11. Duty Free's retail store closed March 21st, 2020 in response to government emergency mandated closures due to Covid-19, including Border Restrictions and public health regulations, and remained closed for retail sales until it reopened on September 19th, 2021 in anticipation of Canadian side travel becoming lawful for non-essential travellers ("**Closure Period**").

12. The U.S. government opened its land border with Canada for non-essential travellers on November 9th, 2021. Even then, there were significant restrictions imposed by both the U.S. and Canadian governments, including testing, vaccine mandates, quarantine periods and mandatory use of the ArriveCAN app.

13. A non-exclusive summary of the Border Restrictions is as follows:

a) March 17th, 2020: Ontario **declares state of emergency** under the *Emergency Management and Civil Protection Act*;

b) March 21st, 2020: Agreement to **close U.S.-Canada border** to non-essential travel border **for 30 days**;

c) April 15th, 2020: Enhanced Federal border measures and quarantine plan and **14-day quarantine requirement;**

d) April 22nd, 2020**: Extension of restriction on** non-essential **travel** between Canada-US border **until May 21st, 2020**;

e) May 22nd, 2020: Canada-U.S. **border closure** to all but essential workers **extended to June 21st, 2020;**

f) May 27th, 2020: Ontario government **extends all emergency orders** in force under s.7.0.2 (4) of the *Emergency Management and Civil Protection Act* **until June 9th, 2020;**

g) June 16th, 2020: U.S.-Canada **border closure** to all but essential workers **extended until July 21st, 2020** for non-essential travel;

h) June 24th, 2020: Ontario government **extends all emergency orders** in force under s.7.0.2 (4) of the *Emergency Management and Civil Protection Act* **until July 15th,** 2020;

i) July 2020: **ArriveCAN app** was **introduced** for all border crossing into Canada;

j) July 9th, 2020: Ontario government **extends all emergency orders** in force under s.7.0.2 (4) of the *Emergency Management and Civil Protection Act* **until July 22nd, 2020;**

k) July 26th, 2020: U.S.-Canada **border closure** for non-essential travel **extended until August 20th, 2020;**

l) August 14th, 2020: U.S.-Canada **border closure** for non-essential travel **extended until September 21, 2020;**

m) August 14th, 2020: Ontario **extends emergency orders** in force under s.7.0.2 (4) of the *Emergency Management and Civil Protection Act* **until September 22nd, 2022;**

n) September 18th, 2020: U.S.-Canada **border closure** for non-essential travel **extended until October 21st, 2020;**

o) October 19th, 2020: U.S.-Canada **border closure** to non-essential travel **extended to November 21st, 2020**[1]**;**

p) November 2nd, 2020: Program launched to allow international **travellers to Canada to leave quarantine provided they test negative upon arrival and retest 6 to 7 days after.**

q) February 2021: Land travellers entering Canada required to **provide negative COVID test result from the US within 3 days/positive result within 14 & 90 days prior to arrival.**

r) April 21st, 2021: US-Canada **border closure** to non-essential travel **extended until May 21st, 2021;**

s) June 21st, 2021: Temporary **travel restrictions to Canada for all U.S. travellers extended**, unless their travel is for non-discretionary reasons.

t) August 9th, 2021: **Canada permitted entry for fully vaccinated U.S. travellers. PCR test required. U.S. border remains closed;**

u) September 7th, 2021 - **Fully vaccinated foreign nationals eligible to enter Canada for non-essential reasons;**

v) October 30th, 2021: Travellers in Canada were required to be fully vaccinated in order to board planes, trains and non-essential passenger vessels**. Negative molecular tests within 72 were accepted as alternatives until November 29th, 2021.**

w) November 30th, 2021: **All travellers** to Canada **must be fully vaccinated and have a negative COVID-19 molecular test results within 72 hours;**

x) November 8th, 2021: **U.S.** lifted restrictions at its land borders to **permit travel for fully vaccinated travellers and a negative PCR tests within 72 hours;**

y) December 2nd, 2021: Canadian announced that **Canadians travelling abroad for less than 72 hours will not have to show negative PCR COVID-19 test when re-entering Canada;**

z) December 21st, 2021: **Reinstated the requirement for a pre-arrival negative PCR test for all travellers arriving in Canada from a trip of any duration**;

aa) January 15th, 2022: Announced groups who were exempt from entry requirements will only be allowed to enter Canada if they are fully vaccinated; unvaccinated or

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[1] US-Canada border closure to non-essential travel continued to be extended until September 7th in Canada and November 8th, 2021 in the U.S., subject to travellers being fully vaccinated.

partially **vaccinated foreign national truck drivers, coming from the U.S. by land, will not be allowed entry;**

bb) January 22nd, 2022: **U.S. allowed** non-U.S. **individuals** traveling via land ports or entry at US-Canada borders to be **fully vaccinated and to show proof of vaccination** for essential and non-essential reasons;

cc) February 28th, 2022: **Fully vaccinated travellers arriving from any country to Canada would be randomly selected for arrival testing and accepting either a negative rapid antigen or PCR test from travellers as well as ArriveCAN;**

dd) April 1st, 2022: Fully vaccinated travellers no longer required to provide a pre-entry COVID-19 test result to enter Canada by air, land or water, but **ArriveCAN required;**

ee) April 25th, 2022: Border measures eased - **rapid testing no longer required, but ArriveCAN and double vaccination still required**;

ff) October 1st, 2022: **Canadian Covid-19 border measures ended** including all requirements including vaccination and mandatory use of ArriveCAN.

Authority's obligation to reasonably consult on the impact to Lease

14. The Authority is a statutory entity created by New York State legislation and the Government of Canada legislation pursuant to *An Act Respecting the Buffalo and Fort Erie Public Bridge Company*, SC 1934, c 63. It is governed by a 10-member Board of Directors consisting of five members from New York State and five members from Canada of which each five person slate of directors is appointed by the respective American and Canadian stakeholder governments.

> Attached hereto and marked as **Exhibit "B"** is a true copy of the printout of the Authority's website

15. Upon termination of the rights, powers and jurisdiction of the Authority under the applicable Canadian/New York legislation, the property acquired or held by it within Canada reverts to and becomes the property of His Majesty in right of Canada, and the property within New York State becomes under the jurisdiction as the New York State legislature may designate. As such the Federal government is the beneficial owner of the Leased Premises.

16. As a result, the Authority essentially holds and administers the Peace Bridge and related property and assets on behalf of the beneficial owners, the Canadian and New York State governments

17. As noted in paragraphs 20-22 of my December 12th, 2021 affidavit, pursuant to subsection 18.07 of the Lease, the Authority covenanted to consult with Duty Free about the impact of introductions of or changes to Applicable Laws (including laws enacted by the Authority's stakeholders the Canadian and New York State governments) would have on the Lease:

> **18.07 Regulatory Changes**
>
> **In the event an unanticipated introduction of or a change in any Applicable Laws causes a material adverse effect (sic) 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**. [emphasis added]

18. Notwithstanding the:

a. introduction and changes in Applicable Laws enacted by the Authority's stakeholders from time to time that caused material Averse Effects to Duty Free's business and that have been ongoing throughout the Covid-19 pandemic, including the Border Restrictions;

b. acknowledgement by the Authority in the rent deferral agreements that "…travel restrictions and economic hardship created…by the Covid 19 pandemic…" resulted in the need for rent deferral;

c. Acknowledgment of the economic hardship caused by Covid by the suspension of re-payment of rent arrears for the American side duty-free store;

d. acknowledgment by the Authority in its motion record that in respect of Base Rent arrears "…there a dispute as to how much is owing…"; and

e. letter from the Authority's counsel at Tab 10 of the Exhibits to Ron Rienas' Affidavit in the Authority's motion record that it would conditionally accept 50% of Base Rent during Duty Free's Covid-19 related closure period;

the Authority appears to take the position in the affidavit of Ron Rienas that full Base Rent under the Lease is payable from July 31st, 2020 onward.

19. Effectively, and inconsistent with the matters noted at a. to e. above, the Authority is asserting the Border Restrictions had no impact on the Lease whatsoever beyond July 31st, 2020 (when the first rent deferral agreement expired).

20. The Authority now seeks to terminate the Lease relying upon Base Rent from December 14th, 2021 onward, ignoring the Authority's covenant in subsection 18.07 of the Lease.

21. The Landlord, in addition to it duties of good faith and honest performance, has a contractual obligation pursuant to subsection 2.15 of the Lease to act reasonably in exercising any discretion in respect of how the Applicable Laws impact the Lease:

> **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. (emphasis added)**

22. The Canadian and New York State governments are equal stakeholders in the Authority, and are also responsible for the many of the Applicable Laws, including Border Restrictions, that

caused material Averse Effects to Duty Free's business. They also stand to appropriate over $6 million of improvements to the Leased Premises, and the good will created by Duty Free. In this regard, Duty Free has been nominated for many domestic and international awards as a duty-free store.

23. The Authority as the owner of the Peace Bridge and related assets appears to me to be an "agent having jurisdiction" as that term is provided for in the Lease, and therefore, is a "Government Authority" as defined in paragraph 2.01(t) of the Lease:

> **"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. (emphasis added)

24. The emergency Border Restrictions were in large part enacted by Canadian and U.S. governments, and by association the Authority as a Governmental Authority.

25. When the border was closed to non-essential travellers, the essential workers who were crossing the Canadian side of the border were daily crossers and did not have any duty-free allowance.

26. Duty Free is required by subsection 9.04 the Lease to comply with all Applicable Laws and keep its Licence in good standing, which it has always done.

27. Duty Free's expectation was and continues to be that the Authority would take into consideration the fact that its emergency Border Restrictions eliminated Duty Free's ability to operate the Permitted Use at the Leased Premises and to generate any retail sales for almost two years, when considering the impact on the Lease, and the appropriate adjustment to Base Rent.

Authority initially recognized the need to amend the Rent payable under the Lease due to Border Restrictions

28. As set out in paraphs 23 to 32 of my December 12th, 2021 affidavit, the Authority recognized the need to amend the Base Rent payable under the Lease due to the impact of the emergency Border Restrictions on Duty Free's business. The parties entered into the April 27th, 2020 rent deferral agreement based on the anticipated impact of the emergency Border Restrictions at that time (see Exhibit "B" of my December 12th, 2021 affidavit). In that agreement, the Authority acknowledged the obvious, that the reason for the deferral being "…travel restrictions and economic hardships created…by the Covid19 pandemic…".

29. Duty Free and the Authority entered into a second rent deferral agreement dated November 20th, 2020, although the Authority now disputes the enforceability of the second rent deferral agreement, notwithstanding the second agreement also noted the existence of ongoing "…travel restrictions and economic hardships created…by the Covid 19 pandemic…" (see Exhibit "C" of my December 12th, 2021 affidavit).

30. While the Authority now seeks to impose an obligation on Duty Free to pay full Base Rent while it was unable to open due to the emergency Border Restriction, the Authority did agree on terms of the second rent deferral agreement, prepare the agreement for execution at the expense of Duty Free, accept Duty Free's executed version of the agreement and thereafter at all material times during the term of that agreement conducted itself as though the second deferral agreement was in force.

31. However, beginning in spring 2021, and accelerating through fall 2021, the Authority made financial demands that it knew Duty Free could not fulfill by reason of the lack of any sales at its duty-free shop because it was closed due to the emergency Border Restrictions.

32. In light of the impossibility of paying Base Rent due to the Border Restrictions, Duty Free made several requests to meet with the Authority address the Duty Free's situation, which I understand to be an obligation of the Authority under subsection 18.07 of the Lease. In doing so, Duty Free notified the Authority of its contractual obligation. The Authority has incomprehensibly steadfastly refused to meet with Duty Free other than once briefly in May 2021, when the Authority flatly refused to discuss or provide any assistance despite the fact Duty Free's business was still closed as a result of the Border Restrictions, and the U.S.-Canada border remained closed to non-essential travelers.

Inadequacy of Government Authority rental assistance programs

33. In responding to Covid-19 emergency, Government Authorities properly prioritized public health over the interest of commercial businesses and imposed significant personal restrictions, including the emergency Border Restrictions, to the detriment of private businesses.

34. Governmental Authorities sought to ameliorate the impact of its emergency restrictions through a variety of Governmental Authority programs including commercial rent subsidy programs. Unfortunately, the rent subsidy programs, prepared in a rush to respond to the emergency, resulted in programs through which Duty Free fell through the cracks of the intended benefit of subsidizing commercial rent while restrictions impacted businesses.

35. The Authority was unfortunately not eligible to receive the benefit of CECRA.

36. Inexplicably, the Authority subsequently refused to follow the Treasury Board of Canada's directive to all Federal landlords not eligible for the CECRA program to notwithstanding their ineligibility to provide rent reduction in alignment with CECRA, which would have resulted in the waiver 75% of Base Rent during the program.

37. Despite being among the hardest hit businesses by Covid-19 and associated restrictions, the rental assistance rolled out by Government Authorities completely failed to provide any meaningful measure of assistance to the duty-free industry in general, and specifically to Duty Free. The rental assistance programs available to Duty Free as a percentage of full contract rent was a small fraction of that available to other commercial businesses.

38. For example, the CERS program was intended to provide an emergency monthly rent subsidy of up to 90% of commercial rent payable for the hardest hit businesses, like Duty Free, that were shut down by mandatory emergency public health orders.

39. The CERS legislation was intended to provide emergency commercial rent support to businesses to “get through” the public health emergency and to “cover costs” so all businesses would be positioned for a strong recovery when the pandemic’s emergency restrictions ended.

40. However, unfortunately because the CERS eligible monthly rent expenses per location was limited to $75,000/month, the program is entirely inadequate to address the unique circumstances of land border duty free stores, and in particular Duty Free, which ordinarily had a Base Rent obligation of $333,333/month.

41. Duty Free’s ordinary high monthly Base Rent obligation reflects the Authority as a Government Authority extracting a significant portion of the financial benefit arising from the right granted by Government Authorities to sell duty free goods to travelers crossing the border. In other words the government gives “duty-free” benefits to travellers on the one hand and extracts extraordinarily high rent on the other hand.

42. The monthly CERS subsidy received by Duty Free amounted to only approximately 15% of monthly Base Rent under the Lease, despite Duty Free being impacted by Covid-19 more than other businesses that were receiving CERS payments equal to 90% of their commercial rent.

> Attached hereto and marked as **Exhibit "C"** is a Department of Finance Canada's news release regarding CERS dated October 9th, 2020

43. Duty Free has applied for every government program in respect of commercial rent assistance available to it (CERS and the Tourism and Hospitality Recovery Program) for the benefit of the Authority, and has paid all sums received (and more when 20% of monthly Gross Sales exceeded the government rent assistance payment).

44. In response to paragraph 39 of Ron Rienas' September 7th, 2022 affidavit, Duty Free has provided all required documentation to the Authority to enable it to confirm that all rental assistance received from CERS and the Tourism and Hospitality Recovery Program in respect of the tenancy has been paid.

> Attached hereto and marked as **Exhibit "D"** is a summary of government rent assistance received by Peace Bridge and payments to the Authority.

45. While the other retail businesses were coming out of the Covid-19 pandemic beginning in 2021, Duty Free's retail business continued to be (and remains) severely impacted due to ongoing Border Restrictions, including vaccine requirements, quarantine rules, the ArriveCan app requirement, and lack of cross-border traffic (the U.S. conditionally opened its border to non-essential travelers on November 8th, 2021), particularly motor coach traffic and pleasure travelers.

Duty Free acted in good faith and to the benefit of the Authority

46. When the retail store was ordered closed, the Authority opened Duty Free's washroom facilities beginning in May 2020. Despite paragraph 2.01(ff) the Lease that limits the Permitted

Use of the Lease Premises to the "operation of a duty-free shop and related services", the Authority pivoted and demanded Duty Free operate restroom facilities for truckers and essential workers at its expense beginning November 30th, 2020, notwithstanding there was a major travel/truck stop four kilometers up the highway. The Authority served a notice of an alleged non-monetary default threatening Lease termination.

> Attached hereto and marked as **Exhibit "E"** is the notice of alleged default dated November 27th, 2020

47. Duty Free, despite being closed for business, complied and maintained staff to operate a public restroom with janitorial service for the benefit of the Authority and its stakeholders to keep the Peace Bridge operational for essential workers, despite the Authority and its stakeholders' Border Restrictions completely preventing Duty Free from generating any income to pay Rent.

48. In addition, while the retail store was closed, at the request of the Authority, Duty Free gratuitously provided customs document processing services for truckers to facilitate border operations for the Authority and its stakeholders.

49. Duty Free could not generate any income during the Closure Period and it could not (by law) pivot to online sales, do curbside pickup or make any domestic sales whatsoever, as other retail businesses could, during the pandemic. Land border duty-free stores are licensed by the Canadian Border Services Agency, are highly regulated, and have no alternative business model to switch to, even temporarily.

50. Since the onset of the Covid-19 emergency Border Restriction there have been no payments made to Duty Free's shareholders.

51. Greg O'Hara, President, the only shareholder of Duty Free that receives a salary, has deferred his annual salary of $60,000 per annum to date in its entirety.

Duty Free's payment of rent

52. Throughout the Covid-19 pandemic, Duty Free has paid all Additional Rent to the Authority, in the sum of approximately $10,800 per month, including during the Closure Period.

53. Base Rent payable under the Lease is by a formula predicated upon twenty percent (20%) of Duty Free's Gross Sales, being the minimum gross sales anticipated at the time of entering into the Lease, together with a minimum rent of $4 million per annum paid monthly (subject to a calculation set out in subsection 4.03 of the Lease).

54. Since reopening its retail store, Duty Free has in good faith paid to the Authority Additional Rent and the greater of all Covid-related rent assistance it was eligible for and received or 20% of its monthly Gross Sales ("**Normal Rent**"). In addition, at the demand of the Authority in or about July 2022, Duty Free has paid HST on 100% of Base Rent, $43,000 per month from April 2020, resulting in an HST overpayment, and Duty Free continues to pay HST on 100% of Base Rent at the Authority's request.

> Attached hereto and marked as **Exhibit "F"** is a summary of the HST remittance reconciliation for from April 2020 to June 2022.

55. The Authority has accepted all payments from Duty Free, including Normal Rent.

56. Duty Free had been paying the 20% of Gross Sales on or around the tenth day of each month after completing its accounting of Gross Sales for each month, which it delivered to the Authority in accordance with subsection 5.01 of the Lease. In response to a request from the

Authority, made by way of alleging a default of the Lease, Duty Free adjusted its accounting practices to calculate is monthly Gross Sales on the last day of each month on a rush basis, so it could accelerate payment of its installments of Normal Rent to the Authority on the first day of each month.

57. Duty Free's Normal Rent payments have increased as Gross Sales have increased from close to 0% to about 50% of pre-Covid sales by summer 2022, and are currently 60% to 65% of pre-Covid-19 sales.

The Authority's bad faith conduct intended to unnecessarily cause receivership proceeding

58. I am advised by Barbara Barrett, Executive Director of the Frontier Duty Free Association ("**FDFA**"), that of the previously 33, now 32, land border duty free shops in Canada, Duty Free was the only one whose landlord demanded immediate payment of full contract rent and threatened eviction for non-payment of rent during the non-enforcement period under Part IV of the *Commercial Tenancies Act*, that ran to April 22nd, 2022, commonly referred to as the eviction moratorium.

59. As noted in paragraph 26 of my December 12th, 2021 affidavit, the Authority issued two default notices under the Lease on September 8th, 2021, threatening termination of the Lease. These notices of default were promptly and duly reported by Duty Free to its bank, RBC.

60. As a result of the Authority's default notices, on September 23rd, 2021, RBC made demand and sent a Notice of Intention to Enforce Security as noted in paragraph 61 of my December 12th, 2021 affidavit.

61. I note that paragraph 27 of Ron Rienas' September 7th, 2022 affidavit states that from July 31st, 2020 onward, the Authority was aware of and operating within the context of the eviction moratorium. As such, the Authority was aware it would be unlawful to terminate the Lease when it elected to wrongfully threaten eviction for non-payment of rent, both on September 8th, 2021 and November 21st, 2021, as noted below.

62. Despite the Authority's knowledge of the eviction moratorium making it unlawful to terminate the Lease, the acknowledgment by the Authority's lawyer of the eviction moratorium (September 17th, 2021 letter at Exhibit "E" of my December 12th, 2021 affidavit), the Authority's counsel advised RBC's lawyer that the Authority intended to exercise its remedies under the default provisions of the Lease (ie. terminate the Lease anyway) during the non-enforcement period, without regard to the eviction moratorium.

> Attached hereto and marked as **Exhibit "G"** is a copy of Chris Stanek's November 21st, 2021 email that is also referred to in paragraph 65 of my December 12th, 2021 affidavit

63. The Authority's actions directly led to this receivership application and in due course RBC demanding increased security from Duty Free. As a result of the receivership application, Duty Free has granted RBC additional security in the form of $850,000 collateral cash, and has also duly maintained the thresholds set out in the Appointment Order as amended (defined below).

64. In response to paragraph 38 of Ron Rienas' affidavit alleging Duty Free has not provided financial information in accordance with Article V of the Lease, Article V of the Lease requires Duty Free to furnish two things to the Authority: monthly statements of Gross Sales by the tenth day of each month (subsection 5.01), which Duty Free has done; and annual statements within 45 days (subsection 5.02) – Duty Free has delivered its 2021 audited financial statements to the

Authority. Article V of the Lease does not impose any additional contractual obligation on Duty Free to furnish or deliver any other financial information to the Authority.

65. While Duty Free may have provided additional financial information to the Authority in the past as a courtesy, Duty Free is not prepared to extend that courtesy in the context of the current proceedings that were initiated because of the Authority's wrongful conduct and the Authority's threats of Lease termination.

Duty Free has paid Normal Rent in accordance with the status quo since the Appointment Order and is in compliance with the Appointment Order

66. At the time of Justice Pattillo's December 14th, 2021 Order (as amended by Justice Penny's March 23rd, 2022 Order) appointing the monitor ("**Appointment Order**"), Duty Free had paid to the Authority as basic rent the greater of 20% of its Gross Sales (as provided for by section 4.03 of the Lease) and any emergency rent assistance received from the government (CERS and the Tourism and Hospitality Recovery Program). The greater of 20% of the Tenant's Gross Sales and any government rent support, along with Additional Rent (together Normal Rent as defined above), has been the "normal rent" paid by Duty Free since the onset of the Covid-19 pandemic and was the basic rent accepted by the authority as at the date of the Appointment Order.

67. I am advised by Duty Free's counsel, David Ullmann of Blaney McMurtry LLP, that the Authority's counsel was present at the hearing before Justice Pattillo when the initial order was made, but took no position, and the Authority's counsel also received the draft Appointment Order before it was submitted to the Court or signed and did not object to it or request any additional provisions in the order.

> Attached hereto and marked as **Exhibit "H"** is an email exchange dated December 14th, 2021 with counsel and Justice Pattillo regarding the Appointment Order

68. I am advised by Duty Free's counsel that the Authority's counsel also attended a hearing before Justice Pattillo on January 17th, 2022 that resulted in amending the terms of the Appointment Order, but again took no position.

> Attached hereto and marked as **Exhibit "I"** is Justice Pattillo's January 17th, 2022 Endorsement and amended Appointment Order

69. I am further advised by Duty Free's counsel that the Appointment Order that was provided in draft to the Authority's counsel in advance, does not include a "pay rent" provision requiring payment of full Base Rent that is typically included in insolvency proceeding orders where the debtor is required to pay full post-filing rent in strict compliance with a lease.

70. Justice Penny received and approved the monitor's first and second reports, and granted proposed amendments to the Appointment Order. Justice Penny confirmed that cash flow projections also support the conclusion that the business is viable until the proposed return date. The Authority received notice of the monitor's motion, including the monitors second report, and raised no objections to the continuation of the status quo as ordered by Justice Penny.

> Attached hereto and marked as **Exhibit "J"** is a copy of Justice Penny's order dated March 23rd, 2022, along with email endorsement.

Compliance with Appointment Order

71. Since the stay of proceedings, Duty Free has maintained the status quo as it was at the time of the Appointment Order by continuing to pay Normal Rent, and is not in default of the Appointment Order.

72. Duty Free has paid RBC regularly in accordance with its secured lending agreement.

73. Duty Free, through counsel, has in good faith engaged in numerous including phone calls with the Monitor' and RBC's counsel and provided the Monitor two written reports.

> Attached hereto and marked as **Exhibit "K"** is a true copy of John Wolf's correspondence to Leanne Williams dated June 9th, 2022 and March 10th, 2022

74. On November 4th, 2022, Duty Free, through its counsel, provided the monitor with a monthly report for October 2022 and cash flow report, as it has been doing on a monthly basis, showing Duty Free is in compliance with its court ordered thresholds.

> Attached hereto and marked as **Exhibit "L"** is a true copy of David Ullmann's November 4th, 2022 email with attachment

75. The monitor did not take any steps to return this matter to court until its recent stay termination motion and to my knowledge the monitor has not raised any concerns about Duty Free's conduct to date

76. I am not aware of any prejudice to any stakeholders by maintaining the status quo while the issue of what additional base rent is payable is determined.

Frontier Duty Free Association's intervention

77. The FDFA is the industry representative to Canada's land border duty free shops. Its mandate is to promote the development and success of the land border duty free sector by acting as a voice, advocate and business resource for members.

78. FDFA's members include 32 land border duty free shops. Its associate members include product and service suppliers, Canadian airport duty free stores, and U.S. land border duty free stores.

> Attached hereto and marked as **Exhibit "M"** is an Economic Report relating to the impact of Covid-19 on FDFA members from August 2022.

79. FDFA has access to sales and traffic data from its members as well as information about how other landlords dealt with land border duty free store tenants during Covid-19. FDFA intervened at the request of and on behalf of Duty Free to provide a sense of perspective to the Authority on the uniquely devastating impact of the Covid-19 pandemic and the emergency Border Restrictions on land border duty free stores nation wide. FDFA provided information about how other land border duty free store landlords, and in particular Canadian Federal government landlords, have addressed lease obligations and rental payments.

80. On February 1st, 2022, Barbara Barrett, the Executive Director of FDFA emailed me providing information FDFA had assembled about the Canadian Federal Government's policy to have Federal tenants treated equally with commercial tenants in respect of the various rent programs the government announced for private sector tenants. In particular, all Federal landlords were directed to align with core CECRA program criteria, which in the case of duty Free would have waived 75% of the Base Rent and Additional Rent due by the Lease during the CECRA program.

> Attached hereto and marked as **Exhibit "N"** is Barbara Barrett's email, including links to various Government of Canada websites that are the source of the information in her email.

81. On February 10th, 2022, FDFA wrote to the Authority on behalf of Duty Free. It noted that all FDFA stores that were Federal tenants, including those that were not eligible to participate in the CECRA program, were to be provided rent reduction in alignment with CECRA (ie. 75% of rent would be borne by government landlord and Federal Bridge authorities, leaving 25% of rent payable by the tenant). The Authority's treatment of Duty Free was the sole exception to this approach. The letter also noted that the Authority was the only landlord to threaten any FDFA member with the lease termination and it was the only landlord to communicate with a tenant's

lender/bank. FDFA repeatedly offered the Authority the benefit of its good offices to seek to facilitate a resolution of the Lease issues.

> Attached hereto and marked as **Exhibit "O"** is a true copy of the letter from FDFA to the Authority dated February 10th, 2022

82. In its February 17th, 2022 response to FDFA, the Authority refused to engage in discussions with FDFA because the "matter is in the hands of the attorneys… and it will be handled appropriately in that manner", and notwithstanding that the Authority's lawyers have refused to meet with Duty Free's lawyers or to participate in mediation or any other dispute resolution process. In addition, the Authority appeared to seek to justify its treatment of Duty Free by making the nonsensical distinction that: during the period the border was restricted to a small group of essential workers, that it was therefore not closed; Duty Free was not eligible for CECRA; and it claimed Duty Free was offered a generous rent relief package notwithstanding that Duty Free's sales were obviously inadequate to pay the alleged arrears of Base Rent and/or ongoing Base Rent the Authority demanded.

> Attached hereto and marked as **Exhibit "P"** is a true copy of the letter from the Authority to FDFA dated February 17th, 2022

83. On February 24th, 2022, FDFA responded to the Authority noting that Canadian and American governments intended the Peace Bridge to be closed for all but essential workers from March 2020 until October 2021. Bridge traffic during this period declined by more than 90%. In addition, the provincial government issued health advisories restricting travel and closing Ontario businesses remained in effect. Various other Canadian stakeholders advised the public against discretionary travel to the United States. FDFA also clarified the CECRA issue, having received confirmation from the Treasury Board that "confirmed that Federal departments and agencies who are landlords were not eligible to participate in the CECRA program. Given this, the government

decided that they, as well as Crown corporations, should provide rent reduction to their commercial tenants in alignment with CECRA intent and core criteria for the months of April, May, June, July, August, and September 2020." (the Authority has not followed this directive). FDFA again requested an opportunity to meet with the Authority to find a mediated solution.

> Attached hereto and marked as **Exhibit "Q"** is a true copy of the letter from FDFA to the Authority dated February 24th, 2022

84. The Authority again dismissed FDFA's efforts to assist resolving the Lease issues by letter dated February 25th, 2022.

> Attached hereto and marked as **Exhibit "R"** is a true copy of the letter from the Authority to FDFA dated February 25th, 2022

85. On March 7th, 2022, FDFA again wrote to the Authority. FDFA noted that the Authority was the <u>only</u> land border duty-free store landlord that has declined its offer to meet and be of assistance in respect of rent issues arising during the pandemic. It also noted the Authority was an "outlier" in terms of how it interacted with Duty Free in respect of the Covid emergencies caused Lease issues. Again, FDFA offered its services, including an offer to meet with the Authority's board.

> Attached hereto and marked as **Exhibit "S"** is a true copy of the letter from FDFA to the Authority dated March 7th, 2022

86. The Authority's board agreed to meet virtually at its regularly scheduled meeting on March 25th, 2022, but advised that it would not discuss specifics of the Lease situation and further asked for written confirmation that Duty Free would not be present.

> Attached hereto and marked as **Exhibit "T"** is a true copy of Barbara Barrett's email exchange with Ron Rienas from March 10th, 2022 to May 10th, 2022

87. Barbara Barrett, Executive Director of FDFA, gave a presentation at the March 25th, 2022 Authority board meeting. Ms. Barrett noted land border duty-free stores sustained a 90% reduction more or less in gross sales up to that point in time during the pandemic, and she identified that 95% more or less of the land border duty-free stores' business was from leisure travellers, which is consistent with Duty Free's observations.

> Attached hereto and marked as **Exhibit "U"** is a true copy of Barbara Barrett's presentation dated March 25th, 2022

88. Barbara Barrett gave another presentation to the Authority's board in May 2022. In that presentation she noted that monthly sales at land border duty-free stores in April 2022 were down on average 47% compared to April 2019 (Duty Free's sales were down approximately 50% for that period, consistent with the industry average). She noted that the ArriveCAN app, the motor coach industry cancelling tours due to border practices, and individuals' vaccine status were particularly detrimental to land border duty-free stores.

> Attached hereto and marked as **Exhibit "V"** is a true copy of Barbara Barrett's presentation from May 2022

89. On October 24th, 2022, FDFA wrote to the Authority for the purpose of sharing information and data obtained from its member duty-free stores. As of summer 2022, Canada's land border duty-free store average sales decreases were around 45% as compared to 2019. However, those statistics were taken at a time when the vaccination requirements to enter Canada and the ArriveCAN app were still in place. The FDFA noted that Duty Free was by then among the top-performing Canadian duty-free stores. Duty Free's sales performance is directly impacted by Governmental Authorities closure policy, and upon partial opening Border Restrictions and especially the failure to provide appropriate rent subsidy programs to Duty Free.

Attached hereto and marked as **Exhibit "W"** is a true copy of the letter from FDFA to the Authority dated October 24th, 2022

Communication with Federal Government

90. On April 1st, 2022, Member of Parliament for the Niagara Falls Riding, Tony Baldinelli, wrote to the Minister of Finance and Deputy Prime Minister, Crystia Freeland, following a meeting with FDFA. The letter notes that since Federal pandemic border restrictions and rules were implemented in March 2020, land border duty-free stores have either been fully or partially closed. The business model was instantly broken when the borders closed. Consequently, land border duty-free stores' finances have suffered tremendously and thousands of workers have been laid off. There is a request before the Federal government for a $20 million financial support program to save land border duty-free store businesses that have been uniquely and disproportionately impacted by the pandemic.

Attached hereto and marked as **Exhibit "X"** is a true copy of the letter from Tony Baldinelli to Deputy Prime Minister Crystia Freeland dated April 1st, 2022

91. The Minister of Tourism and Associate Minister of Finance, Randy Boissonnault, responded on August 2nd, 2022 noting substantial government funds that are intended to assist workers and businesses in the tourism industry, including duty-free stores that "felt the full impact of public health measures and border closures." The response also noted progress in reopening the border and additional funds that are earmarked to facilitate the timely and efficient entry of a growing number of visitors to Canada.

Attached hereto and marked as **Exhibit "Y"** is a true copy of the August 2nd, 2022 correspondence from Minister of Tourism and Associate Minister of Finance, Randy Boissonnault

92. On August 9th, 2022, I wrote to member of Parliament, Vance Badawey, regarding the Lease and the urgent need for government funding and/or a loan program to address the devastating financial impact to Duty Free and other land border duty-free stores.

> Attached hereto and marked as **Exhibit "Z"** is a true copy of the letter from Jim Pearce to Vance Badaway

Damages resulting from the Authority wrongfully causing receivership application

93. To my knowledge, which is confirmed by Barbara Barrett of the FDFA, the Authority is the only land border duty-free store landlord to contact a duty-free store tenant's creditor/bank for the express purpose of causing the creditor to initiate receivership proceedings because of what it stated was pending Lease termination, notwithstanding that it knew that it was prohibited from terminating the Lease by reason of the eviction moratorium under Part IV of the *Commercial Tenancies Act*, that was in place through April 2022.

94. As a result of the receivership and monitor proceedings, significant costs have been incurred, at the sole expense of Duty Free. Such costs were $358,249.48 as of November 9th, 2022; and cost have continued to accrue thereafter. Leave may be sought to deliver further evidence before the hearing of this motion as to actual costs as at that time.

> Attached hereto and marked as **Exhibit "AA"** is a summary of Duty Free's professional fees incurred to date in respect of the receivership application proceeding

95. Pursuant to Canada Border Services Agency Memorandum D4-3-2, in the event of a receiver is appointed, the receiver is not permitted to operate a duty-free store unless permission is requested from and granted by the Canada Border Services Agency.

> Attached hereto and marked as **Exhibit "BB"** is a true copy of Canada Border Services Agency Memorandum D4-3-2

96. I believe the Authority (wrongfully) assumed RBC would appoint a receiver to operate Duty Free's business and pay Base Rent indefinitely pending a sale of the business and assignment of the Lease.

97. My expectation is that a receiver appointed by RBC would not receive permission from Canada Border Services Agency to continue the day-to-day operations of the duty-free shop. Rather, the most likely scenario is that the receiver would shut down the business, return product to suppliers to the extent possible and liquidate the balance of the inventory offsite.

98. RBC has not requested any information in respect of day to day operations or staffing which in my view supports my expectation. If RBC was planning for the eventual receivership operation of Duty Free, especially after the Authority's motion I would have expected it to reach out to duty Free for its co-operation. I have spoken with RBC during this period about other matters.

99. The imposition of a receiver defacto results in the destruction of Duty Free.

Arbitrary treatment of Duty Free

100. The Authority's 2020 Annual Report notes at page 10 that both the U.S. and the Canadian duty-free store leases at the Peace Bridge have a minimum base rent component:

> The rent from the duty free stores was negatively impacted by the border restrictions on non-essential travel that resulted in sharp declines in duty free sales. **Both the U.S. and the Canadian duty-free stores are required to pay a minimum base rent**; however, due to the COVID-19 border restrictions, the Authority entered in to rent deferral agreements with both stores. [emphasis added]

> Attached hereto and marked as **Exhibit "CC"** is a true copy of the 2020 Annual Report

101. Page 21 of the Authority's 2021 Financial Statements posted on its website notes that both the U.S. and Canadian duty-free store leases contain a continent component, along with the annual minimum rent component:

> The Authority, as lessor, has entered into non-cancelable operating leases with separate U.S. and Canadian duty-free enterprises through December 31, 2025 and October 31, 2031, respectively. The Authority recognized $4,494,000and $4,260,000 in gross rental income in 2021 and 2020 from the duty-free enterprises. **The leases provide for annual minimum and contingent lease payments to the Authority**. [emphasis added]

102. Page v. of the Authority's 2021 Financial Statements states that the U.S. duty-free store now (or at least at the time the report was prepared) pays only a percentage of actual sales made each month as rent (i.e. it is not paying the annual minimum rent component provided for in its lease).

103. Duty Free has been paying 20% of its Gross Sales, which was the underlying conceptual basis for the calculation of Base Rent set out in Article IV of the Lease. However, the Authority's demand of 100% of annual Base Rent after December 14th, 2021 is inconsistent with the normal payment practices at the time of the Appointment Order. It also appears to be inconsistent with the Authority's treatment of its other Peace Bridge duty-free store tenant.

104. It is unclear to me why the Authority appears to have arbitrarily given preferential treatment to its U.S. duty free store tenant over Duty Free by purporting through legal proceedings to require Duty Free to pay an annual minimum Base Rent instead of a percentage of actual sales when the Authority is aware Duty Free's Gross Sales are insufficient to pay the annual minimum Base Rent, and Duty Free arguably faced and continues to face greater restrictions (as the border to the US is not yet open to unvaccinated travelers) in Ontario than the U.S. duty free store did or does in New York where the border into Canada is open without restriction.

105. The Authority's position vis a vis Duty Free is even more befuddling since its assets as of December 31st, 2021 included approximately US$77,000,000 of unrestricted cash and cash equivalents on hand, representing nearly 2,570 days cash on hand as noted at page v. of the Authority's 2021 Financial Statements

> Attached hereto and marked as **Exhibit "DD"** is a true copy of the Authority's 2021 Financial Statements.

Losses due to Border Restrictions

106. As a result of the emergency Border Restrictions, and during the Closure Period Duty Free was deprived of the entire benefit of its bargain.

107. Duty Free was not allowed to operate the Permitted Use under the Lease or to peaceably and quietly hold and enjoy the Leased Premises without hindrance or interruption of the Authority, both as landlord and as Government Authority.

108. The Authority adopted what can be described as an aggressive rights based approach after the initial deferral agreement by ultimately seeking after the November 2020 rent deferal agreement had expired, that it was of no force or effect. As such the Authority seeks to continue to charge full Base Rent from July 2020 while prohibiting Duty Free from operating the sole Permitted Use at the Leased Premises.

109. Duty Free lost the total value of any Base Rent payable for the duration that the Government Authorities' emergency Border Restrictions prevented Duty Free from operating its retail duty-free shop during the Closure Period.

Failure to account for insurance proceeds

110. Duty Free paid for the Authority's business interruption insurance as part of its Operating Costs pursuant to subsection 11.06 of the Lease through Additional Rent.

111. As such I understand the Authority may have had access to business interruption insurance. As of the date of this affidavit, the Authority has not disclosed whether it applied for business interruption coverage, and what, if any, proceeds it has received from any insurance policies it may have obtained at Duty Free's expense.

Border Traffic

112. While border traffic eastbound on the Peace Bridge (which is the direction that travelers would access Duty Free's retail store) remains significantly below pre-Covid 19 levels, there has been a slow upward trend toward increased traffic. Traffic for October 2022 was down 27% compared to October 2019, and traffic for all of 2022 is down by 47%.

> Attached hereto and marked as **Exhibit "EE"** is a summary of eastbound traffic on the Peace Bridge from January 2017 to October 2022.

Duty Free Gross Sales are anticipated to continue to improve

113. Duty Free's sales remain significantly below pre-Covid 19 levels. However, in recent months since the emergency border restrictions began to be eased and the Ontario provincial government restrictions have also been eased, and with the recent elimination of the ArriveCan app, Duty Free's sales have been slowly, but consistently trended upward.

114. Duty Free's Gross Sales have increased from close to 0% to about 60% to 65% of 2019 pre-Covid sales by October 2022.

> Attached hereto and marked as **Exhibit "FF"** is a summary of sales from January 2017 to October 2022.

115. Assuming sales continue trending upward and no unforeseen reintroduction of government restrictions, Duty Free anticipates that as border traffic returns to its pre-Covid-19 levels, sales will continue to increase to a level which will enable it to be able to pay the annual minimum Base Rent provided for in the Lease. However, the uncertainties around Covid-19 make any timing estimate problematic, as is seen from the lengthy list noted earlier of government extensions and re-impositions of emergency restrictions. As at the time of making this affidavit, Covid-19 related infections are increasing and Ontario's medical system is discussing the possible re-introduction of mandatory masks. It is uncertain what the future may hold and for that reason it is important that certainty exist in respect of base rent obligations under the Lease in the event of further material Adverse Effects related to a change in Applicable Laws.

Impact of Lease termination

116. In the event the Lease is terminated, all Duty Free employees will lose their jobs, likely resulting in employment insurance applications; a licensed replacement operator will need to be found, and will likely take a minimum of up to six months to begin operating, resulting in a total rent loss for that period. During any such period all of Duty Free's suppliers will lose all of their sales.

117. A new lease will have to be negotiated with a new operator taking into consideration the new economic reality for cross-border duty-free shopping and the reduction in bridge traffic as compared to 2015/2016, rather than the Rent payable under the Lease that was negotiated pre-Covid-19 based on significantly higher traffic volumes.

118. In the event the Lease is terminated, there will be no duty-free services for people leaving Canada into the U.S. at the Peace Bridge border crossing while the destruction caused by the

Authority is sorted out, a new operator is found, a new lease negotiated, and the new operator gets the business up and running again, along with all the growing pains involved starting a new business in a highly regulated environment.

119. Licensing may be a further obstacle. In June 2022, I was advised by Charles Melchers, Director Regulatory Trade Programs for Canada Border Services Agency, that it would not be issuing new licenses for duty free stores at least well into 2023.

120. It is extremely unlikely any replacement tenant would agree to pay gross rent as a percentage of occupancy costs of 20% like Duty Free has and will continue to do. According to FDFA, Duty Free by the Lease pays the highest Base Rent of any Canadian land border duty free store and the highest percentage of gross sales.

121. In addition, as a result of Duty Free's secured bank creditor RBC, the Authority likely would not recover any of the alleged Base Rent arrears in the context of a receivership or other insolvency, as all sums would be required by RBC.

122. I continue to believe that in conjunction with a judicial ordered mediation, and given some more months for Gross Sales to continue to improve, that a commercial resolution can be reached with the Authority reflecting a fair compromise to both parties; and the best value for the Authority will be achieved by preserving the Lease (which now provides for higher than market Base

Rent).With the passage of time, it is anticipated that Duty Free, which was a profitable business before Covid-19 , will return to form.

SWORN (OR AFFIRMED) remotely by way of video conference by Jim Pearce stated as being located in the Town of Fort Erie, in the Province of Ontario, before Brendan Jones stated as being in the City of Toronto, in the Province of Ontario on this 13th day of November, 2022, in accordance with O.Reg. 431/20, Administering the Oath or Declaration remotely.

A Commissioner for Taking Affidavits,
Brendan Jones

JIM PEARCE

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

ROYAL BANK OF CANADA and **PEACE BRIDGE DUTY FREE INC.**

Applicant Respondent

Email address of recipient: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF JIM PEARCE

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Lawyers for the Respondent

THIS IS **EXHIBIT "A"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Blaney McMurtry LLP | Lawyers
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Partner
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January 14th, 2022

Via Email

Gowling WLG
100 King St West
Suite # 1600
Toronto, ON, M5X 1G5

Attention: Christopher Stanek and Patrick Shea

Dear Chris and Patrick,

RE: **Buffalo & Fort Erie Public Bridge Authority ("Landlord") lease to Peace Bridge Duty Free Inc. as amended ("Lease") of certain premises ("Duty Free Store "or "store")**

And Re: **Royal Bank Of Canada ("RBC") Receivership Application Initially returnable December 14th, 2021 ("Receivership")**

Further to your last email, we wanted to respond to you with areas of mutual client agreement, and proposals on those areas still requiring refinement.

Underlying this letter are what I understand to be the material interests/positions of the parties as follows:

1. Authority has no business objective of terminating the Lease in favour of another tenant.

2. All things being equal Authority is prepared for Duty Free to remain the tenant throughout the Lease term.

3. Authority supported Duty Free after May 2020 when it was unable to pay rent because of governmental closures and in that regard an initial rent deferral agreement was concluded, and a second agreement was executed by Duty Free (but not by the Authority) that sought to address the periods through March 31st, 2021, it being anticipated non-essential traffic would resume before then.

4. In December 2020, the Authority supported Duty Free's attempts to secure federal support.

5. In April 2021, the parties began to disagree. The Authority wanted Duty Free to open for business and Duty Free wanted to await a time when non-essential traffic was permitted again, or at least expected in the short term.

6. Despite this philosophical disagreement, the status quo was permitted to continue without further written agreement- probably because of the provincial eviction moratorium which the Authority acknowledged the existence of in various communications.

7. Once Duty Free opened in early Fall 2021, the Authority sought payment of full minimum monthly basic rent notwithstanding that sales having regard to reduced traffic were inevitably going to be insufficient to generate that sum.

8. In August 2021, DutyFree made a proposal which was not acceptable to Authority. Counter proposals were exchanged.

9. During 2021, Duty Free paid monthly 20% of actual gross sales which was accepted by the Authority (20% being the basis uon which minimum basic rent is calculated in the Lease). Duty Free gross sales since opening are approximately 35% of pre-closure sales.

10. Bad weather and government musing about future Covid implications have had an immediate negative impact on gross sales.

From the exchanges to date, it appears that prior to Omicrom when it was anticipated that the pandemic was moving behind the parties and a gradual return to normal bridge traffic could be reasonably contemplated, the parties indicated in without prejudice proposals a general agreement as follows:

1. Security deposit $50,000 to be replenished (completed).

2. HST would be paid by Duty Free on the Authority's imputed 2021 Rent (resulting in an overpayment of HST) (completed).

3. Food tenant to be sought at full market rent and approved by Authority (underway).

4. Lease amendment to be retroactive to November 1st, 2021.

5. Existing Lease terms apply after January 1st, 2026.

6. 2023: minimum base rent calculated as the greater of rent payable on $3 million, or 20% of sales.

7. 2024: minimum base rent calculated as the greater of rent payable on $3.5 million, or 20% of sales.

8. 2025: minimum base rent calculated as the greater of rent payable on $4 million, or 20% of sales.

Obviously given the developments of the past two months, particulars of these terms will require tweaking to reflect on the ground facts, and the delay in any proforma estimates of the time for business to improve sufficiently to be able to honour these commitments..

The parties were not able to reach any agreement in principal on:

1. Basic rent for the period October 24th - December 2021.

2. Basic rent for the period 2022.

3. How to address rent arrears (partial forgiveness and the balance abated over a future term).

4. Treatment of the 2021 HST over paymenent.

5. Duty Free's Lease term extension proposal.

6. How to address further governmental interference with bridge crossing; and/or reduction in traffic.

Since the exchange of offers, Omicron has introduced a further and large degree of uncertainty into bridge traffic and therefore what will be achieved vis a vis Duty Free sales in 2022.

Ontario is currently in shutdown.

The Federal government (with a stake in the Authority) has specifically requested that Canadians not travel internationally.

It is unknown whether non-essential travel border will be restricted.

As of today, it is expected that unvaccinated persons will be barred entry into Canada and therefore cannot be customers on the return to the USA.

Evidence on the effectiveness of vaccines on new variants is extremely disappointing. Ontario, despite two years of opportunity to plan, appears to have no excess medical capacity generally; and as at now actual capacity is materially impacted by medical worker infection and absenteeism.

The American governmemt is warning its citizens not to travel to Ontario by reason of published Omicron infection rates.

The status quo is to put it mildly, fluid and full of uncertainty and this unfortunate reality should be accounted for in any lease amending agreement.

Over the holidays, we have made many investigations in furtherance of a fair and commercially reasonable framework for a lease amending agreement that takes into account industry norms and practices in dealing with this unprecedented event.

Our investigations have revealed a number of interesting and relevant facts such as:

1. No other Canadian frontier duty free location has been threatened with eviction or other lease enforcement by its landlord as has Duty Free.

2. We are advised that the Treasury Board stated that all federal landlords were to participate in CECRA. We are attempting to obtain a copy of that decree. The Authority did not receive CECRA. Had the Authority received CECRA, 75% of eligible rent would have been forgiven from March 2020 to September 2020. During this period, gross rent of about $2.7 million accrued.

3. The clear intent of the Treasury Board/Federal Government was that CECRA type rent relief should be afforded to frontier duty free stores and many tenants received the benefit of CECRA, or otherwise received CECRA kind relief.

4. Other similarly situated frontier duty free parties have negotiated rent forgiveness, rent reduction and rent deferment agreements where arrears are payable over the term of the lease, and which appear to incorporate CECRA like terms of 75% foregiven during the CECRA period or most of it, and a material rent reduction in respect of the period therafter and going forward.

5. A public example of this is the Sault St. Marie Bridge Authority which agreed:

   <u>for the Canadian operator to:</u>

   (a) Reduce minimum rent for 2020/2021 and 2021/2022 by 35%;

   (b) In addition to waive 75% of rent from April – June 2020 (**<u>at the express request of the Federal Ministry of Transportation</u>**);

   <u>for the American operator to:</u>

   (c) Extend the term of the lease by 15 years;

   (d) Reduce percentage rent from 18% to 16% (the same rate as the Canadian operator);

   (e) Reduce rent retroactively by 35% from March 2020 until border re-opening;

(f) Payment of reduced rent during closure to be deferred and payable amortized without interest over the balance of the term of the extended lease.

Attached are the Sault St. Marie Bridge Authority's minutes evidencing the foregoing.

The approach of the Sault St. Marie Bridge Authority is instructive in terms of examples of reasonable accommodations to duty free operators having regard to site specific facts, including CECRA type relief.

What the parties can take from this is:

1. No duty free leases are in jeopardy except according to the Authority, the Peace Bridge Duty Free;

2. Federal rent relief programs have recently been extended until at least May 2022. In the past, the *Commercial Tenancies Act* stay of enforcement of leases has been extended to a period six months thereafter which means at least November 2022. There is no reason to expect anything different this time.

3. Duty Free may be eligle for the next rent releif program.

4. Rent relief needs to take into account future partial closures/loss of bridge traffic if and when such events occur.

5. Rent relief in favour of Duty Free during CECRA or any other period of government shutdown should be significant such as 75% (like under CECRA).

6. Rent relief in favour of Duty Free during any period of restricted operation should be material such as 35% (used by the Sault St. Marie Bridge Authority).

7. Remaining arrears of rent should be abated over the remaining balance of any term of the Lease without interest.

Our client is keen to resolve all issues related to the Lease, and to be able to focus on its business.

We look forward to a face to face zoom mediation to further hone this proposal into a written agreement capable of execution. Please reply with a mediator from the list previously provided acceptable to you.

Yours very truly,

Blaney McMurtry LLP

John C. Wolf

John C. Wolf
JCW/gf
Encl.

cc: David Ullmann and Alexandra Teodorescu

Sault Ste. Marie Bridge Authority
Draft **Minutes**
May 13, 2021
Virtual Meeting via Zoom

Present:	Natalie Kinloch, Chair (Apple Hill, Ontario) Linda Hoath, Vice Chair (Sault, Michigan) Warren Askew, Member (Sarnia, Ontario) Thye Lee, Member (Ottawa, Ontario) Thomas Buckingham, Sr., Member (Newberry, Michigan) Nicholas White, Member
Absent:	Scott Shackleton, Member
Also Present:	Peter Petäinen, Bridge Director, IBA Laura Mester, Chief Administrative Officer, MDOT Michael Dittenber, Attorney General's Office, MDOT Sara Moore, International Border Crossing & Trade Specialist, MDOT Emily Jacques, Chief Financial Officer, IBA Karl Hansen, Bridge Engineer, IBA Marcus Eidenier, Facilities & Asset Manager, IBA Fiore Cappelli, Operations Manager, IBA Cheryn Sanford, Departmental Analyst, IBA Suzanne Moreau, Accounting Technician, IBA Holly Bishop, Calculations Assistant, IBA Dan Weingarten, MDOT Communications Representative Ken Talsma, Principal, Anderson Tackman & Company

Chair Kinloch called the meeting to order at 9:02 a.m.

I. **Approval of Minutes**
A motion was made by Vice Chair Hoath to approve the February 18, 2021 Sault Ste. Marie Bridge Authority regular meeting minutes as written. The motion was seconded by Member Askew. A roll call vote was taken by all members present. All present voted aye. Motion carried unanimously.

II. **General Manager Comments**

A. <u>Toll Software Replacement Project</u>

Peter reported the respective bridge stakeholders have come to a new agreement on a MOA for the procurement of the new toll software, including contracting and maintenance; the IBA will be the contracting authority on behalf of all stakeholders. The goal is to have a contract in place by July 2021 with replacement software and related equipment installed and functional by the summer of 2022; the current toll software contract expires on August 31, 2022. The initial contract would cover a five-year period with options to renew for an additional five years.

A budget amendment will be requested in the future as currently the approved budgets only cover the IBA's portion of the costs; however, with the IBA being the contracting authority, we will need to show the inflow/outflow of all monies associated with the contract. MDOT has agreed to provide owner support to cover the upfront capital costs for the IBA's portion which would be repaid over the life of the contract at approximately $410k per year.

Final approvals are pending by the State Administrative Board and the Federal Bridge Corporation, Limited.

Member White made the following motion:

Whereas the International Bridge Administration (IBA) is operating under a current Memorandum of Understanding (MOU) between Michigan Department of Transportation (MDOT), Department of Technology Management and Budget (DTMB), Blue Water Bridge-MDOT (BWB-MDOT), and Mackinac Bridge Authority (MBA) for the shared cost and operation of its toll collection system, and;

Whereas MBA replaced their software vendor in August of 2019, and exited the current MOU, and;

Whereas the current vendor contract for IBA and BWB-MDOT expires August 2022, and;

Whereas IBA makes purchases and contracts in its own name, and operates under and has a current agreed upon bi-national Intergovernmental Agreement between FBCL and MDOT, and;

Whereas the IBA, FBCL and BWB-MDOT conducted a toll replacement study for future contract options, and;

Whereas the study identified significant potential operational efficiencies and capital cost savings, and;

Whereas DTMB is finalizing the procurement process on behalf of the Michigan Toll Bridges (IBA and BWB-MDOT) for software replacement, and;

Whereas the IBA, FBCL, and BWB-MDOT have drafted a proposed new Memorandum of Agreement (MOA) for software replacement, and;

Whereas the proposed new vendor and contract are also subject to approvals by the State Administrative Board and The Federal Bridge Corporation Limited Board of Directors,

Now be it hereby resolved that:

- SSMBA approve IBA to enter into a new Memorandum of Agreement (MOA) to allocate costs of the toll system replacement with the stakeholders BWB(MDOT) and/or FBCL, on the condition that each participating stakeholder has obtained all approvals required to enter into the MOA, and;
- SSMBA approve IBA to act as the contracting authority and enter into the proposed contract for toll system replacement on behalf of the named stakeholders of the MOA, and;
- SSMBA conditionally approve IBA to enter into a contract on or after June 24, 2021 on behalf of BWB-MDOT and itself, as selected and recommended by the bi-national stakeholder Joint Evaluation Committee having utilized the DTMB procurement process for the Michigan stakeholders, and subject to the State Administrative Board approval, and;
- SSMBA conditionally approve inclusion of the FBCL as a stakeholder to the toll system replacement contract subject to the FBCL Board of Directors, and;
- MOA stakeholders will reimburse IBA 100% of their respective contract shares as identified in the contract and as invoiced by IBA.

The motion was seconded by Member Lee. A roll call vote was taken by all members present. All present voted aye. Motion carried unanimously.

B. Duty Free Stores

Peter stated an agreement with the Sault Ste. Marie Duty Free operator in Ontario has been reached; subject to receipt of documentation that the operator has applied for federal support available under Canadian support programs, they will receive a 35% reduction in rent relief for the $77,259 minimum annual payment for 2020/21 and 2021/22. Additionally, they will receive a retroactive reduction in rent of 75% for April-June 2020 which comes at the request of the Canadian Federal Minister of Transport related to relief for operators.

The American Duty Free store lease is also due for renewal and terms have been negotiated via the MDOT Real Estate Office. The proposed term for the lease renewal is 15 years which will be retroactive to February 1, 2021 with a new expiration date of January 31, 2036. There will be a reduction in the percentage of gross sales from 18% to 16%, which mirrors the annual percentage paid by the Canadian Duty Free operator. The American Duty Free operator will also receive a 35% rent reduction from March 20, 2020 until the border is reopened; payment of the reduced rent will be deferred until the border opens after which repayment will be amortized monthly over the remaining term of the lease.

Member Buckingham made a motion to approve the US Duty Free lease agreement extension with terms as follows:

- Extension of lease term from be February 1, 2021 through January 31, 2036, and;
- Rental rate of 16% of gross sales, payable monthly, and;
- Minimum annual rent of $77,259 (USD) for the term of the lease extension, and;
- Annual minimum discounted by 35%, during the duration of the border closure, to $50,218.35, with repayment to be amortized over the life of the lease upon border reopening.

The motion was seconded by Vice Chair Hoath. A roll call vote was taken by all members present. All present voted aye. Motion carried unanimously.

C. Other Comments

- Peter stated MDOT Director Ajegba requested the respective Michigan big bridge managers work together on consistency and standardization in their working job titles. This was initiated by the Mackinac Bridge Authority Executive Secretary Kim Nowack, who requested that her working job title be updated to better reflect her role and position. This was reviewed by both Civil Service and the Michigan Attorney General's offices, whom we met with on April 27th. It was determined that the working job titles have no impact on our Civil Service classification, nor anything related to Human Resources. It is effectively an agreed upon change solely in job title to best represent the roles. As such, MDOT will now reference each big bridge manager respectively as Bridge Director, as opposed to the various descriptions today that included Executive Secretary, General Manager, or Bridge Administrator.
- Peter reported work on all of the FBCL stimulus projects is now complete.
- The peregrine falcons have returned and there are three eggs in the nest. Live viewing of the birds can be seen at www.saultbridge.com/falcam.

III. **Finance and Operations**

A. December 31, 2020 Audit Report

CFO Emily Jacques introduced Ken Talsma of Anderson, Tackman & Company. Mr. Talsma gave an overview of the audit process from start to finish and reviewed the audit report letter with the board members. He stated the IBA received the best possible independent audit result, which is an "Unmodified Opinion" which means everything was fairly and accurately reported in accordance with auditing principles.

Mr. Talsma expressed his appreciation to IBA staff for their assistance throughout the auditing process. He stated despite the challenges the pandemic posed, his staff always felt safe and social distancing protocols were easily achieved.

Vice Chair Hoath made a motion to approve the December 31, 2020 Sault Ste. Marie Bridge Authority basic financial statements and independent audit report. The motion was seconded by Member Askew. A roll call vote was taken by all members present. All present voted aye. Motion carried unanimously.

B. First Quarter Financial Report

CFO Emily Jacques reported balance sheet assets as of March 31, 2021 were at $6.8M; total liabilities were at $680K, and total fund balance was at $3.9M. Total net revenue for quarter ending March 31, 2021 was $1.2M with total next expenditures totaling $1M.

C. Independent Auditor Renewal

Per the Intergovernmental Agreement, the board must approve the independent auditor each fiscal year; the IBA respectfully requests board approval to renew Anderson Tackman & Company as the independent auditor for fiscal year ending December 31, 2021.

Vice Chair Hoath made a motion to exercise the option to renew the contract with Anderson Tackman & Company as the Sault Ste. Marie Bridge Authority's independent auditor for the fiscal year ending December 31, 2021. The motion was seconded by Member Lee. A roll call vote was taken by all members present. All present voted aye. Motion carried unanimously.

IV. **Maintenance Operations**

A. Activity and Project Tracking Report

Asset Manager Marcus Eidenier stated overall labor and equipment usage spending was down 41% for the first quarter of 2021; the decrease is attributed to a decrease in winter plowing and sanding activities along with the payroll savings realized from staff temporary reassignments and three full time vacancies.

B. 2021 Maintenance Projects

Marcus stated during the 2021 season the maintenance crew will focus on the remaining 26% of routine maintenance items identified in the 2019 annual inspection report. Additionally, staff will focus on spot painting on the lower portion of the U.S. Arch, repairs to the top of pier 19, and decommissioning and removal of the Shaw Cable system from the bridge; all expenses relating to the removal of the cable system will be reimbursed by Shaw Cable.

C. UB50 Training

Marcus stated Aspen Aerial will be traveling to the Sault the week of May 17^{th} to provide training to IBA maintenance staff. The 2-day course will include basic mechanical troubleshooting, proper maintenance, and a general overview of operational procedures. Total cost of the training is $6,000.

V. **Capital Project Update**

A. 2021 Routine Detailed Inspection

Bridge Engineer Karl Hansen reported Hardesty and Hanover will be onsite during the first two weeks of August to conduct the first bi-annual routine detailed inspection; preliminary findings will be reported at the August SSMBA meeting.

VI. **Public Comment**

There was no public comment.

VII. **Adjournment**

Vice Chair Hoath made a motion to adjourn. The motion was seconded by Member Askew. A roll call vote was taken by all members present. All present voted aye. Motion carried unanimously and the meeting was adjourned at 10:23 a.m.

Respectfully Submitted,
International Bridge Administration

Peter M. Petäinen
Bridge Director

PP:cs

Gail Fairhart

From: John C. Wolf
Sent: January 14, 2022 2:57 PM
To: 'Stanek, Chris'; Shea, Patrick
Cc: David T. Ullmann; Alexandra Teodorescu; John C. Wolf
Subject: RE: Peace Bridge Duty Free

Follow Up Flag: Follow up
Flag Status: Completed

Chris,
The tenant are not presently direct litigants.
The letter will not be before the court through Blaney. It was not provided to any other person(other than our clients of course)
We are not fully comprehending the matter of the distinction as to whether parts of the letter may ultimately be found to be with or without prejudice if litigation between the parties is commenced.
Having said that, and in regard to the prejudice issue, we reiterate our several communications that our intention is to resolve matters with the landlord through reasoned landlord and discussion, preferably with the assistance of a skilled mediator.
In our experience and view, any pragmatic and reasonable landlord could reach a resolution with the Tenant that is capable of performance, and maximizes recovery in the context of ensuring the business remains viable. All parties need to get by mistrust and posturing and roll up their sleeves to get a LAA completed.
Regards,
John

John C. Wolf
jwolf@blaney.com
T 416-593-2994 | F 416-596-2044

From: Stanek, Chris <Christopher.Stanek@gowlingwlg.com>
Sent: January 14, 2022 2:37 PM
To: John C. Wolf <jwolf@blaney.com>; Gail Fairhart <gfairhart@blaney.com>; Shea, Patrick <Patrick.Shea@gowlingwlg.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>
Subject: RE: Peace Bridge Duty Free

Mr. Wolf:
I understand from your reply that your letter is "with prejudice" but will not be before the court on Monday. Please confirm.

Christopher Stanek
Partner
T +1 416 862 4369
christopher.stanek@gowlingwlg.com

From: John C. Wolf <jwolf@blaney.com>
Sent: Friday, January 14, 2022 2:32 PM
To: Stanek, Chris <Christopher.Stanek@ca.gowlingwlg.com>; Gail Fairhart <gfairhart@blaney.com>; Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; John C. Wolf

<jwolf@blaney.com>
Subject: RE: Peace Bridge Duty Free
This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Chris,
We wanted to promptly reply. The letter will not be before the court unless you place it before the court.
We hope it will assist all to move this matter forward to a reasonable without prejudice settlement framework.
It is sent in furtherance of our proposal that a mediation be conducted asap to settle these matters or as many as possible. It is our view that at present all parties would benefit from a neutral mediator.
Regards,
John
John C. Wolf

jwolf@blaney.com
416-593-2994 | 416-596-2044

From: Stanek, Chris <Christopher.Stanek@gowlingwlg.com>
Sent: January 14, 2022 2:27 PM
To: Gail Fairhart <gfairhart@blaney.com>; Shea, Patrick <Patrick.Shea@gowlingwlg.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; John C. Wolf <jwolf@blaney.com>
Subject: RE: Peace Bridge Duty Free
Mr. Wolf and Mr. Ullmann:
We have reviewed your letter and our client contests a number of assertions in it. As such, we will be required to respond. Please also advise if the letter you sent is "with prejudice" or "without prejudice". More specifically, will it be before the court on Monday?

Christopher Stanek
Partner
T +1 416 862 4369
christopher.stanek@gowlingwlg.com

From: Gail Fairhart <gfairhart@blaney.com>
Sent: Friday, January 14, 2022 9:06 AM
To: Stanek, Chris <Christopher.Stanek@ca.gowlingwlg.com>; Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; John C. Wolf <jwolf@blaney.com>
Subject: Peace Bridge Duty Free
This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good morning,
Attached please find correspondence and enclosure from John Wolf.
Regards,

Blaney McMurtry LLP 2 Queen Street East | Suite 1500 Toronto, Ontario M5C 3G5

Gail Fairhart
Legal Assistant to John Wolf, Brendan Jones & Janine Abuluyan

gfairhart@blaney.com
416-593-1221 ext. 4009
Blaney.com

THIS IS **EXHIBIT "B"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

THE PEACE BRIDGE

ABOUT US

Authority Informatio

Board of Directors

Office Location

Peace Bridge Facts

Privacy Policy

AUTHORITY INFORMATION

The Buffalo and Fort Erie Public Bridge Authority

The Buffalo and Fort Erie Public Bridge Authority ("The Authority") is an international compact entity created pursuant to a compact entered into by the State of New York, with the consent of the United States Congress, and by the Government of Canada. The Authority is governed by a ten member Board consisting of five members from New York State and five members from Canada. The mission of the Authority is to be known as the premier Canada-United States international border crossing, providing excellence in customer service and an effective

COMMUNITY PROGRAMS

HISTORICAL TRAFFIC STATISTICS

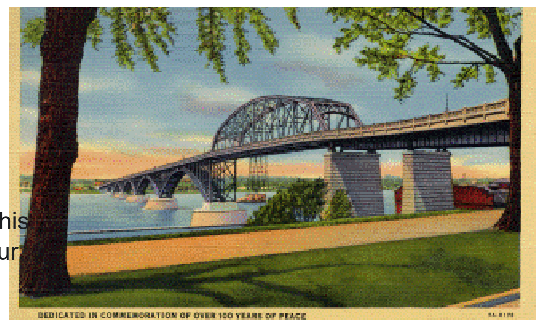
MEDIA ROOM

CONTACT US

conduit for trade and tourism.

The Peace Bridge

The Authority's principal asset and source of revenue is the Peace Bridge, a major international toll crossing spanning the Niagara River between Fort Erie, Ontario, and Buffalo, New York. The Authority also derives significant revenues



in the form of rental and fee income from the United States Bureau of Customs and Border Protection, Public Works and Government Services Canada, United States and Canadian duty-free shops, and commercial brokers operating on the property owned by the Authority and from leases of communication conduits spanning the Peace Bridge. In addition to being a principal artery in the Niagara Frontier for travel and commerce between the United States and Canada, the Peace Bridge is a vital link to long distance, interstate travel and international trade.

Powers

The Authority is authorized under its legislation to establish and collect such tolls and charges as are necessary to produce at all times sufficient revenues to meet its expenses of maintenance and operation, to pay, as the same shall become due, the principal of and interest on bonds of the Authority, and to fulfill the terms of any agreement made with the holders of the bonds until such bonds and the interest thereon are fully met and discharged.

Title to the property and assets of the Authority is vested in the Authority until July 1, 2020, or until all of the bonds issued by the Authority have been paid or discharged, whichever is later. Thereafter, the powers, jurisdiction, and duties of the Authority within the State of New York or within Canada shall be under the jurisdiction of the State of New York and Canada, respectively.

Since 1923, the Authority and its predecessor, the Buffalo and Fort Erie Public Bridge Company, have held pursuant to Canadian law an exclusive franchise under Canadian law to

construct and operate a bridge across the Niagara River. The law provides that "no other bridge for a like purpose shall be constructed or located at any point nearer than six miles from the location of the bridge of [the Authority], except with the consent of [the Authority] or of the Governor in Council." By letter to the Authority dated November 30, 2004, Transport Canada confirmed the Authority's exclusive six-mile franchise.

Fraud Hotline

The Authority is committed to the highest standards of business ethics and integrity. Directors, officers, and employees must represent the Authority accurately and honestly, refraining from any activity intended to defraud anyone of money, property or services, and act in good faith and in the best interest of the Authority. Conduct not specifically addressed by these standards must be consistent with this principle.

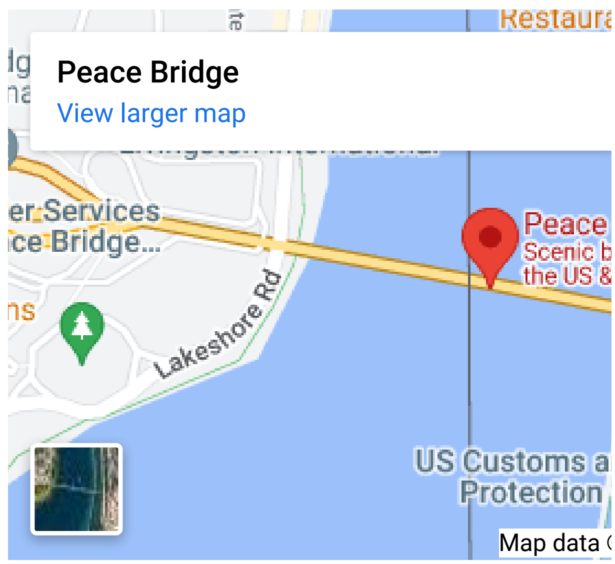
To report a concern call the Authority's independent reporting service at 1-877-472-2110. All calls will be treated confidential and your anonymity will be protected to the extent possible by law.

OUR LOCATION

100 Queen Street
Fort Erie, ON
L2A 3S6
Canada

1 Peace Bridge Plaza
Buffalo, NY
14213 United States

THE PEACE BRIDGE



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Commissioner, etc.

Government of Canada Gouvernement du Canada

Government announces new, targeted support to help businesses through pandemic

From: **Department of Finance Canada**

News release

October 9, 2020 - Ottawa, Ontario - Department of Finance Canada

The Government of Canada took immediate action to help Canadian businesses affected by the global COVID-19 pandemic, from helping keep employees on the job to increasing cash flow and providing support to help pay rent.

While some parts of our economy are recovering, others continue to struggle with reduced revenues, increased costs, and uncertainty because of the COVID-19 pandemic.

That is why today the Deputy Prime Minister and Finance Minister, the Honourable Chrystia Freeland, announced the government's intention to introduce new, targeted supports to help hard-hit businesses and other organizations experiencing a drop in revenue. The government plans to introduce legislation to provide support that would help these businesses safely get through the second wave of the virus and the winter, cover costs so they can continue to serve their communities, and be positioned for a strong recovery, including:

- The new Canada Emergency Rent Subsidy, which would provide simple and easy-to-access rent and mortgage support until June 2021 for qualifying organizations affected by COVID-19. The rent subsidy would be provided directly to tenants, while also providing support to property owners. The new rent subsidy would support businesses, charities, and non-profits that have suffered a revenue drop, by subsidizing a percentage of their expenses, on a sliding scale, up to a maximum of 65 per cent of eligible expenses until December 19, 2020. Organizations would be able to make claims retroactively for the period that began September 27 and ends October 24, 2020.
- A top-up Canada Emergency Rent Subsidy of 25 per cent for organizations temporarily shut down by a mandatory public health order issued by a qualifying public health authority, in addition to the 65 per cent subsidy. This follows a commitment in the Speech from the Throne to provide direct financial support to businesses temporarily shut down as a result of a local public health decision.
- The extension of the Canada Emergency Wage Subsidy until June 2021, which would continue to protect jobs by helping businesses keep employees on the payroll and encouraging employers to re-hire their workers. The subsidy would remain at the current subsidy rate of up to a maximum of 65 per cent of eligible wages until December 19, 2020. This measure is part of the government's commitment to create over 1 million jobs and restore employment to the level it was before the pandemic.
- An expanded Canada Emergency Business Account (CEBA), which would enable businesses, and not-for-profits eligible for CEBA loans—and that continue to be seriously impacted by the pandemic—to access an interest-free loan of up to $20,000, in addition to the original CEBA loan of $40,000. Half of this additional financing would be forgivable if repaid by December 31, 2022. Additionally, the application deadline for CEBA is being extended to December 31, 2020. Further details, including the launch date and application process will be announced in the coming days. An attestation of the impact of COVID-19 on the business will be required to access the additional financing.

Quotes

> "Canadian businesses and workers have shown tremendous resilience in adapting to the challenges posed by the global pandemic. With the country now in the second wave of this virus, our government knows businesses and workers need continued support. We were there to help businesses when the COVID-19 pandemic began, and we will continue to give them the support they need. As we get through this difficult situation, we will keep taking action to support our businesses, protect jobs, and keep Canadians safe and healthy."
>
> *- The Hon. Chrystia Freeland, Deputy Prime Minister and Minister of Finance*

> "From the very beginning of this pandemic, we spent every single day listening to business owners and responding to their urgent needs. Today's changes are a direct result of those crucial conversations, and will help even more Canadian business owners, entrepreneurs, and workers across the country. In the weeks and months ahead, we will continue to have their backs."
>
> *- The Hon. Mary Ng, Minister of Small Business, Export Promotion and International Trade*

Quick facts

- The government intends to introduce legislation to implement the new rent subsidy and the wage subsidy extension in the near future.
- Since its launch, over 3.7 million Canadians have had their jobs supported through the Canada Emergency Wage Subsidy, with more than $41 billion paid out in subsidies as of October 4, 2020.
- Small- and medium-sized businesses are strongly represented in sectors like tourism and transportation, which continue to be significantly affected by the virus and the measures taken to contain it.
- As of early October, the Government of Canada has delivered over $1.8 billion in rent support, through the Canada Emergency Commercial Rent Assistance (CECRA) for small businesses. Rent assistance has helped over 130,000 small businesses, supporting 1.18 million jobs in Canada.
- The new rent subsidy would pick up where the previous program left off, delivering direct, targeted, and accessible rent support to qualifying organizations affected by COVID-19 without the need to work through their landlords. It would provide a subsidy for eligible fixed property expenses, including rent and interest on commercial mortgages. Program parameters announced today apply until December 19, 2020 with future parameters in 2021 to be adapted and targeted as needed.
- Launched in April, CEBA provides zero-interest, partially forgivable loans to small businesses that have experienced diminished revenues due to COVID-19 but face ongoing costs, such as rent, utilities, insurance, taxes and employment costs. By assisting these businesses in covering their costs, CEBA is intended to help them resume normal business operations after COVID-19.
- The additional CEBA loan would effectively increase CEBA loans to $60,000 from $40,000 for eligible businesses, of which a total of $20,000 would be forgiven if the balance of the loan is repaid before December 31, 2022. An attestation of the impact of COVID-19 on the business will be required to access the additional financing.
- As of early October, over 765,000 CEBA loans have been approved, representing more than $30 billion.

Associated links

- Canada's COVID-19 Economic Response Plan
- DPM remarks – October 9, 2020

- Backgrounder: Extending the Canada Emergency Wage Subsidy
- Deputy Prime Minister and Minister of Finance speaking remarks on business supports

Contacts

Media may contact:

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Deputy Prime Minister's Office
Katherine.Cuplinskas@dpmo-cvpm.gc.ca

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Search for related information by keyword: Public finance | Department of Finance Canada | Canada | Money and finances | Coronavirus (COVID-19) | general public | news releases | Hon. Chrystia Freeland | Hon. Mary Ng

Date modified:
2020-10-21

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SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

THRP Subsidy program	Period 22 Nov20 2021	Period 23 Dec18 2021	Period 24 Jan15 2022	Period 25 Feb12 2022	PP26 Mar12 2022	PP27 Apr9 2022	PP28 May7 2022
Maximum claim amount	75,000	75,000	75,000	75,000	75,000	75,000	75,000
THRP Subsidy rate	71.8%	61.8%	61.3%	75.0%	75.0%	27.65%	23.15%
THRP Subsidy	53,850	46,350	45,975	56,250	56,250	20,738	17,362.50
Lockdown support	18,750	18,750	18,750	18,750	-	-	-
Total THRP Subsidy received	72,600	65,100	64,725	75,000	56,250	20,738	17,362.50
PBDF							
PBDF Revenues	432,391	565,466	416,763	238,878	442,366	542,511	739,975
Percentage rent paid-20%	86,478	113,093	83,353	47,776	88,473	108,502	147,995
Additional Rent-Taxes&Insurance	10,812	10,812	10,812	10,812	10,812	10,812	10,812
Total Rent paid to PBA	97,291	123,906	94,165	58,588	99,286	119,314	158,807
Net balance	(24,691)	(58,806)	(29,440)	16,412	(43,036)	(98,577)	(141,445)
Net balance paid to PBA	0	0	0	16,412	0	0	0

CERS Subsidy Program	Period 1 Oct24 2020	Period 2 Nov21 2020	Period 3 Dec19 2020	Period 4(11) Jan16 2021	Period 5(12) Feb13 2021	Period 6(13) Mar13 2021	Period 7(14) Apr10 2021
PBDF store max	75,000	75,000	75,000	75,000	75,000	75,000	75,000
CERS Subsidy Rate	65%	65%	65%	65%	65%	65%	65%
	48,750	48,750	48,750	48,750	48,750	48,750	48,750
Lockdown support	-	18,750	18,750	18,750	18,750	-	-
Total CERS received	48,750	67,500	67,500	67,500	67,500	48,750	48,750
Previously paid to PBA							
Additional Rent-Taxes&Insurance	(8,167)	(8,167)	(8,167)	(8,167)	(9,050)	(9,050)	(9,050)
Net balance	40,583	59,333	59,333	59,333	58,450	39,700	39,700
Remitted to PBA	43,442	59,333	58,053	59,333	58,450	39,700	39,700

CERS Subsidy Program	Period 8(15) May8 2021	Period 9(16) Jun5 2021	Period 10(17) Jul3 2021	Period 11(18) Jul31 2021	Period 12(19) Aug28 2021	Period 13(20) Sep25 2021	Period 14(21) Oct23 2021
PBDF store max	75,000	75,000	75,000	75,000	75,000	75,000	75,000
CERS Subsidy Rate	65%	65%	65%	60%	40%	40%	20%
	48,750	48,750	48,750	45,000	30,000	30,000	15,000
Lockdown support	-	-	-	-	-	-	-
Total CERS received	48,750	48,750	48,750	45,000	30,000	30,000	15,000
Previously paid to PBA							
Additional Rent-Taxes&Insurance	(10,812)	(10,812)	(10,812)	(10,812)	(10,812)	(10,812)	(10,812)
Net balance	37,938	37,938	37,938	34,188	19,188	19,188	4,188
Remitted to PBA	37,938	37,938	37,938	34,188	19,188	19,188	4,188

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SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

November 27, 2020

VIA REGISTERED MAIL

Peace Bridge Duty Free
P.O. Box 339
Peace Bridge Plaza
Fort Erie, ON L2A 5N1

Attn: Gregory G. O'Hara,
President and Chief Executive Officer

Dear Mr. O'Hara:

RE: FORMAL NOTICE TO PERFORM – WITHOUT PREJUDICE

Further to previous e-mail communications, in accordance with Articles 17.01 (b) and 18.03 of the lease between the Buffalo and Fort Erie Public Bridge Authority (PBA) and Peace Bridge Duty Free (PBDF), this letter constitutes formal notice by the PBA requiring PBDF to perform certain tasks stipulated in the lease.

Specifically, the PBA require PBDF to fulfill the obligations required by Article 9.02:

> *(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*
>
> *(e) keep the leased premises clean, neat and free of hazards and fire dangers at all times*

The PBA has provided cleaning services for the restrooms the past seven months out of necessity as PBDF has refused to do so. PBA is now requiring PBDF to fulfill the obligations imposed by the lease.

As per Article 17.01 (b), PBDF has ten (10) days to rectify this failure.

Yours truly,

Ron Rienas
General Manager

/ld

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
100 QUEEN STREET, FORT ERIE, ON L2A 3S6 ▪ 1 PEACE BRIDGE PLAZA, BUFFALO, NY 14213-2495
PHONE (905) 871-1608/(716) 884-6744 ▪ FAX (905) 871-9940/(716) 884-2089
www.peacebridge.com

THIS IS **EXHIBIT "F"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

HST remitted to PBA

Nov23/20	HST Apr-Sep2020	260,000.00	
	April		43,333.33
	May		43,333.33
	Jun		43,333.33
	Jul		43,333.33
	Aug		43,333.33
	Sep		43,333.33
Feb 2/21	HST Oct-Dec 2020	130,000.00	
	Oct		43,333.33
	Nov		43,333.33
	Dec		43,333.33
May 6/21	HST Jan-Mar 2021	130,000.00	
	Jan		43,333.33
	Feb		43,333.33
	Mar		43,333.33
July 23/21	HST Apr-Jun 2021	130,000.00	
	Apr		43,333.33
	May		43,333.33
	Jun		43,333.33
Nov 15/21	HST Jul-Sep 2021	130,000.00	
	Jul		43,333.33
	Aug		43,333.33
	Sep		43,333.33
Feb 22/22	HST Oct-Dec 2021	90,462.67	
	HST Oct Base		43,333.33
	HST Nov Base		43,333.33
	HST Dec Base		43,333.33
	HST Sep percentage paid previously		(2,539.33)
	HST Oct percentage paid previously		(8,008.00)
	HST Nov percentage paid previously		(14,222.00)
	HST Dec percentage paid previously		(14,768.00)
Jul 22/22	PBA HST adj Jan-Jun	162,708.00	
	HST Jan Base		43,333.33
	HST Jan percentage paid previously		(6,916.00)
	HST Feb Base		43,333.33
	HST Feb percentage paid previously		(8,242.00)
	HST Mar Base		43,333.33

HST Mar percentage paid previously	(14,950.00)
HST Apr Base	43,333.33
HST Apr percentage paid previously	(20,852.00)
HST May Base	43,333.33
HST May percentage paid previously	(21,840.00)
HST Jun Base	43,333.33
HST Jun percentage paid previously	(24,492.00)

THIS IS **EXHIBIT "G"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Eunice Baltkois

Subject: FW: Peace Bridge Duty Free

From: Stanek, Chris <Christopher.Stanek@gowlingwlg.com>
Sent: November 21, 2021 2:28 PM
To: Sanj Mitra <smitra@airdberlis.com>
Subject: Peace Bridge Duty Free

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Mr. Mitra:

As you know, we represent the Buffalo and Fort Erie Public Bridge Authority. I am writing to advise that our client has been unable to resolve issues concerning the default of its tenant, Peace Bridge Duty Free Inc., and our client intends to exercise its remedies under the default provisions of the Lease. As you have previously requested, please accept this correspondence as advance notice of our client's intention.

Christopher Stanek
Partner
T +1 416 862 4369
christopher.stanek@gowlingwlg.com

GOWLING WLG

THIS IS **EXHIBIT "H"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Gail Fairhart

From:	Jeremy Nemers <jnemers@airdberlis.com>
Sent:	December 14, 2021 10:53 AM
To:	Laurence.Pattillo@scj-csj.ca
Cc:	Sanj Mitra; David T. Ullmann; Alexandra Teodorescu; Shea, Patrick; Stanek, Chris
Subject:	Peace Bridge - Draft Order and Counsel Slip
Attachments:	Draft Monitorship Order (Peace Bridge)(46905307.4).doc

Good morning Your Honour,

As requested, please see the attached proposed draft Monitorship Order, together with the below counsel slip.

S. Mitra and J. Nemers for the Applicant, Royal Bank of Canada
D. Ullmann, A. Teodorescu and A. Leigh (articling student) for the Respondent, Peace Bridge Duty Free Inc.
P. Shea and C. Stanek for the Buffalo and Fort Erie Public Bridge Authority

Sincerely,

Jeremy Nemers

T 416.865.7724
F 416.863.1515
E jnemers@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 14TH
	)	
JUSTICE	)	DAY OF DECEMBER, 2021

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

ORDER
(appointing Monitor)

THIS APPLICATION, made by Royal Bank of Canada ("**RBC**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel inc. ("**Spergel**") as a monitor (in such capacity, the "**Monitor**") without security, of Peace Bridge Duty Free Inc. (the "**Debtor**"), was heard this day via Zoom videoconference because of the Covid-19 pandemic.

ON READING the affidavit of Christopher Schulze sworn December 2, 2021 and the exhibits thereto, and the affidavit of Jim Pearce sworn December 12, 2021 and on hearing the submissions of counsel for RBC, the Debtor, the Buffalo and Fort Erie Public Bridge Authority and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Eunice Baltkois sworn December 3, 2021, and on reading the consent of Spergel to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of this application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Spergel is hereby appointed Monitor, without security, of the Debtor with the powers, rights and duties further set out herein. This Order and the appointment of the Monitor does not constitute a finding by this Court that the Debtor is insolvent.

3. **THIS COURT ORDERS AND DECLARES** that:

(a) the Monitor shall not take possession or control, nor shall it be deemed to have taken possession or control, of the Debtor's business or the assets, property or undertaking of the Debtor (the "**Property**"), and that the Debtor shall retain all operational control of their Property, business and operations;

(b) the Monitor shall not be and shall not be deemed to be a receiver for purposes of subsection 243(1) of the Bankruptcy and Insolvency Act (the "BIA") or under any other statute;

(c) the Monitor shall have none of the obligations of a receiver under Part XI of the BIA, other than section 247, and for greater certainty it shall not send notice of its appointment or this order to the Superintendent in Bankruptcy or to the known creditors of the Debtor; and

(d) the appointment of the Monitor shall not be and shall not be deemed to be a change of control of the Debtors.

MONITOR'S POWERS

4. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:

(a) to monitor the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to take physical inventories of the Property as may be necessary or desirable;

(c) to monitor the business of the Debtor;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;

(e) to monitor receipts and disbursements of the Debtor;

(f) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and

(g) subject to the limitations in section 3 of this Order, to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor.

6. **THIS COURT ORDERS** that all Persons, including but not limited to Canada Border Services Agency and Canada Revenue Agency, shall be authorized to share information, with the Monitor, provided the Debtor shall be entitled to request and receive copies of all such information from the Monitor.

NO PROCEEDINGS AGAINST THE MONITOR

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Monitor or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Monitor or affecting the Property are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or

regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE MONITOR

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Monitor or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtor, or as may be ordered by this Court.

CASL

12. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON THE MONITOR'S LIABILITY

13. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

MONITOR'S ACCOUNTS

14. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "**Monitor's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings limited to the amount of $100,000, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

15. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

16. **THIS COURT ORDERS** that prior to the passing of its accounts, the Monitor shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

17. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

18. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

19. **THIS COURT ORDERS** that exhibit N will be removed from the Affidavit of Jim Pearce as filed and the Debtor shall file a copy of that exhibit with the Court in a sealed envelope which shall be sealed until a further order of this court. Parties to the Service List in possession of that Exhibit as served shall treat it as sealed by this court, pending a further order of this court..

20. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Debtor.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

24. **THIS COURT ORDERS** that RBC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of RBC’s security or, if not so provided by RBC’s security, then on a substantial indemnity basis to be paid by the Monitor from the Debtor’s estate with such priority and at such time as this Court may determine.

25. **THIS COURT ORDERS** that any interested party, including without limitation the Debtor, may apply to this Court to vary or amend this Order or discharge the Monitor on not less than seven (7) days' notice to the Monitor, the Debtor, the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

____

ROYAL BANK OF CANADA - and - **PEACE BRIDGE DUTY FREE INC.**

Applicant Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(appointing Monitor)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sanj Mitra (LSO # 37934U)
Tel: (416) 865-3085
Fax: (416) 863-1515
Email: smitra@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel: (416) 865-7724
Fax: (416) 863-1515
Email: jnemers@airdberlis.com

Lawyers for Royal Bank of Canada

THIS IS **EXHIBIT "I"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Court File Number: CV-21-00673084-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Royal Bank of Canada
Plaintiff(s)

AND

Peace Bridge Duty Free Inc.
Defendant(s)

Case Management ☐ Yes ☐ No by Judge: ____________

Counsel	Telephone No:	Facsimile No:
S. Mitra and J. Nemers for the Applicant, Royal Bank of Canada		
D. Ullmann and A. Teodorescu for the Respondent, Peace Bridge Duty Free Inc.		
L. Williams for the Court-appointed Monitor, msi Spergel inc. (a representative of which, M. Manchanda, was also in attendance)		
C. Stanek for the Buffalo and Fort Erie Public Bridge Authority		

☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: ____________
☐ Time Table approved (as follows):

* the sub. of the Monitor, its 1st Report*

Based on the agreement of the parties*, the landlord the Buffalo and Fort Erie Public Bridge Authority taking no position, the RBC's motion is adjourned to March 23, 2022 at 12 noon (1 hr.). I am satisfied the draft order, amending the terms of the initial appointment of the Monitor should issue. The cash flow statements of the respondent at Ex N to Jim Pearce's affidavit sworn December 12, 2021 and at Confidential Appendix 1 of the Monitor's report shall be sealed until further order of the court. In my view as noted in Sierra

Jan 17/22
Date

L. Pattillo, J.
Judge's Signature

☑ Additional Pages 1

Court File Number: CV-21-00623084-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522, protection of private commercial information is an interest of public importance and the information sought to be protected here should be sealed to protect the risk of exposure to adverse parties. I am further satisfied the benefits of such an order outweigh its negative effects. See: Sherman Estate v. Donovan, 2021 SCC 25.

Order signed by me.

Judges Initials [initials]

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 17TH
	)	
JUSTICE PATTILLO	)	DAY OF JANUARY, 2022

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

AMENDED ORDER
(appointing Monitor)

THIS APPLICATION, made by Royal Bank of Canada ("**RBC**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel inc. ("**Spergel**") as a monitor (in such capacity, the "**Monitor**") without security, of Peace Bridge Duty Free Inc. (the "**Debtor**"), was heard this day via Zoom videoconference because of the Covid-19 pandemic.

ON READING the affidavit of Christopher Schulze sworn December 2, 2021 and the exhibits thereto, and the affidavit of Jim Pearce sworn December 12, 2021 (the "**Pearce Affidavit**") and the exhibits thereto, and on hearing the submissions of counsel for RBC, the Debtor, the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Eunice Baltkois sworn December 3, 2021, and on reading the consent of Spergel to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of this application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Spergel is hereby appointed Monitor, without security, of the Debtor with the powers, rights and duties further set out herein. This Order and the appointment of the Monitor does not constitute a finding by this Court that the Debtor is insolvent.

3. **THIS COURT ORDERS AND DECLARES** that:

   (a) the Monitor shall not take possession or control, nor shall it be deemed to have taken possession or control, of the Debtor's business or the assets, property or undertaking of the Debtor (the "**Property**"), and that the Debtor shall retain all operational control of their Property, business and operations;

   (b) the Monitor shall not be and shall not be deemed to be a receiver for purposes of subsection 243(1) of the Bankruptcy and Insolvency Act (the "BIA") or under any other statute;

   (c) the Monitor shall have none of the obligations of a receiver under Part XI of the BIA, other than section 247, and for greater certainty it shall not send notice of its appointment or this order to the Superintendent in Bankruptcy or to the known creditors of the Debtor; and

   (d) the appointment of the Monitor shall not be and shall not be deemed to be a change of control of the Debtors.

MONITOR'S POWERS

4. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:

(a) to monitor the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to take physical inventories of the Property as may be necessary or desirable;

(c) to monitor the business of the Debtor;

(d) to report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property or the business of the Debtor and such other matters as may be relevant to the proceedings herein;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;

(f) to monitor receipts and disbursements of the Debtor;

(g) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

(h) to monitor and report on the status of negotiations between the Debtor and the Authority; and

(i) subject to the limitations in section 3 of this Order, to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor.

6. **THIS COURT ORDERS** that all Persons, including but not limited to Canada Border Services Agency and Canada Revenue Agency, shall be authorized to share information, with the Monitor, provided the Debtor shall be entitled to request and receive copies of all such information from the Monitor.

NO PROCEEDINGS AGAINST THE MONITOR

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Monitor or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Monitor or affecting the Property are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE MONITOR

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Monitor or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtor, or as may be ordered by this Court.

CASL

12. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON THE MONITOR'S LIABILITY

13. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

MONITOR'S ACCOUNTS

14. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements by the Debtor upon presentation of such accounts to the Debtor, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall also be entitled to and are hereby granted a charge (the "**Monitor's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings limited to the amount of $100,000, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

15. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

16. **THIS COURT ORDERS** that prior to the passing of its accounts, the Monitor shall be at liberty to apply the monies received from the Debtor pursuant to paragraph 14 of this Order against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

17. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

18. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

19. **THIS COURT ORDERS** that exhibit N will be removed from the Pearce Affidavit as filed and the Debtor shall file a copy of that exhibit with the Court in a sealed envelope which shall be sealed until a further order of this Court. Parties to the Service List in possession of that exhibit as served shall treat it as sealed by this Court, pending a further order of this Court.

20. **THIS COURT ORDERS** that Confidential Appendix "1" to the First Report of the Monitor, dated January 14, 2022 shall be sealed and kept confidential pending further order of this Court.

21. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Debtor.

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

25. **THIS COURT ORDERS** that RBC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of RBC's security or, if not so provided by RBC's security, then on a substantial indemnity basis to be paid by the Debtor with such priority and at such time as this Court may determine.

26. **THIS COURT ORDERS** that the balance of the relief sought by RBC in this application be and is adjourned until March 23, 2022 at noon (one-hour hearing), provided, however that the Debtor satisfies the following conditions at all times:

(a) the Debtor shall continually replenish its inventory to ensure that at no time does the total book value of its inventory go below $1,175,000;

(b) the Debtor shall ensure that at no time does the cash balance in the Debtor's account administered by RBC (the "**Account**") go below $850,000 (the "**Minimum Balance**"); and

(c) the Debtor provides the Monitor and RBC the following information:

(i) on a bi-weekly basis, an updated projected cash flow statement; and

(ii) on a monthly basis, an income statement and balance sheet along with a variance analysis disclosing actual results to the projections with an explanation of any variance.

27. **THIS COURT ORDERS** that RBC be and is hereby authorized to place a hold on the Account in the amount of the Minimum Balance.

28. **THIS COURT ORDERS** that any interested party, including, without limitation, RBC and the Debtor, may apply to this Court to vary or amend this Order or discharge the Monitor on not less than seven (7) days' notice to the Monitor, the Debtor, RBC and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Kimmel, J.

ROYAL BANK OF CANADA - and - **PEACE BRIDGE DUTY FREE INC.**

Applicant Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED ORDER
(appointing Monitor)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sanj Mitra (LSO # 37934U)
Tel: (416) 865-3085
Fax: (416) 863-1515
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Jeremy Nemers (LSO # 66410Q)
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Fax: (416) 863-1515
Email: jnemers@airdberlis.com

Lawyers for Royal Bank of Canada

46118042.1

46905307.2
47156399.2
47196914.2

THIS IS **EXHIBIT "J"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	WEDNESDAY, THE 23rd
	)	
JUSTICE PENNY	)	DAY OF MARCH, 2022

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

ORDER

THIS APPLICATION, made by Royal Bank of Canada ("**RBC**") for, amongst other things, an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel inc. ("**Spergel**") as a monitor (in such capacity, the "**Monitor**") without security, of Peace Bridge Duty Free Inc. (the "**Debtor**"), was heard this day via Zoom videoconference because of the Covid-19 pandemic.

ON READING the affidavit of Christopher Schulze sworn December 2, 2021 and the exhibits thereto, the affidavit of Jim Pearce sworn December 12, 2021 and the exhibits thereto and the Second Report of the Monitor dated March 21, 2022 and the appendices thereto (the "**Second Report**"), and on hearing the submissions of counsel for RBC, the Monitor, the Debtor, the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Eunice Baltkois sworn December 3, 2021,

1. **THIS COURT ORDERS** that the balance of the relief sought by RBC in its application be and is hereby adjourned to a date on or after June 23, 2022 to be set by the Court, subject to the terms of the Amended Order (Appointing Monitor) of The Honourable Mr. Justice Pattillo dated January 17, 2022 (the "**Amended Order**"), which is further amended as follows:

(a) the requirement to establish a Minimum Balance (as defined at paragraph 26(b) of the Amended Order) be and is hereby deleted and replaced with the following:

(b) the Debtor shall use the sum of $850,000 in its account administered by RBC to purchase a Guaranteed Investment Certificate for a term of three months ("**GIC**"), which GIC shall be used as additional security by RBC subject to a Cash Collateral Agreement in a form satisfactory to RBC.

2. **THIS COURT ORDERS** that paragraph 27 of the Amended Order be and is hereby deleted.

3. **THIS COURT ORDERS** that the First Report of the Monitor dated January 14, 2022, the Second Report and the activities, decisions, and conduct of the Monitor as set out therein are hereby authorized and approved.

4. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor for the period to January 31, 2022, in the amount of $27,452.00 and Harmonized Sales Tax ("**HST**") of $3,568.76, for a total of $31,020.76, as further set out in the Second Report and the Manchanda Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Monitor, for the period January 31, 2022, in the amount of $15,410.00, plus disbursements in the amount of $5.32, and HST of $2,003.30, for a total of $17,418.62, as further set out in the Second Report and the Williams Affidavit, are hereby approved.

6. **THIS COURT ORDERS** that the cash flow forecast appended to the Second Report be sealed, kept confidential and not form part of the public record, but rather be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

____

ROYAL BANK OF CANADA - and - **PEACE BRIDGE DUTY FREE INC.**

Applicant Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
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Email: jnemers@airdberlis.com

Lawyers for Royal Bank of Canada

From: Penny, Mr. Justice Michael A. (SCJ)
Sent: Wed, 23 Mar 2022 11:22:50 +0000
To: Leanne Williams;Ariyana Botejue
Cc: David T. Ullmann;Alexandra Teodorescu;JUS-G-MAG-CSD-Toronto-SCJ Commercial List;JUS-G-MAG-CSD-Toronto-SCJ Commercial List;'christopher.stanek@gowlingwlg.com';'patrick.shea@gowlingwlg.com';'smitra@airdberlis.com';'jnemers@airdberlis.com'
Subject: RE: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL) – Consent Order for March 23, 2022 [IMAN-CLIENT.FID151627]
Attachments: 2022-03-23 -Peace Bridge Order.pdf

Endorsement of Penny J.

The debtor’s request for an adjournment on terms is reasonable and is not opposed. I am satisfied that the proposed amendments to the prior order are appropriate and reflect the current circumstances. The cash flow projections also support the conclusion that the business is viable until the proposed return date. The Monitor’s second report is approved. The fees of the Monitor and its counsel are reasonable and are approved. Order to issue in the form signed by me this day.

Mr. Justice Michael A. Penny

From: Leanne Williams <LWilliams@tgf.ca>
Sent: March 22, 2022 2:40 PM
To: Penny, Mr. Justice Michael A. (SCJ) <Michael.Penny@scj-csj.ca>; Ariyana Botejue <ABotejue@blaney.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; 'christopher.stanek@gowlingwlg.com' <christopher.stanek@gowlingwlg.com>; 'patrick.shea@gowlingwlg.com' <patrick.shea@gowlingwlg.com>; 'smitra@airdberlis.com' <smitra@airdberlis.com>; 'jnemers@airdberlis.com' <jnemers@airdberlis.com>
Subject: RE: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL) – Consent Order for March 23, 2022 [IMAN-CLIENT.FID151627]

Your Honour,

Attached is the Second Report of the Monitor together with a slightly revised Order (blackline attached) which is also available on CaseLines. If you would like to review the confidential appendix, I will send same to you under separate cover.

Leanne

Leanne M. Williams | | LWilliams@tgf.ca | Direct Line +1 416 304 0060 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Penny, Mr. Justice Michael A. (SCJ) <Michael.Penny@scj-csj.ca>
Sent: Tuesday, March 22, 2022 2:17 PM
To: Ariyana Botejue <ABotejue@blaney.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; 'christopher.stanek@gowlingwlg.com' <christopher.stanek@gowlingwlg.com>; 'patrick.shea@gowlingwlg.com' <patrick.shea@gowlingwlg.com>; 'smitra@airdberlis.com' <smitra@airdberlis.com>; 'jnemers@airdberlis.com' <jnemers@airdberlis.com>; Leanne Williams <LWilliams@tgf.ca>
Subject: RE: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL) – Consent Order for March 23, 2022

Mr. Ullman,

Subject to any dissenting voices, and to the receipt of the Receiver's report, I am not inclined to require an attendance on the 23rd. If I have questions, I can ask for a brief attendance to discuss them. If not, I will deal with it in writing. From my perspective, therefore, the March 23 attendance can be vacated.

Mr. Justice Michael A. Penny

From: Ariyana Botejue <ABotejue@blaney.com>
Sent: March 21, 2022 3:36 PM
To: Penny, Mr. Justice Michael A. (SCJ) <Michael.Penny@scj-csj.ca>
Cc: David T. Ullmann <DUllmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; 'christopher.stanek@gowlingwlg.com' <christopher.stanek@gowlingwlg.com>; 'patrick.shea@gowlingwlg.com' <patrick.shea@gowlingwlg.com>; 'smitra@airdberlis.com' <smitra@airdberlis.com>; 'jnemers@airdberlis.com' <jnemers@airdberlis.com>; 'Leanne Williams' <LWilliams@tgf.ca>
Subject: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL) – Consent Order for March 23, 2022

Your Honour,

Attached, please find correspondence from Mr. Ullmann.

Thank you,

Blaney McMurtry LLP 2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

Ariyana Botejue
Legal Assistant to Stephen Gaudreau & David Ullmann

abotejue@blaney.com
416-593-1221 ext. 4777
Blaney.com

THIS IS **EXHIBIT "K"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Gail Fairhart

From:	John C. Wolf
Sent:	June 9, 2022 10:55 AM
To:	Leanne Williams; :mmanchanda@spergel.ca
Cc:	David T. Ullmann
Subject:	FW: Peace Bridge Duty Free Inc (PBDF) and Peace Bridge Authority (PBA)- status report to Monitor made June 9th 2022
Attachments:	PBA_Board_May_2022.docx
Follow Up Flag:	Follow up
Flag Status:	Completed

Greetings Leanne & Mukal,

Further to our recent telephone call we:

1. Confirm the information in our earlier report (reproduced below) remains accurate, except for highlighted areas where we provide updates below.
2. The Federal budget did not address the duty free industry or this tenancy.
3. Covid supports through out the economy were terminated in or about May 2022.
4. Sales at the PBDF have risen to more or less 50% of pre-pandemic sales, continuing a favorable trend of recovery.
5. Tour bus sales have unfortunately decreased from about 10% to close to nil because of border restriction issues .
6. Government restrictions including:
    a. ArriveCan obligations for Canadian citizens which program has proven very difficult for persons who are not computer savvy, and an inconvenience to all;
    b. Prohibition on unvaccinated tourists crossing into Canada at land borders(which excludes about 40% plus of travelers from the USA from being able to enter Canada;
    c. Omicrom uncertainty;
    d. Conflicting advisories by various levels of governments in both countries,

    have all contributed to a reduction in the growth of sales.

7. Inflation , especially gas but also general inflation, is a real deterrent to cross border discretionary travel as ordinary families wealth disposal income is destroyed .
8. FDFA lobbying efforts continue visa vis federal and provincial governments culminating in a :Hill Day" series of meetings in Ottawa with MPs on June 6th- 7th to highlight duty free industry issues and needs. Specifically, the MPs were requested by the FDFA to support a $20 million industry rescue package.
9. PBDF was in attendance and spoke with CBSA (Canada Border Services Agency) who advised that no new licences would be available until into 2023 meaning that PBA's threats to terminate the licence may be over-reaching. .
10. MP Battaway(associated with the Transportation Ministry) suggested a three way meeting with the PBA, PBDF(& FDFA) and the government; and floated the idea of the government guaranteeing a long term low interest loan. The PMO had a representative in attendance and supported the initiative. This is the first real "crack" vis a vis a verbal commitment to do a specific thing- even if that things is presently unstructured, and we are facilitating a proposed structured process which we hope will result in exchanges of proposals between stakeholders with concessions to set a framework for a resolution ; and once achieved, also a facilitated meeting of stake holders to attempt to reach a consensus
11. As you may recall FDFA has requested and been invited to provide presentations to the PBA. FDFA provided statistical information not in the public sphere about the industry's performance. These stats emphasized the PBDF is in the top half of duty free shop performers. FDFA reiterated its suggestion of offering to jointly lobby MPs with the PBA. Attached are the presentations/notes for the May 27th attendance at the PBA Board meetings. The meeting with MP Battaway(

who as noted above is associated with the MOT and appointed the actual PBA directors and knows the GM) is the first step in this regard.

12. FDFA indicates that it expects within about 3 months of Hill Day that the industry will know if the Federal government will also assist the industry too and in what manner.
13. The PBA has clearly taken a wait and see approach to arrears and rent, while reserving its contractual and statutory rights of lease termination- which as previously noted the tenant is of the view is subject to a contractual obligation to modify rent in the event of business interruption.

Blaney is of the view that the court attendance should be deferred for 3- 4 months(with a right to return it earlier at any parties initiative) to allowPBDF/MOT & FDFA initiatives to play out; and for the trend in respect of sales to be better informed by actual results. This preserves the stay which is fundamental to a resolution of tenancy issues

Blaney is also of the view that the silence from the PBA is an implicit recognition of its contentment with the staus quo.

We would be pleased to speak with you in more detail about these matter, or to provide any further information that may assist you.

Regards,

Blaney McMurtry LLP 2 Queen Street East | Suite 1500 Toronto, Ontario M5C 3G5

John C. Wolf

jwolf@blaney.com
416-593-2994 | 416-596-2044
Blaney.com

From: John C. Wolf
Sent: March 10, 2022 4:02 PM
To: 'Leanne Williams' <LWilliams@tgf.ca>; Mukul Manchanda (mmanchanda@spergel.ca) <mmanchanda@spergel.ca>
Cc: David T. Ullmann <DUllmann@blaney.com>
Subject: FW: Peace Bridge Duty Free Inc (PBDF) and Peace Bridge Authority (PBA)- status report March 10th, 2022

Greetings Leanne & Mukal,

Further to our recent telephone call we attach for your information and records:

1. Three letters from the FDFA to the PBA and two replies(see footnote below)
2. Email from Treasury Board to FDFA re federal landlords and CECRA(the initial rent relief program waiving 75% of rent)

We also confirm our information as follows:

- Gowling has not communicated with me since my letter in mid January 2022
- Gowlings has not threatened the tenant with lease enforcement since that letter
- PBDF advises:
  - that no monies have been paid to any shareholder of the PBDF since the pandemic began
  - Greg O'Hara has deferred receipt of any employment income from the PBDF since the pandemic began
  - 100% of all rent related government assistance received has been paid to the PBA
  - In addition, those sums have been topped up so that 20% of gross sales have been paid to PBA
  - All forbearance commitments to RBC have been honoured
  - Sales are about 35% of pre -covid sales
  - Sales are less than that as compared to assumptions underlying minimum rent of 20% of gross sales when the lease was negotiated
  - 2022 and 2023 rent will need to be at 20% of percentage gross sales

- FDFA advises:
  - It has had several meetings and discussions with various elected and senior ministerial employees and the Ministry of Transportation has assigned a staffer to brief the minister
  - Treasury Board has been similarly engaged
  - The PMO has also been similarly engaged and a staffer has been assigned to investigate. In addition, the PMO has directed the senior staffer responsible for Cdn-USA border issues to meet with the FDFA and to communicate with the government of the State of New York
  - It has contacted the Premier's office and a staffer is being assigned to co-ordinate with the FDFA
  - It has met with at least 10 individual MP's who are associated with the MOT or local to the region or otherwise connected to frontier issues
  - Its goal is to influence the New York and Cdn government/PMO/MOT to direct the PBA board of directors to conclude a lease amending agreement (LAA) with the PBDF that is capable of being honoured
  - Its meetings with elected politicians and senior bureaucrats have been well received and there is considerable sympathy for the PBDF
  - Specifically, both PBA and FDFA are asking the government to allocate funds to the PBA in respect of PBDF rent
  - The FDFA is asking for a broad relief package for FDFA members and a specific payment in addition to PBDF for rent support
  - It hopes that it's lobbying will result in direction to the PBA board (5 Cdn and 5 USA) appointed directors to negotiate a lease amending agreement
  - Once the Federal budget is finalized and announced (and the PBA knows what funds if any it will receive) a mediation should take place to fix a LAA

- The FDFA/PBDF "Value Proposition " has three components:
  - In the event of lease termination 100% of rent arrears will be forfeited- PBDF has conceptually offered to pay some fixed amount of arrears over the balance of the term of the lease, although this tied to gross revenue and future rent obligations

- Any termination and RFP for a replacement operator will likely take a minimum of 6 months- meaning a loss of rent at 20% of gross sales and probably longer
- The duty-free amenity to travellers will be interrupted
- Alternate arrangements will be needed to process trucker's immigration needs and toilet needs
- Employment for all PBDF employees will be lost
- Any prudent replacement tenant will not agree to the same lease terms as the business can not be profitable with a fixed minimum rent for the foreseeable future; and most new leases provide for free rent periods and tenant allowances- the PBDF is not seeking any rent-free period/allowance and will likely pay greater rent than any replacement tenant
- PBDF a 30-year business will not be destroyed by the federal government who ordered the travel ban which destroyed business opportunities, created a rent relief program inadequate to pay rent; and therefore, is the architect of the business failure

- The Commercial Tenancy Act currently has an eviction moratorium in place through April- which may be extended
- The Lease obligated the PBA to communicate with the PBDF if business is interrupted. PBDF is of the view that the PBA has not fulfilled its contractual obligations in this regard
- The PBA's options are quite limited- either negotiate a LAA or attempt to obtain judicial authorization to terminate the lease when all stays expire

Please contact Blaney should you wish additional information.

Regards,

John

P.S. since we spoke we received a 3rd PBA letter attached

Blaney McMurtry LLP 2 Queen Street East | Suite 1500 Toronto, Ontario M5C 3G5

John C. Wolf

jwolf@blaney.com
T 416-593-2994 | F 416-596-2044
W Blaney.com

THIS IS **EXHIBIT "L"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Gail Fairhart

From:	David T. Ullmann
Sent:	November 4, 2022 5:19 PM
To:	'LWilliams@tgf.ca'; Mukul Manchanda
Cc:	'Jim Pearce'; Greg O'Hara; John C. Wolf
Subject:	November Results
Attachments:	Blaney-Monitor report-Cashflow-Nov3rd.pdf; Blaney-Monitor report-Financials Oct2022.pdf
Follow Up Flag:	Follow up
Flag Status:	Completed

Leanne,

Here are the monthly report and cash flow from our client. As you can see, our client continues to meet the thresholds in the Order. Let me know if you have any concerns.

Have a nice weekend.

Regards,

David

David T. Ullmann
Partner
dullmann@blaney.com
416-596-4289 | 416-594-2437

From: Jim Pearce <JimP@dutyfree.ca>
Sent: November 3, 2022 3:37 PM
To: David T. Ullmann <DUllmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Greg O'Hara <gohara@dutyfree.ca>; Greg O'Hara (Sympatico) <gregohara@sympatico.ca>
Subject: Updates & Call time

David, the two Monitor reports are attached - the Nov3rd Cashflow&Inventory report and the October Financials.

Best,

Jim

Peace Bridge Duty Free - Nov 3rd Report

Cashflow Report (000's)

	Oct 16-29 Projected	Actual	Variance	w/e Nov5	w/e Nov12	w/e Nov19	w/e Nov26
Bank balance-opening	1,995	1,995		1,961	1,693	1,803	1,742
Receipts (Sales)	525	540	15	250	275	250	225
Total receipts	525	540		250	275	250	225
Cash requirements							
Trade payables	475	394	81	200	100	225	100
Rent-Percentage	-	-	-	243	-	-	-
Rent-CAM costs	10	10	-	-	-	-	10
Rent-HIA	-	-	-	-	-	10	
Wages&Benefits	40	40	1	40	25	25	25
Payroll remittances	-	-	-	-	-	25	-
RBC Lease payment	77	77	-	-	-	-	-
HASCAP payment	4	4	0	-	-	-	11
Professional fees	25	31	(6)	-	25	-	25
Insurance	-	-	-	-	-	11	-
Misc payments/expenses	30	20	10	35	15	15	15
Total payments	661	575		518	165	311	186
Bank balance-ending	**1,859**	**1,961**	**102**	**1,693**	**1,803**	**1,742**	**1,781**

Notes:

Bank balance is net of $850,000 held by RBC in a GIC and is net of cash collateral of $625,900 held by the RBC.

Sales are projected at the current trend of down 50% of pre-pandemic levels. Actual sales may be greater depending on return of ordinary traffic and changes to government border policies.

Cashflow report does not account for possible receipt of tax refunds, returns, or amounts as due as a result of any reassessment of taxes paid or amounts received as timing and amounts are uncertain. Any such amounts would increase cash available for operations.

Rent is calculated at 20% of sales in accordance with past practice. Cash flow does not account for payment of rent arrears, to the extent of such arrears exist or are agreed to be paid. Negotiations with the landlord continue.

Professional fees assume the continuation of consensual negotiations in accordance with recent past practice. In the event there are contested issues requiring return to court or the need for a mediation, the professional fee spend could increase materially in response.

Inventory Report (000's)

	Oct 16-29 Projected	Actual	Variance	w/e Nov5	w/e Nov12	w/e Nov19	w/e Nov26
Inventory-opening	1,209	1,209		1,258	1,316	1,286	1,269
Cost of Goods Sold	(247)	(254)		(118)	(129)	(118)	(106)
Purchases	275	303		175	100	100	125
Inventory-ending	1,237	1,258	21	1,316	1,286	1,269	1,288

Peace Bridge Duty Free Inc.
Income Statement
Year-to-Date October 31, 2022

Sales	8,624,306
Cost of Sales	3,840,815
Gross Margin	4,783,491
Store Expenses	
Rent	1,724,861
Wages & Benefits	963,347
Professional Fees	240,000
Insurance	150,000
Commercial Taxes	58,904
Utilities	67,982
Marketing	44,195
Store Supplies	52,133
Maintenance	52,890
Collection Fees	138,454
Computer Expense	29,750
Communications	21,152
Other Admin Expenses	36,375
	3,580,043
Other Income	
Gov't Subsidies-Rent 2021	141,472
Gov't Subsidies-Wages 2021	92,224
Gov't Subsidies-Rent 2022	245,636
Gov't Subsidies-Wages 2022	173,556
Misc Income	241,641
	894,529
Operating Income	2,097,977
RBC Lease Interest	132,197
HASCAP Interest	34,064
EBITA	1,931,716
Amortization	400,000
Corporate Taxes	270,000
Net Income	1,261,716

Peace Bridge Duty Free Inc.
Balance Sheet
As at October 31, 2022

Assets	
Current	
Cash and equivalents	2,326,779
RBC-GIC	1,475,900
Misc Receivables	251,234
Inventory	1,214,613
Prepaid expenses	307,461
	5,575,987
Long-term	
Lease security deposit	50,000
Equipment and leaseholds	7,581,070
Less Accumulated Depreciation	(2,244,754)
	5,336,316
Future income taxes	213,000
	11,175,303
Liabilities	
Current	
Accounts payables	517,652
Rent payable	6,319,526
Accruals	581,907
	7,419,085
Long-term	
RBC Capital Lease	3,288,992
HASCAP Loan	1,000,000
Shareholders' equity	
Common Stock	21,000
Dividends	0
Current earnings	1,261,716
Retained earnings	(1,815,489)
	(532,773)
	11,175,303

THIS IS **EXHIBIT "M"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

FDFA AFHT
FRONTIER DUTY FREE ASSOCIATION
ASSOCIATION FRONTIERE HORS TAXES

ECONOMIC REPORT

Members of the Frontier Duty Free Association have suffered heavy losses during COVID 19 Pandemic:

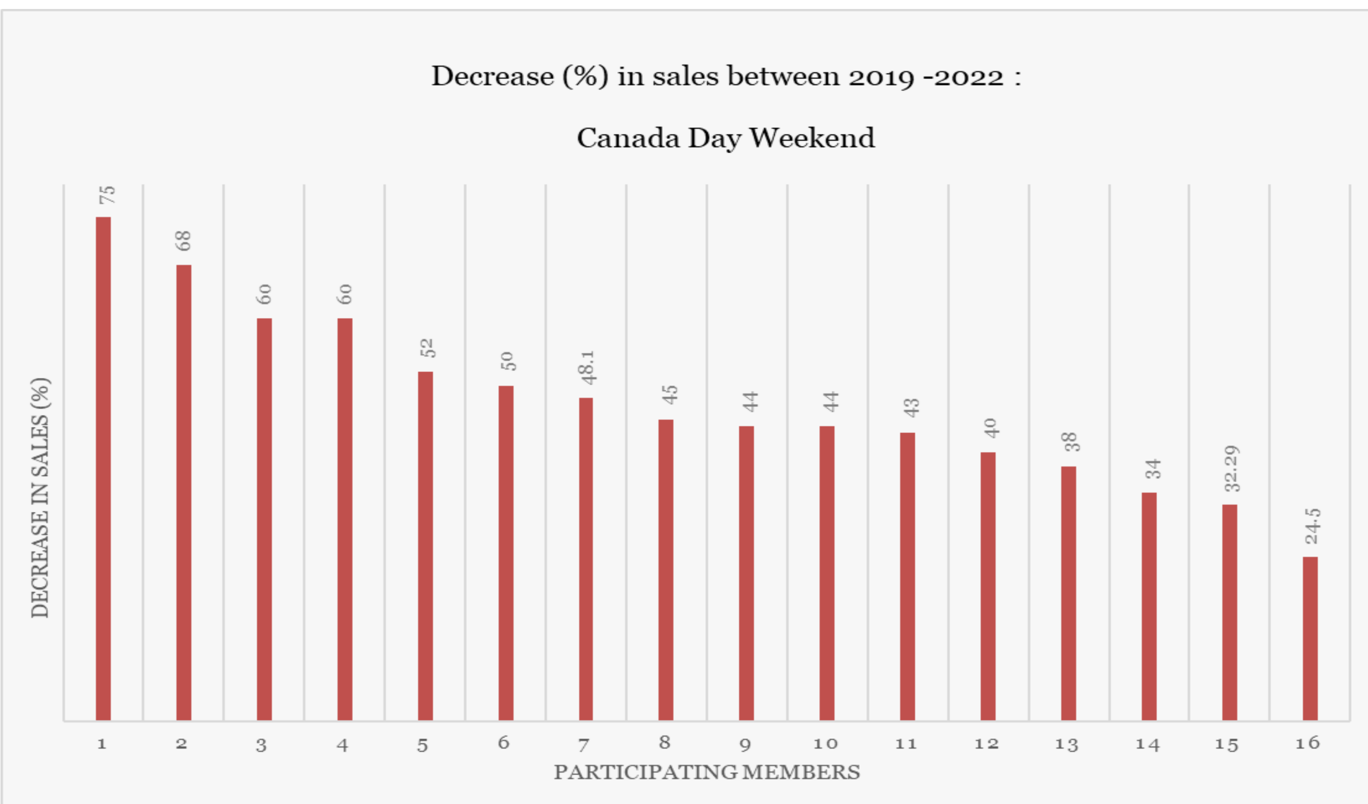
Data visualization of sales losses 2019-2022

The COVID-19 pandemic has had a devastating impact on Canada's land border duty free industry. Partly because of federal and provincial travel restrictions, many of our members observed their annual sales record plummet to historically low levels. Once restrictions were lifted, many barriers remained which created major disincentives to travel in, and out, of Canada. The consequence of that was the inability, for duty free shops, to capitalize on the most profitable windows of the summer season.

The FDFA has launched a survey destined to our members to identify exactly the amplitude of the losses occurred during the summer season of 2022. To do so, we used the sales number from the summer season right before the start of the COVID-19 pandemic (2019).

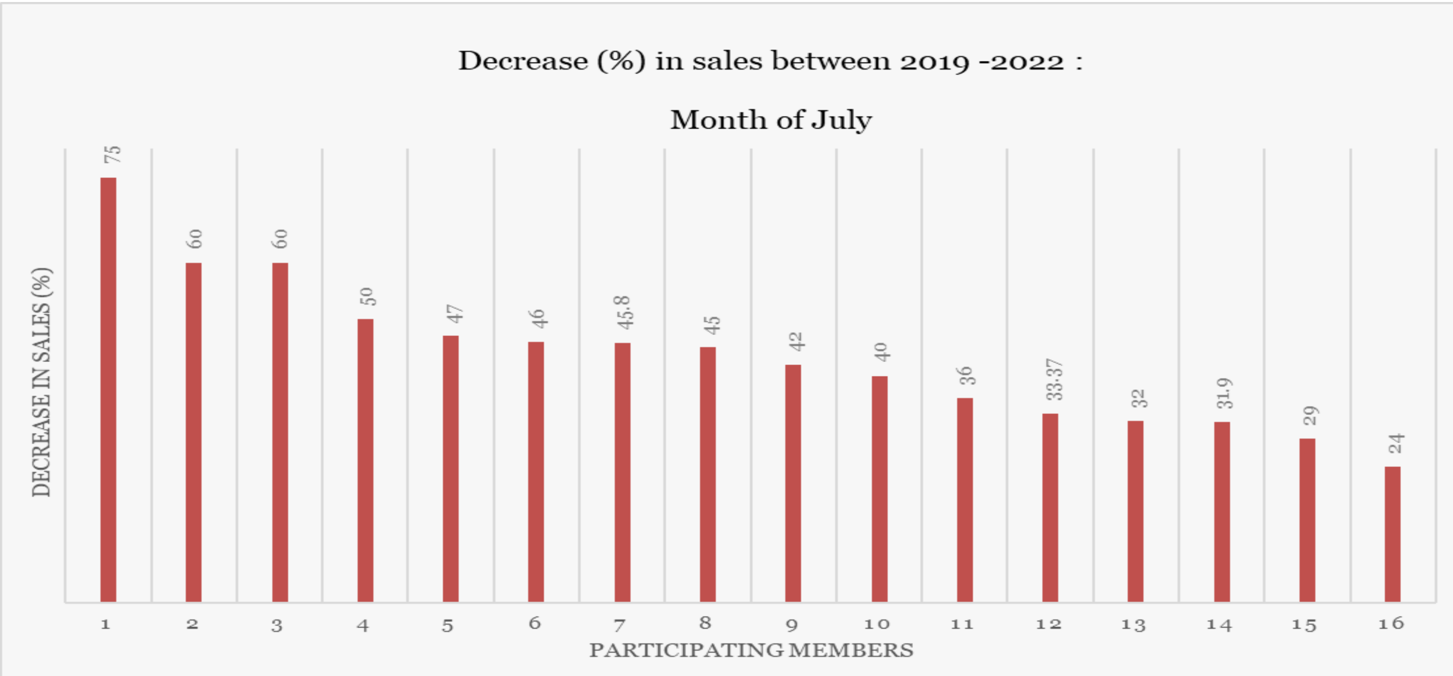
1. Canada Day

Without a doubt, Canada day is one the busiest period for tourism related businesses all around the country. Multiple families make use of the extra-day off to leave Canada and engage in tourism around North-America. The sixteen **respondents averaged a decrease in sales of 47.35 %** between the Canada Day of 2019 and the one of 2022.

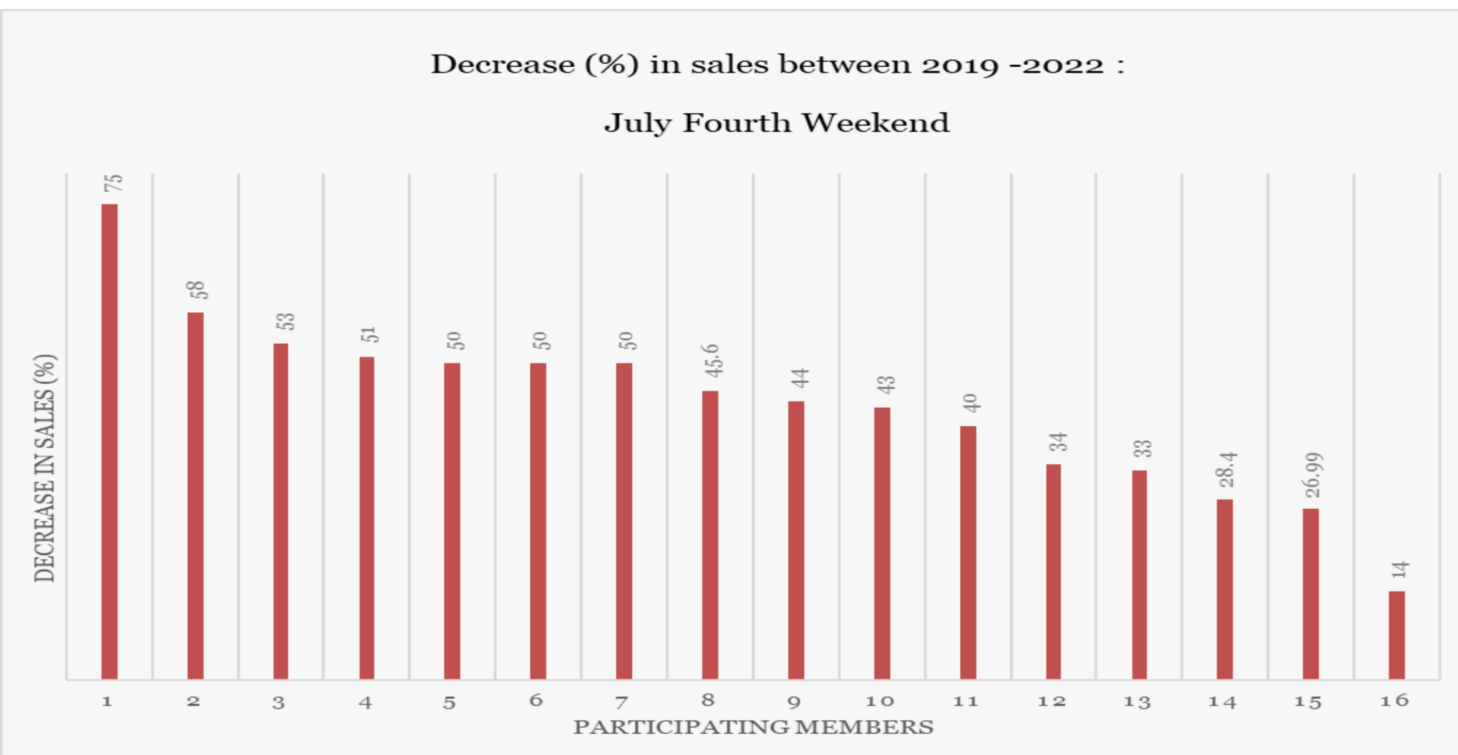


2. July

The entirety of July has been extremely difficult for FDFA members. Even if July is generally seen in Canada as the prime summer month, the sales have not been up to par with previous years. In average, the sixteen border shops included in the survey have **registered a decrease in sales of 43,56%.**



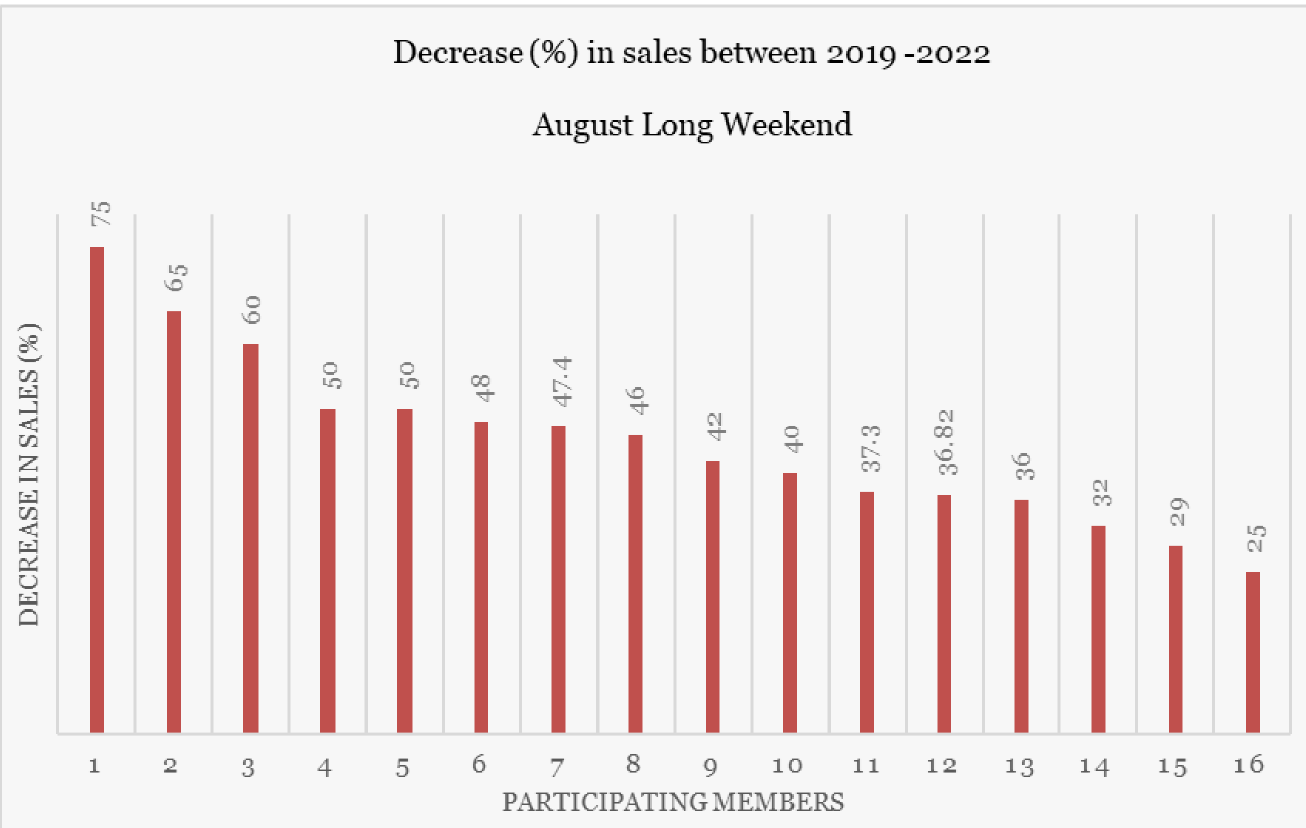
3. July Fourth



In a very similar way to our Canada Day, America's national day is the perfect occasion for Canadian families and US nationals to cross the border. **In 2022, the sales decreased by an average of 43,5% in comparison to 2019.**

4. **August Long Weekend**

The long weekend covering the end of July to the beginning of August was no different than the other flagship moments of the Canadian summer. **In average, members noted a decrease in sales of 45%.** Considering that this weekend is the last of its kind for the summer and thus a great opportunity for shops to finish off the season strong, this decrease is a significant step back from 2019.



5. Final comments

The survey indicates clearly the hardship that Canada's land border duty free industry has been through. Every profitable flagship period of the summer has resulted in disappointing sales for members across the country. With an average sales decrease hovering around 45% for the sixteen respondents, there is no doubt at FDFA that solutions must be put forward by members and officials to avoid a similar situation in the summer of 2023.

FDFA AFHT
FRONTIER DUTY FREE ASSOCIATION
ASSOCIATION FRONTIERE HORS TAXES

The FDFA is the national association representing Canada's the 33 land border duty free shops. Our mandate is to promote the development and success of the land border duty free sector by acting as a voice, advocate and business resource for members.

For more information, please contact:
Barbara Barrett
FDFA Executive Director
bbarrett@fdfa.ca 343-998-8906

THIS IS **EXHIBIT "N"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Gail Fairhart

From:	Barbara Barrett <BBarrett@fdfa.ca>
Sent:	February 1, 2022 2:38 PM
To:	'Jim Pearce'; John C. Wolf
Cc:	Huw Williams
Subject:	Rent Relief Information
Follow Up Flag:	Follow up
Flag Status:	Completed

Jim and John

I have worked with Huw to do an overview of information that should be useful in demonstrating to the bridge authority that the Canadian Federal Government has had a policy to have federal tenants treated as equivalent the various rent programs they have announced for private sector tenants.

The following links and docs should start to help demonstrate the federal government direction on dealing with rent relief given for federal tenants. Treasury Board is the central federal agency that oversees the spending and operation of the Government of Canada and has sent guidance out to federal departments and entities.

1) This link outlines the Prime Minister's announcement on rent relief and the fact that specific guidance is coming from central agencies:

The relevant part is (highlighting added):

"Commercial operations
Support for commercial tenants affected by COVID-19
Treasury Board of Canada Secretariat released guidance on rent relief on March 31, 2020. The authority to provide relief rests with each department and rent deferral put in place by PSPC aligns with the TBS guidance provided. PSPC has implemented interim measures to allow tenants to defer rent payments, up to 90 days, on a case-by-case basis beginning April 1, 2020.

On April 24, 2020, the Prime Minister announced a partnership with provinces and territories to deliver the Canada Emergency Commercial Rent Assistance for small businesses. PSPC is liaising with TBS on the implementation details as it provides for potential rent relief for commercial businesses leasing space from PSPC where they can demonstrate certain impacts to their business. Specific direction on the implementation is forthcoming

https://www.canada.ca/en/government/publicservice/covid-19/easing-restrictions/departmental-guidebook/building-management-covid-19.html

2) This link is further details an expectation of specific Treasury Board Guidance (highlighting added) :

Relevant section:
"On April 24, 2020, the Prime Minister announced that the federal government had reached an agreement in principle with all provinces and territories to implement the Canada Emergency Commercial Rent Assistance (CECRA)

targeted for small businesses and non-profit organizations. This program will lower rent by 75% for businesses that have been affected by COVID-19 for a three-month period (April to June 2020).

On April 25, 2020, TBS Assistant Comptroller General sent a communique stating that, although CECRA does not apply to PSPC, as a custodian, it is required to ensure a whole-of-government approach to the implementation of the program. As such, custodians are expected to extend similar flexibilities to provide eligible tenants with appropriate rent relief. TBS's guidance will follow to ensure a consistent approach. Based on expected program criteria, it could equate to a total rent relief of up to $2.8 million (75% of $3.8 million in revenues from 263 leases)."

https://www.tpsgc-pwgsc.gc.ca/trans/documentinfo-briefingmaterial/covi/2020_05_07/index-eng.html#p9

3) The following is the FDFA member notice that quotes the now taken down government link on Treasury Board guidance.

Subject: Federal Landlords align with core Canada Emergency Commercial Rent Assistance (CECRA) program

FDFA Members,

After extensive lobbying of the federal government including the Prime Minister's Office, the President of Treasury Board and the Minister of Small Business, I am pleased to announce the we now have formal confirmation that federal landlords, both custodian departments like CBSA and Crown corporations, will align with Canada Emergency Commercial Rent Assistance (CECRA) and provide the same relief that is available for private landlords.

The guidance that was sent internally to government the departments and agencies published after extensive consultations with FDFA can be found HERE.

Federal landlords should now be in the process of communicating to our stores on this program. If you have not heard from your landlord, please reach out to your landlords for more details. You should reference this link from the Government of Canada website. The CECRA offer a minimum of a 75% rent reduction for the months of April, May and June 2020.

For reference the guidance states:

Federal Landlords align with core CECRA program criteria
The Government of Canada is responding to the hardships faced by small businesses that are tenants in or on federal buildings or lands due to COVID-19. As these businesses are not eligible for the Canada Emergency Commercial Rent Assistance (CECRA) program, the government has aligned its approach to commercial tenants with the core CECRA program criteria. An aligned approach will ensure small businesses are also supported through rent assistance.
Federal landlords will be reaching out to their small business tenants to begin the application process. Small businesses who are tenants in federal space should contact their landlords for more details.

Let me know if you have any questions on this guidance. FDFA fought hard for this measure including subtle media pressure on CBC's top line political show. Thanks to the board and members for your patience and support.

Other potential links of interest

This text and link are from PWGSC reporting to the House of Commons on how rent relief is being given to federal tenants under Treasury Board Secretariat (TBS) guidance. Highlights added.

"In line with guidance from the Treasury Board Secretariat (TBS) on rent relief to external tenants, PSPC took steps to allow tenants to defer their rent payments for a 6-month period effective April 1, 2020. This applied to businesses whose income had been affected by the COVID-19 containment measures. To date, rent deferrals were sought by 162 tenants (64% of tenants) for a total of $4.8 million for the 6-month period.

In addition, 106 tenants (58% of potentially eligible tenants) benefited from the Canada Emergency Commercial Rent Assistance 75% rent reduction for a total of $1.8 million. The CECRA Program terminated on September 30, 2020.

On October 9, 2020, the government announced the Canada Revenue Agency-administered CERS Program, which replaced the CECRA Program and provides simple and easy-to-access rent and mortgage support for qualifying organizations affected by the COVID-19 pandemic. The rent subsidy is provided directly to affected tenants while providing support to property owners. The CERS subsidy is currently available until June 2021. Budget 2021 proposes to extend support until September 25, 2021.

The rent subsidy supports businesses, charities and non-profit organizations that have suffered a revenue drop by subsidizing a percentage of their expenses, on a sliding scale, up to a maximum of 65% of eligible expenses and top-up of up to 25% for organizations temporarily shut down by a mandatory public health order issued by a qualifying public health authority.

In addition to leveraging the CECRA and CERS programs, PSPC will also be amending lease agreements on a temporary basis, as appropriate, to ensure that future rents reflect the economic realities of its tenants.

Lease amendments contemplated include calculating rent as a percentage of tenants' gross revenues (for example, rent becomes relative to their ability to generate revenues and their ability to pay) and mutual termination without penalty to relieve tenants of any future financial obligations should they believe their business model is no longer sustainable

https://www.tpsgc-pwgsc.gc.ca/trans/documentinfo-briefingmaterial/oggo/2021-06-02/p7-eng.html#a12

others

https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories

https://www.theglobeandmail.com/business/article-entrepreneurs-in-government-owned-buildings-struggle-with-no-rent/

Thank you and we are mining for more. Also I have reached out politically despite a chaotic couple of weeks in Ottawa.
Feel free to call me anytime.

Regards,
Barbara Barrett
Executive Director

#UntilWeMeetAgain

O -- 613-688-9788
M -- 343-998-8906
bbarrett@fdfa.ca
www.fdfa.ca

THIS IS **EXHIBIT "O"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

FDFA AFHT
FRONTIER DUTY FREE ASSOCIATION
ASSOCIATION FRONTIERE HORS TAXES

February 10, 2022

Tim Clutterbuck
Chairman
Buffalo and Fort Erie Public Bridge Authority
100 Queen Street
Fort Erie, ON L2A 3S6

Dear Mr. Clutterbuck,

As the Executive Director of the Frontier Duty Free Association representing the 33 Land Border Duty Free Stores that are on the Canadian side of the Canada/US border, I am writing to you on behalf of Peace Bridge Duty Free, located on the Canadian side of Peace Bridge at 1 Peace Bridge, Fort Erie, Ontario, with which your joint US/Canada bridge authority has a lease agreement.

As you know, the COVID-19 pandemic crisis necessitated a closure of the Canada/US border, by order of the Canadian and American governments. This closure was based on the appropriate need to protect public health but has posed extraordinary challenges for our FDFA stores and cross border organizations. As a result, the vast majority of the Canadian duty free stores had to close or were open only to serve essential trucker and supply chain operations. Store revenues went to zero or near zero. Peace Bridge Duty Free specifically, was closed for retail sales until September 2021, although it continued to facilitate customs and personal needs of truckers crossing the border.

In Canada, the Prime Minister and the federal government delivered a joint federal provincial program called CECRA to account for 75% of small business rents including those paid to federal government landlords and federal bridge authorities, leaving 25% payable by tenants.

For all of our FDFA stores that are federal tenants, we have received confirmation of rent relief in line with the Prime Minister's and the Deputy Prime Minister's stated goal of providing rent relief to business shut or severely and adversely affected by the pandemic. From my review of the Peace Bridge Duty Free store situation, it appears that they are the sole exception to this approach.

While we are now in regular contact with a number of senior officials, including the Prime Minister's office about this matter, I would like to to open a direct dialogue with you to find a solution that other landlords of our stores across the country have reached with our stores impacted by the border closure.

Examples of which are:

- All Canadian federal departments that are landlords have been mandated to apply for federal Rent Relief program including Canada Border Service Agency
- Bridge Authorities have provided rent relief to duty free tenants at other bridge locations across the border having regard to bridge traffic and ability to pay
- Municipal landlords at stores with land border crossings have provided similar rent relief

- Privately-owned landlords renting to duty free stores have applied to the Canadian federal CECRA program which accounts for 75% of the rent payable under any lease
- No FDFA landlord, except the Peace Bridge Authority threatened any FDFA member with lease termination
- No FDFA landlord except the Peace Bridge Authority communicated with any FDFA tenants' lender/bank.

While we recognize each agreement and landlord situation is different, the principle of commercial reasonableness and fairness has been applied uniformly across the country having regard to ability to pay and gross sales/bridge traffic.

The notable exception as to how FDFA tenants have been treated is the Peace Bridge Duty Free.

FDFA would like to offer its good offices to try to facilitate a resolution of any lease issues with the Peace Bridge Duty Free, which resolution is in keeping with how our FDFA members have been treated by their landlords – specifically, rent relief to permit the FDFA member to continue in business while paying an appropriate portion of revenue to landlords.

Thank you in advance for your attention to this. I can be reached at 343-998-8906 and very much look forward to hearing from you.

Sincerely,

Barbara Barrett

Barbara Barrett
Executive Director
Frontier Duty Free Association
bbarrett@fdfa.ca
343-998-8906

CC: Greg O'Hara, Peace Bridge Duty Free, President and CEO
Jim Pearce, Peace Bridge Duty Free, General Manager
Kenneth A. Manning, Authority Vice Chairman
Marie Therese Dominguez, Authority Board Member
Llewellyn Holloway, Authority Board Member
Margaret Neubauer, Authority Board Member
Jennifer C. Persico, Authority Board Member
Patrick Robson, Authority Board Member
Michael J. Russo, Authority Board Member
Debbie Zimmerman, Authority Board Member

THIS IS **EXHIBIT "P"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

THE PEACE BRIDGE
CROSSING PATHS BUILDING FUTURES

February 17, 2022

Ms. Barbara Barrett, Executive Director
Frontier Duty Free Association
222 Queen Street, Suite 1404
Ottawa, ON K1P 5V9

Dear Ms. Barrett:

Thank you for your February 10, 2022 letter.

This matter is in the hands of the attorneys for both the Buffalo & Fort Erie Public Bridge Authority (PBA) and Peace Bridge Duty Free (PBDF) and it will be handled appropriately in that manner. FDFA is not a participant in that process.

However, without getting into specifics, I do want to correct some errors and misconceptions in your letter:

1. The border was restricted, it was not closed.

2. Unlike other Duty Free stores, PBDF chose to remain closed despite repeated requests by PBA to reopen. It was only after receiving formal notice of lease default that PBDF reopened.

3. PBDF refused to provide trucker personal needs so they were provided by the PBA at its expense for eight months. Only after threatened use of PBDF's security deposit, did PBDF begin providing that service, as required by the lease.

4. PBA and PBDF are not eligible for the CECRA program as the rent exceeds $50,000/month.

5. PBA has offered a generous rent relief package to PBDF.

Yours truly,

Tim Clutterbuck,
Chair

/ld
c.c. PBA Board
Chris Stanek, Gowlings

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
100 QUEEN STREET, FORT ERIE, ON L2A 3S6 ▪ 1 PEACE BRIDGE PLAZA, BUFFALO, NY 14213-2494
PHONE (905) 871-1608/(716) 884-6744 ▪ FAX (905) 871-9940/(716) 884-2089
www.peacebridge.com

THIS IS **EXHIBIT "Q"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

FDFA AFHT
FRONTIER DUTY FREE ASSOCIATION
ASSOCIATION FRONTIERE HORS TAXES

February 24, 2022

Buffalo and Fort Erie Public Bridge Authority ("PBA")
100 Queen Street
Fort Erie, ON L2A 3S6

Attention: Tim Clutterbuck, Chairman

Dear Board Members,

Re: Frontier Duty Free Association ("FDFA") letter to PBA and PBA's reply of February 17th 2022

Thank you for your response to our letter addressing the concerns with the rent situation of Peace Bridge Duty Free (PBDF). As the industry's national association, I wanted to take the opportunity on behalf of our member, PBDF, to provide some perspective and clarification.

The Canadian federal government and the American government intended the Peace Bridge to be closed from March 2020 until October 2021 except for essential workers. Bridge traffic during this period declined by more than 90%.

- During the closure period and afterwards the provincial government issued health advisories to restrict travel and to close Ontario businesses from time to time and the PBDF followed those guidelines
- The PBDF also acted to protect the health and safety of its workers in accordance with provincial and local health directives
- Had PBDF operated when permitted during this closure period the remaining permitted bridge traffic would have resulted in minimal duty free sales.

Additionally, the overwhelming majority of FDFA stores remained closed in March 2020 (80%+/-) and 49% +/- of FDFA stores remained closed in July 2021. On August 8th 2021 when the Canadian government permitted non essential USA traffic to enter Canada, additional stores like PBDF planned reopening and yet in September 2021 when PBDF opened something like 15%+/- of FDFA stores were still closed and many others were open on limited hours.

In communications with the Treasury Board, we have "confirmed that federal departments and agencies who are landlords were not eligible to participate in the CECRA program. Given this, the government decided that they, as well as Crown corporations, should provide rent reduction to their commercial tenants in alignment with CECRA intent and core criteria for the months of April, May, June, July, August, and September 2020."

FDFA would like the opportunity to meet with you to layout our global case for rent relief and the context of how all other government agencies, and in this case, federal governments have resolved this with their store tenants. We would also be pleased to find a mediated solution under the auspices of our association.

Thank you in advance for your attention to this. I can be reached at 343-998-8906 and very much look forward to hearing from you.

Sincerely,

Barbara Barrett
Executive Director
Frontier Duty Free Association
bbarrett@fdfa.ca
343-998-8906

CC: Greg O'Hara, Peace Bridge Duty Free, President and CEO
Jim Pearce, Peace Bridge Duty Free, General Manager
Kenneth A. Manning, Authority Vice Chairman
Marie Therese Dominguez, Authority Board Member
Llewellyn Holloway, Authority Board Member
Margaret Neubauer, Authority Board Member
Jennifer C. Persico, Authority Board Member
Patrick Robson, Authority Board Member
Michael J. Russo, Authority Board Member
Debbie Zimmerman, Authority Board Member

THIS IS **EXHIBIT "R"** TO
THE AFFIDAVIT OF **JIM PEARCE**
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Commissioner, etc.

THE PEACE BRIDGE
CROSSING PATHS BUILDING FUTURES

February 25, 2022

Ms. Barbara Barrett
Executive Director
Frontier Duty Free Association
222 Queen Street, Suite 1404
Ottawa, ON K1P 5V9

Dear Ms. Barrett:

RE: PEACE BRIDGE DUTY FREE (PBDF)

The Board reviewed your February 24, 2022 letter at its regular meeting today and reiterates former Chair Clutterbuck's response that FDFA is not a participant in the lease discussions between PBDF and the Peace Bridge Authority. As you know, each border crossing is unique with different traffic characteristics and governance structures, some of whom have received significant federal government funding during the pandemic.

Yours truly,

Kenneth A. Manning,
Chair

/ld

c.c. PBA Board
Chris Stanek, Gowlings

THIS IS **EXHIBIT “S”** TO
THE AFFIDAVIT OF **JIM PEARCE**
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Commissioner, etc.

FDFA AFHT
FRONTIER DUTY FREE ASSOCIATION
ASSOCIATION FRONTIERE HORS TAXES

March 7, 2022

Buffalo and Fort Erie Public Bridge Authority ("PBA")
100 Queen Street
Fort Erie, ON L2A 3S6

Attention: Kenneth A. Manning, Chair

Dear Mr. Manning,

Re: Frontier Duty Free Association ("FDFA") letter to PBA Regarding Peace Bridge Duty Free Inc. and PBA's reply of February 25th 2022

The FDFA has received your letter of February 25, 2022.

It does appear to FDFA that we (FDFA and the PBA) seem to be speaking past each other, as opposed to, speaking to each other.

Both the PBA's letters to the FDFA decline the offers of FDFA assistance; notwithstanding that FDFA has facilitated covid related rent/occupation amending agreements with landlords for a number of its members.

When the PBA notes statements like the FDFA is not a party to the lease; or that lawyers are involved for the parties as reasons to decline engagement, the PBA entirely misses the point of the FDFA's letters. FDFA's letters were to offer reasoned and experienced assistance to all parties to bridge any current impasses. In the case of our last letter, we also sought to correct some apparent PBA's misunderstandings.

The PBA's responding letters by noting irrelevant undisputed statements appear to be merely excuses for declining to accept FDFA involvement and help - when that is the entire point for the existence of FDFA.

FDFA is the national representative for all the Canadian land border duty free store members of which, Peace Bridge Duty Free is one.

The PBA is the *only* land border duty free store landlord that has declined our offer to meet and to be of any assistance in the matter of rent issues during the pandemic and these extraordinary times. As we have previously noted, *PBA is an outlier* in terms of how it has interacted with the PBDF store in respect of covid caused lease issues.

FDFA is offering in good faith to provide PBA with our knowledge and perspective given our experience with other similar situations.

Frontier Duty Free Association, 222 Queen Street, Suite 1404, Ottawa, Ontario K1P 5V9
Tel: 613-688-9788 FDFA.ca

We remain willing to meet with the PBA, be it to attend the next board meeting and make a presentation, or otherwise to attend a special meeting of the PBA Board. The FDFA has no pre-conceived notions as to how any meeting would proceed be it who is in attendance, when, where, and what meeting format is used. The FDFA simply wants to facilitate positive engagement.

Regards,

Sincerely,

Barbara Barrett
Executive Director
Frontier Duty Free Association
bbarrett@fdfa.ca
343-998-8906

CC: Greg O'Hara, Peace Bridge Duty Free, President and CEO
Jim Pearce, Peace Bridge Duty Free, General Manager
Tim Clutterbuck, Authority Board Member
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Commissioner, etc.

www.fdfa.ca

From: Barbara Barrett
Sent: May 10, 2022 4:08 PM
To: 'Ron Rienas' <rr@peacebridge.com>
Cc: Lynda Dubuc <lld@peacebridge.com>
Subject: RE: PBDF

Thank you Ron. I would be happy to attend via teleconference.
Many thanks for the opportunity.
Cheers,
Barbara Barrett
Executive Director

#UntilWeMeetAgain

O -- 613-688-9788
M -- 343-998-8906
bbarrett@fdfa.ca
www.fdfa.ca

From: Ron Rienas <rr@peacebridge.com>
Sent: May 4, 2022 2:21 PM
To: Barbara Barrett <BBarrett@fdfa.ca>
Subject: RE: PBDF

Good afternoon Barbara,
Our next Board meeting is Thursday, May 26 at 8:15am.
The Chairman is amenable to you again presenting to the Board. Please note that we are now back to in-person Board meetings and our Board room does not have Zoom capabilities. You can call in and present over our teleconference system or you can attend in person.
Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority
100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
rr@peacebridge.com T 905-994-3676| T 716-884-8636| F 905-871-9940 | F 716-884-2089 | C 905-651-2206

From: Barbara Barrett <BBarrett@fdfa.ca>
Sent: Friday, April 29, 2022 3:38 PM
To: Ron Rienas <rr@peacebridge.com>; Lynda Dubuc <lld@peacebridge.com>
Subject: RE: PBDF

Ron,
Hope this note finds you well. Since I presented to your Board last, the national landscape for land border duty free stores has changed. I am hoping you and your Board would be amenable to me presenting at your next meeting to bring you up-to-date and hopefully bring important context.
Please let me know your thoughts.
Cheers,
Barbara Barrett
Executive Director

#UntilWeMeetAgain

O -- 613-688-9788
M -- 343-998-8906
bbarrett@fdfa.ca
www.fdfa.ca

From: Barbara Barrett
Sent: March 23, 2022 11:47 AM
To: Ron Rienas <rr@peacebridge.com>; Lynda Dubuc <lld@peacebridge.com>
Subject: RE: PBDF

Ron/Lynda,
Sorry if I have missed it but looking to get timing and details for the meeting on Friday so that I am able to plan.
Many thanks and very much look forward to it.
Barbara Barrett
Executive Director

#UntilWeMeetAgain

O -- 613-688-9788
M -- 343-998-8906
bbarrett@fdfa.ca
www.fdfa.ca

From: Barbara Barrett
Sent: March 22, 2022 7:37 PM
To: Ron Rienas <rr@peacebridge.com>
Cc: Lynda Dubuc <lld@peacebridge.com>
Subject: Re: PBDF

Hoping I can get the time and coordinates for the meeting on Friday so that I am sure I am planning around it.
Many thanks,
Barbara Barrett
Executive Director
Frontier Duty Free Association
343-998-8906
Email: bbarrett@fdfa.ca
www.fdfa.ca

On Mar 21, 2022, at 10:34 AM, Barbara Barrett
<BBarrett@fdfa.ca> wrote:

That is correct Ron. Thank you.
Barbara Barrett
Executive Director
Frontier Duty Free Association
343-998-8906
Email: bbarrett@fdfa.ca
www.fdfa.ca

On Mar 21, 2022, at 9:53 AM, Ron Rienas
<rr@peacebridge.com> wrote:

Barbara,
You have been placed on the agenda for the March 25 Board meeting. We will send you the meeting coordinates prior to the meeting.
Based on your response, it will only be you representing FDFA. Peace Bridge Duty Free (PBDF) will not be present and there will be no discussion about the PBDF lease. Please confirm.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority
100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
rr@peacebridge.com T 905-994-3676| T 716-884-8636| F 905-871-9940 | F 716-884-2089 | C 905-651-2206

From: Barbara Barrett <BBarrett@fdfa.ca>
Sent: Friday, March 18, 2022 6:11 PM
To: Lynda Dubuc <lld@peacebridge.com>
Cc: Ron Rienas <rr@peacebridge.com>
Subject: Re: PBDF

Lynda,

Many thanks for this note. I would be pleased to attend the meeting on March 25th and very much appreciate the opportunity.

Below is an agenda of what I will be covering:

1. Pandemic context for the industry including government support measures
2. Bridge Authority/duty free landscape nationally
3. Ongoing advocacy efforts to obtain support for stores and bridge authorities.

Again many thanks and I look forward to recovering details on attending the meeting.

Regards,

Barbara Barrett
Executive Director
Frontier Duty Free Association
343-998-8906
Email: bbarrett@fdfa.ca
www.fdfa.ca

On Mar 10, 2022, at 11:07 AM, Lynda Dubuc <lld@peacebridge.com> wrote:

Please see attached.
Thank you.

Lynda L. Dubuc
Executive Assistant
Buffalo & Fort Erie Public Bridge Authority
100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
lld@peacebridge.com |T 905-871-1608 | T 716-884-6744 | F 905-871-9940 | F 716-884-2089

For live traffic conditions, visit **mobile.peacebridge.com**

THIS IS **EXHIBIT "U"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

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Land Border Duty Free
Peace Bridge

March 25, 2022

Duty Free

Agenda

1. Pandemic context for the industry including government support measures

2. National Bridge Authority and the land border Duty Free landscape

3. Ongoing advocacy efforts to obtain support for stores and bridge authorities.

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Land Border Duty Free Context

- The pandemic led to an **almost two-year complete land border closure** with only the most essential business travel allowed

- Our national research of store sales demonstrated that our 33 land border duty free stores, over the last two years, saw an over **90% revenue drop**.

- Many stores closed completely for most of the border shut down

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Land Border Duty Free Context

- When the border was reopened, PCR testing was required, then dropped, then put back in place days later and lasting for three months.

No businesses have been hit harder by federal measures to protect Canadians

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Land Border Duty Free Context

We have been on a roller coaster with the unprecedented length of time of the border closure. We know through our analysis of the data that 95% of our business is from Leisure travel or tourism travel. Other businesses could pivot – online, curbside pickup, or domestics sales – our stores could do NONE of those so remained at 90-100% down in revenue compared to pre-pandemic.

Our stores had no business model to pivot to and %95 of customers unable to come to our stores.

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FDFA Survey Data

- February 28, 2022 results based on monthly in store data and national survey of FDFA membership.
- Survey results from our 30 store owners in our national membership representing stores in 7 provinces and 26 federal ridings.
- Six percent of FDFA store results not included as they have closed permanently during the pandemic and not anticipated to reopen. **These 100% losses are excluded from the data**.

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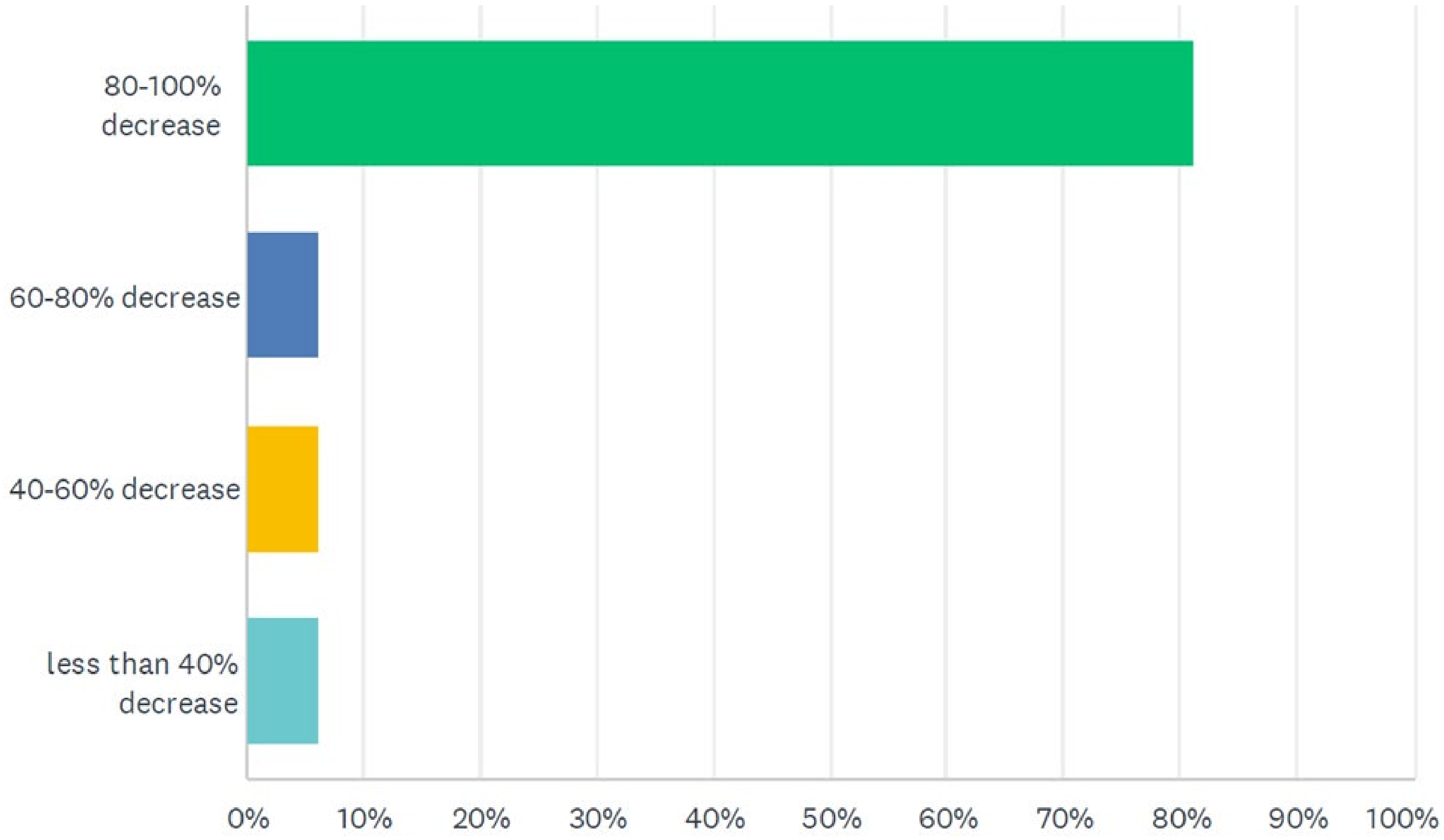
February 2022 Monthly Revenue Decline vs. Pre Pandemic 2020



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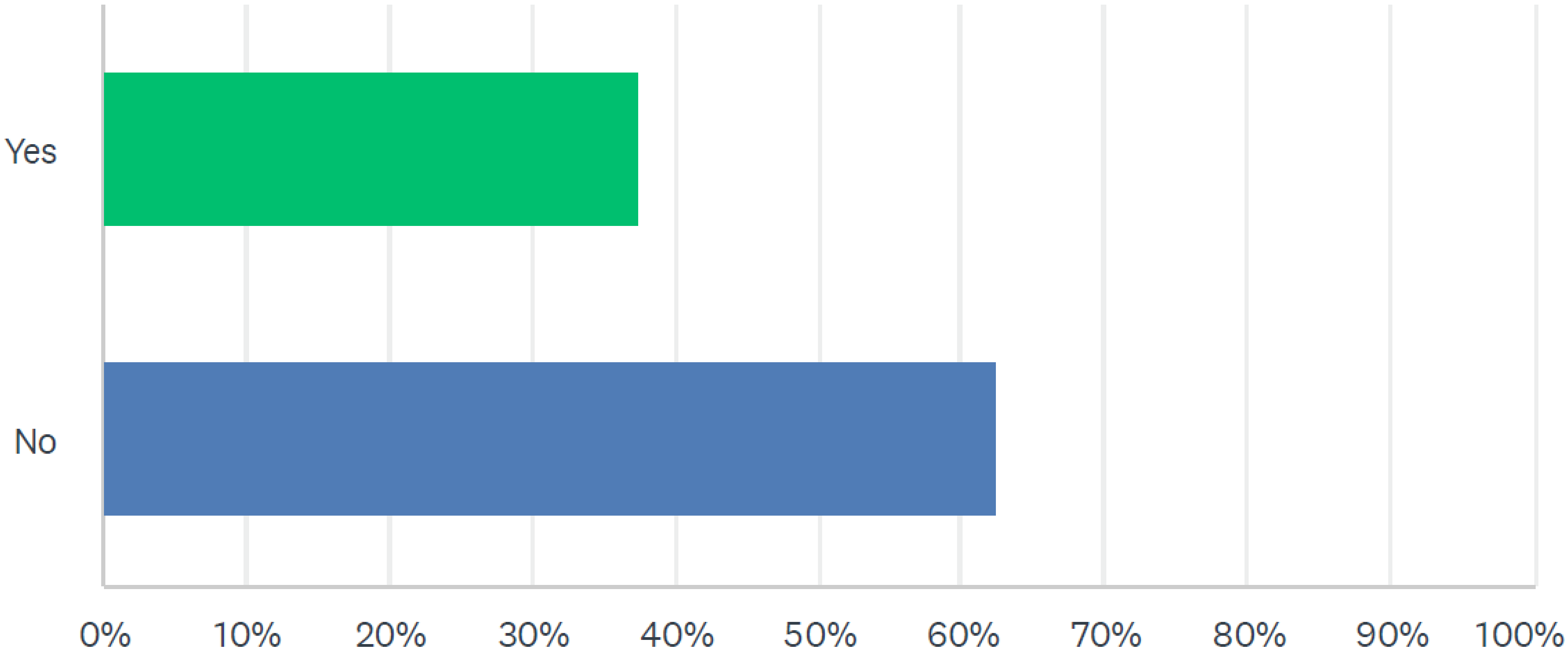
Are the current baseline Federal supports enough to keep your store operating?



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National Open/Closed Throughout the pandemic

	Closed	Open
March 2020	25	7
July 2020	14	18
September 2021	5	27
February 2022	2	30

National Open/Closed Throughout the pandemic

- We have had different stages of the closure that we have been battling – some stores were able to open during different periods, but for many it was too costly with only one or two sales a day – some per week – to be able to even open.

- Testing requirements continued to complicate matters and it was a very difficult time and there was no clear answer as the pandemic progressed, rules changed, but I can assure you the one thing that stayed consistent is that our customers were not in our stores.

	Closed	Open
March 2020	25	7
July 2020	14	18
September 2021	5	27
February 2022	2	30

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Government-wide approach – Treasury Board Directive

Although federal departments and agencies who are landlords ("Landlords'') are not eligible to participate in the CECRA program, the Government has decided that they, as well as Crown corporations, should provide rent reduction to their commercial tenants, in alignment with CECRA intent and core criteria.

To implement this decision, the following direction is provided:

- All Landlords should extend rent reduction, representing 75 per cent of the gross monthly rent for April, May, June, and July 2020, to their existing commercial tenants that meet the same eligibility criteria established through the CECRA.
- Crown corporations will be expected to align with or participate in CECRA, depending on their governance framework. Expectations will be communicated under separate cover and questions relating to specific Crown corporations should be addressed to their portfolio department contacts.

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Government-wide approach – Treasury Board Directive

- The government introduced and rolled out plans quickly for rent relief that weren't fully thought out and had some rough edges that we worked with them to improve.
- One of the pillars of this approach was that the government agreed with us that government entities/landlords should provide the same rent relief as the private sector program – that being 75%

- That lead to this Treasury Board directive to ensure Federal landlords lined up with the 75% goal and to follow that directive.
- I can tell you that all the other bridge authorities have followed this directive and that this bridge authority is the **only** exception.

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The Value of
Peace Bridge Duty Free

1. 100% of rent arrears will be forfeited if lease is terminated
   - A replacement operator will likely take a minimum of 6 months

2. The duty free amenity to travellers will be interrupted

3. Employment for all PBDF employees will be lost

4. A replacement tenant will not have same lease

5. Total loss of rent during RFP and lease negotiation process

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The Value of Peace Bridge Duty Free

1. In the event of lease termination 100% of rent arrears will be forfeited- PBDF has conceptually offered to pay some fixed amount of arrears over the balance of the term of the lease, although this tied to gross revenue and future rent obligations
   - Any termination and RFP for a replacement operator will likely take a minimum of 6 months- meaning a loss of rent at 20% of gross sales and probably longer

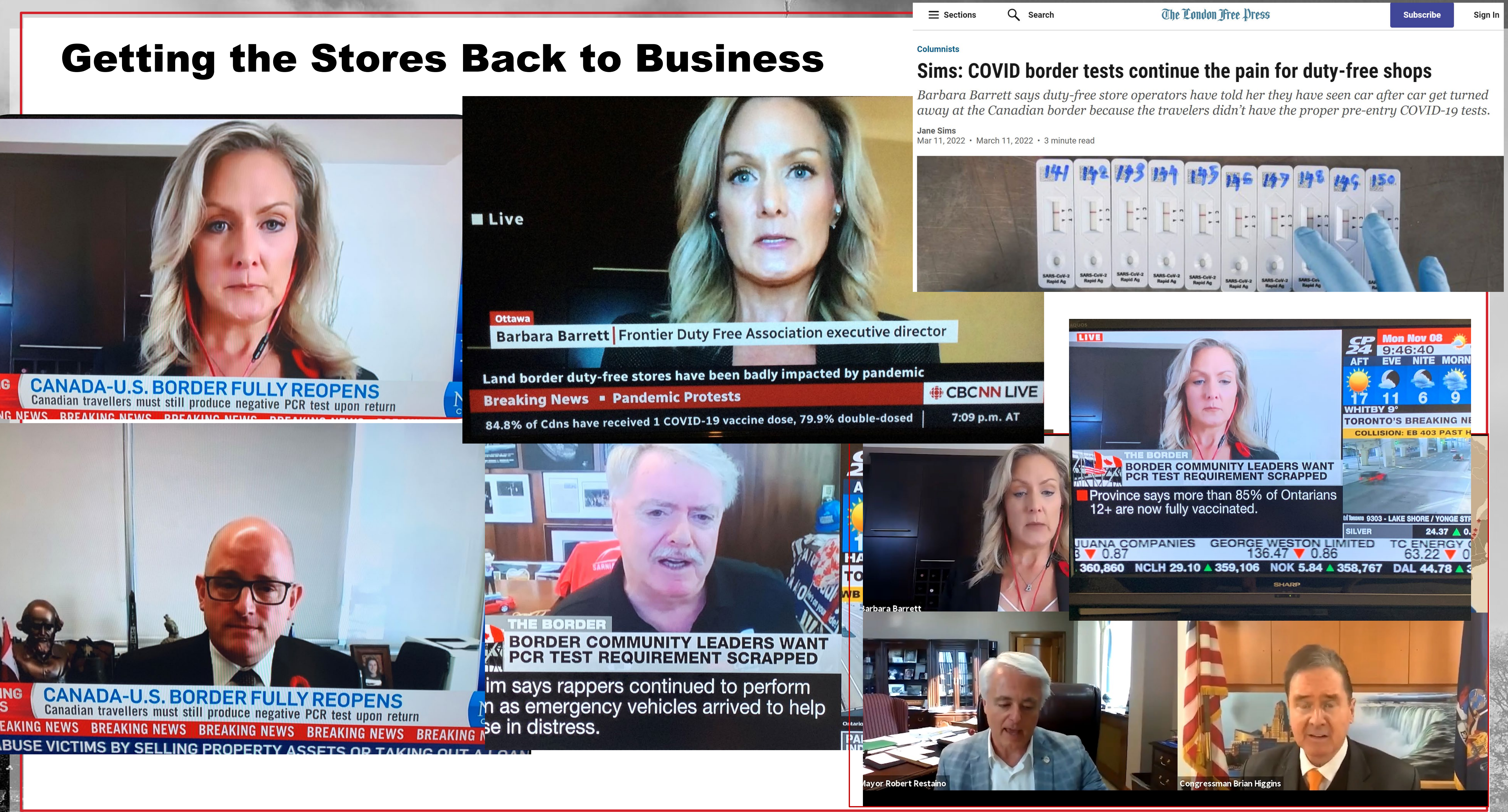
2. The duty-free amenity to travelers will be interrupted
   - Alternate arrangements will be needed to process trucker's customs' paperwork needs and washroom needs

3. Employment for all PBDF employees will be lost

4. Any prudent replacement tenant will not agree to the same lease terms as the business cannot be profitable with a fixed minimum rent for the foreseeable future; and most new leases provide for free rent periods and tenant allowances- the PBDF is not seeking any rent-free period/allowance going forward and will likely pay greater rent than any replacement tenant
   - Any new lease will include other losses related to landlord costs like free rent, fixturing periods, tenant allowances and lower rent based on updated traffic counts with carveouts for future pandemic impacts. Since the PBDF lease was negotiated annual traffic counts are lower (not including covid reductions) by 10%+. i.e the more recent historical traffic stats (excluding the covid period) do not support the traffic assumptions underlying rent in the PBDF store lease.

5. There will be a total loss of rent during RFP and lease negotiation process

Getting the Stores Back to Business



Getting the Stores Back to Business

- FDFA has worked extensively with the media through coalitions like the Hardest Hit Businesses and the border city mayors to get the government to get the border back to normal, drop testing and allow our stores to get back to business.

- We want to work with you to tell the story about working in the spirit of the PM's messaging of "we have your backs" and be able to tell the good news story of how we worked together to find a solution and not one that we were forced to shut our doors.

Let's work together to tell the story about how all our stores survived.


"Our Tourism and Hospitality Recovery Program will provide support through the wage and rent subsidy programs to employers, such as hotels, restaurants, travel agencies, and tour operators."
Our work with government ensured that Bill C-2 was a PRIORORITY for this government and we continue to work for the extensions of these.

One of Only 20 Named Business Classes

Bill C-2

Types of Business Eligible for the Tourism and Hospitality Recovery Program

Backgrounder
The government has introduced legislation to implement the recently announced **Tourism and Hospitality Recovery Program**, which would provide support through wage and rent subsidies to select tourism and hospitality businesses still facing pandemic related challenges, with a subsidy rate of up to **75%.**

Operating or managing a duty-free retail store at a land border crossing where the only exit route is to the United States.

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Ongoing Advocacy

Our Message:
PBDF is a 35-year business licensed by the federal government is going to be destroyed by their own inadequate rent relief program and an extended border closure.

Our Ask:
Provide rent support to the Bridge Authority allowing both PBA and PBDF to recover

Federal:
- Minister of Transport office
- Deputy Prime Minister office
- Prime Minister's Office
- Members of Parliament

- Provincial

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Media Statement

Land Border Duty Free Stores Can Start on Road to Recovery

OTTAWA – March 16, 2022 -- The news that fully vaccinated travellers will no longer have to be tested for COVID-19 at the land border will allow border businesses like land border duty free stores to get on the road to recovery. This could not be more welcomed news and we are grateful to the federal government for hearing our plea and having our back as we continue to struggle to recover.

- 30-

The FDFA is the national association representing Canada's the 33 land border duty free shops. Our mandate is to promote the development and success of the land border duty free sector by acting as a voice, advocate and business resource for members.

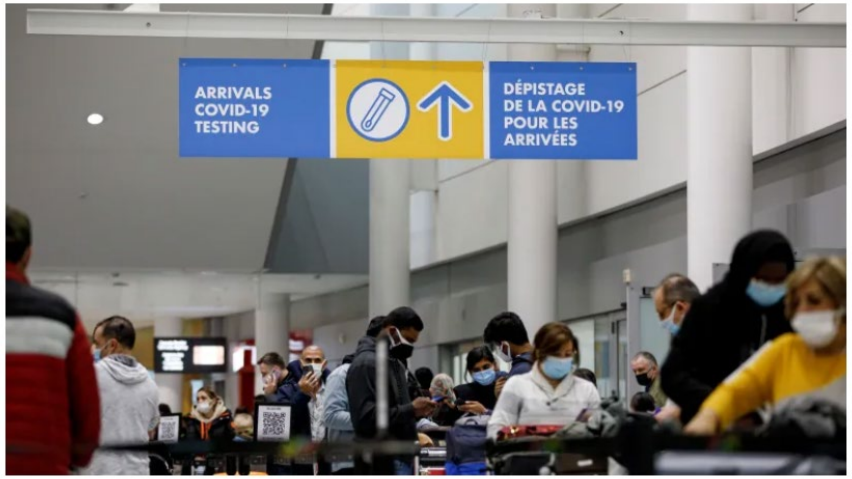
For more information, please contact: Barbara Barrett, 343-998-8906, bbarrett@fdfa.ca

Politics

Federal government to end pre-arrival COVID testing for travellers entering Canada

Random testing of arrivals will continue to track emergence of new COVID-19 variants

Ashley Burke · CBC News · Posted: Mar 16, 2022 11:42 AM ET | Last Updated: March 17



Travellers walk through Pearson airport in Toronto on Dec. 16, 2021. (Evan Mitsui/CBC)

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SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

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Introduction

Good morning, as you will recall from my prior presentation to the Board, my name is Barbara Barrett, Executive Director of the Frontier Duty Free Association representing the 33 land border duty free stores on the Canadian Side of the US Canada border.

I am very appreciative to be here today to continue the dialogue with your Board and leadership on the ongoing challenges our sector and stores have faced and to explore solutions. I am also pleased to share how the sector is recovery across Canada and highlight insight into our current lobbying and advocacy efforts.

As I begin my remarks, I think it is worth reminding ourselves that the Canada/US border and our stores, were not shut down for two years because we had a bad business model or that our stores were inherently dangerous. Our stores, and your bridge passenger traffic, were all but eliminated because the Cabinet and the Executive branches in both Ottawa and Washington deemed it necessary to take historic measure to protect the public health of both countries during a global pandemic. Our stores more than any other business sector of the country were shuttered the longest to protect Canadians. Our stores have been on a roller coaster with the unprecedented length of time of the border closure, restrictions going on, coming off and going on again. But the math is very clear. When the land border was closed or all but closed FDFA stores lost 95% of our customer base. Our stores were the hardest hit of the hardest hit businesses.

Government Support

Since we met last, Government supports for our stores have declined dramatically. The Canadian Emergency Wage Subsidies and CERS rent supports were cut in half in March and then ceased entirely in May.

The April 2022 Federal Budget demonstrated a clear shift away from delivering any pandemic support going forward despite our industry and the greater tourism industry still not even near to being recovered or at the time, even starting to recover as travel restrictions and entry requirements still remained. Of course, the larger Canadian tourism sector has been able to depend on domestic tourism while our land border stores can only serve cross border traffic so our stores will be slower than the overall tourism sector to recover.

Recovery

Despite headwinds our stores are trending for recovery. Slowly, but it is happening. Our monthly sales survey conducted in for the month of April 2022 demonstrated that our stores were on average 47% down compared to pre pandemic April 2019. Prior to that it was more or less 65-70% down. Unfortunately, some stores are still seeing an 80% reduction compared to 2019. We expect the trend to continue upward although the trajectory is unclear.

Peace Bridge Duty Free specifically is still seeing a 50% reduction overall compared to pre-pandemic sales and this past May long weekend also tracked at 50% down in sales compared to pre-pandemic long weekend sales.

With each passing month we get better data which will help to provide further and more detailed analysis.

Ordinarily, a business sector down almost 50% across the board would be a disaster, but considering our stores were down 95% during the border closure – 50% down is encouraging. Initial market intelligence for this past May long weekend indicated that, as expected and forecast business is continuing to recover incrementally.

The ongoing and emerging challenges we are facing include but are not limited to:

- Border delays (in fact the RCMP ask motorist not to call 911 at BC border crossing facing significant delays in border traffic).
- ArriveCan app is deterring travellers, especially tour company travellers which are a key revenue source for border stores.
- In particular the Motor Coach industry is cancelling tours as a result of the difficulties facilitating travel of 50 individuals with current border practices (this is closely related to ArriveCan app difficulties).
- In fact, we are advised that PBDF's biggest customer in 2019 with 129 visits was Diamond Tours. At present no Diamond Tour visits have occurred at the PB, nor are any scheduled, because of the ArriveCan App and its defacto barrier to voluntary travel.

  During the May long weekend in 2019, Peace Bridge Duty Free enjoyed sales from 25 buses in their parking lot. This year, they saw TWO. Sales were down from the reduction in buses by approximately 95%.

- Gasoline prices are at historically high levels and show no sign of ceasing to increase, let alone decline, threatening the affordability of family cross border trips for the foreseeable future.
- This past week, the Tire and Rubber Association of Canada's national survey conducted by Leger found two thirds of Canadians said gasoline prices would force them to cancel or limit summer road trips.
- Raging inflation and the exchange rate differential are further impediments to discretionary travel south.
- Unfortunately, the trend in respect of summer road trips is anticipated to reduce the incline of sales recovery, until a new normal is reached where non essential travellers are content to travel exuberantly.
- Vaccination status – Canadian vaccination rates are reasonably high at nearly 85%, not so the case with the US at a 66% fully vaccinated rate, meaning one third of Americans CAN NOT enter Canada. We can all do the math – this means that a large portion of our stores' traditional American customer base is no longer available to them until such time as vaccine requirements are loosened.
- In short, travel hesitancy not yet been fully over come by the average cross border traveller, but the trend, albeit slower than wanted, is positive.

Advocacy

Since our last meeting our advocacy efforts have focused squarely on reducing the impact of the testing requirements at the border. FDFA rallied the mayors and elected officials of every border community we serve and created an open letter to the Prime Minister calling for action to end the border testing. FDFA then hosted the border mayors in a live press conference that was covered by scores of media outlet and went live on cable news across the country. We were then able to book mayors into countless media interviews to call for an end to testing at the border - The strategy worked. The Federal Government finally dropped the unscientific land border testing starting April 1, 2022.

We continue to meet with the Prime Minister's office and the Minister of Transport's office to reiterate calls for specific supports, especially financial supports, to help landlords and our industry. This effort is supported by local MPs and a group of MPs that have border stores in their ridings, and remains a work in progress that the FDFA believes will ultimately be successful.

In fact, on June 7, the Frontier Duty Free Association will be holding an important strategic advocacy "Hill Day" in Ottawa where our member stores will be meeting not only with their riding MPs but committee members, ministerial staff and all-party members to request action industry needs as well as the need for attention to this particular issue. The day will include a Conservative MP taskforce roundtable, approximately 30 strategically curated meetings, a press conference, as well as a reception on the Hill where personal lobbying opportunities are available to FDFA members. Our key messages will focus on a number of duty free-specific issues, the ArriveCan app issue, as well as supports and programs that will allow for a speedier/healthier recovery. In particular, Peace Bridge Duty Free delegates will have the opportunity to focus on this particular issue and the need for government support.

We think that the huge effort underlying FDFA's Hill Day will over the next months assist the FDFA towards its other multi-level government initiatives related to the health of the duty free sector.

We are optimistic that our advocacy efforts at the current up-beat level will be a factor in improving business conditions for our members and their landlords. There is much more to do.

What We Need Now

What our stores have received from landlords is a firm sense of partnership and understanding that the situation is beyond our stores' control. This is virtually the unanimous status at locations- where landlords and tenants work hand-in-hand with each other to survive this challenge, with an eye to a prosperous future.

Our store at Peace Bridge needs a continuation of your understanding and patience as we all face a longer road to recovery than anyone wants or foresaw. PBA can continue to assist, all the time knowing that Peace Bridge's duty free store's performance trend is consistently upward, and at least consistent with our industry average, and has achieved far better performance than some other duty free stores .

We also want to emphasize that FDFA is more than prepared to work with you and focus our advocacy efforts to achieve fairness for all Peace Bridge stakeholders, who have all been caught up in the continuing whirlwind of unanticipated covid management/regulation side effects. Happy to take questions and suggestions now as to how we might achieve that together, or to schedule a time to have that conversation as the PBA synthesizes this new and updated industry information.

THIS IS **EXHIBIT "W"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

October 24, 2022

Buffalo and Fort Erie Public Bridge Authority ("PBA")
100 Queen Street
Fort Erie, ON L2A 3S6

Attention: Kenneth A. Manning, Chair

Dear Mr. Manning,

Re: Frontier Duty Free Association ("FDFA") Economic Report

FDFA is writing to update PBA on the continuing recovery of the Canadian duty free industry since our last report in the late spring.

We ask that the information be shared with your Board.

In May of 2022, we reported that despite government mandated headwinds our stores were trending for recovery. Conditions for the border have been (very) slowly rolled back on both sides of the border with Canadian restrictions easing more quickly than those of the United States.

While very slow, the ongoing trend of recovery we reported in May is continuing, be it by single digit percentage improvements, with the occasional retreat.

Our monthly sales survey of duty free stores conducted for the month of April 2022 demonstrated that our Canadian stores were on average **47% down** compared to pre pandemic April 2019.

Following the usually busiest season of the year (June to Labour Day), FDFA launched a further survey of our members to identify exactly the amplitude of the percentage of gross sale losses that occurred during the summer season of 2022 vis a vis 2019. Our findings reflect a comparison of the members' gross sales number from the summer season right before the start of the COVID-19 pandemic (2019).

Canada Day
Without a doubt, Canada Day is one the busiest periods for tourism-related businesses all around the country. The duty free industry across Canada averaged a **decrease in sales of 48.18 %** comparing Canada Day of 2019 to the 2022.

July
The entirety of July was frustrating, and extremely difficult for FDFA members. Even though July is generally the prime summer month, the sales were well below pre-pandemic with an average

decrease in sales of 44.82% across Canada. Similarly, the American July long weekend saw sales **44.5%** in comparison to 2019.

August Long Weekend

The long weekend covering the end of July to the beginning of August was no different than the other flagship moments of the Canadian summer. On average, members noted a **decrease in sales of 46.7%.**

In summary, this economic report indicates clearly the hardship that Canada's land border duty free industry is experiencing. Every profitable flagship period of the summer resulted in disappointing sales for members across the country, with an average sales decrease hovering around **45%**.

It is important to remember, that although the Canada – America border was open during this time period, border measures such as, vaccination requirements to enter Canada and the ArriveCAN app were still in place. FDFA was steadfast in its advocacy efforts to have those measures eliminated and were pleased for the success in those efforts starting October 1, 2022. We expect to see continued improvement in sales give as the border is returned to normal.

Unfortunately, restrictions on entry into the United States continue, although it is hoped that after the midterm elections next month, that American restrictions may also be loosened.

Peace Bridge Duty Free

FDFA understands that PBA has recently arranged to apply to Court in December to seek to terminate the Peace Bridge Duty Free lease.

Peace Bridge Duty Free is amongst the top performing Canadian duty free stores, and its performance continues to improve, albeit slowly. FDFA is keenly aware that duty free sales performance across Canada does not reflect industry performance and/or management failures; rather, is directly caused by governmental policy, restrictions, and in the case of a number of locations including especially the Peace bridge Duty free store, the failure to provide any mandatory rent subsidy program accessible by them.

FDFA continues to lobby all levels of government to belatedly address this inherent unfairness in the application of policy where certain retail businesses receive material government rent aid, and others like the Peace Bridge Duty Free are forgotten.

We remain very willing to meet with the PBA, be it to attend the next board meeting and make a more detailed presentation in respect of the conditions facing the PBA's Canadian Duty Free tenant's, or otherwise to attend a special meeting of the PBA Board.

The FDFA has no pre-conceived notions as to how any meeting would proceed be it who is in attendance, when, where, and what meeting format is used.

The FDFA simply wants to offer to facilitate positive fact-based engagement.

Sincerely,

Barbara Barrett
Executive Director
Frontier Duty Free Association
bbarrett@fdfa.ca
343-998-8906

CC: Greg O'Hara, Peace Bridge Duty Free, President and CEO
Jim Pearce, Peace Bridge Duty Free, General Manager
Tim Clutterbuck, Authority Board Member
Marie Therese Dominguez, Authority Board Member
Llewellyn Holloway, Authority Board Member
Margaret Neubauer, Authority Board Member
Jennifer C. Persico, Authority Board Member
Patrick Robson, Authority Board Member
Michael J. Russo, Authority Board Member
Debbie Zimmerman, Authority Board Member

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Commissioner, etc.

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Tony Baldinelli, MP

Member of Parliament
Niagara Falls

April 1, 2022

The Honourable Chrystia Freeland, P.C., M.P.
Minister of Finance and Deputy Prime Minister
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5
Emailed to: chrystia.freeland@fin.gc.ca

Dear Minister Freeland,

I recently met with the Executive Director of the Frontier Duty Free Association, along with representatives of locally owned duty-free stores located in my riding of Niagara Falls. There are 33 land border duty free stores located in Canada, including three in my riding, alone.

As you may know, land border duty free stores are small family-run businesses that are export only and can only serve customers who cross the Canadian land border into the United States. They exist to keep money in Canada, that would otherwise flow over the border and be spent in the U.S.

During this meeting, it was reiterated to me that these Canadian land border duty free stores have been amongst the hardest hit sectors of our economy, as a result of COVID-19.

Since federal pandemic border restrictions and rules were implemented in March 2020, land border duty free stores have either been fully or partially closed. Their business model was instantly broken when the borders closed, and consequently, their finances have suffered tremendously, and thousands of workers have been laid off.

It is important to note, that unlike like other retailers, land border duty free stores could not pivot to try and sustain their operations. They are licensed by the Canadian Border Services Agency (CBSA), are highly regulated, and have no alternative business model to switch to, even temporarily. Therefore, they could not sell products online, they could not do curbside pick-up,

Ottawa
Room 645
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Ottawa, Ontario
K1A 0A6
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Niagara Falls
Niagara-on-the-Lake
4056 Dorchester Street, Unit 107
Niagara Falls, Ontario
L2E 6M9
Tel.: 905-353-9590
Fax.: 905-353-9588
Tony.Baldinelli@parl.gc.ca

Fort Erie
48 Jarvis Street
Fort Erie, Ontario
L2A 254
Tell. : 905-871-9991
Fax. : 905-971-5046

and they could not make any domestic sales whatsoever in the past two years. This has resulted in stores having to destroy a significant amount of inventory, after this inventory reached its "best before" date.

After two long years and complex border policies being implemented at various times, some land border duty free stores are now on the verge of closing permanently.

Federal pandemic policies have had a catastrophic impact on these small Canadian businesses. And if that wasn't enough, a number of these stores were then impacted by the protests and blockades at multiple land border crossings, including Windsor, Emerson, Coutts, Surrey, and Sarnia.

During my meeting with duty free representatives, they brought to my attention that they are asking the federal government for a $20 million financial support program to save their businesses. They noted that their request of federal funds is equal to the amount of federal funding given to downtown Ottawa businesses who had to close for three weeks during the same protests that affected land border crossings and land border duty free stores.

Land border duty free stores have done their part to keep Canadians safe, and after two long years of losses suffered through federal pandemic policies and protest blockades, they are asking for financial assistance from the federal government to help them survive and allow them to continue to operate into the future.

Land border duty free stores have been uniquely and disproportionately impacted by the pandemic and protests, while doing more than their part in sacrificing to help keep Canadians safe from COVID-19. It would be greatly appreciated if you could consider their request above.

Thank you for taking the time to consider the views expressed by those dedicated small business operators in the Canadian duty free industry.

Sincerely,

Tony Baldinelli, M.P.
Niagara Falls Riding

Cc. Randy Boissonnault, P.C., M.P., Minister of Tourism and Associate Minister of Finance
The Hon. Ed Fast, P.C., M.P., Shadow Minister for Finance
Dan Albas, M.P., Associate Shadow Minister for Finance and Housing Inflation
Tracy Gray, M.P., Shadow Minister for Small Business Recovery and Growth
Michelle Ferreri, M.P., Shadow Minister for Tourism

THIS IS **EXHIBIT "Y"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Gail Fairhart

From:	Jim Pearce <JimP@dutyfree.ca>
Sent:	August 3, 2022 8:53 AM
To:	John C. Wolf
Subject:	Fw: Minister of Tourism and Associate Minister of Finance
Attachments:	Baldinelli - Duty Free Letter 2022-04-01 SIGNED.pdf
Follow Up Flag:	Follow up
Flag Status:	Completed

From: Morrison, William (Baldinelli, Tony - MP) <william.morrison.467@parl.gc.ca>
Sent: Tuesday, August 2, 2022 9:48 AM
To: stever@niagaradutyfree.com; jim@dutytaxfree.com; Jim Pearce; chris@dutytaxfree.com
Cc: BBarrett@fdfa.ca; Jeffs, April (Baldinelli, Tony - MP); Wilson, Braydon (Lantsman, Melissa - MP)
Subject: FW: Minister of Tourism and Associate Minister of Finance

Good morning,

Please see the email below from the Minister of Tourism and Associate Minister of Finance in response to MP Baldinelli's attached correspondence dated April 1, 2022.

Sincerely,

Billy Morrison
Communications Advisor and Legislative Assistant
Office of Tony Baldinelli, Member of Parliament for Niagara Falls
Shadow Minister for Manufacturing and Export Promotion
E: William.Morrison.467@parl.gc.ca

From: Minister Boissonnault / Ministre Boissonnault (IC) <ministeroftourism-ministredutourisme@ised-isde.gc.ca>
Sent: August 2, 2022 9:09 AM
To: Baldinelli, Tony - M.P. <Tony.Baldinelli@parl.gc.ca>; Morrison, William (Baldinelli, Tony - MP) <william.morrison.467@parl.gc.ca>
Subject: Minister of Tourism and Associate Minister of Finance

Minister of Tourism and Associate Minister of Finance | Ministre du Tourisme et ministre associé des Finances

Dear Colleague:

Thank you for providing me with a copy of your correspondence of April 1, 2022, which was addressed to the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, conveying the concerns of the owners and operators of land border duty-free stores with respect to the impact the federal border measures put in place in response to COVID-19 have had on their businesses. I regret the delay in replying to you.

Canadian tourism businesses and the communities they support have been among those most heavily impacted during the pandemic, and I recognize the importance of supporting and championing their interests. With the onset of the pandemic, workers and businesses in the tourism industry, including owners and operators of land border duty-free stores, felt the full impact of public health measures and border closures. In response, the tourism and hospitality sector has received an estimated $23 billion in support through the federal government's emergency programs.

As the pandemic situation has improved, on April 1, 2022, the Government of Canada removed the requirement to provide a pre-entry COVID-19 test result on arrival in Canada for fully vaccinated travellers arriving at land, air, or marine ports of entry. On April 25, 2022, the Government removed the requirement to provide a quarantine plan upon entry for all fully vaccinated travellers. Furthermore, as of June 20, 2022, domestic and outbound international travellers are not required to be fully vaccinated against COVID-19. These measures are expected to support the increased flow of cross-border travellers, which will be a welcome boost to the tourism sector and to the Canadian economy as a whole.

In addition, Destination Canada is also expected to spend more than $48 million for marketing campaigns in the United States. This will help to draw in more visitors and increase the economic activity that those visitors bring, including to our border communities. More generally, Budget 2022 also provides $385.7 million to facilitate the timely and efficient entry of a growing number of visitors, workers, and students to Canada.

Once again, thank you for sharing your views and concerns on this important subject. The Government of Canada remains committed to a safe and sustainable recovery for Canada's tourism sector while working to protect the health and safety of individual Canadians.

Please accept my best wishes.

Sincerely,

The Honourable Randy Boissonnault, P.C., M.P.

Canada

THIS IS **EXHIBIT "Z"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

PEACE BRIDGE
DUTY FREE

P.O. Box 339 Peace Bridge Plaza
Fort Erie, Ontario L2A 5N1 Canada

P.O. Box 572
Buffalo, New York USA 14213-0572

Telephone: (905) 871-5400
Fax: (905) 871-6335

August 9th, 2022

VIA EMAIL (vance.badawey@parl.gc.ca)

The Right Honourable Vance Badawey, Niagara Centre
Member and vice chair CEUS Canada-United States Inter Parliamentary Group
Member TRANS Standing Committee on Transportation, Infrastructure and Communities
103-136 East Main Street
Welland, ON L3B 3W6

And to:

VIA FAX (613-995-5245)

The Right Honourable Vance Badawey, Niagara Centre
Member and vice chair CEUS Canada-United States Inter Parliamentary Group
Member TRANS Standing Committee on Transportation, Infrastructure and Communities
House of Commons
Ottawa, ON K1A 0A6

Dear Sir:

Re: **Commercial Lease ("Lease") between Peace Bridge Duty Free Store as tenant ("PBDF") and Peace Bridge Authority as landlord ("PBA")**

And Re: **Offer to convene meetings with a view to considering funding via a longterm low interest loan certain arrears of rent claimed by the PBA and arising by reason of border closure-related shutdowns, restrictions and the after effects**

I wanted to write to you to follow up on our discussion in June regarding PBDF and our landlord, PBA that has unlawfully threatened Lease termination and continues to do so despite all efforts on our part to seek a mutually agreeable resolution to the matter.

Despite a trend line of continued gradual improvement in performance at the PBDF, the Lease dispute situation described to you by me, and also by the Frontier Duty Free Association (FDFA) has unfortunately recently and materially worsened. *This matter is now urgent.*

I have provided considerable detail below to jump start consideration and emphasize the need for your assistance and guidance. Back up documentation to substantiate is available on request. Having said that, this letter is not to be construed by any person that the PBDF directly or indirectly agrees with the PBA's assertion of its alleged contractual rights. PBDF has written PBA advising it of its legal position in respect of rights and obligations under the Lease which position remains unchanged. PBDF reserves all rights to oppose the actions of any party that threatens its continued existence. This position is detailed in the Renewed Notice of Intention To Terminate the Lease below.

By way of overview:

The Problem

- The Lease calculates base rent at 20% of gross sales, but at the time the Lease was negotiated traffic and sales were far greater than now. The Lease based rent on sales also included a minimum threshold of $4 million dollars/annum based upon sales of not less that $20 million.

- Sales in 2022 are estimated to be $10 million. In 2021 (prorated from September when the store re-opened) gross sales were less.

- Nonetheless, PBA has generally demanded the threshold rent be maintained, and has demanded rent be paid in respect of when the store was closed by government policy. PBA has been voluntarily provided with financial information and is patently aware that PBDF sales can not support the rent it demands.

- PBA has refused offers to meet with PBDF and has also refused to participate in mediation.

- PBA has ignored the proposal of the FDFA to participate in a joint request for accommodation from governments who control the PBA.

- In fact, the letter of July 26th, 2022 referenced below is the first letter from counsel to our counsel since our counsel last wrote the Landlord's lawyers on January 14th, 2022.

Status Quo

- PBA wrote our lender RBC last fall threatening Lease termination- which resulted in an Application for a Receiver by RBC which was resolved on the basis of the appointment of a Monitor. This threatened termination has resulted in significant additional costs.

- That RBC Application process resulted in a court ordered Stay of Enforcement granted early winter at hearing at which PBA attended.

- A combination of Part IV of the Ontario *Commercial Tenancies Act* (which barred evictions) and the court ordered Stay has ensured the status quo continued until now.

- During the time from re-opening for business and to date PBDF has faithfully paid 20% of gross sales in base rent to PBA and has also paid all additional rent, and HST on the full rent allegedly still due under the Lease.

- PBDF has paid 100% of any funds received from governments to the PBA.

- PBDF has paid all commercial lenders as per the loan agreements.

- The president of PBDF has deferred his salary and the shareholders have not taken a penny from the company since the border closure.

- The shareholders have invested $7 million in upgrades to the premises.

- PBDF provides employment for 30 employees.

Renewed Notice of Pending Lease Termination Delivered July 26th, 2022

- PBA has just last week unilaterally wrote our lender RBC and its court appointed Monitor without any notice, warning or discussion with the PBDF advising of its intention to enforce the Lease. The RBC, the Monitor, PBA and PBDF are through counsel discussing on August 10th, 2022 next steps to permit a judicial determination of these matters.

- PBA claims arrears of rent totalling in excess of $8.4 million dollars (and has offered on a without prejudice basis to compromise this claim by 50% of Covid border closure-related rent (a sum which is not quantified but likely is about $3.2 million).

- PBA has once again acted to create a situation of urgency.

- It should be noted PBDF disagrees that it is in arrears of rent: and if it is in any arrears, the quantum claimed is excessive and exaggerated.

- The Lease expressly requires the PBA to consult with PBDF with a view to adjusting rent upon the occurrence of Regulatory Changes or Applicable Laws causing an adverse effect on the business operations of the Tenant (see excerpt below).

- "Regulatory Changes

- In the event an unanticipated introduction of or a change in any Applicable Law 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 or change in Applicable laws to the Lease." (emphasis added).

Factual Matrix

- FDFA stores are experiencing a slow return to 2019 levels and PBDF is experiencing a similar situation (please see attached).

- Car traffic on the Peace Bridge is about 50% less than in 2019.

- PBDF gross sales are about 50%+/- of sales in 2019.

- Factors such as new strains of Covid, the virtual destruction of the USA crossborder tour bus business, inflation, uncertainty and the fact that nearly 1/3rd of Americans are unvaccinated and not eligible to enter Canada, as well as the ArriveCan App use represent some of the continuing challenges – none of which were caused by or contributed to by the PBDF.

- PBDF is outperforming the majority of its Duty Free peers according to the FDFA.

- Currently it is estimated by the FDFA that sales will not return to pre-Covid levels until sometime after 2023. Attached are copies of notes from presentations by FDFA to PBA Board of directors' meetings.

Requested Action

We urgently request a meeting to ***discuss*** a framework for the possible provision of some level of government funding/program/loan to address the demands of PBA. Time is of the essence.

Many thanks,

Jim Pearce

Jim Pearce
General Manager

c.c. PBDF
Attention: Greg O'Hara
President

c.c. FDFA
Attention: Barbara Barrett
Executive Director

THIS IS **EXHIBIT "AA"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Peace Bridge Duty Free - Professional Fees - Nov9/22

			Conlin Bedard	Blaney	Monitor Spergel	Aird Berlis	TGF	Misc
CONLIN BEDARD	Oct 19 2021	7,200.00	7,200.00					
CONLIN BEDARD	Nov 29 2021	3,800.00	3,800.00					
CONLIN BEDARD	Dec 7 2021	4,200.00	4,200.00					
CONLIN BEDARD	Jan 19 2022	600.00	600.00					
CANAM APPRAIZ	2021/11/18	3,500.00						3,500.00
CROWE	Mar 3 2022	6,983.00						6,983.00
SPERGEL	Dec 31 2021	11,689.00			11,689.00			
SPERGEL	Jan 312022	15,763.00			15,763.00			
SPERGEL	Mar 31 2022	6,486.50			6,486.50			
TGF	Feb 16 2022	15,414.71					15,414.71	
TGF	May 27 2022	7,910.00					7,910.00	
							-	
AIRD BERLIS	Oct 13 2021	9,524.65				9,524.65		
AIRD BERLIS	Nov 19 2021	1,234.00				1,234.00		
AIRD BERLIS	Dec 20 2021	3,154.00				3,154.00		
AIRD BERLIS	Jan 20 2022	15,330.42				15,330.42		
AIRD BERLIS	Feb 18 2022	15,067.50				15,067.50		
AIRD BERLIS	Mar 16 2022	580.00				580.00		
AIRD BERLIS	Apr 20 2022	5,280.00				5,280.00		
AIRD BERLIS	May 20 2022	487.50				487.50		
AIRD BERLIS	Aug 9 2022	1,465.00				1,465.00		
AIRD BERLIS	Aug 19 2022	1,697.50				1,697.50		
AIRD BERLIS	Sep 22 2022	1,617.50				1,617.50		
AIRD BERLIS	Oct 13 2022	1,592.50				1,592.50		
AIRD BERLIS	Nov 8 2022	2,602.50				2,602.50		
BLANEY	Dec 13 2021	40,990.00		40,990.00				
BLANEY	Jan 26 2022	51,457.40		51,457.40				
BLANEY	Feb 2022	11,597.58		11,597.58				
BLANEY	Mar 11 2022	33,483.90		33,483.90				
BLANEY	Mar 31 2022	21,730.50		21,730.50				
BLANEY	May 31 2022	11,585.06		11,585.06				
BLANEY	July 31 2022	13,969.26		13,969.26				
BLANEY	Sep 30 2022	30,256.50		30,256.50				
				-				
		358,249.48	15,800.00	215,070.20	33,938.50	59,633.07	23,324.71	10,483.00

THIS IS **EXHIBIT "BB"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

ISSN 2369-2391

Memorandum D4-3-2

Ottawa, October 28, 2015

Duty Free Shop – Licensing

In Brief

1. This memorandum incorporates the information previously contained in Memorandum D4-3-3, *Duty-Free Shop – Security* dated May 5, 2009 and replaces Memorandum D4-3-2, *Duty-Free Shop – Licensing* dated May 1, 2009.

2. This memorandum has been revised to reflect organizational changes resulting from the restructuring of the Canada Border Services Agency (CBSA) on April 1, 2010, to include a service standard for processing new Duty Free Shop applications, and to provide general updates and updates as a result of the strategic review of the Duty Free Shop program.

3. In addition to the above, the Commercial Registration Unit (CRU) and Border Information Services contact information has been added.

This memorandum explains the policies and procedures related to the licensing requirements needed to operate a Duty Free Shop (DFS) in Canada.

Legislation

Duty Free Shop Regulations.

Guidelines and General Information

1. Note that the *Customs Act*, Subsection 24 (1), provides the Minister of Public Safety with discretion when considering whether to issue a DFS licence. The Minister has the discretion to consider matters that are relevant to the overall intent of the program and government policy in the choice of a suitable licensee.

2. The DFS licence issued by the CBSA is a licence to acquire goods free of certain duties and taxes (other taxes, such as excise taxes, may be applicable) for sale to travellers who will immediately export the goods from Canada. The licence holds no monetary value and it does not express an implied guarantee of income in its own right, nor does it grant the licensee privileges in other government programs or jurisdictions where other licences, permits or contracts are required.

3. The Commercial Registration Unit (CRU) will strive to process applications for a new DFS within 90 calendar days from the deadline for application submissions. Only complete applications that meet all of the program requirements, as set out in the *Duty Free Shop Regulations*, and that include all required supporting documentation will be considered.

Application and Selection Process

4. The eligibility requirements for a licence to operate a DFS vary depending upon whether it is located at a land border crossing or at an airport. Refer to the *Duty Free Shop Regulations*.

5. Anyone interested in establishing a DFS at a site where there is no existing DFS or where an adequate range of goods is not available at an existing DFS, shall submit a completed Form BSF664, *Duty Free Shop Application/Amendment* indicating their interest in operating a DFS to the CRU by e-mail.

6. The CRU will review the initial request, and determine if the local CBSA office is able to provide service and monitor the proposed DFS operation and, for land border locations, that the establishment of a DFS will not impede the flow of traffic in the vicinity in which the proposed DFS is to be located.

Land Border Location

7. If the proposed land border crossing point is deemed acceptable, the CRU will inform the Frontier Duty Free Association (FDFA) and the Association of Canadian Airport Duty Free Operators (ACADFO) that applications will be invited by means of national advertisements undertaken by the CBSA. A call for applications may include more than one site; however, a separate application is required for each location. Interested parties must submit a completed land border DFS application package to the CRU.

Airport Location

8. For the establishment of a DFS at an airport, lease applications may be invited through a tendering process administered by Transport Canada or the individual airport authority. Once a successful candidate has been selected by the airport authority, the interested party must then submit a completed airport DFS application to the CRU.

Application Package

9. The application package is comprised of Form BSF664, *Duty Free Shop Application/Amendment* and schedules that must be completed in their entirety and supported by all the required documentation in order for the application to be recommended for further consideration. Application packages can be requested from the CRU.

10. For land-border DFSs, the successful applicant is determined by the Minister on the basis of an evaluation. If more than one application qualifies, preference is given to an applicant that qualifies as a small or medium-size business and an eligibility list is created, ranking the applications in order of their final scores. Proposals are evaluated against specific selection criteria in four main groupings: management capabilities and retail/allied experience, site and building proposal, business plan and proposed level of local employment.

11. The CRU will advise all applicants of the results of the selection process. Unsuccessful applicants may make a written request for feedback on the evaluation of their application within 90 days after the licence has been awarded.

12. Before the licence is issued, the successful applicant must ensure that all required documentation and financial security has been submitted to the CRU, otherwise, their application may be disqualified.

Security Requirements

13. A DFS licensee is liable for applicable taxes on its domestic goods and for all duties and taxes on imported goods unless the licensee can prove that the goods have been sold for export, are still in the DFS, have been destroyed or have been lawfully removed. To protect the interests of the Crown, DFS licensees must post financial security against their inventory in order to operate. In the event the DFS licensee fails to pay duties and taxes owed, action may be taken against the security in order to recover any outstanding amounts.

14. The amount of financial security will be based on 25 percent of the highest total projected value of the total inventory of the DFS and any off-site locations for the first year of operation. The amount of financial security for subsequent years will be based on 25 percent of the highest total value of inventory for the previous year.

15. The minimum amount of security is CAN$10,000 for each DFS licence.

16. General policies and procedures for posting and filing financial security are outlined in Memorandum D1-7-1, *Posting Security for Transacting Bonded Operations*. The original customs bond or other acceptable form of financial security is managed by the CRU.

Adjustments to Financial Security

17. The CRU will review the amount of financial security no less than once a year to ensure it is adequate for the value of the inventory on hand.

18. If it is determined that an increase in financial security is required, the licensee is to submit amended financial security to reflect the revised amount within 60 days of being advised to do so by the local CBSA office.

19. A licensee can voluntarily change the surety company or financial institution for its customs DFS bond or other form of financial security at any time by submitting a suitable replacement. At no time may a DFS operate without coverage. Whenever the financial security posted by a licensee is to be amended, Form BSF664, *Duty Free Shop Application/Amendment* is to be completed by the DFS licensee and submitted to the CRU for review.

20. The licensee may apply to have the amount of financial security decreased after the initial year of operation. Form BSF664, *Duty Free Shop Application/Amendment* requesting a reduction relative to the value of the inventory on hand must clearly state the reasons for the proposed adjustment.

Licence Renewal

21. The Minister, or authorized delegate has the sole discretion to determine whether to renew an existing licence. A DFS licence is issued for a maximum of 10 years. The DFS licensee must request renewal of its licence at least two months prior to the date of expiry of the existing licence, by submitting Form BSF664, *Duty Free Shop Application/Amendment* to the CRU.

22. The licensee must provide the names, titles, telephone numbers, residential addresses, dates of birth, share allocation by percentage and citizenship of the company's board of directors and owners.

23. The licensee must also include a copy of financial security for the DFS and, where applicable, the required provincial liquor authority to sell alcohol. When the permit cannot be acquired prior to the renewal of the DFS licence, the licensee is not to sell alcohol products until the permit is received and a copy forwarded to the CBSA.

24. When a request for a licence renewal has been submitted, the CRU will conduct a review of the entire licensing period for the DFS operation and will confirm that the licensee continues to meet all program requirements.

25. If the CBSA is satisfied with the outcome of the review, the licence will be renewed for a further 10 year period or for a shorter period at the Minister's discretion.

26. If a DFS licence runs its full term and is not renewed, it will be deemed to have expired and to be no longer valid.

Cancellation, Suspension or Expiration of Licences

27. Pursuant to the provisions of the *Duty Free Shop Regulations*, the CBSA has the sole discretion to cancel or suspend an existing licence at any given location. If the CBSA cancels or suspends a licence, the CRU will advise the licensee by registered mail of the reasons this action is proposed and the effective date of suspension or cancellation. The DFS will be locked and secured by the local CBSA office.

28. In the case of cancellation, the DFS will remain locked and sealed until the inventory has been properly disposed of. In the case of suspension, the DFS will remain locked and sealed by the local CBSA office until a decision is made by the CBSA either to reinstate or cancel the licence.

29. In the case where the DFS operator has failed to apply for and obtain a renewal of their DFS licence before the expiry date of the licence, the DFS will be locked and sealed by the local CBSA office until a decision is made by the Minister either to reinstate or cancel the licence.

30. Regardless of whether a DFS licence has been cancelled, suspended or has expired, immediately after the effective date, the local CBSA office will conduct a complete audit of the DFS inventory to ensure that records are maintained and up to date.

31. When a licensee requests the Minister to cancel its licence to operate a DFS, the notice of cancellation should include an outline of the licensee's plans for disposing of the assets. A licence, once cancelled by the Minister will not be reinstated. Refer to the *Duty Free Shop Regulations*, Sections 8 to12.

Receivership or Bankruptcy

32. When it is expected that a DFS will be placed under the control of a receiver or may go bankrupt, the DFS licensee must notify the CBSA immediately in writing by sending an e-mail to the CRU.

33. The trustees and the licensee may be given limited access to the DFS but no sale or movement of goods is to take place without prior approval of the local CBSA office. In the case of a receivership, the licensee may request that the receivers be allowed to continue the day-to-day operations of the shop providing they meet the requirements of the DFS program. In the case of a bankruptcy, the DFS licence is automatically cancelled.

34. In both cases, the local CBSA office will conduct a complete audit of the DFS inventory and ensure that records are up to date.

Licence Amendment

35. A DFS licensee is responsible for informing the CRU immediately of any impending changes to the DFS:

(a) Legal or operating name;

(b) Ownership structure; or,

(c) Operation of the DFS (i.e. off-site outlets, hours of operation, expansion of operation, change in location etc.)

36. Each submission should be made using Form BSF664, *Duty Free Shop Application/Amendment* outlining the reason(s) for the change. Supporting documentation may also be required. The CBSA must be allowed sufficient time to review the proposal before the impending change is due to take effect.

Change in Name or Ownership Structure

37. For clarification purposes, a change in ownership structure may involve:

(a) contraction – where one or more of a group of shareholders decide to withdraw from the entity that holds the DFS licence;

(b) expansion – where one or more new shareholders are added;

(c) redistribution – where shares are transferred between existing shareholders; or,

(d) shares up for sale – where all shareholders sell their shares to another legal entity.

38. Proposals for a change to the ownership structure are to include the existing ownership structure and the proposed ownership structure including the names, addresses, dates of birth and percentage of share ownership. For land border DFSs, new shareholders must provide proof of citizenship.

39. Proposals to change the name by which the DFS is known or to change the company name in which the licence was issued must outline the reasons for the change and be accompanied by a certified copy of the amendment to the article of corporation if applicable.

40. If it is determined that the licensee would no longer qualify under the *Duty Free Shop Regulations* as a result of the transfer of shares, the CRU will give notice that an amended licence could not be issued and that such a transfer could result in the cancellation of the existing licence.

Death of a Sole Proprietor

41. In the event of the death of a sole proprietor, the executor of the estate must inform the CRU immediately in writing. The DFS is to be locked and sealed by the local CBSA office.

42. The beneficiary or the executor will be granted 30 days from the date that the notification is received to submit a request to amend the ownership structure in accordance with the procedures outlined in paragraph 37.

43. In such an event, the local CBSA office will conduct a complete audit of the DFS upon receiving such notification and ensure all inventory records are up to date. The representative (estate) will be held responsible for

all deficiencies or other discrepancies noted in the inventory audit. The beneficiary or executor will be given limited access to the DFS but no sale or movement of goods is to take place without prior approval of the CBSA.

44. If the beneficiary does not wish to make an application for the continued operation of the DFS, or the application made by the beneficiary is rejected, goods in the DFS inventory are to be disposed of in accordance with the provisions of Memorandum D4-3-5, *Duty-Free Shop – Inventory Control and Sales Requirements* and the DFS licence will be cancelled.

Transfer of a Licence

45. A licence to operate a DFS is not transferable. If an existing DFS licensee wishes to terminate the licence by disposing of their interests through the sale of the shop, the licensee is to submit a notice of cancellation to the CRU, as outlined in paragraph 31. A prospective purchaser must meet the eligibility requirements of the program and submit an application for a licence to operate in accordance with the procedures set out in paragraphs 8 through 10. The DFS may become the subject of a public call for applications at the discretion of the Minister.

Additional Information

46. For additional information, contact the CRU by e-mail, or by regular mail at:

Commercial Registration Unit
Canada Border Services Agency
191 Laurier Avenue West, 12th Floor
Ottawa, ON K1A 0L8

47. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	
Legislative References	*Customs Act* *Duty Free Shop Regulations*
Other References	D1-7-1 and D4-3-5 Form BSF664
Superseded Memorandum D	D4-3-2 dated May 1, 2009 D4-3-3 dated May 5, 2009

THIS IS **EXHIBIT "CC"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

2020 Annual Report

OUR MISSION…

To be known as the premier Canada/U.S. international crossing providing excellence in customer service and an effective conduit for trade and tourism.

BOARD OF DIRECTORS

Kenneth A. Manning
CHAIRMAN

Timothy Clutterbuck
VICE-CHAIRMAN

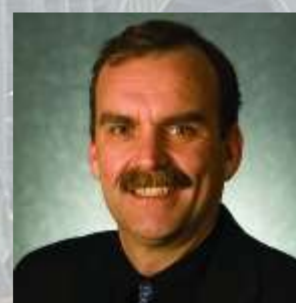
Marie-Therese Dominguez

Llewellyn “Lew” Holloway

Anthony M. Masiello

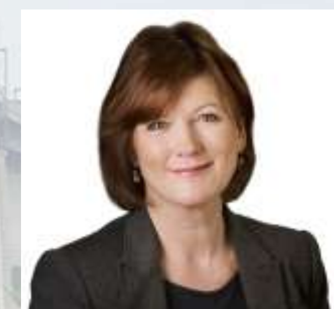
Isabel Meharry

Jennifer C. Persico



Patrick J. Robson

Michael J. Russo



Debbie Zimmerman

CHAIRMAN'S REPORT

2020 was unfortunately dominated by COVID-19.

Less than a month after being elected Chair, the border was closed on March 21, 2020, to all but essential travel by both federal governments and has remained closed.

Immediately, car traffic dropped by 95% ending the year down by almost 80% compared to 2019. Trucks initially dropped by 25% but recovered to end the year down by approximately 5%.

The Authority pivoted quickly to respond, recognizing the Peace Bridge is critical infrastructure integral to keeping essential supply chains functioning and providing support to the Customs functions on both sides of the border. COVID-19 protocols were immediately put in place to protect Authority employees and tenants in accordance with public health directives.

A mid-year revised budget in June 2020 was put forth and was approved to reduce expenditures by approximately $10 million by deferring capital projects and cutting all but essential spending. The 2021 budget in October recognized the border restrictions would likely remain in place through at least the 1st quarter of 2021 and even when lifted (likely partially), car traffic would only return to 25% of pre-pandemic levels. Truck traffic is anticipated to be at 95% pre-pandemic levels.

Amidst all of this, the Authority continued to comply with all bond covenants including debt service coverage requirements and maintained an A+ credit rating.

Capital projects that were contractually committed to, continued, notably the bridge painting and bridge lighting projects. The 3-year bridge rehabilitation project was completed on time and under budget.

The toll structure was revamped in December to encourage touchless toll collection by promoting E-ZPass through higher cash tolls.

2021 will continue to bring uncertainty with no established border reopening plans resulting in ongoing revenue reductions related to car tolls and rental revenue, particularly from the Duty Free stores.

Kenneth A. Manning
Chairman

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Buffalo and Fort Erie Public Bridge Authority

We have audited the accompanying financial statements of Buffalo and Fort Erie Public Bridge Authority (the Authority), a business-type activity, as of and for the years ended December 31, 2020 and 2019, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Authority as of December 31, 2020 and 2019, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that management's discussion and analysis and other required supplementary information, as listed in the table of contents, be presented to supplement the financial statements. Such information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during our audit of the financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

February 26, 2021

MANAGEMENT'S DISCUSSION & ANALYSIS

For the Years Ended December 31, 2020, 2019 and 2018 *(Unaudited)*

The management of the Buffalo and Fort Erie Public Bridge Authority (hereinafter referred to as the Authority) offers the following overview and analysis of the Authority's financial activities as of and for the years ended December 31, 2020, 2019 and 2018 which should be read in conjunction with the Authority's financial statements and notes to the financial statements.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Authority's financial statements. It begins by presenting and explaining the financial statements. These statements have been prepared according to accounting principles generally accepted in the United States of America (GAAP). Revenues and expenses are recorded using the accrual basis of accounting, meaning that they are recorded and recognized by the Authority as earned/incurred, regardless of when cash is received or paid.

Effective January 1, 2018, the Authority adopted GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* (GASB 75). This statement requires the Authority to include in its statement of net position its net other postemployment benefits (OPEB) liability as well as deferred outflows and deferred inflows of resources related to OPEB. The cumulative effect of this change was a decrease in net position at January 1, 2018 totaling $9,079,000.

The balance sheets present information on all the Authority's assets, deferred outflows of resources, liabilities, and deferred inflows of resources with the difference reported as net position. Increases or decreases in net position serve as a relative indicator as to whether the Authority's financial position is strengthening or weakening over time.

The statements of revenues, expenses, and changes in net position show the results of the Authority's operations during the year and reflect both operating and non-operating activities. Changes in net position reflect the operational impact of the current year's activities on the financial position of the Authority.

The statements of cash flows provide an analysis of the sources and uses of cash. The cash flow statements show net cash provided or used in operating, capital and related financing, and investing activities.

The notes to the financial statements include additional information which provides a further understanding of the financial statements.

FINANCIAL STATEMENT ANALYSIS

Comparative Balance Sheets as of December 31:

U.S. $, in thousands	**2020**	**2019**	**2018**
Assets			
Current assets	$ 79,607	$ 94,734	$ 95,723
Restricted assets	19,374	19,678	36,026
Net pension asset	7,390	3,582	5,322
Capital assets, net	249,913	239,199	215,763
Total assets	356,284	357,193	352,834
Deferred outflows of resources	2,977	4,826	13,146
Total assets and deferred outflows of resources	**$ 359,261**	**$ 362,019**	**$ 365,980**
Liabilities			
Current liabilities	$ 10,453	$ 12,536	$ 16,713
Noncurrent liabilities	97,072	105,999	122,882
Total liabilities	107,525	118,535	139,595
Deferred inflows of resources	6,706	3,721	2,291
Net position			
Net investment in capital assets	147,659	131,766	120,067
Restricted	14,981	16,893	16,376
Unrestricted	82,390	91,104	87,651
Total net position	245,030	239,763	224,094
Total liabilities, deferred inflows of resources, and net position	**$ 359,261**	**$ 362,019**	**$ 365,980**

As noted earlier, net position serves as an indicator of the Authority's overall financial strength. The Authority's net position increased by $5,267,000 in 2020, $15,669,000 during 2019, and decreased by $1,266,000 during 2018 resulting from the Authority's operating and non-operating activities each year. The decrease in 2018 is primarily attributed to the cumulative effect of the adoption of GASB 75 which resulted in a decrease in beginning net position of $9,079,000. The effect of this and other variances between 2020 and 2019 are detailed on page iii.

In 2017, the Authority issued $70,800,000 Toll System Revenue Bonds at a premium of $12,915,000, the proceeds of which were required to be used for the bridge redecking and rehabilitation project, coatings project, and enhancements to the U.S. plaza regarding inspection capacity. All bond proceeds were spent by December 31, 2020. Unspent bond proceeds at December 31, 2019 and 2018 totaled $188,000, and $19,497,000 and are recorded as restricted assets. The net investment in capital assets at December 31, 2020, 2019, and 2018 reflects that activity as it consists of the Authority's net capital assets offset by any payables and debt outstanding used to finance the capital asset purchases. As required by the Authority's bond indenture, the restricted portion of net position is reserved for debt service, governmental payments, and operating reserves. Restricted amounts fluctuate based upon the amount of required debt service and operating reserve requirements. Substantially all unrestricted net position has been designated by the Board of Directors for acquisition or construction of capital projects and/or major repairs and replacements.

Deferred outflows and deferred inflows of resources primarily represent actuarially determined amounts related to the Authority's pension and OPEB plans that will be amortized through pension and OPEB expense over several years. Deferred items arise primarily from the differences between actual and expected investment earnings and changes in healthcare cost trends. Deferred outflows of resources related to OPEB also include the Authority's contributions subsequent to the measurement date of $370,000, $876,000, and $10,718,000 at December 31, 2020, 2019 and 2018, respectively.

Statements of Revenues, Expenses, and Changes in Net Position for the years ended December 31:

U.S. $, in thousands	2020	2019	2018
Operating revenues			
Toll revenues	$ 16,910	$ 22,118	$ 22,213
Other revenues	7,662	8,813	8,859
Total operating revenues	24,572	30,931	31,072
Operating expenses			
Toll collection and traffic control	1,643	2,211	2,387
Maintenance of bridge, buildings, plazas & equipment	3,761	4,694	4,639
Administration	3,437	3,117	3,294
Pension	283	673	1,033
Other postemployment benefits	(3,650)	(1,162)	1,327
Other expenses	1,177	1,157	1,171
Bad debt	2,500	-	-
Loss on asset impairment	306	-	2,224
Depreciation	8,053	6,242	5,711
Total operating expenses	17,510	16,932	21,786
Operating income	7,062	13,999	9,286
Non-operating revenues (expenses)			
Interest income	1,534	3,325	2,269
Interest expense	(3,476)	(3,570)	(3,660)
Grant revenue	-	1,814	-
Currency remeasurement	147	101	(82)
Total non-operating revenue (expense)	(1,795)	1,670	(1,473)
Change in net position	5,267	15,669	7,813
Net position, beginning of year	239,763	224,094	225,360
Restatement - GASB 75	-	-	(9,079)
Net position, end of year	$ 245,030	$ 239,763	$ 224,094

As a bi-national toll bridge operator, the Authority earns revenue and incurs expenses in both U.S. and Canadian dollars. Canadian revenues and expenses are converted to U.S. dollars at the average exchange rate for the month in which the transaction occurs. Fluctuations in the exchange rates result in an improvement or deterioration in the currency remeasurement to U.S. dollars.

Toll volumes decreased 63% in 2020 compared to 2019 due to the border restrictions on non-essential travel put in place by the governments of the U.S. and Canada on March 21, 2020 in response to the COVID 19 pandemic. The auto and bus categories of travel were impacted the most as trade and commerce was deemed essential travel by both governments. Overall, 2020 toll revenues decreased approximately 24% as a result of a 79% decrease in auto and bus revenues offset by an 8% increase in truck revenues. Commercial tolls also increased due to a scheduled toll increase on trucks effective January 1, 2020. Toll revenue decreased slightly in 2019 from 2018 (less than 1%) despite a 2.9% decrease in traffic volumes due to the elimination of the E-ZPass discount on commercial tolls.

Other revenues consist primarily of rental income, the largest portion of which is attributed to leases with duty-free businesses. The rent from the duty-free stores was negatively impacted by the border restrictions on non-essential travel that resulted in sharp declines in duty free sales. Both the U.S. and the Canadian duty-free stores are required to pay a minimum base rent; however, due to the COVID-19 border restrictions, the Authority entered into rent deferral agreements with both stores. These agreements permit the deferral of base rent for a period of time with repayment over 12 months at an interest rate of 4%. At December 31, 2020, the Canadian duty-free store was in default of their lease and the deferral agreement. The decrease of the duty-free rent was mitigated by an increase in the rents attributed to government agencies.

Operating expenses increased $578,000 or 3.4% from 2019 to 2020. The increase is primarily due to recording $2,500,000 in bad debt expense attributable to duty free rent discussed previously and asset impairment losses of $306,000, offset by an increase in OPEB revenue of $2,488,000 compared to 2019. OPEB revenue totaled $1,162,000 for the year ended December 31, 2019 and increased to $3,650,000 for the year ended December 31, 2020. This increase was primarily a result of the difference between actual and expected return on plan assets and a decrease in the healthcare cost trend rate used in the actuarial calculation. Toll traffic and maintenance operating expense categories decreased $1,501,000 due to decreased activity and staffing as a result of the border restrictions. Depreciation increased $1,811,000 from 2019 due mainly to the completion of the toll system replacement and bridge redecking projects.

Operating expenses decreased $4,854,000 or 22% in 2019 compared to 2018. The primary driver in the decrease in operating expenses in 2019 was due to a one time impairment loss of $2,224,000 recognized in 2018 and a decrease in OPEB expense of $2,489,000 from 2018. OPEB expense amounted to $1,327,000 for the year ended December 31, 2018 as compared to OPEB income of $1,162,000 for the year ended December 31, 2019. This was primarily a result of a decrease in the healthcare cost trend rate used in the actuarial calculation.

Total non-operating net revenue (expense) decreased $3,465,000 in 2020 and increased $3,143,000 in 2019. Interest income declined approximately $1,791,000 in 2020 as the Authority used its capital improvement reserve to fund capital projects that were already in progress. Additionally, the investment mix held in the capital improvement reserve was reallocated to more liquid investments which further reduced interest income. In 2019, the Authority received a one-time capital grant from Transport Canada in the amount of $1,814,000, which was used to fund RFID readers at Canadian customs, a new toll system, and border analytics software. Additionally, interest income increased $1,056,000 in 2019 compared to 2018.

CAPITAL ASSETS AND LONG-TERM DEBT

The Authority's total investment in capital assets as of December 31, 2020 approximated $249,913,000 representing 70% of the Authority's total assets. Capital assets consist of land, the Peace Bridge, buildings and plaza improvements, equipment, and construction-in-progress. Capital asset additions totaled $19,082,000 in 2020 and $29,714,000 in 2019, as the Authority continued the Peace Bridge rehabilitation and bridge coatings projects, other capital projects, and equipment purchases.

In June 2014, the Authority issued $28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of $4,262,000, to currently refund $33,500,000 of outstanding Series 2005 bonds, with interest rates ranging from 4% to 5%, and a true interest cost of 2.22%. The Series 2014 bond proceeds of $33,102,000 plus $3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under a mandatory tender and establish the Series 2014 debt reserves. The outstanding balance of the 2014 bonds at December 31, 2020 amounted to $14,950,000.

Standard & Poor's Rating Services and Fitch Ratings have assigned ratings of "A+" and "A" respectively, to the Series 2014 Bonds.

In June 2017, the Authority issued $70,800,000 in 30 year fixed rate Toll Bridge System Revenue Bonds at a premium of $12,915,000, to finance the redecking and rehabilitation of the Peace Bridge, make a deposit to the debt service reserve account, and to pay certain costs of issuance of the Series 2017 bonds. The proceeds were also used to pay for costs of the Peace Bridge coatings and enhancements to the U.S. plaza devoted to inspection capacity. The Series 2017 bonds were issued on a parity with the Series 2014 bonds, with fixed interest rates of 5%, and a true interest cost of 3.71%. Principal repayments begin upon the repayment of the Series 2014 bonds (January 1, 2025) and continue until January 1, 2047.

Standard & Poor's Rating Services have assigned a rating of "A+" to the Series 2017 Bonds.

FACTS THAT WILL IMPACT FINANCIAL POSITION

The COVID-19 pandemic has had health, financial, and economic impacts across the world. Effective March 21, 2020, the United States and Canada enacted a joint initiative temporarily restricting all non-essential travel across the US/Canadian border. Supply chains, including trucking, were not impacted by these restrictions. Americans and Canadians also crossing the land border every day to do essential work or for other urgent or essential reasons were not impacted. These restrictions have been extended approximately every 30 days since March 2020 and remain in place through December 31, 2020 and are expected to continue into 2021. The Authority has been designated an essential business by both countries and all Authority staff are able to report to work and are not prevented from crossing the border to do so.

While the duration of the travel restrictions is currently unknown, the Authority has experienced traffic declines in 2020 as compared to the previous year in both passenger and commercial crossings since the non-essential travel restrictions were put in place. The Authority anticipates that traffic declines will continue to impact toll revenues and duty-free revenues in 2021.

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both of the Authority's duty-free enterprise tenants entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum.

The U.S. duty-free store has remained open during the ongoing border restrictions (at reduced hours) and continues to pay a percentage of actual sales made each month as rent. The amount deferred is the difference between the minimum rent (based on 2019 sales levels) and the amounts paid to the Authority.

The Canadian duty-free store closed in March 2020 and has remained closed during the ongoing border restrictions. Its deferral agreement expired July 31, 2020 and the Canadian duty-free lease is currently in default. Due to the default status, the Authority has recognized a $2,500,000 bad debt allowance related to the 2020 deferred rent due by the Canadian duty-free operator.

Despite the loss of toll revenue and the deferral of the duty-free rent payments, at December 31, 2020 the Authority has sufficient reserves to pay debt service and meet its operating expenses. Assets include approximately $78,000,000 of unrestricted cash and cash equivalents, representing nearly 3,000 days cash on hand.

As the COVID-19 border restrictions continue, the Authority continues to closely monitor the impacts of these restrictions on its operations, revenues, and liquidity. The Authority's 2021 budget was developed to include the implementation of operating cost curtailment measures and the deferral of non-critical capital projects until a later date to reduce short-term operating and long-term capital expenses.

In 2018, the Authority established an independent trust for the purpose of providing benefits associated with the Authority's OPEB plans in the amount of $10,000,000. The Authority intends to fund the Trust annually based on investment returns and actuarially determined calculations. Payments to the OPEB Trust totaled $370,000 in 2020 and $878,000 in 2019.

CONTACT FOR AUTHORITY'S FINANCIAL MANAGEMENT

This report is designed to provide a general overview of the finances of the Authority for interested parties. Questions concerning any information within this report or requests for additional information should be addressed to Karen L. Costa, Chief Financial Officer, 100 Queen Street, Fort Erie, ON L2A 3S6.

BALANCE SHEETS, *in thousands*

December 31,		2020		2019
Assets				
Current assets:				
Cash	$	951	$	641
Accounts receivable, net		1,699		2,132
Prepaid expenses		297		194
Investments		76,660		91,767
		79,607		94,734
Noncurrent assets:				
Restricted assets:				
Cash		12,188		12,322
Investments		7,186		7,356
		19,374		19,678
Net pension asset		7,390		3,582
Capital assets, net (Note 5)		249,913		239,199
		276,677		262,459
Total assets		356,284		357,193
Deferred Outflows of Resources				
Defeasance loss		146		213
Deferred outflows of resources related to pensions		2,461		3,737
Deferred outflows of resources related to OPEB		370		876
Total deferred outflows of resources		2,977		4,826
Total assets and deferred outflows of resources	$	359,261	$	362,019
Liabilities				
Current liabilities:				
Current portion of bonds payable	$	2,690	$	2,550
Accounts payable and accrued liabilities		4,643		6,720
Accrued compensation and benefits		737		820
Other current liabilities		2,383		2,446
		10,453		12,536
Noncurrent liabilities:				
Bonds payable		95,203		98,771
Net OPEB liability		1,869		7,228
		97,072		105,999
Total liabilities		107,525		118,535
Deferred Inflows of Resources				
Deferred inflows of resources related to pensions		4,129		2,019
Deferred inflows of resources related to OPEB		2,577		1,702
Total deferred inflows of resources		6,706		3,721
Net Position				
Net investment in capital assets		147,659		131,766
Restricted		14,981		16,893
Unrestricted		82,390		91,104
Total net position		245,030		239,763
Total liabilities, deferred inflows of resources, and net position	$	359,261	$	362,019

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION, *in thousands*

For the years ended December 31,	2020	2019
Operating revenues:		
Commercial tolls	$ 15,269	$ 14,294
Passenger tolls	1,641	7,824
Rentals	7,448	8,585
Other	214	228
Total operating revenues	24,572	30,931
Operating expenses:		
Toll collection and traffic control	1,643	2,211
Maintenance of bridge, buildings, plazas, and equipment	3,761	4,694
Administration	3,437	3,117
Pension	283	673
Other postemployment benefits	(3,650)	(1,162)
Canadian property taxes and U.S. equalization payments	977	957
Payments to New York State	200	200
Bad debt	2,500	-
Loss on asset impairment	306	-
Depreciation	8,053	6,242
Total operating expenses	17,510	16,932
Operating income	7,062	13,999
Non-operating revenues (expenses):		
Interest income	1,534	3,325
Interest expense	(3,476)	(3,570)
Currency remeasurement	147	101
Grant revenue	-	1,814
Total non-operating revenues (expenses)	(1,795)	1,670
Change in net position	5,267	15,669
Net position - beginning of year	239,763	224,094
Net position - end of year	$ 245,030	$ 239,763

STATEMENTS OF CASH FLOWS, *in thousands*

For the years ended December 31,	2020	2019
Operating activities:		
Toll revenue	$ 17,085	$ 21,813
Payments to suppliers	(8,676)	(6,096)
Payments for wages and employee benefits	(5,073)	(6,136)
Other revenues	6,716	8,815
Net operating activities	10,052	18,396
Capital and related financing activities:		
Property and equipment expenditures	(21,024)	(33,954)
Interest payments on debt	(4,351)	(4,463)
Principal payments on debt	(2,550)	(2,440)
Grant proceeds	1,100	714
Net capital and related financing activities	(26,825)	(40,143)
Investing activities:		
Sales of investments	15,277	18,759
Interest proceeds	1,534	3,325
Net investing activities	16,811	22,084
Effect of exchange rate changes	138	136
Change in cash	176	473
Cash - beginning	12,963	12,490
Cash - ending	$ 13,139	$ 12,963
Reconciliation of operating income to net cash provided from operating activities:		
Operating income	$ 7,062	$ 13,999
Adjustments to reconcile operating income to net cash provided from operating activities:		
Depreciation	8,053	6,242
Net pension and OPEB activity	(4,414)	(1,951)
Loss on disposal	315	-
Changes in assets and liabilities:		
Accounts receivable	(547)	(16)
Prepaid expenses	(101)	168
Accounts payable and accrued liabilities	(217)	(68)
Accrued compensation and benefits	(99)	22
	$ 10,052	$ 18,396

STATEMENTS OF FIDUCIARY NET POSITION, *in thousands*

December 31,	Pension and Other Employee Benefit Trust Funds 2020	2019
Assets		
Current assets:		
Cash and short-term investments	**$ 615**	$ 964
Noncurrent assets:		
Investments - equity and fixed income securities	**53,961**	47,416
Total assets	**54,576**	48,380
Net Position		
Net position held in trust for pension benefits	**42,321**	38,201
Net position held in trust for OPEB benefits	**12,255**	10,179
	$ 54,576	$ 48,380

NOTES TO FINANCIAL STATEMENTS

1. Summary of Significant Accounting Policies:

Reporting Entity

Buffalo and Fort Erie Public Bridge Authority (the Authority) was established through a legislative act as a public benefit corporation to own and operate an international toll bridge connecting the United States and Canada. The enabling Act, under which the Authority was created, provides that on July 1, 2020, or when all bonds issued by the Authority have been discharged (current final maturity date is January 1, 2047), whichever shall be later, the powers, jurisdiction, and duties of the Board shall cease and the property and assets acquired and held by the Authority within the State of New York and within Canada shall be under jurisdiction of the State of New York and Her Majesty The Queen in Right of Canada, respectively.

Basis of Presentation

The financial statements of the Authority are prepared in conformity with U.S. generally accepted accounting principles (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

Measurement Focus

The Authority reports as a special purpose government engaged in business-type activities, as defined by GASB Statement No. 34. Business-type activities are those that are financed in whole or in part by fees charged to external parties for goods or services. The Authority's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been satisfied.

The Authority's policy for defining operating activities in the statements of revenues, expenses, and changes in net position are those that generally result from exchange transactions such as payments received for services and payments made to purchase those goods or services. Certain other transactions are reported as non-operating activities and include investment income, interest paid on capital debt, and the net effect of currency remeasurement.

The Authority uses a fiduciary fund to report assets held in trust for pension and other postemployment benefits (OPEB). The Pension and Other Employee Benefit Trust Fund accounts for the assets held in trust for the U.S. and Canadian defined benefit plans (Note 7) and the U.S and Canadian single-employer defined benefit postemployment healthcare plans (Note 8).

NOTES TO FINANCIAL STATEMENTS *(...continued)*

1. Summary of Significant Accounting Policies: cont'd

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash

At various times, cash in financial institutions may exceed insured limits and subject the Authority to concentrations of credit risk.

Investments

Investments consist of cash equivalents, money market funds, commercial paper, corporate bonds, and U.S. mortgage and government agency obligations and are stated at fair value on a recurring basis as determined by quoted prices in active markets.

Restricted Assets

The Authority established the following accounts in order to comply with bond resolution requirements:

Bond – trustee accounts established to receive amounts necessary to meet current principal and interest payments and to maintain a sufficient balance in a debt service reserve fund.
Government payments – holds amounts necessary to fund payments to the State of New York as required under current legislation.
Operating expense reserve – holds amounts necessary to pay current year operating expenses as defined, plus an operating reserve equal to one-sixth of the operating expenses of the Authority for the preceding year.

Capital Assets

Capital assets are reported at historical cost. For assets being depreciated, the expense is calculated over estimated useful lives using the straight-line method. Maintenance and repairs are expensed as incurred; significant improvements are capitalized.

Capitalization thresholds for determining which asset purchases are added to capital accounts and the estimated useful lives of capital assets are:

	Capitalization Policy	Estimated Useful Life
Bridge infrastructure	$ 5,000	10-150 years
Buildings and plazas	$ 5,000	10-40 years
Equipment - general	$ 1,000	3-10 years
Equipment - toll system	$ 1,000	7 years

1. Summary of Significant Accounting Policies: cont'd

Currency Translation

Due to its bi-national operations, the Authority accounts for transactions in either United States dollars (USD) or Canadian dollars (CAD). The Authority translates all Canadian asset and liability accounts at the year end exchange rate, except for property and equipment, which is translated at historical rates in effect in the year of acquisition. The statement of revenues, expenses, and changes in net position is converted at the average monthly exchange rate for the month in which the transaction occurs. Translation gains and losses are included as a component of non-operating revenues (expenses) as a currency remeasurement.

Compensated Absences

The Authority provides for vacation, sick, and compensatory time that is attributable to services already rendered and vested. The liabilities are recorded based on employees' rates of pay as of the end of the year, and include all payroll-related liabilities.

Pensions

The net pension asset, deferred outflows and deferred inflows of resources, pension expense, and information about and changes in the fiduciary net position of the Authority's defined benefit pension plans (Note 7) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms and investments are reported at fair value.

Other Postemployment Benefits (OPEB)

The net OPEB liability, deferred outflows and deferred inflows of resources, OPEB expense, and information about and changes in the fiduciary net position of the Authority's defined benefit healthcare plans (Note 8) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms and investments are reported at fair value.

Net Position

- *Net investment in capital assets* – consists of net capital assets reduced by outstanding balances of any related debt obligations attributable to the acquisition, construction, or improvement of the assets.
- *Restricted* – consists of restricted assets, reduced by liabilities and deferred inflows of resources related to those assets, subject to externally imposed restrictions by creditors (such as through debt covenants), federal or state laws, or enabling legislation.
- *Unrestricted* – the net amount of assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the definition of the above restrictions and are available for general use of the Authority.

The Authority has adopted a policy of using restricted funds, when available, prior to unrestricted funds.

NOTES TO FINANCIAL STATEMENTS *(...continued)*

2. Deposits and Investments:

The Authority's policy is to obtain collateral from U.S. financial institutions for its cash deposits. Cash deposits maintained in banks within the United States are covered by U.S. Federal Deposit Insurance and by collateral held by a custodial bank in the Authority's name based upon the average daily funds available as determined by the bank. Canada Deposit Insurance covers a portion of cash deposits maintained at banks within Canada.

Custodial credit risk is the risk that in the event of a bank failure, the Authority's deposits may not be returned to it. At December 31, 2020, $5,757,000 of the Authority's bank deposits were uncollateralized and therefore exposed to custodial credit risk.

The Authority's exposure to foreign currency risk derives from its deposits denominated in Canadian currency totaling $6,182,000 (USD) at December 31, 2020.

Interest rate risk is the risk that the value of investments will decrease as a result of a rise in interest rates. The Authority's investments had the following maturities at December 31, 2020:

	Less than 1 year	1-5 years
Money market funds	$ 13,234	$ -
Commercial paper	150	-
Corporate bonds	4,590	14,778
Federal notes	7,186	43,908
	$ 25,160	$ 58,686

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Authority's investments in corporate bonds are all within investment grade categories.

The Authority manages its investments pursuant to the bond resolution, which defines the nature and maturity of allowable investments.

NOTES TO FINANCIAL STATEMENTS *(…continued)*

3. Accounts Receivable, net:

(in thousands)	2020	2019
Accounts receivable for rental and tolls	$ 4,200	$ 2,133
Less allowance for doubtful accounts (Note 9)	2,501	1
	$ 1,699	$ 2,132

4. Investments:

(in thousands)	2020	2019
Unrestricted:		
U.S. Treasury notes	$ -	$ 2,737
Federal Home Loan Mortgage Corporation	18,800	7,946
Federal Home Loan Bank notes	1,016	-
Federal Farm Credit notes	11,552	7,565
Federal National Mortgage Association notes	12,540	2,503
Corporate bonds	19,368	21,303
Commercial paper	150	46,316
Cash equivalents	-	1,299
Money market fund	13,234	2,098
	$ 76,660	$ 91,767
Restricted:		
U.S. Treasury notes	$ 7,186	$ 7,168
Cash equivalents	-	188
	$ 7,186	$ 7,356

5. Capital Assets:

(in thousands)	January 1, 2020	Additions	Reclassifications and Disposals	December 31, 2020
Non-depreciable capital assets:				
Land	$ 25,243	$ -	$ -	$ 25,243
Construction-in-progress	12,248	19,082	(6,199)	25,131
Total non-depreciable assets	37,491	19,082	(6,199)	50,374
Depreciable capital assets:				
Bridge	157,408	-	456	157,864
Buildings and plazas	124,765	-	3,432	128,197
Equipment - general	6,819	-	92	6,911
Equipment - toll system	3,440	-	813	4,253
Total depreciable assets	292,432	-	4,793	297,225
Less accumulated depreciation:				
Bridge	(35,842)	(3,641)	1,000	(38,483)
Buildings and plazas	(50,938)	(3,296)	-	(54,234)
Equipment - general	(3,799)	(658)	73	(4,384)
Equipment - toll system	(145)	(458)	18	(585)
Total accumulated depreciation	(90,724)	(8,053)	1,091	(97,686)
Total depreciable assets, net	201,708	(8,053)	5,884	199,539
	$ 239,199	$ 11,029	$ (315)	$ 249,913

(in thousands)	January 1, 2019	Additions	Reclassifications and Disposals	December 31, 2019
Non-depreciable capital assets:				
Land	$ 25,243	$ -	$ -	$ 25,243
Construction-in-progress	80,117	29,714	(97,583)	12,248
Total non-depreciable assets	105,360	29,714	(97,583)	37,491
Depreciable capital assets:				
Bridge	64,955	-	92,453	157,408
Buildings and plazas	123,991	-	774	124,765
Equipment - general	7,018	-	(199)	6,819
Equipment - toll system	4,499	-	(1,059)	3,440
Total depreciable assets	200,463	-	91,969	292,432
Less accumulated depreciation:				
Bridge	(33,607)	(2,235)	-	(35,842)
Buildings and plazas	(47,693)	(3,245)	-	(50,938)
Equipment - general	(4,361)	(623)	1,185	(3,799)
Equipment - toll system	(4,399)	(139)	4,393	(145)
Total accumulated depreciation	(90,060)	(6,242)	5,578	(90,724)
Total depreciable assets, net	110,403	(6,242)	97,547	201,708
	$ 215,763	$ 23,472	$ (36)	$ 239,199

NOTES TO FINANCIAL STATEMENTS *(…continued)*

5. Capital Assets: cont'd

Net investment in capital assets as of December 31, 2020 and 2019 consists of the following (in thousands):

	2020	2019
Capital assets, net of accumulated depreciation	$ 249,913	$ 239,199
Bonds and related premiums, net of unspent proceeds	(97,893)	(101,133)
Capital asset purchases included in accounts payable	(2,363)	(4,305)
Accrued interest	(2,144)	(2,208)
Defeasance loss	146	213
	$ 147,659	$ 131,766

6. Bond Indebtedness:

(in thousands)	January 1, 2020	Increases	Decreases	December 31, 2020	Due Within One Year
Series 2014 bonds	$ 17,500	$ -	$ (2,550)	$ 14,950	$ 2,690
Unamortized premium 2014 refunding	1,250	-	(396)	854	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	11,771	-	(482)	11,289	-
	$ 101,321	$ -	$ (3,428)	$ 97,893	$ 2,690

(in thousands)	January 1, 2019	Increases	Decreases	December 31, 2019	Due Within One Year
Depreciable capital assets:					
Series 2014 bonds	$19,940	$-	$(2,440)	$17,500	$ 2,550
Unamortized premium 2014 refunding	1,709	-	(459)	1,250	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	12,235	-	(464)	11,771	-
	$ 104,684	$-	$(3,363)	$101,321	$ 2,550

6. Bond Indebtedness: cont'd

In June 2014, the Authority issued $28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of $4,262,000, with interest rates ranging from 4% to 5%, to currently refund $33,500,000 of outstanding Series 2005 bonds. The Series 2014 bond proceeds of $33,102,000 plus $3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under mandatory tender and establish the Series 2014 debt reserves. The Series 2005 bonds refunded Series 1995 bonds which resulted in a difference between the reacquisition price and the net carrying amount of the old debt of $2,242,000. This defeasance loss, reported in the accompanying balance sheets as a deferred outflow, is being charged to operations through the year 2024 using the effective interest method. The defeasance loss remaining is $146,000 and $213,000 at December 31, 2020 and 2019.

In June 2017, the Authority issued $70,800,000 in fixed rate Toll Bridge System Revenue Bonds at a premium of $12,915,000, with an interest rate of 5%. The Series 2017 bond proceeds totaling $83,715,000 were used to partially fund a $100,000,000 bridge redecking and rehabilitation project and to establish the Series 2017 debt reserves. Remaining funds, if any, may also be used for the coatings project and enhancements to the U.S. plaza regarding inspection capacity. The bonds were structured so that principal repayments will begin upon the payoff of the Series 2014 bonds (January 1, 2025) and will continue until January 1, 2047.

Debt service requirements are as follows (in thousands):

Years ending December 31,	Principal	Interest
2021	$ 2,690	$ 4,153
2022	2,830	4,012
2023	2,980	3,863
2024	3,140	3,706
2025	5,150	3,540
2026-2030	10,670	16,226
2031-2035	13,620	13,277
2036-2040	17,370	9,615
2041-2045	22,180	4,715
2046-2047	5,120	256
	$85,750	$63,363

7. Pension Plans:

Defined Benefit Plans

The Authority maintains two non-contributory, single-employer defined benefit pension plans: Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in the United States (U.S. Plan) and Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in Canada (Canadian Plan), collectively, the Defined Benefit Plans. The Defined Benefit Plans cover full and part-time employees hired before September 29, 2006 (union) and January 1, 2009 (non-union) in the United States, and before July 27, 2007 (union) and January 1, 2009 (non-union) in Canada. The Board of Directors has the responsibility to establish and amend benefit provisions. Audited financial statements of the Defined Benefit Plans are not required and have not been prepared.

Benefits: The Defined Benefit Plans provide retirement, death benefits, and if applicable, certain annual cost of living adjustments to members and beneficiaries. Cost of living adjustments are effective when the most recent actuarial valuation reports reveal a surplus which is greater than twice the annual service cost. The cost of living adjustment, on a percentage basis, is equal to 50% of the change in consumer price indices based on the average change over the 12 month period ending on September 30th of the calendar year prior to the effective date of the adjustment. The cost of living adjustments are included in the Authority's annual pension cost only in the applicable years.

Employees Covered by Benefit Terms: At December 31, 2020 and 2019, the following employees were covered by the Defined Benefit Plans:

	2020		2019	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Inactive employees or beneficiaries currently receiving benefits	44	58	44	58
Inactive employees entitled to but not yet receiving benefits	-	1	-	1
Active employees	14	15	14	15
	58	74	58	74

Contributions: The Authority pays the full cost of all benefits provided under the Defined Benefit Plans. As a federally regulated pension plan, the Canadian plan is funded based upon an actuarial valuation and funding standards established by the *Pension Benefits Standards Act*. The Authority's policy with respect to the U.S. plan is to fund the greater of the annual required contribution or the current year service cost, as actuarially determined. Actuarial valuations are prepared no less frequently than every other year. For the years ended December 31, 2020 and 2019, the Authority's contribution rate to the Canadian Plan was 35% and 33%, respectively, of covered payroll and 10% and 9% of covered payroll for the U.S. Plan, respectively.

7. Pension Plans: cont'd

Net Pension Asset

The net pension asset was measured as of December 31, 2019 based on an actuarial valuation as of January 1, 2019, rolled forward to December 31, 2019. There have been no significant changes in benefits or other plan provisions from the beginning of the year to the end of the year.

Actuarial Assumptions: Based on the size of the plans, it was not deemed appropriate to perform an experience study. The total pension liability in the January 1, 2019 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

	Canadian Plan	U.S. Plan
Inflation	2.25%	2.75%
Salary increases	2.75%	2.75%
Investment rate of return	4.5%, compounded annually, net of all expenses	6.5%, compounded annually, net of all expenses
Mortality	CPM2014 Mortality Table with generational improvements projected using Scale B – no assumed preretirement deaths	RP-2014 Healthy Mortality Table rolled back to 2006, projected generationally with Scale BB improvements – no assumed preretirement deaths
Discount rate	4.5%	6.5%
COLA increases	0.93% COLA assumed (1.11% previously)	0.85% COLA assumed (1.14% previously)

7. Pension Plans: cont'd

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of pension plan investments and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Canadian Plan		
Canadian equities	6%	5.3%
International equities	14%	5.3%
Fixed income	70%	(0.1%)
Real estate	10%	6.0%
	100%	
U.S. Plan		
U.S. equities	32%	5.8%
International equities	6%	3.1%
Fixed income	35%	0.1%
Multi-asset	20%	3.5%
Real estate	5%	2.8%
Cash	2%	(0.1%)
	100%	

Discount rate: The projection of cash flows used to determine the respective discount rates assumed that the Authority's contributions will continue to follow the current funding policy. Based on this assumption, the Authority's fiduciary net position was projected to be sufficient to make all projected future benefit payments of the Defined Benefit Plans' current members. Therefore, the discount rate equals the long-term rate of return of 4.5% (Canadian Plan) and 6.5% (U.S. Plan).

NOTES TO FINANCIAL STATEMENTS *(…continued)*

7. Pension Plans: cont'd

Changes in the Net Pension Asset

Canadian Plan (in thousands)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Asset
Balances at 12/31/18	$ (13,033)	$ 15,405	$2,372
Effect of currency exchange rate changes	(601)	714	113
Changes for the year:			
Service cost	(156)	-	(156)
Interest	(604)	-	(604)
Differences between expected and actual experience	217	-	217
Employer contributions	-	411	411
Net investment loss	-	(64)	(64)
Benefit payments	750	(750)	-
Administrative expenses	-	(101)	(101)
Net changes	207	(504)	(297)
Balances at 12/31/19	$ (13,427)	$15,615	$2,188
Effect of currency exchange rate changes	(210)	244	34
Changes for the year:			
Service cost	(137)	-	(137)
Interest	(603)	-	(603)
Differences between expected and actual experience	(77)	-	(77)
Employer contributions	-	282	282
Net investment income	-	1,660	1,660
Benefit payments	744	(744)	-
Administrative expenses	-	(76)	(76)
Net changes	(73)	1,122	1,049
Balances at 12/31/20	$ (13,710)	$16,981	$3,271

7. Pension Plans: cont'd

Changes in the Net Pension Asset

U.S. Plan (in thousands)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Asset
Balances at 12/31/18	$(22,081)	$25,031	$2,950
Changes for the year:			
Service cost	(62)	-	(62)
Interest	(1,281)	-	(1,281)
Employer contributions	-	167	167
Differences between expected and actual experience	(485)	-	(485)
Changes of assumptions	1,094	-	1,094
Net investment loss	-	(856)	(856)
Benefit payments	1,623	(1,623)	-
Administrative expenses	-	(133)	(133)
Net changes	889	(2,445)	(1,556)
Balances at 12/31/19	$(21,192)	$22,586	$ 1,394
Changes for the year:			
Service cost	(49)	-	(49)
Interest	(1,333)	-	(1,333)
Employer contributions	-	87	87
Differences between expected and actual experience	(131)	-	(131)
Net investment income	-	4,275	4,275
Benefit payments	1,484	(1,484)	-
Administrative expenses	-	(124)	(124)
Net changes	(29)	2,754	2,725
Balances at 12/31/20	$(21,221)	$25,340	$4,119

7. Pension Plans: cont'd

The following presents the Authority's net pension asset for the Defined Benefit Plans calculated using the discount rate of 4.5% (Canadian Plan) and 6.5% (U.S. Plan) and the impact of using a discount rate that is 1.0% higher or lower than the current rate as of December 31, 2020.

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Canadian Plan	$ 1,666	$ 3,271	$ 4,613
U.S. Plan	$ 1,875	$ 4,119	$ 6,011

Pension Expense and Deferred Outflows and Deferred Inflows of Resources Related to Pensions

For the years ended December 31, 2020 and 2019, the Authority recognized pension income of $37,000 and pension expense of $99,000 for the Canadian Plan and pension expense of $69,000 and $207,000 for the U.S. Plan. At December 31, 2020 and 2019, the Authority reported deferred outflows and deferred inflows of resources as follows:

	2020			
	Canadian Plan		U.S. Plan	
(in thousands)	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ 475	$ 1,129	$ 1,489	$ 3,000
Changes of assumptions	-	-	-	-
Changes in experience	22	-	37	-
Authority contributions subsequent to the measurement date	341	-	97	-
	$ 838	$ 1,129	$ 1,623	$ 3,000

7. Pension Plans: cont'd

	2020			
	Canadian Plan		U.S. Plan	
(in thousands)	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ 475	$ 1,129	$ 1,489	$ 3,000
Changes of assumptions	-	-	-	-
Changes in experience	22	-	37	-
Authority contributions subsequent to the measurement date	341	-	97	-
	$ 838	$ 1,129	$ 1,623	$ 3,000

Authority contributions subsequent to the measurement date will be recognized as an addition to the net pension asset in the year ending December 31, 2021. Other amounts reported as deferred outflows and deferred inflows of resources related to pensions will be recognized in pension expense as follows (in thousands):

Years ending December 31,	
2021	$ (547)
2022	(655)
2023	(142)
2024	(762)
	$ (2,106)

7. Pension Plans: cont'd

Defined Contribution Plans

The Authority has also established two non-contributory defined contribution money purchase plans which separately cover U.S. and Canadian employees hired subsequent to the eligibility dates of the Defined Benefit Plans described above.

The defined contribution plans require the Authority to contribute 6.0% of each qualified employee's covered salary annually. Contributions to the defined contribution plans totaled $112,000 and $113,000 in 2020 and 2019, respectively. The Authority makes all required contributions when due.

8. OPEB:

The Authority maintains two single-employer defined benefit postemployment healthcare plans (the Plans), one covering certain Canadian employees and one covering certain U.S. employees. The Plans provide benefits in the form of insurance premium payments for coverage of eligible retirees and dependents. Plan provisions and Authority and member contribution rates are determined by the Authority. The Plans do not issue publicly available financial reports.

Eligibility is based on date of hire, attainment of retirement age, and years of service. The Authority pays 100% of the health, dental, and life insurance premiums for employees meeting the following criteria:

<u>Canadian Plan</u>
Full-time employees hired prior to September 19, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after September 19, 2003 but prior to July 27, 2007 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

<u>U.S. Plan</u>
Full-time employees hired prior to July 18, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after July 18, 2003 but prior to September 29, 2006 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

The Plans are closed to new entrants subsequent to December 31, 2008.

8. OPEB: cont'd

At December 31, 2020 and 2019, employees covered by the Plan include:

	2020		2019	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Active employees	14	14	14	14
Inactive employees or beneficiaries currently receiving	75	53	75	53
Inactive employees entitled to but not yet receiving	-	-	-	-
	89	67	89	67

Net OPEB Liability

The Authority's net OPEB liability of $1,869,000 was measured as of December 31, 2019, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of January 1, 2019, rolled forward to December 31, 2019.

The Authority established a qualified trust as defined by GASB Statement Nos. 74 and No. 75 which was funded with an initial cash contribution of $10,000,000 during the year ended December 31, 2018. The Plan has adopted a funding policy and began making contributions in 2019 that are projected to cover all future benefit payments. Therefore, the discount rate is equal to the long-term rate of return.

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of plan investments and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
U.S. equities	32%	5.8%
International equities	6%	3.1%
Fixed income	35%	0.1%
Multi-asset	20%	3.5%
Real estate	5%	2.8%
Cash	2%	(0.1%)
	100%	

NOTES TO FINANCIAL STATEMENTS *(…continued)*

8. OPEB: cont'd

The total OPEB liability in the December 31, 2019 valuation was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:

Healthcare cost trend:
  Canadian Plan: 5.5% (5.75% previously) grading down by 0.25% each year to 4.5%
  U.S. Plan: 6.0% (6.25% previously) grading down by 0.25% each year to 5.0%
Discount rate:
  Discount rate at measurement date is 6.0% which is equal to the long-term rate of return on the trust assets
Mortality:
  U.S. Plan: RPH-2014, using Projection Scale BB
  Canadian Plan: CIA CPM-2014 Combined Mortality with CIA Scale CPM-B
Retirement:
  Expected dates for each active employee based upon their unreduced pension eligibility
Salary:
  Increases of 2.75%
Termination:
  Rates calibrated to produce 3% aggregate turnover of the active data based on the Authority's historical experience

NOTES TO FINANCIAL STATEMENTS *(…continued)*

8. OPEB: cont'd

Changes in the Net OPEB Liability

(in thousands)	Total OPEB Liability	Plan Fiduciary Net Position	Net OPEB Liability
Balances at December 31, 2018	$ (20,638)	$ -	$ (20,638)
Effect of foreign currency exchange rate changes	(228)	-	(228)
Changes for the year:			
Employer contributions	-	10,765	10,765
Net investment income	-	178	178
Service cost	(106)	-	(106)
Interest	(1,234)	-	(1,234)
Differences between expected and actual experience	1,657	-	1,657
Changes of assumptions	2,378		2,378
Benefit payments	764	(764)	-
Net changes	3,459	10,179	13,638
Balances at December 31, 2019	$ (17,407)	$ 10,179	$ (7,228)
Effect of foreign currency exchange rate changes	(217)	-	(217)
Changes for the year:			
Employer contributions	-	878	878
Net investment income	-	1,957	1,957
Service cost	(69)	-	(69)
Interest	(1,031)	-	(1,031)
Differences between expected and actual experience	190	-	190
Change of assumptions	3,674	-	3,674
Benefit payments	736	(736)	-
Administrative expenses	-	(23)	(23)
Net changes	3,500	2,076	5,576
Balances at December 31, 2020	$ (14,124)	$ 12,255	$ (1,869)

8. OPEB: cont'd

The following presents the sensitivity of the Authority's net OPEB liability to changes in the discount rate, including what the Authority's net OPEB liability would be if it were calculated using a discount rate that is 1% higher or lower than the current discount rate of 6.0%:

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Net OPEB Liability	$ (4,419)	$(1,869)	$(978)

The following presents the sensitivity of the Authority's net OPEB liability to changes in the healthcare cost trend rates, including what the Authority's net OPEB liability would be if it were calculated using trend rates that are 1% higher or lower than the current healthcare cost trend rates of 6.0% to 4.5%:

(in thousands)	1.0% Decrease	At Current Trend rate	1.0% Increase
Net OPEB Liability	$ (918)	$(1,869)	$(4,485)

OPEB Expense and Deferred Outflows and Deferred Inflows of Resources Related to OPEB

For the years ended December 31, 2020 and 2019, the Authority recognized OPEB income of $3,650,000 and $1,162,000. At December 31, 2020 and 2019, the Authority reported deferred outflows and deferred inflows of resources as follows:

	2020		2019	
(in thousands)	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ -	$ 1,102	$ -	$ 135
Changes of assumptions	-	1,403	-	912
Changes in experience	-	72	-	655
Authority contributions subsequent to the measurement date	370	-	876	-
	$ 370	$ 2,577	$ 876	$ 1,702

8. OPEB: cont'd

OPEB Expense and Deferred Outflows and Deferred Inflows of Resources Related to OPEB (cont'd)

Authority contributions subsequent to the measurement date will be recognized as a reduction of the net OPEB liability in the year ending December 31, 2021. Other amounts reported as deferred inflows of resources related to OPEB will be recognized in pension expense as follows (in thousands):

Years ending December 31,		
2021	$	(1,759)
2022		(284)
2023		(284)
2024		(250)
	$	(2,577)

9. Rentals:

The Authority, as lessor, has entered into non-cancelable operating leases with separate U.S. and Canadian duty-free enterprises through December 31, 2025 and October 31, 2031, respectively. The Authority recognized $4,260,000 and $5,483,000 in gross rental income in 2020 and 2019 from the duty-free enterprises. The leases provide for annual minimum and contingent lease payments to the Authority.

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both duty-free enterprises entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum. The Canadian duty-free rent deferral agreement expired July 31, 2020 and the duty-free lease is currently in default. The Authority has recognized a $2,500,000 bad debt allowance relative to the default status of the lease.

The Authority also leases space to a governmental entity under a non-cancelable twenty year operating lease expiring June 30, 2039. Rental revenue received by the Authority under this lease totaled $2,422,000 and $2,267,000 in 2020 and 2019.

Minimum amounts, assuming all rentals are received under the leases, are as follows (in thousands):

Years ending December 31,		
2021	$	6,612
2022		6,612
2023		6,612
2024		6,647
2025		6,683
Thereafter		53,167
	$	86,333

The Authority also leases certain real property under cancelable operating leases to commercial enterprises and governmental agencies. These leases are generally maintained on a month-to-month basis.

10. Deferred Compensation Plan:

All employees of the Authority in the United States are offered participation in a deferred compensation plan (the Plan) created in accordance with Internal Revenue Code Section 457. The Plan permits eligible participants to defer a portion of their salaries until future years. Under the Plan, amounts deferred are not available to employees until separation, retirement, death, or unforeseen emergency. All amounts deferred under the Plan, all property, and rights purchased with those amounts, and all income attributable to those amounts, property, or rights, are held in trust until paid or made available to the employee or other beneficiary.

The Authority also has unfunded liabilities of $1,627,000 and $1,486,000 included in accrued liabilities as of December 31, 2020 and 2019 to current and former management employees due under separate deferred compensation agreements. Payments made under these agreements totaled $4,800 in 2020 and 2019.

11. Commitments and Contingencies:

Risk Management

The Authority purchases commercial insurance for various risks of loss due to torts, theft, damage, errors and omissions, injuries to employees, and natural disasters. Settled claims resulting from these risks have not exceeded commercial coverage in any of the past three years. Losses resulting from acts of terrorism have been excluded from property and excess liability policies. The Terrorism Risk Insurance Act of 2002 of the United States governs coverage for acts of terrorism under the general liability policy.

Contractual Commitments

As of December 31, 2020, the Authority had contractual commitments of approximately $4,390,000 primarily related to ongoing capital construction projects.

Litigation

The Authority is involved in various legal proceedings, the outcome of which is not expected to have significant impact on the financial position of the Authority.

12. Net Position:

Unrestricted - Designated

The Board of Directors has designated available unrestricted amounts for acquisition or construction of capital projects and maintenance.

Restricted

(in thousands)	2020	2019
Debt service funds:		
Debt service fund	$ 4,927	$ 4,801
Debt reserve fund	7,086	7,146
Operating expense reserve	2,968	4,946
	$ 14,981	$ 16,893

13. Risks and Uncertainties:

On January 31, 2020, the United States Secretary of Health and Human Services (HHS) declared a public health emergency related to the global spread of coronavirus COVID-19, and a pandemic was declared by the World Health Organization in February 2020. On March 7, 2020, the Governor of the State of New York declared a disaster emergency in the State of New York, ordered all non-essential businesses State-wide to be closed, and required other restrictive social distancing and related measures. On March 17, 2020, the premier of the province of Ontario declared a state of emergency in the province of Ontario and ordered all non-essential businesses to be closed along with other restrictive measures. Efforts to fight the widespread disease resulted in a severe disruption of operations. Financial markets also experienced significant fluctuations in value.

Beginning in March 2020 and continuing subsequent to December 31, 2020, the Authority experienced significant decline in toll volume; the governments of the U.S and Canada limited border crossings to essential travel only beginning March 21, 2020. The extent of the impact of COVID-19 on the Authority’s operational and financial performance will depend on further developments, including the duration and spread of the outbreak and its impact on travelers, employees, and vendors, none of which can be predicted.

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
mobile.peacebridge.com | peacebridge.com

100 Queen Street
Fort Erie, ON L2A 3S6
905-871-1608

1 Peace Bridge Plaza
Buffalo, NY 14213-2494
716-884-6744

THIS IS **EXHIBIT "DD"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

BUFFALO AND FORT ERIE
PUBLIC BRIDGE AUTHORITY

FINANCIAL STATEMENTS

DECEMBER 31, 2021

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Table of Contents

December 31, 2021

Cyclorama Building | 369 Franklin Street | Buffalo, NY 14202
p: 716.856.3300 | f: 716.856.2524 | www.LumsdenCPA.com

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Buffalo and Fort Erie Public Bridge Authority

Opinion

We have audited the financial statements of Buffalo and Fort Erie Public Bridge Authority (the Authority), a business-type activity, as of and for the years ended December 31, 2021 and 2020, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Authority as of December 31, 2021 and 2020, and the changes in its financial position and its cash flows for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained in sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for one year after the date that the financial statements are issued.

Auditors' Responsibility for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that management's discussion and analysis and other required supplementary information, as listed in the table of contents, be presented to supplement the financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with GAAS, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Lumsden & McCormick, LLP

February 25, 2022

Management's Discussion and Analysis (Unaudited)

December 31, 2021

The management of the Buffalo and Fort Erie Public Bridge Authority (hereinafter referred to as the Authority) offers the following overview and analysis of the Authority's financial activities as of and for the years ended December 31, 2021, 2020 and 2019 which should be read in conjunction with the Authority's financial statements and notes to the financial statements.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Authority's financial statements. It begins by presenting and explaining the financial statements. These statements have been prepared according to accounting principles generally accepted in the United States of America (GAAP). Revenues and expenses are recorded using the accrual basis of accounting, meaning that they are recorded and recognized by the Authority as earned/incurred, regardless of when cash is received or paid.

The balance sheets present information on all the Authority's assets, deferred outflows of resources, liabilities, and deferred inflows of resources with the difference reported as net position. Increases or decreases in net position serve as a relative indicator as to whether the Authority's financial position is strengthening or weakening over time.

The statements of revenues, expenses, and changes in net position show the results of the Authority's operations during the year and reflect both operating and non-operating activities. Changes in net position reflect the operational impact of the current year's activities on the financial position of the Authority.

The statements of cash flows provide an analysis of the sources and uses of cash. The cash flow statements show net cash provided or used in operating, capital and related financing, and investing activities.

The notes to the financial statements include additional information which provides a further understanding of the financial statements.

FINANCIAL STATEMENT ANALYSIS

Balance Sheets as of December 31:

U.S. $, in thousands	2021	2020	2019
Assets			
Current assets	$ 79,437	$ 79,607	$ 94,734
Restricted assets	17,104	19,374	19,678
Net pension asset	9,405	7,390	3,582
Net OPEB asset	604	-	-
Capital assets, net	244,755	249,913	239,199
Total assets	351,305	356,284	357,193
Deferred outflows of resources	2,123	2,977	4,826
Total assets and deferred outflows of resources	$ 353,428	$ 359,261	$ 362,019
Liabilities			
Current liabilities	$ 8,988	$ 10,453	$ 12,536
Noncurrent liabilities	91,544	97,072	105,999
Total liabilities	100,532	107,525	118,535
Deferred inflows of resources	6,077	6,706	3,721
Net position			
Net investment in capital assets	148,000	147,659	131,766
Restricted	14,895	14,981	16,893
Unrestricted	83,924	82,390	91,104
Total net position	246,819	245,030	239,763
Total liabilities, deferred inflows of resources, and net position	$ 353,428	$ 359,261	$ 362,019

As noted above, net position serves as an indicator of the Authority's overall financial strength. The Authority's net position increased by $1,789,000 in 2021, $5,267,000 during 2020, and $15,669,000 during 2019 resulting from the Authority's operating and non-operating activities each year. The effects of the variances are detailed on page iii.

In 2017, the Authority issued $70,800,000 Toll System Revenue Bonds at a premium of $12,915,000, the proceeds of which were required to be used for the bridge redecking and rehabilitation project, coatings project, and enhancements to the U.S. plaza regarding inspection capacity. All bond proceeds were spent by December 31, 2020. Unspent bond proceeds at December 31, 2019 totaled $188,000 and are recorded as restricted assets. The net investment in capital assets at December 31, 2021, 2020, and 2019, reflects that activity as it consists of the Authority's net capital assets offset by any payables and debt outstanding used to finance the capital asset purchases. As required by the Authority's bond indenture, the restricted portion of net position is reserved for debt service, governmental payments, and operating reserves. Restricted amounts fluctuate based upon the amount of required debt service and operating reserve requirements. Substantially all unrestricted net position has been designated by the Board of Directors for acquisition or construction of capital projects and/or major repairs and replacements.

Deferred outflows and deferred inflows of resources primarily represent actuarially determined amounts related to the Authority's pension and OPEB plans that will be amortized through pension and OPEB expense over several years. Deferred items arise primarily from the differences between actual and expected investment earnings and changes in healthcare cost trends and the Authority's contributions subsequent to the plans' measurement dates.

Statements of Revenues, Expenses, and Changes in Net Position for the years ended December 31:

U.S. $, in thousands	2021	2020	2019
Operating revenues			
Toll revenues	$ 18,165	$ 16,910	$ 22,118
Other revenues	8,123	7,662	8,813
Total operating revenues	26,288	24,572	30,931
Operating expenses			
Toll collection and traffic control	1,386	1,643	2,211
Maintenance of bridge, buildings, plazas and equipment	3,918	3,761	4,694
Administration	3,509	3,437	3,117
Pension	(408)	283	673
Other postemployment benefits	(2,855)	(3,650)	(1,162)
Other expenses	1,261	1,177	1,157
Bad debts	3,192	2,500	-
Loss on asset disposals/impairment	2,268	306	-
Depreciation	8,143	8,053	6,242
Total operating expenses	20,414	17,510	16,932
Operating income	5,874	7,062	13,999
Non-operating revenues (expenses)			
Net increase (decrease) in fair value of investments	(767)	1,450	3,216
Interest income	34	84	109
Interest expense	(3,381)	(3,476)	(3,570)
Grant revenue	-	-	1,814
Currency remeasurement	29	147	101
Total non-operating revenues (expenses)	(4,085)	(1,795)	1,670
Change in net position	1,789	5,267	15,669
Net position, beginning of year	245,030	239,763	224,094
Net position, end of year	$ 246,819	$ 245,030	$ 239,763

As a bi-national toll bridge operator, the Authority earns revenues and incurs expenses in both U.S. and Canadian dollars. Canadian revenues and expenses are converted to U.S. dollars at the average exchange rate for the month in which the transaction occurs. Fluctuations in the exchange rates result in an improvement or deterioration in the currency remeasurement to U.S. dollars.

Toll volumes decreased 5% in 2021 compared to 2020 due to the continued border restrictions on non-essential travel put in place by the governments of the U.S. and Canada on March 21, 2020 in response to the COVID-19 pandemic. The auto and bus categories of travel were impacted the most as trade and commerce is deemed essential travel by both governments. Overall, toll revenues increased approximately 7.4% as a result of a 9.2% increase in truck revenues, offset by a 8.6% decrease in auto and bus revenues. Truck toll revenue accounts for 92% of the Authority's toll revenue. The increase in truck revenue was due to a toll increase effective January 1, 2020, as well as increased volume in 2021. Toll revenue decreased 24% in 2020 from 2019 due to the impact of the COVID-19 border restrictions put in place by the US and Canadian governments as previously described.

Other revenues consist primarily of rental income, the largest portion of which is attributed to leases with duty-free businesses. The rent from the duty-free stores was negatively impacted by the border restrictions on non-essential travel that resulted in sharp declines in duty free sales. Both the U.S. and the Canadian duty-free stores are required to pay a minimum base rent, however, due to COVID-19 border restrictions, the Authority entered into rent deferral agreements with both stores. These agreements permit the deferral of base rent for a period of time with repayment over 12 months at an interest rate of 4%. At December 31, 2021, the Canadian duty-free store was in default of their lease and the deferral agreement. The decrease of the duty-free rent was mitigated by an increase in the rents attributed to government agencies. Bad debt expense of $3,192,000 and $2,500,000 was recognized for 2021 and 2020 related to these duty-free lease agreements.

Operating expenses increased $2,904,000 or 16.6% from 2020 to 2021. The increase is primarily due to the recognition of a one-time asset impairment loss of $2,268,000 related to the previous bridge coatings project. The new bridge coatings project was completed in 2021. An increase in bad debt expense of $692,000 is attributable to duty-free rent discussed previously. Fluctuations in pension and OPEB are primarily the result of changes in assumptions used in the actuarial calculations. As a result, the Authority recognized income of $3,263,000, $3,367,000, and $489,000 related to its pension and OPEB plans for the years ended 2021, 2020, and 2019.

Operating expenses increased $578,000 or 3.4% in 2020 compared to 2019. The primary driver in the increase in operating expenses in 2020 was due to recording $2,500,000 in bad debt expense attributable to duty free rent which was mitigated by an increase in OPEB income of $2,488,000 from 2019.

Total non-operating net expenses increased $2,290,000 in 2021 and $3,465,000 in 2020. The Authority utilized its capital improvement reserve to fund capital projects that were already in progress. As a result, the investments held in the capital improvement reserve were reallocated to more liquid investments and other short-term fixed income investments which reduced investment earnings. The fair value of investments declined approximately $2,217,000 in 2021 and $1,791,000 in 2020. Additionally, capital grant revenue of $1,814,000 received in 2019 did not occur in 2020.

CAPITAL ASSETS AND LONG-TERM DEBT

The Authority's total investment in capital assets as of December 31, 2021 approximated $244,755,000 representing 70% of the Authority's total assets. Capital assets consist of land, the Peace Bridge, buildings and plaza improvements, equipment, and construction-in-progress. Capital asset additions totaled $6,319,000 in 2021 and $19,082,000 in 2020, as the Authority continued the Peace Bridge rehabilitation and bridge coatings projects and other capital projects and equipment purchases.

In June 2014, the Authority issued $28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of $4,262,000, to currently refund $33,500,000 of outstanding Series 2005 bonds, with interest rates ranging from 4% to 5%, and a true interest cost of 2.22%. The Series 2014 bond proceeds of $33,102,000 plus $3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under a mandatory tender and establish the Series 2014 debt reserves. The outstanding balance of the 2014 bonds at December 31, 2021 was $12,260,000.

Fitch Ratings has assigned ratings of "A" respectively, to the Series 2014 Bonds.

In June 2017, the Authority issued $70,800,000 in 30 year fixed rate Toll Bridge System Revenue Bonds at a premium of $12,915,000, to finance the redecking and rehabilitation of the Peace Bridge, make a deposit to the debt service reserve account, and to pay certain costs of issuance of the Series 2017 bonds. The proceeds may also be used to pay the cost of the Peace Bridge coatings and enhancements to the U.S. plaza devoted to inspection capacity. The Series 2017 bonds were issued on a parity with the Series 2014 bonds, with fixed interest rates of 5%, and a true interest cost of 3.71%. Principal repayments begin upon the repayment of the Series 2014 bonds (January 1, 2025) and continue until January 1, 2047.

Standard & Poor's Rating Services have assigned a rating of "A+" to the Series 2017 Bonds.

FACTS THAT WILL IMPACT FINANCIAL POSITION

The COVID-19 pandemic has had health, financial, and economic impacts across the world. Effective March 21, 2020, the United States and Canada enacted a joint initiative temporarily restricting all non-essential travel across the U.S/Canadian border. Supply chains, including trucking, were not impacted by these restrictions. Americans and Canadians also crossing the land border every day to do essential work or for other urgent or essential reasons were not impacted. These restrictions were extended approximately every 30 days from March 2020 through August 8, 2021. On August 9, 2021, Canada began to allow non-essential travel provided the individual was fully vaccinated and received a negative COVID test within 72 hours of entry into Canada. On November 30, 2021, Canada removed the test requirement for Canadian citizens for trips to the U.S. that were 72 hours or less. On December 21, 2021, in response to the presence of the Omicron variant and increasing positive cases, Canada reinstituted its negative test requirement for all travel across land borders with the U.S. On November 8, 2021, the U.S began allowing fully vaccinated non-essential travelers to enter the US with no requirement of a negative COVID test. We expect some form of border restrictions to continue into 2022.

Beginning in January 2022, both governments are requiring all truck drivers (even though they are still designated essential) to be fully vaccinated to be able to cross into the United States and Canada. The duration of such requirements is uncertain given the potential economic and supply chain impacts. The Authority has been designated as an essential business by both countries and all Authority staff are able to report to work and are not prevented from crossing the border to do so.

While the duration and type of future travel restrictions are currently unknown, the Authority has experienced traffic declines in 2021 as compared to the previous year in passenger crossings since the non-essential travel restrictions were put in place. The Authority anticipates that traffic declines will continue to impact toll revenues and duty-free revenues in 2022.

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both of the Authority's duty-free enterprise tenants entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum.

The U.S. duty-free store has remained open during the ongoing border restrictions (at reduced hours) and continues to pay a percentage of actual sales made each month as rent. The amount deferred is the difference between the minimum rent (based on 2019 sales levels) and the amounts paid to the Authority.

The Canadian duty-free store closed in March 2020 and reopened in September 2021. Its deferral agreement expired July 31, 2020 and the Canadian duty-free lease is currently in default. Due to the default status, the Authority has recognized a $5,692,000 bad debt allowance related to the 2020 and 2021 deferred rent due by the Canadian duty-free operator.

Despite the loss of toll revenue and the deferral of the duty-free rent payments, at December 31, 2021 the Authority has sufficient reserves to pay debt service and meet its operating expenses. Assets include approximately $77,000,000 of unrestricted cash and cash equivalents, representing nearly 2,570 days cash on hand.

As the COVID-19 border restrictions continue, the Authority continues to closely monitor the impacts of these restrictions on its operations, revenues, and liquidity. The Authority's 2022 budget was developed to include the continued operating cost curtailment measures and the deferral of non-critical capital projects until a later date to reduce short-term operating and long-term capital expenses.

CONTACT FOR AUTHORITY'S FINANCIAL MANAGEMENT

This report is designed to provide a general overview of the finances of the Authority for interested parties. Questions concerning any information within this report or requests for additional information should be addressed to Karen L. Costa, Chief Financial Officer, 100 Queen Street, Fort Erie, ON L2A 3S6.

Balance Sheets (in thousands)

December 31,	2021	2020
Assets		
Current assets:		
Cash	$ 3,753	$ 951
Accounts receivable, net	1,913	1,699
Prepaid expenses	307	297
Investments	73,464	76,660
	79,437	79,607
Noncurrent assets:		
Restricted assets:		
Cash	10,011	12,188
Investments	7,093	7,186
	17,104	19,374
Net pension asset	9,405	7,390
Net OPEB asset	604	-
Capital assets, net (Note 5)	244,755	249,913
	271,868	276,677
Total assets	351,305	356,284
Deferred outflows of resources		
Defeasance loss	89	146
Deferred outflows of resources related to pensions	1,761	2,461
Deferred outflows of resources related to OPEB	273	370
Total deferred outflows of resources	2,123	2,977
Total assets and deferred outflows of resources	$ 353,428	$ 359,261
Liabilities		
Current liabilities:		
Current portion of bonds payable	$ 2,830	$ 2,690
Accounts payable and accrued liabilities	3,085	4,643
Accrued compensation and benefits	759	737
Other current liabilities	2,314	2,383
	8,988	10,453
Noncurrent liabilities:		
Bonds payable	91,544	95,203
Net OPEB liability	-	1,869
	91,544	97,072
Total liabilities	100,532	107,525
Deferred inflows of resources		
Deferred inflows of resources related to pensions	4,214	4,129
Deferred inflows of resources related to OPEB	1,863	2,577
Total deferred inflows of resources	6,077	6,706
Net position		
Net investment in capital assets	148,000	147,659
Restricted	14,895	14,981
Unrestricted	83,924	82,390
Total net position	246,819	245,030
Total liabilities, deferred inflows of resources, and net position	$ 353,428	$ 359,261

See accompanying notes.

Statements of Revenues, Expenses, and Changes in Net Position (in thousands)

For the years ended December 31,	2021	2020
Operating revenues:		
Commercial tolls	$ 16,646	$ 15,269
Passenger tolls	1,519	1,641
Rentals	7,810	7,448
Other	313	214
Total operating revenues	26,288	24,572
Operating expenses:		
Toll collection and traffic control	1,386	1,643
Maintenance of bridge, buildings, plazas, and equipment	3,918	3,761
Administration	3,509	3,437
Pension	(408)	283
Other postemployment benefits	(2,855)	(3,650)
Canadian property taxes and U.S. equalization payments	1,061	977
Payments to New York State	200	200
Bad debts	3,192	2,500
Loss on asset disposal/impairment	2,268	306
Depreciation	8,143	8,053
Total operating expenses	20,414	17,510
Operating income	5,874	7,062
Non-operating revenues (expenses):		
Net increase (decrease) in fair value of investments	(767)	1,450
Interest income	34	84
Interest expense	(3,381)	(3,476)
Currency remeasurement	29	147
Total non-operating net expenses	(4,085)	(1,795)
Change in net position	1,789	5,267
Net position - beginning of year	245,030	239,763
Net position - end of year	$ 246,819	$ 245,030

See accompanying notes.

Statements of Cash Flows (in thousands)

For the years ended December 31,	2021	2020
Operating activities:		
Toll revenue	$ 17,727	$ 17,085
Payments to suppliers	(8,839)	(8,676)
Payments for wages and employee benefits	(5,020)	(5,073)
Other revenues	8,266	6,716
Net operating activities	12,134	10,052
Capital and related financing activities:		
Property and equipment expenditures	(7,222)	(21,024)
Interest payments on debt	(4,222)	(4,351)
Principal payments on debt	(2,690)	(2,550)
Grant proceeds	-	1,100
Net capital and related financing activities	(14,134)	(26,825)
Investing activities:		
Sales of investments	1,755	18,177
Change in fair value of investments	767	(1,450)
Interest proceeds	34	84
Net investing activities	2,556	16,811
Effect of exchange rate changes	69	138
Change in cash	625	176
Cash - beginning	13,139	12,963
Cash - ending	$ 13,764	$ 13,139
Reconciliation of operating income to net cash provided from operating activities:		
Operating income	$ 5,874	$ 7,062
Adjustments to reconcile operating income to net cash provided from operating activities:		
Depreciation	8,143	8,053
Net pension and OPEB activity	(4,320)	(4,414)
Loss on asset disposal/impairment	2,268	315
Changes in assets and liabilities:		
Accounts receivable	(295)	(547)
Prepaid expenses	(11)	(101)
Accounts payable and accrued liabilities	447	(217)
Accrued compensation and benefits	28	(99)
	$ 12,134	$ 10,052

See accompanying notes.

Statements of Fiduciary Net Position (in thousands)

	Pension and Other Employee Benefit Trust Funds	
December 31,	**2021**	2020
Assets		
Current assets:		
Cash and short-term investments	**$ 328**	$ 615
Noncurrent assets:		
Investments - equity and fixed income securities	**57,438**	53,961
Total assets	**57,766**	54,576
Net Position		
Net position held in trust for pension benefits	**44,442**	42,321
Net position held in trust for OPEB benefits	**13,324**	12,255
	$ 57,766	$ 54,576

See accompanying notes.

Statements of Changes in Fiduciary Net Position (in thousands)

	Pension and Other Employee Benefit Trust Funds	
December 31,	**2021**	2020
Additions:		
Employer contributions	**$ 857**	$ 1,247
Net investment income	**5,360**	7,892
Effect of foreign currency exchange rate changes	**134**	244
Total additions	**$ 6,351**	$ 9,383
Deductions:		
Benefits paid to participants or beneficiaries	**$ 2,950**	$ 2,964
Administrative expenses	**211**	223
Total deductions	**3,161**	3,187
Change in net position	**3,190**	6,196
Net position - beginning of year	**54,576**	48,380
Net position - end of year	**$ 57,766**	$ 54,576

See accompanying notes.

Notes to Financial Statements

1. Summary of Significant Accounting Policies:

Reporting Entity

Buffalo and Fort Erie Public Bridge Authority (the Authority) was established through a legislative act as a public benefit corporation to own and operate an international toll bridge connecting the United States and Canada. The enabling Act, under which the Authority was created, provides that on July 1, 2020, or when all bonds issued by the Authority have been discharged (current final maturity date is January 1, 2047), whichever shall be later, the powers, jurisdiction, and duties of the Board shall cease and the property and assets acquired and held by the Authority within the State of New York and within Canada shall be under jurisdiction of the State of New York and Her Majesty The Queen in Right of Canada, respectively.

Basis of Presentation

The financial statements of the Authority are prepared in conformity with U.S. generally accepted accounting principles (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

Measurement Focus

The Authority reports as a special purpose government engaged in business-type activities, as defined by GASB Statement No. 34. Business-type activities are those that are financed in whole or in part by fees charged to external parties for goods or services. The Authority's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred. Grants and similar items are recognized as revenue when all eligibility requirements imposed by the provider have been satisfied.

The Authority's policy for defining operating activities in the statements of revenues, expenses, and changes in net position are those that generally result from exchange transactions such as payments received for services and payments made to purchase goods or services. Certain other transactions are reported as non-operating activities and include investment income, interest paid on capital debt, and the net effect of currency remeasurement.

Assets held in trust for pension (Note 7) and other postemployment benefits (OPEB) (Note 8) are reported in the Pension and Other Employee Benefit Trust Fund.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash

At various times, cash in financial institutions may exceed insured limits and subject the Authority to concentrations of credit risk.

Investments

Investments consist of money market funds, commercial paper, corporate bonds, and U.S. mortgage and government agency obligations and are stated at fair value on a recurring basis as determined by quoted prices in active markets.

Restricted Assets

The Authority established the following accounts in order to comply with bond resolution and other requirements:

Bond – trustee accounts established to receive amounts necessary to meet current principal and interest payments and to maintain a sufficient balance in a debt service reserve fund.

Government payments – holds amounts necessary to fund payments to the State of New York as required under current legislation.

Operating expense reserve – holds amounts necessary to pay current year operating expenses as defined, plus an amount equal to one-sixth of the operating expenses of the Authority for the preceding year.

Capital Assets

Capital assets are reported at historical cost. For assets being depreciated, the expense is calculated over estimated useful lives using the straight-line method. Maintenance and repairs are expensed as incurred; significant improvements are capitalized.

Capitalization thresholds for determining which asset purchases are added to capital accounts and the estimated useful lives of capital assets are:

	Capitalization Policy	Estimated Useful Life
Bridge infrastructure	$ 5,000	10-150 years
Buildings and plazas	$ 5,000	10-40 years
Equipment - general	$ 1,000	3-10 years
Equipment - toll system	$ 1,000	7 years

Currency Translation

Due to its bi-national operations, the Authority accounts for transactions in either United States dollars (USD) or Canadian dollars (CAD). The Authority translates all Canadian asset and liability accounts at the year end exchange rate, except for property and equipment, which is translated at historical rates in effect in the year of acquisition. Revenues and expenses are converted at the average monthly exchange rate for the month in which the transaction occurs. Translation gains and losses are included as a component of non-operating revenues (expenses) as a currency remeasurement.

Compensated Absences

The Authority provides for vacation, sick, and compensatory time that is attributable to services already rendered and vested. The liabilities are recorded based on employees' rates of pay as of the end of the year, and include all payroll-related liabilities.

Pensions

The net pension asset, deferred outflows and deferred inflows of resources, pension expense, and information about and changes in the fiduciary net position of the Authority’s defined benefit pension plans (Note 7) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms, and investments are reported at fair value.

Other Postemployment Benefits (OPEB)

The net OPEB asset (liability), deferred outflows and deferred inflows of resources, net OPEB income, and information about and changes in the fiduciary net position of the Authority's defined benefit healthcare plans (Note 8) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms, and investments are reported at fair value.

Net Position

- *Net investment in capital assets* – consists of net capital assets reduced by outstanding balances of any related debt obligations attributable to the acquisition, construction, or improvement of the assets.
- *Restricted* – consists of restricted assets, reduced by liabilities and deferred inflows of resources related to those assets, subject to externally imposed restrictions by creditors (such as through debt covenants), federal or state laws, or enabling legislation.
- *Unrestricted* – the net amount of assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the definition of the above restrictions and are available for general use of the Authority.

The Authority has adopted a policy of using restricted funds, when available, prior to unrestricted funds.

2. Deposits and Investments:

The Authority's policy is to obtain collateral from U.S. financial institutions for its cash deposits. Cash deposits maintained in banks within the United States are covered by U.S. Federal Deposit Insurance and by collateral held by a custodial bank in the Authority's name based upon the average daily funds available as determined by the bank. Canada Deposit Insurance covers a portion of cash deposits maintained at banks within Canada.

Custodial credit risk is the risk that in the event of a bank failure, the Authority's deposits may not be returned to it. At December 31, 2021, $3,924,000 of the Authority's bank deposits were uncollateralized and therefore exposed to custodial credit risk.

The Authority's exposure to foreign currency risk derives from its deposits denominated in Canadian currency totaling $4,431,000 (USD) at December 31, 2021.

Interest rate risk is the risk that the value of investments will decrease as a result of a change in interest rates. The Authority's investments had the following maturities at December 31, 2021 (in thousands):

	Less than 1 year	1-5 years
Money market funds	$ 5,611	$ -
Commercial paper	5,248	-
Corporate bonds	-	16,387
Federal notes	200	53,111
	$ 11,059	$ 69,498

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Authority's investments in corporate bonds are all within investment grade categories.

The Authority manages its investments pursuant to the bond resolution, which defines the nature and maturity of allowable investments.

3. Accounts Receivable, net:

(in thousands)	2021	2020
Accounts receivable for rental and tolls	$ 7,606	$ 4,200
Less allowance for doubtful accounts (Note 9)	(5,693)	(2,501)
	$ 1,913	$ 1,699

4. Investments:

(in thousands)	2021	2020
Unrestricted:		
Federal Home Loan Mortgage Corporation notes	$ 11,524	$ 18,800
Federal Home Loan Bank notes	12,369	1,016
Federal Farm Credit notes	11,336	11,552
Federal National Mortgage Association notes	10,789	12,540
Corporate bonds	16,387	19,368
Commercial paper	5,248	150
U.S. Treasury notes	200	-
Money market fund	5,611	13,234
	$ 73,464	$ 76,660
Restricted:		
U.S. Treasury notes	$ 7,093	$ 7,186

5. Capital Assets:

(in thousands)	January 1, 2021	Additions	Reclassifications and Disposals	December 31, 2021
Non-depreciable capital assets:				
Land	$ 25,243	$ -	$ (965)	$ 24,278
Construction-in-progress	25,131	6,319	(29,582)	1,868
Total non-depreciable assets	50,374	6,319	(30,547)	26,146
Depreciable capital assets:				
Bridge	157,864	-	4,863	162,727
Buildings and plazas	128,197	-	399	128,596
Equipment - general	6,911	-	59	6,970
Equipment - toll system	4,253	-	(8)	4,245
Total depreciable assets	297,225	-	5,313	302,538
Less accumulated depreciation:				
Bridge	(38,483)	(3,873)	21,016	(21,340)
Buildings and plazas	(54,234)	(3,229)	840	(56,623)
Equipment - general	(4,384)	(606)	28	(4,962)
Equipment - toll system	(585)	(435)	16	(1,004)
Total accumulated depreciation	(97,686)	(8,143)	21,900	(83,929)
Total depreciable assets, net	199,539	(8,143)	27,213	218,609
	$ 249,913	$ (1,824)	$ (3,334)	$ 244,755

(in thousands)	January 1, 2020	Additions	Reclassifications and Disposals	December 31, 2020
Non-depreciable capital assets:				
Land	$ 25,243	$ -	$ -	$ 25,243
Construction-in-progress	12,248	19,082	(6,199)	25,131
Total non-depreciable assets	37,491	19,082	(6,199)	50,374
Depreciable capital assets:				
Bridge	157,408	-	456	157,864
Buildings and plazas	124,765	-	3,432	128,197
Equipment - general	6,819	-	92	6,911
Equipment - toll system	3,440	-	813	4,253
Total depreciable assets	292,432	-	4,793	297,225
Less accumulated depreciation:				
Bridge	(35,842)	(3,641)	1,000	(38,483)
Buildings and plazas	(50,938)	(3,296)	-	(54,234)
Equipment - general	(3,799)	(658)	73	(4,384)
Equipment - toll system	(145)	(458)	18	(585)
Total accumulated depreciation	(90,724)	(8,053)	1,091	(97,686)
Total depreciable assets, net	201,708	(8,053)	5,884	199,539
	$ 239,199	$ 11,029	$ (315)	$ 249,913

Net investment in capital assets as of December 31, 2021 and 2020 consists of the following (in thousands):

	2021	2020
Capital assets, net of accumulated depreciation	$ 244,755	$ 249,913
Bonds and related premiums	(94,374)	(97,893)
Capital asset purchases included in accounts payable	(393)	(2,363)
Accrued interest	(2,077)	(2,144)
Defeasance loss	89	146
	$ 148,000	$ 147,659

6. Bond Indebtedness:

(in thousands)	January 1, 2021	Increases	Decreases	December 31, 2021	Due Within One Year
Series 2014 bonds	$ 14,950	$ -	$ (2,690)	$ 12,260	$ 2,830
Unamortized premium 2014 refunding	854	-	(329)	525	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	11,289	-	(500)	10,789	-
	$ 97,893	$ -	$ (3,519)	$ 94,374	$ 2,830

(in thousands)	January 1, 2020	Increases	Decreases	December 31, 2020	Due Within One Year
Series 2014 bonds	$ 17,500	$ -	$ (2,550)	$ 14,950	$ 2,690
Unamortized premium 2014 refunding	1,250	-	(396)	854	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	11,771	-	(482)	11,289	-
	$ 101,321	$ -	$ (3,428)	$ 97,893	$ 2,690

In June 2014, the Authority issued $28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of $4,262,000, with interest rates ranging from 4% to 5%, to currently refund $33,500,000 of outstanding Series 2005 bonds. The Series 2014 bond proceeds of $33,102,000 plus $3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under mandatory tender and establish the Series 2014 debt reserves. The Series 2005 bonds refunded Series 1995 bonds which resulted in a difference between the reacquisition price and the net carrying amount of the old debt of $2,242,000. This defeasance loss, reported in the accompanying balance sheets as a deferred outflow, is being charged to operations through the year 2024 using the effective interest method. The defeasance loss remaining is $89,000 and $146,000 at December 31, 2021 and 2020.

In June 2017, the Authority issued $70,800,000 in fixed rate Toll Bridge System Revenue Bonds at a premium of $12,915,000, with an interest rate of 5%. The Series 2017 bond proceeds totaling $83,715,000 were used to partially fund a $100,000,000 bridge redecking and rehabilitation project and to establish the Series 2017 debt reserves. The bonds were structured so that principal repayments will begin upon the payoff of the Series 2014 bonds (January 1, 2025) and will continue until January 1, 2047.

Debt service requirements are as follows (in thousands):

Years ending December 31,	Principal	Interest
2022	$ 2,830	$ 4,012
2023	2,980	3,863
2024	3,140	3,706
2025	5,150	3,540
2026	1,930	3,448
2027-2031	11,205	15,693
2032-2036	14,300	12,696
2037-2041	18,240	8,646
2042-2046	23,285	3,606
	$ 83,060	$ 59,210

7. Pension Plans:

Defined Benefit Plans

The Authority maintains two non-contributory, single-employer defined benefit pension plans: Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in the United States (U.S. Plan) and Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in Canada (Canadian Plan), collectively, the Defined Benefit Plans. The Defined Benefit Plans cover full and part-time employees hired before September 29, 2006 (union) and January 1, 2009 (non-union) in the United States, and before July 27, 2007 (union) and January 1, 2009 (non-union) in Canada. The Board of Directors has the responsibility to establish and amend benefit provisions. Audited financial statements of the Defined Benefit Plans are not required and have not been prepared.

Benefits: The Defined Benefit Plans provide retirement, death benefits, and if applicable, certain annual cost of living adjustments to members and beneficiaries. Cost of living adjustments are effective when the most recent actuarial valuation reports reveal a surplus which is greater than twice the annual service cost. The cost of living adjustment, on a percentage basis, is equal to 50% of the change in consumer price indices based on the average change over the 12 month period ending on September 30th of the calendar year prior to the effective date of the adjustment. The cost of living adjustments are included in the Authority's annual pension cost only in the applicable years.

Employees Covered by Benefit Terms: At December 31, 2021 and 2020, the following employees were covered by the Defined Benefit Plans:

	2021		2020	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Active employees	14	13	14	15
Inactive employees or beneficiaries currently receiving benefits	44	58	44	58
Inactive employees entitled to but not yet receiving benefits	-	1	-	1
	58	72	58	74

Contributions: The Authority pays the full cost of all benefits provided under the Defined Benefit Plans. As a federally regulated pension plan, the Canadian plan is funded based upon an actuarial valuation and funding standards established by the *Pension Benefits Standards Act*. The Authority's policy with respect to the U.S. plan is to fund the greater of the annual required contribution or the current year service cost, as actuarially determined. Actuarial valuations are prepared no less frequently than every other year. For the years ended December 31, 2021 and 2020, the Authority's contribution rate to the Canadian Plan was 38% and 37%, respectively, of covered payroll and 12% and 10% of covered payroll for the U.S. Plan, respectively.

Net Pension Asset

The net pension asset was measured as of December 31, 2020 based on an actuarial valuation as of January 1, 2020, rolled forward to December 31, 2020. There have been no significant changes in benefits or other plan provisions from the beginning of the year to the end of the year.

Actuarial Assumptions: Based on the size of the plans, it was not deemed appropriate to perform an experience study. The total pension liability in the January 1, 2020 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

	Canadian Plan	U.S. Plan
Inflation	2.25%	2.75%
Salary increases	2.75%	2.75%
Investment rate of return	4.25%, compounded annually, net of all expenses (4.5% previously)	6.5%, compounded annually, net of all expenses
Mortality	CPM2014 Mortality Table with generational improvements projected using Scale B – no assumed preretirement deaths	Various Pub-2010 mortality tables, projected generationally with Scale MP-2020 improvements – no assumed preretirement deaths
Discount rate	4.25% (4.5% previously)	6.5%
COLA increases	0.26% COLA assumed (0.93% previously)	0.69% COLA assumed (0.85% previously)

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of pension plan investments and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Canadian Plan		
Canadian equities	5%	5.3%
International equities	10%	5.3%
Fixed income	80%	0.8%
Real estate	5%	6.0%
	100%	
U.S. Plan		
U.S. equities	30%	5.5%
International equities	5%	3.5%
Fixed income	41%	0.6%
Multi-asset	17%	4.0%
Real estate	5%	3.2%
Cash	2%	-
	100%	

Discount rate: The projection of cash flows used to determine the respective discount rates assumed that the Authority's contributions will continue to follow the current funding policy. Based on this assumption, the Authority's fiduciary net position was projected to be sufficient to make all projected future benefit payments of the Defined Benefit Plans' current members. Therefore, the discount rate equals the long-term rate of return of 4.25% (Canadian Plan) and 6.5% (U.S. Plan).

Changes in the Net Pension Asset

Canadian Plan (in thousands)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Asset
Balances at 12/31/19	$ (13,427)	$ 15,615	$ 2,188
Effect of currency exchange rate changes	(210)	244	34
Changes for the year:			
Service cost	(137)	-	(137)
Interest	(603)	-	(603)
Differences between expected and actual experience	(77)	-	(77)
Employer contributions	-	282	282
Net investment income	-	1,660	1,660
Benefit payments	744	(744)	-
Administrative expenses	-	(76)	(76)
Net changes	(73)	1,122	1,049
Balances at 12/31/20	$ (13,710)	$ 16,981	$ 3,271
Effect of currency exchange rate changes	(108)	134	26
Changes for the year:			
Service cost	(104)	-	(104)
Interest	(610)	-	(610)
Differences between expected and actual experience	(265)	-	(265)
Changes of assumptions	(380)		(380)
Employer contributions	-	342	342
Net investment income	-	1,151	1,151
Benefit payments	762	(762)	-
Administrative expenses	-	(74)	(74)
Net changes	(597)	657	60
Balances at 12/31/21	$ (14,415)	$ 17,772	$ 3,357

U.S. Plan (in thousands)			
Balances at 12/31/19	$ (21,192)	$ 22,586	$ 1,394
Changes for the year:			
Service cost	(49)	-	(49)
Interest	(1,333)	-	(1,333)
Employer contributions	-	87	87
Differences between expected and actual experience	(131)	-	(131)
Net investment income	-	4,275	4,275
Benefit payments	1,484	(1,484)	-
Administrative expenses	-	(124)	(124)
Net changes	(29)	2,754	2,725
Balances at 12/31/20	$ (21,221)	$ 25,340	$ 4,119
Changes for the year:			
Service cost	(50)	-	(50)
Interest	(1,335)	-	(1,335)
Employer contributions	-	106	106
Differences between expected and actual experience	441	-	441
Changes of assumptions	58		58
Net investment income	-	2,823	2,823
Benefit payments	1,485	(1,485)	-
Administrative expenses	-	(114)	(114)
Net changes	599	1,330	1,929
Balances at 12/31/21	$ (20,622)	$ 26,670	$ 6,048

The following presents the Authority's net pension asset for the Defined Benefit Plans calculated using the discount rate of 4.25% (Canadian Plan) and 6.5% (U.S. Plan) and the impact of using a discount rate that is 1.0% higher or lower than the current rate as of December 31, 2021.

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Canadian Plan	$ 1,655	$ 3,357	$ 4,780
U.S. Plan	$ 3,873	$ 6,048	$ 7,889

Pension Expense and Deferred Outflows and Deferred Inflows of Resources Related to Pensions

For the years ended December 31, 2021 and 2020, the Authority recognized pension expense of $267,000 and pension income of $37,000 for the Canadian Plan and pension income of $1,056,000 and pension expense of $69,000 for the U.S. Plan. At December 31, 2021 and 2020, the Authority reported deferred outflows and deferred inflows of resources as follows:

	2021			
	Canadian Plan		U.S. Plan	
(in thousands)	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ 319	$ 1,048	$ 924	$ 3,051
Changes of assumptions	63	-	-	13
Changes in experience	44	-	-	102
Authority contributions subsequent to the measurement date	308	-	103	-
	$ 734	$ 1,048	$ 1,027	$ 3,166

	2020			
	Canadian Plan		U.S. Plan	
(in thousands)	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ 475	$ 1,129	$ 1,489	$ 3,000
Changes of assumptions	-	-	-	-
Changes in experience	22	-	37	-
Authority contributions subsequent to the measurement date	341	-	97	-
	$ 838	$ 1,129	$ 1,623	$ 3,000

Authority contributions subsequent to the measurement date are recognized as an addition to the net pension asset in the subsequent year. Other amounts reported as deferred outflows and deferred inflows of resources at December 31, 2021 related to pensions will be recognized in pension expense as follows (in thousands):

Years ending December 31,	
2022	$ (987)
2023	(466)
2024	(1,088)
2025	(323)
	$ (2,864)

Defined Contribution Plans

The Authority has also established two non-contributory defined contribution money purchase plans which separately cover U.S. and Canadian employees hired subsequent to the eligibility dates of the Defined Benefit Plans described above.

The defined contribution plans require the Authority to contribute 6.0% of each qualified employee's covered salary annually. Contributions to the defined contribution plans totaled $114,000 and $112,000 in 2021 and 2020, respectively. The Authority makes all required contributions when due.

8. OPEB:

The Authority maintains two single-employer defined benefit postemployment healthcare plans (the Plans), one covering certain Canadian employees and one covering certain U.S. employees. The Plans provide benefits in the form of insurance premium payments for coverage of eligible retirees and dependents. Plan provisions, including Authority and member contribution rates, are determined by the Authority and collective bargaining agreements. The Plans do not issue publicly available financial reports.

Eligibility is based on date of hire, attainment of retirement age, and years of service. The Authority pays 100% of the health, dental, and life insurance premiums for employees meeting the following criteria:

Canadian Plan
Full-time employees hired prior to September 19, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after September 19, 2003 but prior to July 27, 2007 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

U.S. Plan
Full-time employees hired prior to July 18, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after July 18, 2003 but prior to September 29, 2006 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

At December 31, 2021 and 2020, employees covered by the Plan include:

	2021		2020	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Active employees	12	12	14	14
Inactive employees or beneficiaries currently receiving benefits	56	72	53	75
Inactive employees entitled to but not yet receiving benefits	-	-	-	-
	68	84	67	89

Net OPEB Asset

The Authority's net OPEB asset of $604,000 at December 31, 2021 was measured as of December 31, 2020, and the total OPEB asset used to calculate the net OPEB asset was determined by an actuarial valuation as of January 1, 2020, rolled forward to December 31, 2020.

The Authority established a qualified trust as defined by GASB Statement Nos. 74 and No. 75 which was funded with an initial cash contribution of $10,000,000 during the year ended December 31, 2018. The Plan has adopted a funding policy and began making contributions in 2019 that are projected to cover all future benefit payments. Therefore, the discount rate is equal to the long-term rate of return.

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of plan expenses and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
U.S. equities	32%	5.8%
International equities	6%	3.5%
Fixed income	35%	0.6%
Multi-asset	20%	4.0%
Real estate	5%	3.2%
Cash	2%	0%
	100%	

The total OPEB asset in the December 31, 2020 valuation was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:

Healthcare cost trend:
- Canadian Plan: 5.25% (5.5% previously) grading down by 0.125% each year to 4.25%
- U.S. Plan: 5.75% (6.0% previously) grading down by 0.125% each year to 4.75%

Discount rate:
- Discount rate at measurement date is 6.0% which is equal to the long-term rate of return on the trust assets

Mortality:
- U.S. Plan: General Pub-2010 Headcount Weighted Mortality using Projection Scale MP-2020
- Canadian Plan: CIA CPM-2014 Combined Mortality with CIA Scale CPM-B

Retirement:
- Expected dates for each active employee based upon their unreduced pension eligibility

Salary:
- Increases of 2.75%

Termination:
- Rates calibrated to produce 3% aggregate turnover of the active data based on the Authority's historical experience

Changes in the Net OPEB Asset (Liability)

(in thousands)	Total OPEB Liability	Plan Fiduciary Net Position	Net OPEB Asset (Liability)
Balances at December 31, 2019	$ (17,407)	$ 10,179	$ (7,228)
Effect of foreign currency exchange rate changes	(217)	-	(217)
Changes for the year:			
Employer contributions	-	878	878
Net investment income	-	1,957	1,957
Service cost	(69)	-	(69)
Interest	(1,031)	-	(1,031)
Differences between expected and actual experience	190	-	190
Changes of assumptions	3,674		3,674
Benefit payments	736	(736)	-
Administrative expenses	-	(23)	(23)
Net changes	3,500	2,076	5,576
Balances at December 31, 2020	$ (14,124)	$ 12,255	$ (1,869)
Effect of foreign currency exchange rate changes	(162)	-	(162)
Changes for the year:			
Employer contributions	-	409	409
Net investment income	-	1,386	1,386
Service cost	(52)	-	(52)
Interest	(825)	-	(825)
Differences between expected and actual experience	140	-	140
Change of assumptions	1,600	-	1,600
Benefit payments	703	(703)	-
Administrative expenses	-	(23)	(23)
Net changes	1,566	1,069	2,635
Balances at December 31, 2021	$ (12,720)	$ 13,324	$ 604

The following presents the sensitivity of the Authority's net OPEB asset to changes in the discount rate, including what the Authority's net OPEB asset would be if it were calculated using a discount rate that is 1% higher or lower than the current discount rate of 6.0%:

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Net OPEB Asset (Liability)	$ (1,687)	$ 604	$ 1,176

The following presents the sensitivity of the Authority's net OPEB asset to changes in the healthcare cost trend rates, including what the Authority's net OPEB asset would be if it were calculated using trend rates that are 1% higher or lower than the current healthcare cost trend rates of 5.75% to 4.25%:

(in thousands)	1.0% Decrease	At Current Trend rate	1.0% Increase
Net OPEB Asset (Liability)	$ 1,137	$ 604	$ (1,627)

OPEB Expense and Deferred Outflows and Deferred Inflows of Resources Related to OPEB

For the years ended December 31, 2021 and 2020, the Authority recognized OPEB income of $2,855,000 and $3,650,000. At December 31, 2021 and 2020, the Authority reported deferred outflows and deferred inflows of resources as follows:

(in thousands)	2021 Deferred Outflows of Resources	2021 Deferred Inflows of Resources	2020 Deferred Outflows of Resources	2020 Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	$ -	$ 1,302	$ -	$ 1,102
Changes of assumptions	-	485	-	1,403
Changes in experience	25	76	-	72
Authority contributions subsequent to the measurement date	248	-	370	-
	$ 273	$ 1,863	$ 370	$ 2,577

Authority contributions subsequent to the measurement date are recognized as an addition to the net OPEB asset in the subsequent year. Other amounts reported as deferred inflows of resources related to OPEB will be recognized in pension expense (income) as follows (in thousands):

Years ending December 31,	
2022	$ (939)
2023	(406)
2024	(372)
2025	(121)
	$ (1,838)

9. Rentals:

The Authority, as lessor, has entered into non-cancelable operating leases with separate U.S. and Canadian duty-free enterprises through December 31, 2025 and October 31, 2031, respectively. The Authority recognized $4,494,000 and $4,260,000 in gross rental income in 2021 and 2020 from the duty-free enterprises. The leases provide for annual minimum and contingent lease payments to the Authority.

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both duty-free enterprises entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum. The Canadian duty-free rent deferral agreement expired July 31, 2020 and the duty-free lease is currently in default. The Authority has recognized an allowance for uncollectible accounts of $5,693,000 and $2,500,000 at December 31, 2021 and 2020.

The Authority also leases space to a governmental entity under a non-cancelable twenty year operating lease expiring June 30, 2039. Rental revenue received by the Authority under this lease totaled $2,480,000 and $2,422,000 in 2021 and 2020.

Minimum amounts, assuming all rentals are received under the leases, are as follows (in thousands):

Years ending December 31,	
2022	$ 6,962
2023	6,962
2024	6,998
2025	7,034
2026	5,829
Thereafter	49,086
	$ 82,871

The Authority also leases certain real property under cancelable operating leases to commercial enterprises and governmental agencies. These leases are generally maintained on a month-to-month basis.

10. Deferred Compensation Plan:

All employees of the Authority in the United States are offered participation in a deferred compensation plan (the Plan) created in accordance with Internal Revenue Code Section 457. The Plan permits eligible participants to defer a portion of their salaries until future years. Under the Plan, amounts deferred are not available to employees until separation, retirement, death, or unforeseen emergency. All amounts deferred under the Plan, all property, and rights purchased with those amounts, and all income attributable to those amounts, property, or rights, are held in trust until paid or made available to the employee or other beneficiary.

The Authority also has unfunded liabilities of $1,890,000 and $1,627,000 included in accrued liabilities as of December 31, 2021 and 2020 to current and former management employees due under separate deferred compensation agreements. Payments made under these agreements totaled $4,800 in 2021 and 2020.

11. Commitments and Contingencies:

Risk Management

The Authority purchases commercial insurance for various risks of loss due to torts, theft, damage, errors and omissions, injuries to employees, and natural disasters. Settled claims resulting from these risks have not exceeded commercial coverage in any of the past three years. Losses resulting from acts of terrorism have been excluded from property and excess liability policies. The Terrorism Risk Insurance Act of 2002 of the United States governs coverage for acts of terrorism under the general liability policy.

Contractual Commitments

As of December 31, 2021, the Authority had contractual commitments of approximately $1,200,000 primarily related to ongoing capital construction projects.

Litigation

The Authority is involved in various legal proceedings, the outcome of which is not expected to have significant impact on the financial position of the Authority.

12. Net Position:

Unrestricted - Designated

The Board of Directors has designated available unrestricted amounts for acquisition or construction of capital projects and maintenance.

Restricted

(in thousands)	2021	2020
Debt service funds:		
Debt service fund	$ 4,918	$ 4,927
Debt reserve fund	7,002	7,086
Operating expense reserve account	2,975	2,968
	$ 14,895	$ 14,981

13. Risks and Uncertainties:

On January 31, 2020, the United States Secretary of Health and Human Services (HHS) declared a public health emergency related to the global spread of coronavirus COVID-19, and a pandemic was declared by the World Health Organization in February 2020. On March 7, 2020, the Governor of the State of New York declared a disaster emergency in the State of New York, ordered all non-essential businesses State-wide to be closed, and required other restrictive social distancing and related measures. On March 17, 2020, the premier of the province of Ontario declared a state of emergency in the province of Ontario and ordered all non-essential businesses to be closed along with other restrictive measures. Efforts to fight the widespread disease resulted in a severe disruption of Authority operations. Financial markets also experienced significant fluctuations in value.

In response to the pandemic, various travel restrictions have been imposed by the U.S. and Canadian governments since March 2020, negatively impacting passenger tolls during this time. The extent of the impact of COVID-19 on the Authority's operational and financial performance will depend on further developments, including the duration and spread of the outbreak and its continued impact on travelers, employees, and vendors, none of which can be predicted.

Required Supplementary Information
Schedule of Changes in the Authority's Net Pension Asset and Related Ratios - Canadian Plan
(in thousands)

As of the measurement date of December 31,	2020	2019	2018	2017	2016	2015	2014
Total pension liability							
Service cost	$ 104	$ 137	$ 156	$ 126	$ 124	$ 207	$ 190
Interest	610	603	604	605	633	593	565
Benefit payments, including refunds of employee contributions	(762)	(744)	(750)	(697)	(750)	(673)	(565)
Differences between expected and actual experience	265	77	(217)	680	191	-	-
Changes of assumptions	380	-	-	-	187	-	-
Net change in total pension liability	597	73	(207)	714	385	127	190
Total pension liability - beginning	13,710	13,427	13,033	13,296	12,139	11,581	11,391
Effect of foreign currency exchange rate changes	108	210	601	(977)	772	431	-
Total pension liability - ending	$ 14,415	$ 13,710	$ 13,427	$ 13,033	$ 13,296	$ 12,139	$ 11,581
Plan fiduciary net position							
Employer contributions	$ 342	$ 282	$ 411	$ 484	$ 498	$ 554	$ 647
Net investment income (loss)	1,151	1,660	(64)	1,429	995	175	1,432
Benefit payments, including refunds of employee contributions	(762)	(744)	(750)	(697)	(750)	(673)	(565)
Administrative expense	(74)	(76)	(101)	(68)	(24)	(41)	(19)
Net change in plan fiduciary net position	657	1,122	(504)	1,148	719	15	1,495
Plan fiduciary net position - beginning	16,981	15,615	15,405	15,388	13,793	13,283	11,788
Effect of foreign currency exchange rate changes	134	244	714	(1,131)	876	495	-
Plan fiduciary net position - ending	$ 17,772	$ 16,981	$ 15,615	$ 15,405	$ 15,388	$ 13,793	$ 13,283
Net pension asset - ending	$ 3,357	$ 3,271	$ 2,188	$ 2,372	$ 2,092	$ 1,654	$ 1,702
Plan fiduciary net position as a percentage of the total pension liability	123.3%	123.9%	116.3%	115.7%	115.7%	113.6%	114.7%
Covered payroll	$ 809	$ 930	$ 895	$ 863	$ 965	$ 949	$ 868
Net pension asset as a percentage of covered payroll	415.0%	351.7%	244.5%	275.0%	216.8%	174.2%	196.0%
Foreign currency exchange rate:	1.27	1.28	1.30	1.36	1.26	1.34	1.39

** Data prior to 2014 is unavailable.*

Required Supplementary Information
Schedule of Changes in the Authority's Net Pension Asset and Related Ratios - U.S. Plan
(in thousands)

As of the measurement date of December 31,	2020	2019	2018	2017	2016	2015	2014
Total pension liability							
Service cost	$ 50	$ 49	$ 62	$ 84	$ 138	$ 283	$ 267
Interest	1,335	1,333	1,281	1,289	1,269	1,269	1,252
Benefit payments, including refunds of employee contributions	(1,485)	(1,484)	(1,623)	(1,374)	(1,233)	(1,610)	(936)
Difference between expected and actual experience	(441)	131	485	-	207	-	-
Changes of assumptions	(58)	-	(1,094)	-	103	-	-
Net change in total pension liability	(599)	29	(889)	(1)	484	(58)	583
Total pension liability - beginning	21,221	21,192	22,081	22,082	21,598	21,656	21,073
Total pension liability - ending	$ 20,622	$ 21,221	$ 21,192	$ 22,081	$ 22,082	$ 21,598	$ 21,656
Plan fiduciary net position							
Employer contributions	$ 106	$ 87	$ 167	$ 157	$ 219	$ 266	$ 300
Net investment income (loss)	2,823	4,275	(856)	3,263	854	(657)	1,515
Benefit payments, including refunds of employee contributions	(1,485)	(1,484)	(1,623)	(1,374)	(1,233)	(1,610)	(936)
Administrative expense	(114)	(124)	(133)	(120)	(53)	(65)	(42)
Net change in plan fiduciary net position	1,330	2,754	(2,445)	1,926	(213)	(2,066)	837
Plan fiduciary net position - beginning	25,340	22,586	25,031	23,105	23,318	25,384	24,547
Plan fiduciary net position - ending	$ 26,670	$ 25,340	$ 22,586	$ 25,031	$ 23,105	$ 23,318	$ 25,384
Net pension asset - ending	$ 6,048	$ 4,119	$ 1,394	$ 2,950	$ 1,023	$ 1,720	$ 3,728
Plan fiduciary net position as a percentage of the total pension liability	129.3%	119.4%	106.6%	113.4%	104.6%	108.0%	117.2%
Covered payroll	$ 928	$ 987	$ 1,023	$ 1,469	$ 1,430	$ 2,157	$ 2,099
Net pension asset as a percentage of covered payroll	651.7%	417.3%	136.3%	200.8%	71.5%	79.7%	177.6%

** Data prior to 2014 is unavailable.*

Required Supplementary Information
Schedule of Canadian Plan Contributions (in thousands)

December 31,	2021	2020	2019	2018	2017	2016	2015
Actuarially determined contribution	$ 308	$ 341	$ 298	$ 415	$ 523	$ 468	$ 534
Contributions in relation to the actuarially determined contribution	308	341	298	415	523	468	534
Contribution deficiency (surplus)	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 809	$ 930	$ 895	$ 863	$ 965	$ 949	$ 868
Contributions as a percentage of covered payroll	38.07%	36.67%	33.30%	48.12%	54.19%	49.30%	61.50%
Foreign currency exchange rate:	1.27	1.28	1.30	1.36	1.26	1.34	1.39
The following is a summary of changes of assumptions:							
Inflation	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%
Salary increases	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Investment rate of return	4.25%	4.50%	4.50%	4.50%	5.00%	5.00%	5.00%
Cost of living adjustments	0.26%	0.93%	1.11%	0.78%	0.67%	1.01%	1.01%
Discount rate	4.25%	4.50%	4.50%	4.50%	5.00%	5.00%	5.00%

** Data prior to 2015 is unavailable.*

Required Supplementary Information
Schedule of U.S. Plan Contributions (in thousands)

December 31,	2021	2020	2019	2018	2017	2016	2015
Actuarially determined contribution	$ 102	$ 97	$ 92	$ 166	$ 157	$ 286	$ 270
Contributions in relation to the actuarially determined contribution	102	97	92	166	157	219	266
Contribution deficiency (surplus)	$ -	$ -	$ -	$ -	$ -	$ 67	$ 4
Covered payroll	$ 928	$ 987	$ 1,023	$ 1,469	$ 1,430	$ 2,157	$ 2,099
Contributions as a percentage of covered payroll	10.99%	9.83%	8.99%	11.30%	10.98%	10.15%	12.67%

The following is a summary of changes of assumptions:

	2021	2020	2019	2018	2017	2016	2015
Inflation	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Salary increases	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Investment rate of return	6.50%	6.50%	6.50%	6.00%	6.00%	6.00%	6.00%
Cost of living adjustments	0.69%	0.85%	1.14%	0.73%	0.73%	0.83%	0.83%
Discount rate	6.50%	6.50%	6.50%	6.00%	6.00%	6.00%	6.00%

** Data prior to 2015 is unavailable.*

Required Supplementary Information
Schedule of Changes in the Authority's Net OPEB Asset (Liability) and Related Ratios (in thousands)

December 31,	2021	2020	2019	2018
Total OPEB liability - beginning	$ (14,124)	$ (17,407)	$ (20,638)	$ (20,419)
Effect of foreign currency exchange rate changes	(162)	(217)	(228)	298
Changes for the year:				
Service cost	(52)	(69)	(106)	(100)
Interest	(825)	(1,031)	(1,234)	(1,190)
Differences between expected and actual experience	140	190	1,657	(9)
Changes of assumptions	1,600	3,674	2,378	-
Benefit payments	703	736	764	782
Net change in total OPEB liability	1,566	3,500	3,459	(517)
Total OPEB liability - ending	$ (12,720)	$ (14,124)	$ (17,407)	$ (20,638)
Plan fiduciary net position - beginning	$ 12,255	$ 10,179	$ -	$ -
Changes for the year:				
Employer contributions	409	878	10,765	-
Net investment income	1,386	1,957	178	-
Benefit payments	(703)	(736)	(764)	-
Administrative expenses	(23)	(23)	-	-
Net change in plan fiduciary net position	1,069	2,076	10,179	-
Plan fiduciary net position - ending	$ 13,324	$ 12,255	$ 10,179	$ -
Net OPEB asset (liability) - ending	$ 604	$ (1,869)	$ (7,228)	$ (20,638)
Plan fiduciary net position as a percentage of the total OPEB asset (liability)	104.7%	86.8%	58.5%	0%
Covered-employee payroll	$ 1,829	$ 1,819	$ 1,806	$ 2,149
Net OPEB asset (liability) as a percentage of covered-employee payroll	33.0%	102.7%	400.2%	960.4%

The following is a summary of changes of assumptions:

Healthcare cost trend rate (U.S.)	5.75% to 4.75%	6.0% to 5.0%	6.25% to 5.0%	6.75% to 5.0%
Healthcare cost trend rate (Canadian)	5.25% to 4.25%	5.5% to 4.5%	5.75% to 4.5%	6.25% to 4.5%
Salary increases	2.75%	2.75%	2.75%	2.75%
Investment rate of return	6.00%	6.00%	6.00%	6.00%
Discount rate	6.00%	6.00%	6.00%	6.00%

Data prior to 2018 is unavailable.

THIS IS **EXHIBIT "EE"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

Nov9 Report

	Peace Bridge Traffic-Eastbound				Car Traffic
	Cars	Trucks	Buses	Total	vs 2019
Oct 2022	124,964	44,770	435	170,169	-27%
Sep 2022	114,411	46,521	409	161,341	-35%
Aug 2022	139,629	50,155	386	190,170	-44%
Jul 2022	138,852	49,024	365	188,241	-40%
Jun 2022	101,401	49,024	264	150,689	-46%
May 2022	88,446	48,787	207	137,440	-46%
Apr 2022	77,616	46,277	212	124,105	-46%
Mar 2022	57,787	50,680	175	108,642	-62%
Feb 2022	33,448	40,527	88	74,063	-71%
Jan 2022	33,958	42,527	111	76,596	-70%
Jan-Oct2022	910,512	468,292	2,652	1,381,456	-47%
Dec 2021	54,587	43,403	141	98,131	-62%
Nov 2021	49,587	48,055	116	97,758	-66%
Oct 2021	37,478	49,453	28	86,959	-78%
Sep 2021	39,614	49,934	13	89,561	-78%
Aug 2021	38,189	50,624	17	88,830	-85%
Jul 2021	22,522	45,787	17	68,326	-90%
Jun 2021	21,332	50,342	17	71,691	-89%
May 2021	20,674	48,512	31	69,217	-87%
Apr 2021	17,422	47,780	12	65,214	-88%
Mar 2021	15,766	53,579	7	69,352	-90%
Feb 2021	12,148	43,130	6	55,284	-89%
Jan 2021	13,393	44,175	8	57,576	-88%
YTD 2021	342,712	574,774	413	917,899	-83%
Dec 2020	12,881	43,112	1	55,994	-91%
Nov 2020	13,431	46,718	2	60,151	-91%
Oct 2020	15,260	46,809	3	62,072	-91%
Sep 2020	14,777	46,113	3	60,893	-92%
Aug 2020	14,501	44,420	2	58,923	-94%
Jul 2020	12,742	42,932	6	55,680	-94%
Jun 2020	11,559	40,734	2	52,295	-94%
May 2020	8,718	35,148	1	43,867	-95%
Apr 2020	6,545	34,031	2	40,578	-95%
Mar 2020	67,111	44,325	338	111,774	-55%
Feb 2020	121,355	44,804	649	166,808	5%
Jan 2020	123,186	45,576	921	169,683	8%
YTD 2020	422,066	514,722	1,930	938,718	-79%
Dec 2019	145,503	40,069	1,061	186,633	
Nov 2019	147,129	43,215	1,053	191,397	
Oct 2019	171,744	48,675	1,100	221,519	
Sep 2019	176,774	46,973	976	224,723	
Aug 2019	249,184	45,722	1,050	295,956	
Jul 2019	230,244	45,928	929	277,101	
Jun 2019	188,736	45,312	826	234,874	
May 2019	164,405	47,670	752	212,827	
Apr 2019	143,282	46,316	659	190,257	
Mar 2019	150,707	46,407	723	197,837	
Feb 2018	115,595	42,608	610	158,813	
Jan 2019	114,306	43,837	611	158,754	
YTD 2019	1,997,609	542,732	10,350	2,550,691	

Nov9 Report

	Peace Bridge Traffic-Eastbound				Car Traffic
	Cars	Trucks	Buses	Total	vs 2019
Dec 2018	154,528	40,532	743	195,803	
Nov 2018	147,854	46,565	867	195,286	
Oct 2018	169,751	51,686	903	222,340	
Sep 2018	179,114	45,595	965	225,674	
Aug 2018	249,704	47,479	1,074	298,257	
Jul 2018	244,804	46,947	1,063	292,814	
Jun 2018	196,380	48,141	953	245,474	
May 2018	172,250	51,282	813	224,345	
Apr 2018	142,730	50,688	800	194,218	
Mar 2018	166,680	50,103	826	217,609	
Feb 2018	125,661	45,222	838	171,721	
Jan 2018	131,293	47,879	845	180,017	
YTD 2018	2,080,749	572,119	10,690	2,663,558	
Dec 2017	161,352	40,828	981	203,161	
Nov 2017	158,464	47,868	881	207,213	
Oct 2017	182,156	51,633	1,187	234,976	
Sep 2017	190,180	47,125	1,110	238,415	
Aug 2017	247,105	51,577	1,237	299,919	
Jul 2017	244,254	46,192	1,164	291,610	
Jun 2017	184,617	51,486	1,106	237,209	
May 2017	160,985	52,799	941	214,725	
Apr 2017	150,020	47,330	843	198,193	
Mar 2017	143,223	51,459	778	195,460	
Feb 2017	123,090	44,836	761	168,687	
Jan 2017	127,857	47,757	802	176,416	
YTD 2017	2,073,303	580,890	11,791	2,665,984	

THIS IS **EXHIBIT "FF"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the Town of Fort Erie, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 13, 2022, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely

Commissioner, etc.

PBDF Report-Nov8/22

		Total Revenues	PBDF	Tim Horton
	Jan2017	1,113,047	1,039,046	74,001
	Feb2017	1,132,241	1,063,573	68,668
	Mar2017	1,421,366	1,336,602	84,763
	Apr2017	1,558,657	1,476,219	82,438
	May2017	1,782,859	1,692,693	90,166
	Jun2017	2,031,919	1,952,544	79,374
	Jul2017	2,474,768	2,363,915	110,853
	Aug2017	2,478,928	2,361,448	117,480
	Sep2017	2,098,971	2,003,123	95,848
	Oct2017	2,138,131	2,031,668	106,463
	Nov2017	2,004,149	1,906,906	97,243
	Dec2017	1,976,017	1,880,534	95,483
	Jan2018	1,026,382	956,197	70,185
	Feb2018	1,141,705	1,072,855	68,850
	Mar2018	1,582,901	1,490,462	92,439
	Apr2018	1,391,850	1,311,689	80,161
	May2018	1,737,031	1,646,796	90,235
	Jun2018	2,017,500	1,928,287	89,213
	Jul2018	2,327,377	2,222,873	104,504
Note- only half of the store at a time was open during renovation months				
Renovations	Aug2018	2,247,258	2,228,492	18,766
Renovations	Sep2018	1,688,790	1,688,790	0
Renovations	Oct2018	1,594,221	1,594,221	0
Renovations	Nov2018	1,650,001	1,650,001	0
Renovations	Dec2018	1,521,935	1,521,935	0
Renovations	Jan2019	808,614	786,454	22,160
Renovations	Feb2019	914,450	865,987	48,463
Renovations	Mar2019	1,234,896	1,170,012	64,884
Renovations	Apr2019	1,289,118	1,225,273	63,845
Renovations	May2019	1,680,048	1,609,629	70,419
Renovations	Jun2019	1,861,013	1,787,096	73,917
	Jul2019	2,201,435	2,112,130	89,305
	Aug2019	2,616,163	2,514,542	101,621
	Sep2019	1,880,952	1,808,864	72,088
	Oct2019	1,923,072	1,841,330	81,742
	Nov2019	1,863,824	1,789,858	73,966
	Dec2019	1,738,567	1,671,142	67,425
	Jan2020	977,058	920,345	56,713
	Feb2020	1,034,963	977,455	57,507
	Mar2020	587,300	553,247	34,053
Note-closed March 21, 2020				
	Nov2020	186	186	0
	Dec2020	111	111	0
	Jan2021	147	147	
	Feb2021	87	87	
	Mar2021	102	102	
	Apr2021	63	63	
	May2021	117	117	
	Jun2021	138	138	
	Jul2021	117	117	
	Aug2021	91	91	
	Sep2021	97,691	97,691	

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	Total Revenues	PBDF	Tim Horton
Oct2021	309,754	309,754	
Nov2021	545,927	545,927	
Dec2021	571,208	571,208	
Jan2022	266,652	266,652	
Feb2022	317,739	317,739	
Mar2022	574,900	574,900	
Apr2022	803,466	803,466	
May2022	839,157	839,157	
Jun2022	942,743	942,743	
Jul2022	1,332,856	1,332,856	
Aug2022	1,295,437	1,295,437	
Sep2022	1,189,993	1,189,993	
Oct2022	1,214,518	1,214,518	