

J. Pearce - 119

1 A. Yes, I have seen this letter before.

2 594. Q. And this is an acknowledgement April
3 6th of your letter of April 3rd, correct?

4 A. Yes, it is an acknowledgement.

5 595. Q. An acknowledgement of the situation
6 that you're encountering?

7 A. It's a response to the request to
8 the Board of Directors for a meeting.

9 596. Q. And do they agree to a meeting?

10 A. They suggest we have a discussion
11 with the management.

12 597. Q. And you will agree with me that a
13 meeting was arranged?

14 A. I believe it's...

15 598. Q. If you turn the page over...

16 A. Yes, yes, yes.

17 599. Q. So a meeting was arranged between
18 Peace Bridge Duty Free and the Authority?

19 A. Correct.

20 600. Q. Okay. Turn the page over to the
21 next page, please, 18. So were you at the meeting
22 that took place?

23 A. Yes.

24 601. Q. And that meeting took place on April
25 11th, did it?

1 A. I'm not 100 percent sure of the
2 date, but in that time frame.

3 602. Q. Around April 11th, April, 12th,
4 April 13th.

5 MR. JONES: I think the 11, Counsel,
6 just reading it, it's in reference to a
7 time.

8 603. MR. SHEA: Well, no, I'm just asking
9 whether it took place on the 11th.

10 THE DEPONENT: I couldn't verify the
11 date, but it's in that time frame.

12
13 BY MR. SHEA:

14 604. Q. Okay, and did you keep any notes
15 from that meeting?

16 A. I don't recall having any notes from
17 that.

18 605. Q. You and Mr. O'Hara didn't exchange
19 any e-mails after that meeting or before that
20 meeting?

21 A. I don't recall us exchanging that
22 when we were going in there.

23 606. Q. But on April 16th...

24 A. Yes.

25 607. Q. ...Mr. Rienas sends to Mr. O'Hara a

1 rent deferral, a draft rent deferral agreement?

2 A. Okay.

3 608. Q. Are you familiar with this?

4 A. The agreement, yes, I have seen it.

5 609. Q. And you saw the agreement?

6 A. I have seen it, yes, I have seen the
7 agreement.

8 610. Q. The draft?

9 A. Yes, I would have seen the draft.

10 611. Q. Okay. Turn the page over, please.

11 This is the next day. Were you familiar with this
12 e-mail? Have you seen this e-mail before?

13 A. Yes, I have seen this before.

14 612. Q. So Mr. O'Hara responds,
15 acknowledging receipt of the rent deferral
16 agreement, and indicates they'll get back the next
17 week?

18 A. Correct.

19 613. Q. Okay. Turn the page then to 28.

20 A. Okay.

21 614. Q. This is a...it appears to be an e-
22 mail from Mr. O'Hara to individuals?

23 A. M'hm.

24 615. Q. A John Marsh?

25 A. Yes.

1 616. Q. A Ben Mills, we know who Ben Mills
2 is.

3 A. Yes.

4 617. Q. And copied to you.

5 A. Correct.

6 618. Q. And he is looking for comments on
7 a...

8 MR. JONES: Counsel, I don't know...this
9 looks like an e-mail to counsel. I don't
10 know how it ended up in here.

11 619. MR. SHEA: It's copied to Mr. Marsh.
12 Mr. Marsh isn't counsel.

13 MR. JONES: Mr. Bedard is.

14 620. MR. SHEA: Yes, but...

15 MR. JONES: Oh, sorry, Mr. Mills.

16 621. MR. SHEA: So it's disclosed.

17 MR. JONES: It may been disclosed
18 inadvertently, but we're not going to get
19 into what discussions were with counsel.

20 622. MR. SHEA: I'm not asking you to get
21 into what discussions were with counsel.

22
23 BY MR. SHEA:

24 623. Q. So Mr. O'Hara sends to you and Mr.
25 Marsh a draft of what he proposes to send to Mr.

1 Rienas in response, dealing with the rent deferral.

2 Is that accurate?

3 A. Well, I'm making the assumption that
4 this hasn't been sent to Ron as of yet.

5 624. Q. Well, I think if you turn the page,
6 you'll see what was sent to Ron.

7 A. Okay, on the 21st. So it's a good
8 assumption, then.

9 625. Q. Yes.

10 A. Yes.

11 MR. JONES: So why don't we just review
12 that...

13 626. MR. SHEA: Because I don't have any
14 questions on this e-mail, please.

15 MR. JONES: The one that they sent to
16 counsel.

17 627. MR. SHEA: So did you receive...

18 MR. JONES: Counsel...

19 628. MR. SHEA: Sorry, sir...

20 MR. JONES: You're reviewing the e-mail
21 that was sent to counsel?

22 629. MR. SHEA: I'm reviewing an e-mail that
23 was sent to Mr. Pearce and Mr. Marsh, and
24 my question does not relate to anything to
25 do with counsel. So please let me proceed.

1 MR. JONES: Well...

2
3 BY MR. SHEA:

4 630. Q. Did you respond to this e-mail,
5 providing any comments on this document? Did you
6 respond?

7 A. No.

8 631. Q. No. Did Mr. Marsh respond?

9 A. I do not know.

10 632. Q. Okay. Who is Mr. Marsh?

11 A. He is one of the directors.

12 633. Q. Okay.

13 MR. JONES: So this is an internal e-
14 mail to counsel that you're referring to,
15 that we have said is privileged.

16 634. MR. SHEA: Sorry, I note that on a
17 number of occasions there were e-mails
18 included. Now...

19 MR. JONES: You can move on, and...

20 635. MR. SHEA: We will move on when I wish
21 to move on, please.

22
23 BY MR. SHEA:

24 636. Q. So you're not aware of Mr. Marsh
25 responding and you don't recall responding?

1 A. I'm not aware.

2 637. Q. Okay. So on to the next document.
3 This is the response that Mr. O'Hara provided to Mr.
4 Rienas, and you're aware of that?

5 MR. JONES: Take a minute to read it.

6 THE DEPONENT: Yes. I'm not...I don't
7 recall if I have actually seen this e-mail,
8 but I am aware of the information in there,
9 if that makes sense.

10
11 BY MR. SHEA:

12 638. Q. So it doesn't actually make sense.

13 A. Okay. I might have seen this...I
14 must...I have probably seen this e-mail or this
15 note, but...

16 639. Q. But you'll recall that the document
17 that was sent by the Authority to Peace Bridge...

18 A. Right.

19 640. Q. ...was a rent abatement agreement?

20 A. Yes.

21 641. Q. And it contemplated that the
22 Authority would...sorry, rent deferral agreement,
23 not abatement agreement, rent deferral agreement,
24 would defer rent for a period of time?

25 A. Right.

1 642. Q. And then the rent that had been
2 deferred would be repaid by Peace Bridge over a
3 period?

4 A. There was...yes, I believe that was
5 the concept or what is in the rent deferral
6 agreement.

7 643. Q. Yes, and in this e-mail you will
8 agree that Mr. O'Hara indicates that Peace Bridge
9 Duty Free is in agreement with virtually all of the
10 terms in the proposal, except for the repayment
11 terms or the payment terms? What he proposes is 20
12 percent...percentage rent and deferral or payment of
13 the deferred rent over two years. He never asked
14 for an abatement at this point in time?

15 A. I'm just reading it like you.

16 644. Q. Do you recall asking for an
17 abatement at this point in time?

18 A. I do not recall.

19 645. Q. Okay. Then I'm going to ask you to
20 turn to...are you finished reading that? There is
21 no reference in that letter to an abatement.

22 So the next is...have you seen this e-
23 mail? This is Mr. Rienas' response to Mr. O'Hara.
24 Do you recall...if you haven't seen it, do you
25 recall having any discussions with Mr. O'Hara about

1 this?

2 A. I believe I have seen this before.

3 646. Q. So you will agree that Mr. Rienas
4 explains that a...the accrual of unpaid rent for up
5 to a year and then convert that to a two-year loan
6 is not acceptable to the Authority and explains why?
7 It says that:

8 "...It will likely result in violating the
9 bond covenants and the Authority is not a
10 bank..."

11 A. I can't dispute what Ron said here.

12 647. Q. On to the next document. This is
13 further communications between Mr. Rienas and Mr.
14 O'Hara. So this is at 23. This is Mr. O'Hara
15 acknowledging the concern with respect to the bond
16 covenants, and requesting that the directors look at
17 the proposal, and also attaching the 2018 audited
18 financials to assist the directors, I assume. Is
19 that how you read that?

20 A. Not necessarily.

21 648. Q. Okay, how do you read that?

22 A. The audited financial statements
23 were requested, so we sent those through, and then
24 looking for input from the...I'm trying to interpret
25 the wording here, but...

1 649. Q. Did you talk to Mr. O'Hara about
2 this?

3 A. The request is for the directors
4 to...

5 650. Q. To look at it?

6 A. Yes.

7 651. Q. And then I'm going to ask you to
8 turn to the next one, 24.

9 A. Okay.

10 652. Q. And are you familiar with this e-
11 mail? Have you seen it before?

12 A. I believe I have.

13 653. Q. And in this one Mr. Rienas indicates
14 that the board considered the request, and explained
15 why it was not going to agree to the requested
16 changes.

17 A. That's what the e-mail says.

18 654. Q. Turn the page over to the next page,
19 please. So are you aware of Mr. O'Hara responding
20 to Mr. Rienas' e-mail of April 24th, 2020?

21 A. Sorry, what...

22 655. Q. Are you aware of...

23 A. April 24, oh, this one here?

24 656. Q. Yes.

25 MR. JONES: Do you want to take him to a

document?

657. MR. SHEA: There is no document in your disclosures of him responding. So I'm asking him is he aware of any response.

THE DEPONENT: No.

BY MR. SHEA:

658. Q. No. You never responded?

A. No.

659. Q. No. So if you turn the page over to 25...

A. I'm sorry, that's where I'm at.

660. Q. I apologize, 25. If you go to 25, so this is a...

A. That is what I was answering. I'm sorry, I was on 25.

661. Q. Okay. Do you want to go back to...sorry, 24.

A. Right.

662. Q. This is Mr. Rienas' e-mail to Mr. O'Hara...

A. Right.

663. Q. ...indicating that the board had considered and rejected Peace Bridge's proposals for changes to the first rent deferral and explaining

1 why, and I'm asking are you aware of any response
2 from Mr. O'Hara to that e-mail?

3 A. No.

4 664. Q. And you did not respond to that e-
5 mail?

6 A. And I did not.

7 665. Q. Over to the next document is a copy
8 of an e-mail from Mr. Rienas to Mr. O'Hara again.

9 A. M'hm.

10 666. Q. A series of e-mails actually, and
11 the first one is down April 27. So the second one
12 on that page.

13 A. Okay.

14 667. Q. And Mr. Rienas attaches the rent
15 deferral agreement. Do you see that?

16 A. Yes.

17 668. Q. Are you aware of any response from
18 Mr. O'Hara to that e-mail?

19 A. I believe...I think he sent the
20 signed agreement.

21 669. Q. No, I'm asking to this specific e-
22 mail, because the next one above is on May 4th.

23 A. Oh, right, for the April 27th. No,
24 I'm not aware of anything.

25 670. Q. Then so Mr. Rienas reminds Mr.

1 O'Hara that he sent the agreement and asks for it
2 back, and turn the page over again to 26. This e-
3 mail was copied to you.

4 A. M'hm.

5 671. Q. Do you recall this e-mail?

6 A. Yes.

7 672. Q. And this is May 5. So in
8 between...obviously overnight there had been no
9 response from Mr. O'Hara, I take it?

10 A. Overnight?

11 673. Q. Well, on the 4th there is the
12 inquiry as to whether Peace Bridge Duty Free still
13 wants the rent deferral agreement, and this is...

14 A. Yes, I don't know when that was...

15 674. Q. Well, I showed you.

16 A. Yes, I know. Dates and times, I
17 can't answer when Greg...

18 675. Q. But in response to this, what
19 happened?

20 MR. JONES: You're referring to the one
21 where they are...the default proceedings?

22
23 BY MR. SHEA:

24 676. Q. No, the May 5, 2020.

25 A. Right.

1 MR. JONES: Right.
2 677. MR. SHEA: In response to that...
3 MR. JONES: That's the one where they're
4 saying they're going to...
5 678. MR. SHEA: I didn't ask that, sir.
6 MR. JONES: Okay, well, just make sure
7 I'm reading the right e-mail.
8 THE DEPONENT: Yes.

9
10 BY MR. SHEA:

11 679. Q. So in response to that outreach with
12 respect to...

13 A. The May 5?

14 680. Q. Yes. You signed back or Peace
15 Bridge Duty Free signed back the first rent
16 deferral, correct?

17 A. That would be on May 6th, yes. It
18 was actually on May 6th that it got sent back.

19 681. Q. May 6th it gets sent back, and
20 turning over to the next page, anticipating, so the
21 next page, and after getting it back...

22 A. The 27th, the 27th?

23 682. Q. May 6th, 27, yes. After getting it
24 back, Mr. Rienas agrees that there will need to be
25 more discussions. Do you recall that, that there

1 was...you referred in one of your affidavits that
2 there was an agreement. After getting the first
3 rent deferral back, there was an agreement that
4 there would be more discussions?

5 A. Yes. Yes, I remember this e-mail.

6 683. Q. Okay. So what I'm interested in
7 understanding with respect to the e-mail at tab 26
8 and 27, they weren't included in your disclosures.
9 Is there a reason for that?

10 MR. JONES: You have our disclosure.

11 684. MR. SHEA: I asked...I just asked is
12 there a reason they weren't included?

13 THE DEPONENT: I do not know.

14 685. MR. SHEA: You just couldn't find them?

15 THE DEPONENT: I do not know.

16 MR. JONES: They may have been in the...

17 686. MR. SHEA: I asked your witness, please,
18 sir.

19
20 BY MR. SHEA:

21 687. Q. You didn't find them?

22 A. I did not, no.

23 688. Q. Okay, you didn't know these e-mails
24 existed?

25 A. I did not know...

1 MR. JONES: I think they're actually in
2 his affidavit.

3 689. MR. SHEA: The e-mail we spoke about, so
4 point to me where they're in the affidavit
5 then. While your counsel is looking for
6 that, perhaps we can move on, because I
7 want to get a couple of more questions in.
8 At least I want to close out...

9 MR. JONES: I'm not going to look for it
10 while you're asking questions but...

11 690. MR. SHEA: Okay, well, then we'll
12 just...

13 MR. JONES: You have whatever the
14 disclosure was and you have whatever was in
15 the affidavit.

16
17 BY MR. SHEA:

18 691. Q. Okay, so let's move on to tab 28
19 before we close this out. So tab 28 is the rent
20 deferral agreement. Do you see that?

21 A. Yes, I do.

22 692. Q. This is the version that was signed
23 by both parties.

24 A. Yes.

25 693. Q. So this is the signed agreement.

1 A. Correct.

2 694. Q. You'll agree with me that what Peace
3 Bridge Duty Free agreed to was a deferral of rent
4 until the earlier of July 31st, 2020 or the last day
5 of the month following the day the tenant has fully
6 reopened the duty free?

7 MR. JONES: "...Free shop for the
8 business after the restrictions on non-
9 essential travel between Canada and the
10 United States are lifted..."

11 695. MR. SHEA: Yes, the earlier of, and
12 you'll...

13 MR. JONES: "...For greater certainty of
14 partial reopening to accommodate essential
15 travel does not constitute full
16 reopening..."

17
18 BY MR. SHEA:

19 696. Q. Yes. So you'll agree that it's the
20 earlier of those two, and the second never happened?

21 MR. JONES: Well, it eventually
22 happened.

23 697. MR. SHEA: Sorry, sir, I'm asking your
24 witness...

25 MR. JONES: But you're putting a false

1 statement to him.

2 698. MR. SHEA: I'm not putting a false
3 statement to him. If you want me to
4 clarify, it never happened before this
5 agreement expired, I'll do that. It's the
6 earlier of.

7
8 BY MR. SHEA:

9 699. Q. The second event never happened
10 before July 31st, 2020, correct?

11 A. The question is number 2 didn't
12 happen...

13 700. Q. Yes.

14 A. ...before July 31st?

15 701. Q. That's correct.

16 A. Correct.

17 702. Q. So under the terms of this
18 agreement, Peace Bridge Duty Free was required to
19 begin to repay the deferred rent on July...beginning
20 August 1st, 2020, correct?

21 A. I believe that's correct.

22 703. Q. And you'll agree with me that Peace
23 Bridge Duty Free has never repaid any of the
24 deferred rent?

25 A. That's correct.

1 704. Q. Okay. Your disclosures during the
2 first outreach...so from March...let's call it April
3 1st through to April 27th include no internal
4 communications with respect to...or internal
5 documents at all with respect to the first rent
6 deferral? There are no board minutes. There are no
7 e-mails to the directors. There are no
8 communications between yourself and Mr. O'Hara.
9 There are no other related documents.

10 Is it your position that you had no
11 discussions or no e-mail exchanges with you and Mr.
12 O'Hara during this period?

13 MR. JONES: You have our disclosure.

14 705. MR. SHEA: I asked him if...so I just
15 want to confirm that you did a search and
16 there were no undisclosed e-mails between
17 or communications, written communications,
18 between you and Mr. O'Hara during this
19 period?

20 MR. JONES: You have our disclosure.

21
22 BY MR. SHEA:

23 706. Q. And there were no communications
24 with the board with respect to this issue?

25 A. I have no knowledge of that.

1 707. Q. You have no knowledge of any
2 communications with the board?

3 A. With the board.

4 708. Q. So you're not aware of any board
5 meeting called to discuss this?

6 A. No.

7 709. Q. You're not aware of any
8 communications to the board with respect to this
9 issue or the first rent deferral?

10 A. I don't recall.

11 710. Q. And you're not aware of any...the
12 board even being told that you had entered into the
13 first rent deferral?

14 A. I don't know. I don't know.

15 711. MR. SHEA: So now is a good time to
16 break for lunch and then we will pick up
17 at...it's now 1:05.

18
19 --- upon recessing at 1:04 p.m.

20 --- A BRIEF RECESS

21 --- upon resuming at 1:59 p.m.

22
23 JIM PEARCE, resumed

24 CONTINUED CROSS-EXAMINATION BY MR. SHEA:

1 712. Q. We had left off, and I had just
2 finished asking you about the what we called the
3 first rent deferral, and I want to start asking you
4 some questions about the second rent deferral.

5 So the first rent deferral expired on 31
6 July, 2020, correct?

7 A. Well, the earlier of...

8 MR. JONES: I think if you go to the
9 document...

10 THE DEPONENT: Earlier of?

11
12 BY MR. SHEA:

13 713. Q. Well, okay, but we agree the second
14 event didn't happen before 31 July, 2020. So that
15 means...

16 MR. JONES: Yes, I think what...the rent
17 deferral period ended on July 31st.

18 714. MR. SHEA: Yes, the rent deferral period
19 ended July 31st.

20
21 BY MR. SHEA:

22 715. Q. So Peace Bridge Duty Free was going
23 to have to start paying rent on August 1st or
24 negotiate a new arrangement. Is that an accurate
25 assessment of the situation?

1 A. I believe the Authority acknowledged
2 that we would have to redo the agreement. I think
3 that was Ron's one e-mail. He says, "Obviously..."

4 716. Q. Did he agree to that or did he agree
5 that there had to be further discussions?

6 A. I'm not sure about his exact words.
7 He acknowledged that...

8 717. Q. "...I don't disagree with you that
9 recognizing that we will be...and recognize
10 that we will in all likelihood have
11 additional discussions..."

12 A. Yes, okay.

13 718. Q. Did you take that to be a commitment
14 from the Authority to extend the rent deferral
15 period?

16 A. To do something. From a legal
17 standpoint, I don't know, but do something to
18 address the situation.

19 719. Q. But you recognized that absent an
20 agreement, the rent deferral period ended on July
21 31st, 2020, and rent would be payable on August 1st?

22 A. From a legal standpoint, possibly,
23 right.

24 720. Q. I'm asking from a business
25 perspective what did you understand.

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1 A. A business perspective, we would be
2 back in discussions and doing something with that.

3 721. Q. Okay. So but Peace Bridge Duty Free
4 didn't reach out proactively to the Authority prior
5 to July 1st, 2020 about the future, did it?

6 A. I do not know about that, unless we
7 review the documents.

8 722. Q. Well, did you reach out to...

9 A. I did not.

10 723. Q. Do you recall Mr. O'Hara reaching
11 out?

12 A. In July of 2020, I do not recall.

13 724. Q. Okay. So turn the page. Look up
14 29. Do you recall this e-mail?

15 A. Yes.

16 725. Q. So it was the Authority that reached
17 out to Peace Bridge after the rent deferral had
18 expired. There had been no discussions, reachout
19 that you're aware of. So August 6th they reach out
20 and say the rent deferral period expired, and the
21 restart date was August 1. Turn the page, you'll
22 see the response.

23 A. From the 30?

24 726. Q. Yes. Well, no, I think it was 18.
25 Yes, number 30.

1 A. Yes.

2 727. Q. But I think there were, I guess,
3 some attempts by Mr. O'Hara to reach out, and
4 ultimately Mr. O'Hara, on August 18th, indicates
5 that the Peace Bridge Duty didn't see any other
6 option but to extend the restart date until the
7 month after the border is fully reopened.

8 So you'll agree with me that what Peace
9 Bridge Duty Free wanted is an extension of the rent
10 deferral...I'm going to call it indefinite, in the
11 sense that it was until the month after the border
12 is fully reopened. So that's what you were looking
13 for?

14 A. That's what Greg sent to Ron.

15 728. Q. And you didn't agree with that?

16 A. Me, personally?

17 729. Q. No, I mean, this...I assume Mr.
18 O'Hara was sending it on behalf of Peace Bridge Duty
19 Free?

20 A. Peace Bridge Duty Free.

21 730. Q. So that's the position that Peace
22 Bridge Duty Free was taking?

23 A. Yes.

24 731. Q. If you turn the page, this is
25 October 29th.

1 A. Okay.

2 732. Q. So during that interim period, Peace
3 Bridge Duty Free didn't reach out at all to the
4 Authority, did it? So from...

5 A. Is that a question or...

6 733. Q. Yes, I mean, I can't find in your
7 disclosures any communications or engagement to...

8 A. Either side, from the Authority to
9 us?

10 734. Q. Yes. But you will agree with me
11 that shortly after...so this is in August. There
12 have been no...there is no outreach from either
13 side. So you're not reaching out, saying, "We need
14 to do something about this. We need to get..."

15 A. I guess that's your conclusion.

16 735. Q. Well, I don't know. I'm asking is
17 there...that's what I'm asking. Are there documents
18 that are not in your disclosure during this time
19 period?

20 A. Not that I know of.

21 736. Q. No, and there were no internal
22 discussions at Peace Bridge Duty Free during this
23 time period. You and Mr. O'Hara were not exchanging
24 communications during this time period?

25 A. I don't recall.

1 737. Q. You weren't exchanging
2 communications with the board during this period
3 about these issues?

4 A. I did not send anything to the
5 board, and...

6 738. Q. There were no board meetings during
7 these issues...during this period dealing with these
8 issues. So from the time...

9 A. Our board or their board, both
10 boards?

11 739. Q. Your board.

12 A. Yes.

13 740. Q. I don't know about...our board
14 is...this isn't an examination of me.

15 A. Okay.

16 741. Q. So on October 29th you have got
17 the...Mr. Rienas reaches out.

18 A. Right.

19 742. Q. And says, "Here is the draft
20 agreement."

21 A. Okay.

22 743. Q. And attaches the agreement and then
23 identifies a few issues. Do you see that?

24 A. Yes.

25 744. Q. Okay. So October 29th reaches out,

1 identifies a few issues. So the next tab is tab 32,
2 and this is an e-mail that you're copied on from
3 November 13th, so two weeks later.

4 A. Right.

5 745. Q. And he indicates there has been no
6 response to the questions raised by the Authority.
7 Are you aware of a response during that period?

8 A. No.

9 746. Q. No. So there has been no response
10 for two weeks to the draft second rent deferral and
11 there are further questions or the same questions
12 repeated.

13 This e-mail does not appear to be in your
14 disclosures. Do you know why that may be? You just
15 couldn't find it?

16 A. I do not know why it...

17 747. Q. Okay. So over on to 33, it's the
18 same document. I just want to point out in mine
19 it's the same document. So I just eliminated it
20 from theirs. That's a blank page.

21 A. Okay.

22 748. Q. So that's a blank page. So the tabs
23 that I sent you had two of the same page. I don't
24 know why. So I just left it out. There is nothing
25 at tab 33. It is blank.

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1 So over on to 34, so Peace Bridge Duty
2 Free, on November 16th, ultimately responds, and you
3 are again copied on this e-mail. Do you recall this
4 e-mail, and indicates that there wasn't...that from
5 Peace Bridge Duty Free's perspective, they didn't
6 think there was an urgency there, or didn't see an
7 urgency to this, or didn't realize there was an
8 urgency to complete the second deferral because it
9 took the Authority three months to deliver it.

10 So they don't really see any urgency here,
11 and he raises one issue about the rent deferral.
12 The only issue that is raised by Mr. O'Hara is that
13 the expiry shouldn't be December 31st, and wants it
14 March 31st. That's the only issue he raises.

15 He doesn't raise an issue about the fact
16 that it's a rent...or you don't raise an issue about
17 the fact that it is a rent deferral instead of an
18 abatement, do you?

19 A. There is one question here about the
20 timing of it.

21 749. Q. Yes, the timing of it, that's the
22 only issue you raise. Then we go on...let me ask
23 you this, though. At this point in time, had the
24 provincial termination moratorium taken effect? It
25 took effect May 1st, didn't it?

1 A. Yes.

2 750. Q. Okay. So that's not something that
3 you considered. The moratorium was not something
4 that was in your mind when you were dealing with the
5 Authority?

6 A. I can't...I don't know the legal
7 part of the moratorium. So I don't know.

8 751. Q. No, sorry, the fact that...

9 A. Yes.

10 752. Q. ...the Authority could not kick you
11 out, could not evict you, based on non-payment of
12 rent, was that something that was in your mind at
13 this point in time?

14 A. I don't recall.

15 753. Q. You don't recall?

16 A. Yes.

17 754. Q. Then we go over on to tab 35.

18 You're copied on all these.

19 A. Yes.

20 755. Q. And Mr. Rienas agrees to the changes
21 made. So it's now March 31st, 2021, exactly as you
22 have requested, Peace Bridge Duty Free has
23 requested.

24 A. M'hm.

25 756. Q. They provide some information to you

1 on CERS and asks for the HST reimbursement, okay?

2 A. M'hm.

3 757. Q. Then we go on to tab 36. At tab
4 36...sorry, and also just to be clear, at tab 35,
5 going back to just make sure we close that off, he
6 does indicate the board was going to have to approve
7 the agreement, correct? So you were aware that the
8 Authority board approval was required?

9 A. Yes.

10 758. Q. So November 20th...that is over on
11 36, he indicates to you and Mr. O'Hara that the
12 Authority board tentatively approved the rent
13 deferral subject to...conditional on greater
14 assurances as to receiving unpaid rent, and
15 expresses the concern that zero rent had been paid
16 since April of 2020.

17 MR. JONES: Well, the e-mail says what
18 it says.

19 759. MR. SHEA: I'm just confirming. I'm
20 going through the document.

21
22 BY MR. SHEA:

23 760. Q. So you were aware on November 20th
24 that the board had tentatively approved it, correct?
25 Sir, let your client answer the question.

1 MR. JONES: How can he know what the
2 board did? All he can know is that this e-
3 mail was sent.
4

5 BY MR. SHEA:

6 761. Q. Okay. So you were aware...

7 A. I acknowledge the e-mail from Ron.

8 762. Q. You received an e-mail from Ron...

9 A. Yes.

10 763. Q. ...telling you that the board

11 approval was tentative, correct?

12 A. I agree I got the e-mail from Ron.

13 MR. JONES: Right, but that's not what
14 the resolution says.

15 764. MR. SHEA: Sorry, sir...

16 MR. JONES: He can't give evidence about
17 what the board actually did.

18 765. MR. SHEA: Sir, stop interrupting, and
19 stop providing evidence, please.

20 MR. JONES: Well, I just want to make
21 sure that the question is being put to the
22 witness in proper context.

23 766. MR. SHEA: Sir, let's take a break. Off
24 the record.
25

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1 --- upon recessing at 2:13 p.m.

2 --- A BRIEF RECESS

3 --- upon resuming at 2:14 p.m.

4
5 JIM PEARSON, resumed

6 CONTINUED CROSS-EXAMINATION BY MR. SHEA:

7
8 767. Q. Go to the next document, please. So
9 the next document is over at 37. Thirty-seven is a
10 copy of the November, 2020 rent deferral agreement.
11 Do you recognize this document?

12 A. Yes, I do.

13 768. Q. And you'll agree that the Authority
14 never signed this document?

15 A. It's not signed. It was only signed
16 by Peace Bridge.

17 769. Q. So the Authority never signed this
18 document?

19 MR. JONES: Well, again, Counsel, he...

20 770. MR. SHEA: I asked whether...

21 MR. JONES: You can ask him whether he
22 received a signed version back, but I don't
23 think he is in a position to say what they
24 did.

25

1 BY MR. SHEA:

2 771. Q. Okay. Did you receive a signed
3 version of this back? Let me ask do you have any
4 knowledge of the Authority signing this document?

5 A. I have no knowledge of that.

6 772. Q. And you never received a signed copy
7 of this document?

8 A. I do not believe we did.

9 773. Q. Turn to the next page, please, 38.
10 So you'll agree that you have seen this e-mail
11 before?

12 A. Yes.

13 774. Q. And so you'll agree that in December
14 there were exchanges between you and Mr. Rienas
15 concerning financial...the audited financial
16 statements and other information. Is that correct?
17 You'll agree with that?

18 A. Yes.

19 775. Q. December 9th, which is the next one,
20 39, you'll agree that on December 9th Mr. Rienas
21 took the position that "we", the Authority, didn't
22 believe that Peace Bridge Duty Free was being
23 forthcoming in providing information and was
24 delaying.

25 I'm not asking you to agree that he

1 believed that, but that's what he told you. That's
2 the position the Authority took?

3 A. That's what Ron said in this letter.

4 776. Q. And then turning the page over to
5 40, on 40 you provided further information to Mr.
6 Rienas concerning the financial position of Peace
7 Bridge Duty Free. Is that correct?

8 A. I responded to the questions I
9 believe Ron and Karen had sent over.

10 777. Q. And the answers to those questions
11 included providing financial information, correct?

12 A. More information, yes.

13 778. Q. So at point 4 you indicate that as
14 at November 30th you had drawn down 115,000 of a
15 900,000 line of credit. That line of credit is with
16 RBC?

17 A. All our credit is with RBC.

18 779. Q. Okay. Over on to 41 this is a
19 letter from the Authority demanding a million dollar
20 payment. Is that how you interpreted this?

21 MR. JONES: Take a moment to review it.

22 THE DEPONENT: Sure. Pretty
23 much...well, the letter says what the
24 letter says, 3.1 million dollars.

1 BY MR. SHEA:

2 780. Q. They said that's...3.1 million was
3 the arrears?

4 A. Right.

5 781. Q. And they're looking for a million?

6 A. Right.

7 MR. JONES: They are also looking for
8 some other...

9 THE DEPONENT: Another 2.1.

10
11 BY MR. SHEA:

12 782. Q. They were looking for payment terms,
13 a schedule for the 2.1. They're looking for the
14 million payment and looking for schedule...for
15 payment terms for the 2.1.

16 MR. JONES: And they also want...I don't
17 want to give evidence, but I'm just reading
18 the letter.

19
20 BY MR. SHEA:

21 783. Q. And in response to that letter at
22 tab 42 you write back and you don't agree to pay the
23 million or come up with a schedule. Is that a fair
24 summary of your letter?

25 A. There's a lot to it. I wouldn't say

1 that's the only point to it. I think the letter,
2 again, speaks for itself, but...

3 784. Q. So what point were you trying to get
4 across in this letter?

5 MR. JONES: Just to be clear, it's Mr.
6 O'Hara's letter.

7
8 BY MR. SHEA:

9 785. Q. So what point was Peace Bridge Duty
10 Free trying to get across in the letter? Do you
11 know? Let me ask you another question. Did you
12 speak to Mr. O'Hara about this letter?

13 A. I'm just reading it. One second.
14 This letter is about a plan, I recall, of going
15 forward, how we can work together and help the
16 bridge authority and the duty free.

17 786. Q. But in this letter were you agreeing
18 to pay the million?

19 A. In this letter?

20 787. Q. Did you ever agree to pay the
21 million?

22 A. I think everything we did was more
23 of a bigger picture.

24 788. Q. So let me ask did you pay the
25 million?

1 A. No, we did not pay the million.

2 789. Q. Okay. In response...

3 A. Forty-three?

4 790. Q. Yes. Did you see this or did you
5 discuss this with Mr. O'Hara, this e-mail...this
6 letter, sorry?

7 MR. JONES: You're talking about tab 43
8 now?

9 791. MR. SHEA: Yes. Sorry, are you looking
10 at tab 43? Yes.

11 THE DEPONENT: Yes.

12

13 BY MR. SHEA:

14 792. Q. Okay, so did you...

15 A. Yes, I have seen this letter.

16 793. Q. Okay. So without getting into the
17 specifics, Peace Bridge Duty Free did respond to Mr.
18 O'Hara's letter. He acknowledged the letter of
19 December 23rd and he responded?

20 A. Correct.

21 794. Q. And turning the page to the next
22 page, 44?

23 A. Yes.

24 795. Q. The duty free then responded back to
25 Mr. O'Hara...Mr. Rienas, correct?

1 A. M'hm.

2 796. Q. So the parties were engaged in a
3 discussion?

4 MR. JONES: Well...

5 797. MR. SHEA: I asked him a question. He
6 can deny it if he wants, sir.

7 THE DEPONENT: Well, you define as...
8

9 BY MR. SHEA:

10 798. Q. Well, they were engaged in an e-mail
11 exchange.

12 A. We were trying to work towards a
13 bigger solution for the Authority and the duty free.

14 799. Q. But in this e-mail, in this letter,
15 do you not indicate a) that you're not in a position
16 to meet the demand for a million dollars. You can't
17 pay a million dollars based on the financial
18 statements and the assertion that you don't have a
19 million dollars on hand. You make that assertion in
20 the second-last paragraph on this page. Am I
21 correct that you indicate you can't pay the million
22 dollars because you don't have the money?

23 A. I agree we weren't in the
24 position...the letter says we weren't in a position
25 to pay the million dollars.

1 800. Q. It also says you started the BCAP
2 process. Did, in fact, you start the BCAP process?

3 A. Yes, we did.

4 801. Q. And...

5 A. And that went on.

6 802. Q. When did you file that application?

7 A. I can't recall.

8 803. MR. SHEA: Would you undertake to
9 determine when you filed that application?

10 THE DEPONENT: I can undertake to...

11 804. MR. SHEA: No, no, only your lawyer
12 gives undertakings.

13 MR. JONES: To advise when they applied
14 for the...

15 805. MR. SHEA: The BCAP.

16 THE DEPONENT: The process.

17
18 BY MR. SHEA:

19 806. Q. When you made the application,
20 when...

21 A. I didn't say that. We started the
22 process.

23 807. Q. Okay, when did you start the
24 process?

25 A. That's the question.

808. Q. Okay, when did you start the process and what were the results? Did you...you indicate in this letter that you will keep the Authority updated on your progress through BCAP. Did you ever do that?

A. I'm trying to find correspondence to that.

809. Q. There is no correspondence...I can tell you there is no correspondence in this file to that. So it's correct that you did not keep them updated?

A. I don't recall.

810. Q. You don't recall keeping them
updated as to the process?

A. BCAP.

811. Q. And you finally indicate that you're in the process of finalizing a business plan setting out your going forward plan, and you're going to get that by January the 15th, 2021, correct?

A. That was the target goal.

812. Q. Okay. So I want to address, first of all, with you the assertion that you did not have a million on hand to make the million dollar payment. Is it not correct that you had 889,000 available on your line of credit with RBC?

1 A. That, I'm not sure. I'm honestly
2 not sure. We would have to check with...I know we
3 had that line of credit. I wasn't sure about
4 the...we had access to that or not.

5 813. Q. I refer you back to your response...

6 A. Yes.

7 814. Q. ...to Mr. Pearce (sic) at tab 40.

8 A. Right.

9 815. Q. Where you indicate that you have an
10 operating facility, and as of November 30th the
11 balance drawn on the facility was 115, with a limit
12 of 900.

13 A. Right.

14 816. Q. So certainly you will agree with me
15 that Mr. Rienas would not be incorrect in assuming
16 that you had this money available?

17 A. I can't make that determination with
18 Ron.

19 817. Q. Okay, but you told...in response to
20 a question you say...

21 A. The question is what...I believe he
22 had the credit facility and questioned what the
23 credit facilities were and I explained the different
24 ones.

25 818. Q. Okay.

1 A. There are three different ones. I
2 explained those to him, so...

3 819. Q. And then in your 2020, which is
4 Exhibit 4...

5 A. Okay.

6 820. Q. In your 2020...but this is at
7 December 31st, 2020...do you have those handy?

8 A. I have seen them around here
9 somewhere.

10 821. Q. I will give you another copy if you
11 would like. I have other copies here.

12 A. It's in here somewhere.

13 822. Q. It's okay. Here is another copy.

14 A. Okay.

15 823. Q. So in the 2020 financials, if you
16 turn to...these are your audited financials as at
17 December 31.

18 A. Right.

19 824. Q. If you turn to the asset listing, so
20 the balance sheet?

21 A. Yes.

22 825. Q. So you have got...you list as your
23 assets 734,000 in receivables, and note 6...I think
24 if you'll turn to note 6, it refers to an excise tax
25 credit of 427,000 as being included in that, sales

1 and excise tax, 420,000.

2 A. Right.

3 826. Q. So you had that coming.

4 A. These were...note that these
5 probably were completed on December 31st before the
6 end of March, 2021.

7 827. Q. Those were on your balance sheet?

8 A. Yes.

9 828. Q. And then you had a tax refund of 1.2
10 million coming.

11 A. So on April 21st, that's when we got
12 that.

13 829. Q. Yes. So you have 1.2 million that
14 you got April 21st.

15 A. We didn't get it, but that's when
16 the statements came out.

17 830. Q. So as at December the 30th...

18 A. Right.

19 831. Q. ...you got a line of credit that has
20 889,000 available?

21 A. I can't confirm that, but anyways.

22 832. Q. Okay.

23 A. That's your assumption. I can't
24 confirm that.

25 833. Q. You advised the Authority that...

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1 A. I explained our letters of credit to
2 Ron.

3 834. Q. Not letters of...that was your
4 credit line.

5 A. Credit line, yes, but they're all in
6 our credit facility. I explained that, what the
7 three different parts were, but again, it would be
8 up to the Royal Bank whether that money was actually
9 available or not.

10 835. Q. And you had 427,000 coming in HST, I
11 assume HST?

12 A. Correct.

13 836. Q. HST input tax credits, and 1.2
14 million in tax...

15 A. Correct.

16 837. Q. ...refunds?

17 A. Correct.

18 838. Q. And you will also agree with me that
19 based on this in...

20 A. But note on that HST receivable, we
21 probably owed a lot of that to the bridge authority.
22 That flows through to them. I'm not sure of the
23 exact breakout of that at December 31st.

24 839. Q. HST, why would you owe HST to us?

25 MR. JONES: That was paid...that was

1 part of what Ron Rienas was asking for.

2 THE DEPONENT: One of the demands that
3 he...

4
5 BY MR. SHEA:

6 840. Q. No, that's the input tax...the HST
7 there is input tax credit, right. So you had
8 already...

9 A. No, we might have accrued some of
10 that, knowing we owed that to the Authority.

11 841. Q. So where is the...

12 A. So of that...

13 842. Q. Sorry, note 6...okay, let's...can
14 you undertake to determine whether the sales and
15 excise tax...

16 A. Right.

17 843. Q. ...receivable owing back to you...

18 A. That 400,000 was all to us or some
19 to the Authority?

20 844. Q. Yes.

21 A. Yes.

22 845. Q. And now I want to get to...so and in
23 2020, the same financial statements...

24 A. Okay.

25 MR. JONES: Sorry, hold on. You're

1 asking for an undertaking to advise...

2 846. MR. SHEA: As to what, if any portion,
3 of the...

4 THE DEPONENT: Four hundred and twenty-
5 four thousand?

6 847. MR. SHEA: ...427,000 was payable to the
7 Authority.

8 MR. JONES: Okay.

9
10 BY MR. SHEA:

11 848. Q. Okay. So I also want to confirm
12 with you that in 2020 dividends of 160,000 were paid
13 to the shareholders.

14 A. Is that what it says?

15 849. Q. That's over on the statement of cash
16 flows.

17 A. That is correct.

18 850. Q. And in the...

19 A. That was paid in months of January
20 and February of 2020 before the pandemic hit.

21 851. Q. And in the year before, in 2019,
22 1.36 million in dividends had been paid.

23 A. Correct, before the pandemic hit.

24 852. Q. So how did Peace Bridge Duty Free
25 use the 1.2 million in taxes it got back?

1 A. Great question. I can't...I don't
2 have that answer right now, but it was just to
3 maintain the building and maintain our costs we were
4 incurring.

5 853. Q. So to pay other obligations, aside
6 from the Authority?

7 A. And the Authority. We paid them.

8 854. Q. What portion of the...

9 A. Well, to maintain the building...

10 855. Q. What portion of the...

11 A. ...which the Authority owns.

12 856. Q. What portion of the 1.2 million was
13 paid to the Authority?

14 A. I don't have a detailed answer.

15 857. Q. Will you undertake to advise...to
16 make inquiries and advise as to what portion of the
17 1.2 million dollar tax return was paid to the
18 Authority? You are going to make inquiries on the
19 427.

20 A. M'hm.

U/T

21 858. Q. Did Peace Bridge Duty Free reach out
22 to its shareholders and ask if they would return a
23 portion of their dividends?

24 A. I would have no knowledge of that.

25 859. Q. So you're not aware of...you

1 certainly didn't reach out to them and ask them to
2 return the dividends?

3 A. I did not.

4 860. Q. And you're not aware of Mr. O'Hara
5 reaching out to them and asking them to return their
6 dividends?

7 A. I have no knowledge either way.

8 861. Q. So let me take a moment here see if
9 we have portions we can cut down. You can keep
10 that. We have a second marked copy here.

11 Okay, so we're now edging into 2021. So
12 on December 30th...

13 A. What number?

14 862. Q. I'm setting the framework here. So
15 December 30th you indicated that you would have
16 a...or not you personally, but Peace Bridge
17 indicated you would have a business plan by January
18 15th, correct?

19 A. That was the goal, to try to get
20 something done.

21 863. Q. Well, you met the goal, well, that
22 one. So January 6th, so if you turn to...

23 A. I'm sorry?

24 864. Q. ...that one. So if you turn to
25 45...open up tab 45.

1 MR. JONES: I think it's 46.

2 865. MR. SHEA: No, I'm at 45.

3
4 BY MR. SHEA:

5 866. Q. Forty-five is...so Mr. Rienas
6 reminds Mr. O'Hara...first of all, have you seen
7 this letter before?

8 A. I believe, yes.

9 867. Q. Reminds him that the business plan
10 is due on January 15th, and confirms...

11 A. Again, our best intentions were
12 January 15th.

13 868. Q. But again, you made it. So if you
14 turn the page, the next page is 46.

15 A. Hey, we made it.

16 869. Q. So 46...did you see this...you're
17 aware of this letter, this business plan?

18 A. Yes.

19 870. Q. Okay, and did...was there back and
20 forth on this business plan before it was sent?

21 A. To the Authority?

22 871. Q. Yes.

23 A. To the Authority, no, I don't
24 believe it was.

25 872. Q. No, back and forth, internal back

1 and forth?

2 A. I would say there would have been
3 discussions as this gets all created in any business
4 plan.

5 873. Q. Would there have been written
6 exchanges between you and Mr. O'Hara about this?

7 A. It's hard to say. Just there
8 is...there is a lot of work in this. So there would
9 have been discussions of the concepts and build up
10 of the business plan and certain...

11 874. Q. But you don't recall if there were
12 e-mail communications or drafts of this
13 between...internal communications with drafts of
14 this?

15 A. Communicate back and forth, no, I
16 don't...

17 875. Q. Would the board have seen this
18 before it was sent?

19 A. That I do not know.

20 876. Q. Can you inquire as to if the board
21 saw this document before it was sent and approved
22 it?

23 A. Is that an undertaking or...

24 877. MR. SHEA: Yes, that's what I'm asking
25 for.

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1 MR. JONES: Well, you can assume it was
2 approved if it went out.

3 878. MR. SHEA: I would like to see the
4 documents. I would like to see, for
5 example, if there was a report to the board
6 about this, and whether the board actually
7 passed a resolution approving it.

8 MR. JONES: Well, you have our
9 disclosure about...

10 879. MR. SHEA: If that's a refusal, then,
11 please give the refusal.

12 MR. JONES: Okay. Well, I'm telling you
13 if there was, it would be in the
14 disclosure. You have our disclosure.

15
16 BY MR. SHEA:

17 880. Q. So I'm going to take it there was
18 none. There was no internal communications. This
19 thing just came out of whole cloth like this, no
20 drafts, no nothing.

21 This is how it came out, fine. That's
22 your position? It came out of whole cloth just like
23 this. You sat down one day. You drafted this.
24 This is what came out. It got sent?

25 A. The question is...

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1 881. Q. That's my question.

2 A. Was there work to build these up?

3 Yes.

4 882. Q. Yes. Is that work in writing?

5 A. I can give an undertaking. Well...
6 there might have been.

7 883. Q. There might have been?

8 A. Discussions.

9 MR. JONES: You said there were
10 discussions to develop this?

11 THE DEPONENT: Yes.

12

13 BY MR. SHEA:

14 884. Q. I'm asking him...

15 A. Yes.

16 885. Q. ...is his position that none of them
17 were in writing. So this document was produced in
18 one sitting. This document came out. There were no
19 previous drafts, no exchanges of drafts between
20 anyone, just this?

21 A. You said in writing. I sent out a
22 draft business plan out to...

23 886. Q. To Mr. O'Hara, did you send a draft
24 business plan out to Mr. O'Hara?

25 A. Not in its entirety, I don't...no.

1 I don't believe I did.

2 887. Q. Well, did you send parts of a draft
3 business plan out to Mr. O'Hara, asking for
4 feedback?

5 A. No, again, I'm not sure if I sent
6 them out or we had discussions on...the buildup to
7 this, there might have been discussions with him,
8 but that I would send them out? I'm not...I don't
9 know.

10 888. Q. Can you undertake to look at your
11 records to determine...

12 A. Sure.

13 889. Q. ...if there were exchanges between
14 you...if your position is that if it's not here...

15 MR. JONES: That's the exact same
16 position we got from Mr. Stanek.

17 890. MR. SHEA: I'm sorry. I didn't...what
18 you got from Mr. Stanek is what you got
19 from Mr. Stanek. I'm asking you for
20 the...you can give the refusal. That's
21 your right.

22 MR. JONES: Sure.

/R

23 891. MR. SHEA: So that's your right, to give
24 the refusal. I have no objection. I told
25 you that before. If you want to refuse,

1 refuse. So it's a refusal?

2 MR. JONES: Yes.

3 892. MR. SHEA: Okay. Just to be clear, the
4 request for an undertaking was to...

5 MR. JONES: Well, to be clear, my answer
6 is if there was, it's in the documents.
7 It's in the disclosure. That's my answer.

8 893. MR. SHEA: That's his answer you mean.
9 So your...that's his answer, okay. That's
10 why I asked. So the position, then, is
11 this came out of whole cloth. There were
12 no previous exchanges of this, and his
13 answer was he wasn't sure, just so we're
14 clear on that. Okay.

15 MR. JONES: Yes.

16
17 BY MR. SHEA:

18 894. Q. So did you hire a consultant to
19 assist in preparation of a business plan?

20 A. I do not believe so.

21 895. Q. Did you engage with your accountants
22 with respect to the preparation of your business
23 plan or your projections?

24 A. I do not believe so.

25 896. Q. So no consultants, did not engage

1 with anyone. You did this yourself?

2 A. Yes.

3 897. Q. And you didn't engage with anyone
4 else on the staff, just you?

5 A. Correct, yes.

6 898. Q. So the assumptions on which these
7 are based are purely yours, and there is no
8 underlying documents to support the assumptions?

9 MR. JONES: Do you want to take him to
10 something in particular that you're
11 referring to?

12
13 BY MR. SHEA:

14 899. Q. One fifty-three you raise various
15 assumptions with respect to automobile traffic.

16 A. M'hm.

17 900. Q. So your bus traffic based rounded
18 averages. There is no basis for that, other than
19 your own opinion?

20 A. Yes, it would have been mine.

21 901. Q. Automobile traffic based on rounded
22 average is just your opinion as to where they're
23 going to go?

24 A. Yes.

25 902. Q. No basis for this, no experts, no

1 consultants, didn't even look at a website?

2 A. I don't believe there is a website
3 that is going to give you traffic projections.

4 903. Q. My wife tells me Wikipedia does
5 everything. So truck traffic projections, just your
6 numbers, just your guesses?

7 A. My projections, yes.

8 904. Q. So then we go on to page 47. So did
9 you see this letter from Mr. Rienas?

10 MR. JONES: Well, take a minute to read
11 it.

12 THE DEPONENT: Yes, I have seen this
13 letter, yes.

14
15 BY MR. SHEA:

16 905. Q. So you will agree with me that in
17 this letter Mr. Rienas makes it clear that it's the
18 position of the Authority that percentage only rent
19 is not acceptable?

20 A. Where does he say that?

21 906. Q. "...In response to your letter of
22 January 15..."

23 A. Okay.

24 907. Q. "...Peace Bridge Duty Free's
25 proposed financial business plan of

1 eliminating base rent and moving to only
2 percentage rent is unacceptable..."

3 Do you see that?

4 A. That's Ron's letter, yes.

5 908. Q. And you'll appreciate that further
6 down, Mr. Rienas, on behalf of the Authority,
7 indicates:

8 "...Your rent proposal was the key element
9 in Peace Bridge Duty Free winning the
10 concession, and was included unamended in
11 the lease between Peace Bridge Duty Free
12 and the Authority, and the Authority is not
13 prepared to alter the basis upon which the
14 concession was awarded..."

15 Do you see that? That's the position.

16 A. Okay.

17 909. Q. Okay, so you're aware that that was
18 the position being taken?

19 A. I acknowledge that's his letter.

20 910. Q. Okay. January 19th, this letter, he
21 also makes an inquiry and indicates that the plan is
22 silent on accessing government relief programs like
23 the BCAP and the HASCAP. You indicated that you
24 were going to give me some information on the BCAP,
25 but what about the HASCAP? Did the bridge...did the

1 Peace Bridge ever apply...sorry, did Peace Bridge
2 Duty Free apply for that?

3 A. Yes, we did.

4 911. Q. And what was the result?

5 A. Again, a million dollar loan.

6 912. Q. Okay, and when did you receive that
7 million dollar loan?

8 A. I have to get back to you with the
9 exact date.

10 913. Q. Okay. So I'm going to ask you to
11 give me an undertaking as to when you got the
12 million dollar loan and how those funds were spent.

13 A. Yes.

14 914. Q. So the undertaking is when the
15 HASCAP million dollars was received and how it was
16 spent. Okay.

17 MR. JONES: I'm going to take that one
18 under advisement.

U/A

19 915. MR. SHEA: Okay.

20
21 BY MR. SHEA:

22 916. Q. So you were aware on...or Peace
23 Bridge Duty Free was aware on January 19th that the
24 Authority was not going to agree to a move to
25 percentage only rent. They found that to be

1 unacceptable?

2 A. On January 19th, right.

3 917. Q. January 19th, and did that ever
4 change? Did they ever take a different position on
5 whether they were prepared to accept percentage only
6 rent?

7 A. We had always hoped through
8 discussions that would be the...part of the plan to
9 go forward.

10 918. Q. The next document is March 25th. So
11 I take it that between January 19th, when the plan
12 for percentage only rent was rejected, and March
13 25th, there were no new proposals from Peace Bridge
14 Duty Free?

15 A. If they're not in your file...

16 919. Q. If they're not in the documents,
17 they don't exist. They're not in the documents. So
18 they don't exist.

19 So the next proposal is March 25th. Do
20 you recall that proposal?

21 A. Yes.

22 920. Q. And why don't you read this
23 document?

24 A. Sure. Okay.

25 921. Q. So you'll agree with me that this

1 proposal doesn't differ significantly from your
2 January 19th proposal?

3 A. Okay.

4 922. Q. The documents are the same, aren't
5 they, the attachments?

6 A. Are they?

7 923. Q. It refers to, "As previously
8 indicated." Sorry, I don't want to interrupt you,
9 but isn't the gist of this letter, the third
10 paragraph, where you ask for a meeting? Isn't that
11 the purpose of this letter, to ask for a meeting?

12 A. Yes.

13 924. Q. Okay. So you're putting forward the
14 proposal again and you're asking for a meeting. Is
15 that fair?

16 A. Again...

17 925. Q. Go back and check to see if they
18 differ significantly.

19 A. Yes.

20 MR. JONES: So Counsel, are you telling
21 the witness that these documents are the
22 same?

23 926. MR. SHEA: I'm not. I'm suggesting
24 they're the same, and I'm asking him to
25 tell me if he thinks they're different.

1 MR. JONES: The numbers look at least
2 different in some spots.
3

4 BY MR. SHEA:

5 927. Q. So what is the basis for the
6 difference, like, why the change? What changed
7 between January 19th...January 15th, sorry, and
8 March 25th?

9 MR. JONES: Is your question to identify
10 what's different?
11

12 BY MR. SHEA:

13 928. Q. No, what changed. Not the numbers.
14 What changed from you...from a basis for your
15 assumptions? So what facts changed for you that
16 caused you to change these numbers? Because as
17 I...I could be wrong, but previous evidence was that
18 there is no document...if there is no underlying
19 documents in your disclosures, they don't exist.

20 There are similarly no underlying
21 documents for this in your disclosure. So I assume
22 you also created this, but something must have
23 changed to cause the numbers to change.

24 MR. JONES: While we're looking at this,
25 can we go off the record for just a moment?

1 929. MR. SHEA: Sure.

2
3 --- upon recessing at 2:54 p.m.

4 --- A BRIEF RECESS

5 --- upon resuming at 3:13 p.m.

6
7 JIM PEARCE, resumed

8 CONTINUED CROSS-EXAMINATION BY MR. SHEA:

9
10 930. Q. We were at the point where we took
11 the break so you could compare the 15th January and
12 the 25 March proposals.

13 A. Right. I must say they are very
14 similar. There might have been some rounding on
15 some sales and expenses, but they're very similar in
16 concept, and it looked like the March 25th was,
17 again, trying to engage the Authority to come up
18 with this...work together on a plan going forward.
19 That's...again, percentage rent was a key to that.

20 931. Q. Okay. So from your perspective,
21 you're saying that the purpose of the March
22 25...there were no purpose for the changes. So the
23 changes are inconsequential, from your perspective?

24 A. Yes, yes, it looked like there was
25 some rounding on the sales, instead of make an easy

1 million. It went to 18,360.

2 932. Q. What you were trying to do is
3 convince the Authority to agree to percentage only
4 rent?

5 A. To engage in...

6 933. Q. In a discussion of percentage only
7 rent?

8 MR. JONES: Let him answer the question.
9

10 BY MR. SHEA:

11 934. Q. So?

12 A. Thank you, yes. To show them that
13 percentage rent was the viable way, going forward,
14 until traffic returned. As we said in the letter,
15 paying full rent with no traffic, and I wanted to
16 highlight to them the difference, and the percentage
17 rent over time, business is viable until traffic
18 comes back.

19 So that was the whole idea, get them to
20 engage in the numbers, not just a blanket, "No."
21 "Let's discuss this, these scenarios."

22 935. Q. Okay, but at this point in time,
23 you're not paying any rent?

24 A. We weren't open.

25 936. Q. No, but so you're saying that you

1 would get them to discuss...

2 A. We're paying...

3 937. Q. Let me finish, please.

4 A. Okay.

5 938. Q. Get them to agree to percentage
6 rent.

7 MR. JONES: You didn't let him finish
8 his answer.

9 THE DEPONENT: You said we weren't
10 paying rent. We were paying additional
11 rent and services.

12
13 BY MR. SHEA:

14 939. Q. Okay, but you're not paying rent
15 base...you're not paying the base rent and you're
16 not paying percentage rent?

17 A. Correct, because it was zero for
18 percentage rent.

19 940. Q. So you were asking them to agree to
20 accept percentage rent only going forward?

21 A. Yes, to the...yes.

22 941. Q. Okay, thank you. So the next letter
23 is...or the next correspondence is at tab...

24 A. Percentage rent, and the idea
25 was...I'm sorry to interrupt again, but percentage

1 rent until the business comes back.

2 942. Q. Show me where you were saying that
3 you would go back to paying minimum rent.

4 A. Well, that wasn't part of the
5 discussion.

6 943. Q. But your proposal was to pay
7 minimum...to pay percentage rent only?

8 A. And as soon as sales came back, I
9 assume we would have reached over the four million.

10 944. Q. But just to be clear...

11 A. Yes.

12 945. Q. ...percentage rent only, and your
13 position is if sales got to a certain point...

14 A. Right.

15 946. Q. ...that percentage rent would equal
16 the base rent?

17 A. Correct.

18 947. Q. So you were proposing to amend the
19 lease to remove base rent?

20 A. The idea was to have a discussion
21 with the Authority, sit down and work this out to
22 what is best going forward.

23 948. Q. But what did you want?

24 A. We wanted to meet with them and
25 discuss, using numbers, to get a plan going forward.

1 949. Q. Okay.

2 A. Yes.

3 950. Q. So on tab 49 is an April 12th letter
4 from Peace Bridge Duty Free to the Authority.

5 A. M'hm.

6 951. Q. Are you familiar with this letter?

7 A. Yes.

8 952. Q. Okay, and in this letter, at the
9 very last line...

10 A. Yes.

11 953. Q. ...Mr. O'Hara says:

12 "...If the Peace Bridge authority is going
13 to decline our request to engage in good
14 faith discussions, we kindly request that
15 you explain why you refuse to do so..."

16 A. Right.

17 954. Q. The next day the Authority wrote
18 back, did they not?

19 A. Okay.

20 955. Q. That's the fifth (sic).

21 A. That is dated April 13th, correct.

22 956. Q. And did they not indicate that they
23 continued to be prepared to have discussions when
24 Peace Bridge Duty Free has provided its 2020 audited
25 financial statements? They assert that you

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1 previously indicated that they would be available by
2 the end of March at the latest. Did you indicate
3 that?

4 A. That is, I think, in the lease, if I
5 remember the lease right, and normally we have those
6 done. Do I have that somewhere? Did I say that
7 somewhere?

8 957. Q. Do you recall saying that...

9 A. March 31st?

10 958. Q. ...the financials would be available
11 by the end of March at the latest?

12 MR. JONES: Do you have that letter to
13 direct him to or...

14
15 BY MR. SHEA:

16 959. Q. No, I'm just saying this is what Mr.
17 Rienas asserts. Do you have any basis to say he is
18 wrong?

19 A. I can't fairly...I would have to go
20 back into the...

21 960. Q. Let me put it another way.

22 A. Sure.

23 961. Q. Did someone reach out to Mr. Rienas
24 and say, "No, we never said that"?

25 A. I believe that was our belief, that

1 they would be finished by the end of March.

2 962. Q. But they weren't, were they?

3 A. We'll see the dates on there. I
4 think it is...I think we just had those, right, and
5 they said an April date or whatever.

6 963. Q. Yes. So you will agree that you
7 provided the financials in the middle of April?

8 MR. JONES: Do you have a document to
9 refer him to?

10
11 BY MR. SHEA:

12 964. Q. I'm asking when he...well, let me
13 ask this. So the financials are dated April 21st,
14 2021.

15 A. Correct.

16 965. Q. So you could not have provided them
17 before April 21st, 2021?

18 A. They were not...yes, we couldn't
19 have provided them by end of March.

20 966. Q. Yes. So but you also could not have
21 provided them to the Authority before you received
22 them, and you got...they're dated April 21st, 2021.
23 So you could not have given them to the Authority
24 before that?

25 A. I don't want to agree with that,

1 because I'm not exactly sure when I sent them to the
2 Authority, but...

3 967. Q. Would you have sent them to the
4 Authority before they were given to you?

5 A. Well, no, no, you're referring to
6 the date, and I'm not sure if this date is the...

7 968. Q. Okay.

8 A. ...the date that is...

9 969. Q. Can you give me an undertaking as to
10 when you gave the 2020 financials to the Authority?

11 A. M'hm.

12 MR. JONES: Well...

13 970. MR. SHEA: Refuse or give it.

14 MR. JONES: I think...

15 971. MR. SHEA: I have tried to...

16 MR. JONES: It's not before...

17 972. MR. SHEA: I asked that question and he
18 said no.

19 THE DEPONENT: Well, I don't know the
20 exact date. That's all. I want to be
21 accurate.

22 MR. JONES: I think what he asked you is
23 it's...you didn't give it to them before
24 the financials are dated. We can agree
25 on...

1 973. MR. SHEA: Okay, that's what I asked.

2 MR. JONES: You don't...

3 THE DEPONENT: Yes.

4 MR. JONES: I assume you don't...there
5 is no issue about that?

6 THE DEPONENT: Yes.

7
8 BY MR. SHEA:

9 974. Q. Okay.

10 A. Okay.

11 975. Q. So you gave them to him on some time
12 after the 21st, and you will agree that the
13 Authority asked some questions about the financial
14 statements?

15 MR. JONES: Can you refer us to what
16 you're talking about?

17
18 BY MR. SHEA:

19 976. Q. I didn't think I was going to have
20 to put this many documents in, but so on...it is in
21 our disclosures at D19, but I'm just asking...I
22 didn't want to put all these documents in, but on
23 May 6th, 2021 you responded to inquiries, correct?
24 Do you know that?

25 A. I don't know that. I don't...show

1 me...is it here?

2 977. MR. SHEA: Let's go off the record for a
3 second.
4

5 --- DISCUSSION OFF THE RECORD
6

7 BY MR. SHEA:

8 978. Q. I'm showing you a document. Do you
9 recognize that document?

10 A. Yes.

11 979. Q. Can I have that one back so I can
12 mark it then as an exhibit?

13 A. Do you want me to go through it or
14 no? No, no.

15 980. MR. SHEA: I'm just asking you responded
16 to their inquiries on...this will be
17 Exhibit 5.
18

19 --- EXHIBIT NO. 5: Letter dated May 6, 2021 from Mr.
20 Pearce to Peace Bridge Authority
21

22 BY MR. SHEA:

23 981. Q. So you responded based on this
24 letter? There was a request to you of April 28th.
25 So within days of receiving the financials, and you

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1 responded on May 6th. Sound about right?

2 A. I responded on May 6th to this April
3 28th, yes.

4 982. Q. Yes.

5 A. Yes.

6 983. Q. Okay. So May 6th you responded. Is
7 it not correct that the Authority arranged an in-
8 person meeting with you for the 13th?

9 A. Me and Greg?

10 984. Q. I don't know. I think so. Let's
11 turn up a document.

12 A. Yes.

13 985. Q. Let's turn up document 51.

14 A. Okay. Oh, yes, okay, yes.

15 986. Q. Yes, so the 13th.

16 A. Yes.

17 987. Q. And again, I'm going to ask the
18 question is there a reason this document wasn't in
19 your disclosures? Did you just not find it?

20 A. I do not know the answer.

21 988. Q. Okay, so you just didn't find this
22 in your disclosures? Is that what...I'm guessing,
23 because it's not in your disclosures.

24 So there was a meeting, and this was on
25 the 13th. So you responded on...delivered the

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1 financials some time after the 21st. They made
2 inquiries of you on the 28th. You responded on the
3 6th. They arranged a meeting on the 13th.

4 After that meeting, you indicated you were
5 going to provide a proposal, did you not?

6 A. Greg mentions in his letter to Ron a
7 proposal, yes, will be coming.

8 989. Q. And you said you were going to start
9 to work on it the next week?

10 A. Yes, yes.

11 990. Q. Okay. So 52, the next set of
12 documents, again, 52 doesn't appear to be in your
13 disclosure. So I assume you just couldn't find 52.

14 A. I don't know.

15 991. Q. Okay. Fifty-two, on we see May
16 14th...so the day after the meeting.

17 A. Okay.

18 992. Q. The authority asks for the proposal
19 June 1st.

20 A. Right.

21 993. Q. Because you needed to sort some
22 stuff out with RBC. Don't know what, but Greg
23 O'Hara...you're not copied on this, but were you
24 aware of this e-mail?

25 A. Yes.

1 994. Q. Okay. Greg indicated to the
2 Authority that...this is on the 26th of May...

3 A. Right.

4 995. Q. ...that they hadn't got things
5 sorted out with RBC on the credit request renewal
6 yet, so proposal won't be completed as soon as they
7 hoped. As soon as we hear anything definitive from
8 the bank, you'll get back to the Authority. So
9 that's May 26th.

10 A. Okay.

11 996. Q. And there was no communications
12 concerning a proposal from May 26th until August
13 21st, was there?

14 A. I can't say that is factual.

15 997. Q. But if it is not in your
16 disclosures, it didn't happen?

17 A. Okay.

18 998. Q. I'm just asking.

19 A. I don't know, yes.

20 999. Q. So do you recall anything being sent
21 to the Authority between the 26th of May and August
22 21st?

23 A. I do not recall.

24 1000. Q. But on August 21st, if you turn the
25 tab over to 53, on August 21st you delivered this

1 proposal, did you not?

2 A. Correct. Is there a date in there?
3 I believe...we did submit this. I believe that was
4 the same time frame.

5 1001. Q. Did you want to check whether it was
6 August 21st or do you agree it was August 21st?

7 A. I'll go with August 21st.

8 1002. Q. Okay. So this is the proposal that
9 you had promised in June?

10 A. Okay.

11 1003. Q. Or that we had requested in June,
12 and it's in August. So this proposal...I'm going to
13 take you to page...it's 290 at the top. It's page
14 5, bottom right, page 5 of the proposal. Okay?

15 A. Yes.

16 1004. Q. This is your proposal?

17 A. Yes.

18 1005. Q. You're only going to pay 20 percent
19 of revenue received?

20 A. Yes.

21 1006. Q. You'll agree that that has been
22 rejected twice now by...at this point in time, it
23 had been rejected...that concept had been rejected
24 twice by the Authority. You'll agree with that,
25 that they already told you twice?

1 A. At certain times, they disagreed
2 with that. We had hoped...

3 1007. Q. You hoped they would change their
4 mind?

5 A. Based on our proposal, our plan.

6 1008. Q. You also indicated that you were
7 looking for 100 percent waiver of all of the rent
8 that had accrued and move to a percentage rent only
9 basis going forward. So you're looking for an
10 amendment to the lease to remove minimum rent and
11 you're looking for a waiver of 100 percent of the
12 accrued deferral, and that would have been the
13 deferral under the first and what you assert is the
14 second rent deferral agreements, correct?

15 A. Yes, all base rent that has been
16 accrued be waived by the bridge authority.

17 1009. Q. So 100 percent forgiveness of
18 rent...

19 A. Yes.

20 1010. Q. ...and amendment of the lease to
21 remove minimum rent in perpetuity, for the rest of
22 the term, yes?

23 A. That's the way it reads.

24 1011. Q. Okay. So why would you make a
25 proposal that you knew was unacceptable to the

1 Authority?

2 A. We didn't know that.

3 1012. Q. Well, they had previously told you
4 that percentage rent was not acceptable to them.

5 A. You said two different times, two
6 different dates. They said no. We think this plan
7 showed...hopefully convinced them the best way for
8 them and us going forward would be this proposal.

9 1013. Q. But they didn't agree?

10 A. Ultimately, I do not believe they
11 did.

12 1014. Q. Well, it's not in here. They didn't
13 accept that. There is no...

14 A. Okay.

15 1015. Q. I didn't put it in here. They
16 didn't accept this.

17 A. Okay.

18 1016. Q. Do you recall them accepting this?

19 A. No.

20 1017. Q. No, okay. So and you never retained
21 a consultant or external advisor. You confirmed
22 that already.

23 A. Right.

24 1018. Q. And then numbers that you put
25 together were just your numbers, based on your own

1 knowledge?

2 A. Yes.

3 1019. Q. And do you have any reason to
4 suggest that the Authority didn't look at your
5 documents and consider them?

6 A. I would hope they would have read
7 the whole proposal every time we sent it through,
8 and...

9 1020. Q. They asked questions?

10 A. ...review it.

11 1021. Q. They asked questions, didn't they?

12 A. Some did.

13 1022. Q. So they asked questions about your
14 financials. They asked questions about your
15 proposals?

16 A. Yes, questions about, yes, financial
17 statements. I don't know if they asked questions
18 about our proposal.

19 1023. Q. Did they not ask questions about
20 your projections?

21 A. I don't...they always...

22 MR. JONES: Do you have a document in
23 which they did ask...

24 THE DEPONENT: Yes.

25 MR. JONES: ...that you can put to the

1 witness?

2 THE DEPONENT: So they always seemed
3 to...

4
5 BY MR. SHEA:

6 1024. Q. I'll make sure is the right one.
7 I'm going to show you a document from January 28th.

8 A. Okay.

9 1025. Q. And then once you confirm it, I'll
10 give you the non-official version.

11 A. Okay.

12 1026. Q. Do you recall that document?

13 A. Oh, this is for the financial
14 statements, right?

15 1027. Q. No, this is after your
16 January...have a look at the second page.

17 A. This is...but I think...if I'm
18 misinterpreting your question...

19 1028. Q. The second page "Financial
20 forecast".

21 A. Okay.

22 1029. Q. These are questions on the forecast
23 you delivered to them on January 19th, are they not?

24 MR. JONES: Take a minute to read...

25 1030. MR. SHEA: Give me back that one so I

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1 can mark it while you look at it, sorry.

2
3 --- EXHIBIT NO. 6: E-mail re financial forecast, dated
4 January 28, 2021
5

6 BY MR. SHEA:

7 1031. Q. Just while you're looking at it, did
8 you give them any other forecasts between January
9 9th...January 15th, sorry, and January 28th?

10 A. In January?

11 1032. Q. Well, sorry, you gave them forecasts
12 on the 15th attached to your plan. This inquiry
13 relates to forecasts. Were there any other
14 forecasts between January 15th and January 28th?

15 A. I don't recall. If they're not in
16 there, I don't recall. So I'm trying...do you have
17 Ron's e-mail to me?

18 1033. Q. I don't.

19 A. Okay, yes, I get...the questions I
20 can see coming from Ron, yes. We asked him if he
21 had traffic projections, which they didn't, wouldn't
22 share.

23 1034. Q. My question is not what the contents
24 were. My question is they asked you...they engaged.
25 They asked you questions about your proposals?

1 MR. JONES: So this is dated after the
2 letter that you put to him in January,
3 where they rejected the proposal?

4 1035.

MR. SHEA: Well, those were his
5 responses. I'm just saying that...so
6 January 15th.

7 MR. JONES: And then January 19th they
8 flat rejected it.

9 1036.

MR. SHEA: And then this is dated the
10 28th, the response.

11 MR. JONES: I think you have skipped
12 something.

13 THE DEPONENT: No, I haven't skipped
14 anything. I'm saying that he says on his
15 19th that percentage rent is not something
16 that they're prepared to consider, but he
17 also made inquiries after that, and it's
18 interesting that you say that, but your
19 documents have nothing in between. We
20 don't have Ron's e-mail to him. I don't
21 have that. All I have is his response.

22 MR. JONES: Well, why isn't it in your
23 productions?

24 1037.

MR. SHEA: Because we couldn't find it.

25 MR. JONES: Well, then what's the

1 problem?

2 THE DEPONENT: I'm kind of guessing what
3 Ron's e-mail was and the context it was
4 sent to him.

5
6 BY MR. SHEA:

7 1038. Q. You can have that. So my question
8 was whether you'll agree that the Authority
9 considered your proposal.

10 MR. JONES: After they rejected it?

11 1039. MR. SHEA: Please let him answer the
12 question. I'm asking him whether...

13 MR. JONES: You're putting this document
14 from the end of January.

15 1040. MR. SHEA: He...that is also before the
16 25th, the next one.

17
18 BY MR. SHEA:

19 1041. Q. I'm asking whether you will agree
20 that the Authority considered your proposals and
21 asked questions about your projections during the
22 course of this.

23 A. Well, again...

24 1042. Q. Shake your head all you want.

25 A. No, I'm not shaking...

1 1043. Q. No, him.

2 A. So they rejected it.

3 1044. Q. Yes.

4 A. On the 19th.

5 1045. Q. They rejected the concept of
6 percentage rent on the 19th, that's for sure.

7 A. Right, and then end of the month,
8 they asked questions...

9 1046. Q. Yes.

10 A. ...after they rejected it.

11 1047. Q. But we don't know when they asked
12 these questions but they asked the questions.

13 A. We don't know.

14 1048. Q. You responded at the end of the
15 month, but they asked the questions. If you can
16 help me identify the date that he sent it, I would
17 be grateful but...

18 A. Yes.

19 1049. Q. Let's move on. So on September 8th,
20 you'll recall that...

21 A. What number?

22 1050. Q. This is 54...that notices of default
23 were delivered by the Peace Bridge. Have a look at
24 these. I just have one question that relates to
25 these and...

1 A. Okay.

2 1051. Q. You'll agree with me that the lease
3 was never terminated by the Authority?

4 A. Is that legal? Like...

5 1052. Q. Well, these are notices of default.
6 Did they ever change the locks?

7 A. Is that what...the legal thing of
8 termination?

9 1053. Q. I'm not going to ask you for a
10 legal...did they ever change the locks?

11 A. I don't believe there is any locks.

12 1054. Q. Okay.

13 A. Yes.

14 1055. Q. There are no locks on the front
15 doors of the duty free?

16 A. I don't believe so. We never close.
17 Yes, there is a door lock.

18 1056. Q. So they never changed those locks.
19 They never...

20 A. No.

21 1057. Q. Did they take possession of the
22 leased premises?

23 A. That's the question, no.

24 1058. Q. No. In this document do you see
25 anywhere the words, "The lease is terminated"?

December...what was it, December...

1064. MR. SHEA: This is the December 12th,
2021 affidavit.

MR. JONES: Okay.

BY MR. SHEA:

1065. Q. So paragraph 16, do you see that
paragraph?

A. Yes.

1066. Q. So of the six million dollars that
was spent, 4.2 million was borrowed from RBC and 1.8
was used from cash reserves, correct?

A. Correct.

1067. Q. So the shareholders contributed no
funds for these renovations?

A. Sorry, I don't know if that...

1068. Q. So the shareholders contributed no
money to the company for these renovations?

MR. JONES: Do you mean, like...

1069. MR. SHEA: It's a simple question. Did
the shareholders contribute any money...

THE DEPONENT: Did they send a cheque
in?

MR. JONES: Did the corporation...

1070. MR. SHEA: Sorry, sir, I can ask the

1 questions I would like to ask. If you want
2 to say "Refuse", you can say "Refuse". We
3 have been through this.

4 MR. JONES: I just don't understand the
5 question. You're asking...

6 1071. MR. SHEA: Like, the question is simple.

7 THE DEPONENT: They have a balance sheet
8 of assets.

9 1072. MR. SHEA: You can refuse or you can
10 answer the question.

11 THE DEPONENT: So anything that comes
12 from that balance sheet, the shareholders
13 own, correct?

14 MR. JONES: Did the shareholders add
15 parties to the lease?

16 1073. MR. SHEA: I didn't...sorry, I didn't
17 ask that.

18
19 BY MR. SHEA:

20 1074. Q. The question is simple. Did the
21 shareholders contribute money? Did they lend money
22 to the company for them to make these renovations?
23 Did they lend money to the company?

24 A. The monies that came out of the
25 corporation, the shareholders own, right, correct?

1 1075. Q. No.

2 A. Well, the corporation is...they own
3 the corporation.

4 MR. JONES: What are you getting at with
5 your question?
6

7 BY MR. SHEA:

8 1076. Q. I just want the answer. I want to
9 know did the shareholders...

10 MR. JONES: Are you asking did they
11 specifically write the cheque that...
12

13 BY MR. SHEA:

14 1077. Q. Did they lend...no. did they lend
15 money to the company to make the renovations?

16 A. In a roundabout way, 1.8 million of
17 that, plus the 4.2 million, end of the day is the
18 corporation, correct?

19 1078. Q. Sorry, I asked the question did the
20 shareholders lend money to the company to fund these
21 renovations.

22 A. I know your question isn't as simple
23 as it sounds, because there is...has got to be angle
24 to it.

25 1079. Q. No, don't think of...sorry, sorry.

1 MR. JONES: Is there a document you want
2 to put to him?

3 1080. MR. SHEA: No, I don't want to put a
4 document. I want my question answered.
5

6 BY MR. SHEA:

7 1081. Q. Did the shareholders make a loan to
8 the...or make loans to the company to fund the
9 renovation?

10 A. The money came from the corporation
11 for the renovations.

12 1082. Q. Is the answer yes or is the answer
13 no?

14 MR. JONES: Well, I think he just said
15 it came from the corporation.
16

17 BY MR. SHEA:

18 1083. Q. So it didn't come from the
19 shareholders?

20 A. It came from the corporation.

21 1084. Q. Okay. Did the shareholders
22 guarantee the RBC loan?

23 A. I do...you guys got that. I would
24 have to pull that up.

25 MR. JONES: Do you know?

1 THE DEPONENT: I don't...you guys have
2 that document, and so we...

3 1085. MR. SHEA: I don't have the document.

4 MR. JONES: If you know, you know. If
5 you don't know, you don't know.

6 THE DEPONENT: Yes, yes. There is
7 no...I don't believe there is any
8 guarantees.

9
10 BY MR. SHEA:

11 1086. Q. Have the shareholders made any
12 shareholder loans to this company?

13 A. No, I do not believe that any
14 loans...

15 1087. Q. Have the shareholders made any
16 equity contributions to the company in...

17 A. No.

18 1088. Q. No.

19 A. Oh, in what time period?

20 1089. Q. Since 2016.

21 A. No.

22 1090. Q. Thank you.

23 A. Okay.

24 1091. Q. Paragraph 31, please.

25 A. Okay, yes.

1 1092. Q. Do you see that paragraph?

2 A. Yes.

3 1093. Q. You assert that:

4 "...The underlying principle of the
5 deferral agreements was that the duty free
6 would not be required to pay rent until
7 after traffic across the bridge returned to
8 normal levels and the duty free was able to
9 reopen its store to the public..."

10 A. Yes.

11 1094. Q. That's not what the agreements say,
12 is it?

13 A. Our belief that we have to open in
14 order to...and get traffic back, too.

15 1095. Q. Do the agreements not say that the
16 deferral period expires on the earlier of a fixed
17 date and an event that is related to reopening the
18 stores?

19 A. Well, there is only one, correct?

20 1096. Q. There is only one.

21 A. Yes, and that's with the July...

22 1097. Q. There is only one and that's the
23 July.

24 A. Yes.

25 1098. Q. And it says July. So you'll agree

1 with me that the underlying principle of the
2 agreements is the deferral period ends on a fixed
3 date or the reopening of the store?

4 A. During the discussions about that,
5 we knew until the border came back, there would be
6 further...we hoped for discussions and agreements
7 but they never materialized.

8 1099. Q. No, I agree. You hoped there would
9 be further discussions and agreements.

10 MR. JONES: There was another agreement.

11 THE DEPONENT: We had one there, and
12 another one after that, hopefully, and
13 another one after that, hopefully.

14
15 BY MR. SHEA:

16 1100. Q. So that was your hope?

17 A. It made sense until the...as a
18 principle and everything of getting us through to
19 the bridge traffic returns and restrictions down.

20 1101. Q. Okay. I'm going to now turn to
21 paragraphs 64 and 65.

22 A. Okay.

23 1102. Q. These relate to the termination and
24 the forbearance agreement. So I'm kind of going to
25 ask you to do a little bit of double dipping here.

1 I'm going to ask you to also turn up in volume 3,
2 tab 55, please.

3 A. Okay.

4 1103. Q. This is the forbearance agreement.
5 Have a look at it. This is the forbearance
6 agreement that you entered into with RBC, or that
7 Peace Bridge Duty Free entered into, correct?

8 A. Yes.

9 1104. Q. We're not a party to this agreement,
10 but is not a condition of this agreement that by
11 November the 15th Peace Bridge Duty Free have
12 reached an agreement with the Authority?

13 MR. JONES: Is there a paragraph you
14 want to take us to?

15 1105. MR. SHEA: Sure. So let's go
16 through...I just want to make sure you're
17 comfortable that this is the full
18 agreement. You read it. You understand
19 it. So we don't have any issues there?

20 MR. JONES: Have you read it?

21
22 BY MR. SHEA:

23 1106. Q. So page 9. If you finish reading it
24 and you're comfortable with it, page 9.

25 MR. JONES: Well, Jim, have you read the

1 whole agreement?

2 THE DEPONENT: Right now, no.

3 MR. JONES: Do you want him to read the
4 whole agreement?

5 1107. MR. SHEA: If he wants to read it or if
6 he just...previously you had asked him to
7 read the entire document before you
8 permitted him to answer a question. So I
9 want to make sure that...I have one
10 question...two questions, and they relate
11 to a...

12 THE DEPONENT: I believe this is the
13 forbearance agreement.

14 MR. JONES: So what paragraph are you
15 referring to?

16 1108. MR. SHEA: 6.4(b) on paragraph 9.

17 THE DEPONENT: Okay.

18
19 BY MR. SHEA:

20 1109. Q. Have you read that?

21 A. Okay.

22 1110. Q. You'll agree that that requires that
23 the borrower, Peace Bridge Duty Free, deliver to the
24 lender evidence that an arrangement satisfactory to
25 the lender has been reached with the landlord.

1 That's us, and that's by November 15th of 2021. You
2 agree to that, that's what that says? I think you
3 have to be verbal. You can't...

4 A. Okay.

5 MR. JONES: It says...I mean, do you
6 want him to read (b)?

7 1111. MR. SHEA: Sorry, I'm going to take him
8 to what the bank asserted next. I'm
9 not...whatever arrangements are with the
10 bank...

11 MR. JONES: So they want to ensure that
12 the landlord will not terminate the lease
13 before the end of its current term.

14 1112. MR. SHEA: That's what...who?

15 MR. JONES: That's what this...

16 1113. MR. SHEA: So now you're providing
17 evidence.

18 MR. JONES: No, I'm reading the
19 paragraph that you just directed us to.

20 1114. MR. SHEA: "...No later than
21 November..."

22 MR. JONES: Right.

23
24 BY MR. SHEA:

25 1115. Q. "...shall deliver to the lender

1 arrangements satisfactory in its sole
2 discretion has been entered into between
3 the borrower and the lender with respect to
4 the lease and the defaults thereunder to
5 ensure that the landlord will not terminate
6 the lease before the end of its current
7 term. By November..."

8 MR. JONES: That's exactly what I was
9 reading.

10
11 BY MR. SHEA:

12 1116. Q. My question is by November 15th you
13 had to deliver something to the lender, correct?

14 A. Some evidence that they're happy
15 that things are progressing.

16 1117. Q. Not that they're progressing, that
17 arrangements satisfactory have been entered into.

18 A. Yes, not to you, and not to us, to
19 them, correct.

20 1118. Q. But also that arrangements have been
21 entered into between the two of us?

22 A. That they're happy, that their
23 evidence...they are satisfactory. So whatever it
24 is, doesn't have to a signed thing, whatever they're
25 happy with. That's what...I agree that...

1 1119. Q. It says...

2 A. Evidence that is satisfactory to
3 them and only them, correct?

4 1120. Q. That:

5 "...[An arrangement] has been entered into
6 between the borrower and the lender with
7 respect to the lease...thereunder to ensure
8 that the landlord will not terminate..."

9 A. I agree, more evidence to them that
10 is satisfactory to them, not to us.

11 1121. Q. So you're saying that you did not
12 have to deliver...you did not have to establish to
13 the bank that you had an arrangement with us under
14 the lease. You do not read it that way?

15 A. No, we have to...as long as they're
16 happy that we're not going to be terminated, that's
17 what it is.

18 1122. Q. Okay.

19 A. As long as they're happy.

20 1123. Q. Okay. Later on in (d)...

21 A. Okay.

22 1124. Q. ...you agree that that...that you
23 authorized the lender to speak directly, so RBC to
24 speak directly with our client regarding the status
25 of the release and the resolution of any defaults?

1 A. That's correct.

2 1125. Q. Okay. Turn over to page 59, please?

3 A. Back here?

4 1126. Q. Yes. So by the 15th...

5 A. This is the Gowlings letter?

6 1127. Q. No, 56, 56, sorry.

7 A. Is it Aird's letter?

8 1128. Q. Yes. So are you familiar with this

9 letter?

10 A. Yes, I have seen this letter.

11 1129. Q. What document did you deliver to the

12 bank...if any, did you deliver to the bank by

13 November 15th in fulfilment of the clause that you

14 read?

15 A. So the question is what evidence we

16 sent to the bank?

17 1130. Q. What document did you send to the

18 bank?

19 A. What evidence we sent to the bank?

20 I can't recall what evidence, if any, we sent to the

21 bank.

22 1131. Q. So did you send any evidence to the

23 bank?

24 A. I can't recall.

25 1132. Q. Will you undertake to make inquiries

1 to determine if you sent any evidence to the bank?

2 MR. JONES: Okay.

U/T

3
4
5 BY MR. SHEA:

6 1133. Q. But you'll agree that to the extent
7 you did send evidence, the bank deemed it to be
8 unsatisfactory?

9 A. I have seen a few different things
10 at the bank.

11 MR. JONES: Counsel, I think you have
12 to...there are some intervening things that
13 you would have to put to him.

14
15 BY MR. SHEA:

16 1134. Q. Does the bank not say that there is
17 failure of the borrower to...

18 A. One or more, right?

19 1135. Q. Sorry, sorry:

20 "...One or more, without limiting..."

21 A. Yes.

22 1136. Q. "...One or more intervening events
23 has occurred, including without limitation
24 the failure of the borrower under section
25 6.4(b) of the agreement to deliver to the

1 lender no later than November 15th

2 evidence..."

3 So you will agree that whatever you sent, if you
4 sent anything, the bank did not agree was
5 satisfactory to the lender?

6 A. I think that might be a little too
7 narrow. It may not be wrong, but it may be a little
8 too narrow, because there may be more than one
9 event, even though they meant in that one. There
10 might be other events.

11 1137. Q. But they mentioned this one. So are
12 there any other events that were raised with you?

13 A. I don't know.

14 1138. Q. Are there any other events,
15 intervening events, that were raised by the bank?

16 MR. JONES: I think it's in the
17 material.

18 THE DEPONENT: Yes. I don't know. If
19 it's in the...I don't know.

20
21 BY MR. SHEA:

22 1139. Q. So you're not aware of any other
23 intervening events?

24 MR. JONES: It's in his affidavits.

25 1140. MR. SHEA: What is in his affidavit,

1 what other intervening events? There
2 aren't any other intervening events.

3 MR. JONES: Well, there was an e-mail
4 from...

5 1141. MR. SHEA: Where is this? I'm asking
6 the question, but if you want to provide
7 evidence...answers for your client, then go
8 ahead.

9 MR. JONES: As I recall, there was an e-
10 mail from Gowlings to the lender, telling
11 them that they intended to enforce the
12 lease.

13 1142. MR. SHEA: Telling them that they had
14 failed to reach an agreement, that's
15 correct. Was there an agreement in...let
16 me ask you this. On November...

17 MR. JONES: On November 21st there is an
18 e-mail that says:

19 "...Our client intends to exercise
20 its remedies under the default
21 provision of the lease..."

22 1143. MR. SHEA: Yes.

23 MR. JONES: But that's in his
24 affidavits.

25 1144. MR. SHEA: Sorry, but is that another

1 intervening event? He just said there may
2 be other intervening events.

3 THE DEPONENT: They said that, and I'm
4 not...

5
6 BY MR. SHEA:

7 1145. Q. So what are the other intervening
8 events, aside from the failure of our clients to
9 reach an agreement?

10 A. That's for the...

11 MR. JONES: Well, I think beyond what I
12 have just referred you to, the landlord's
13 lawyer saying they intend to
14 exercise...they intend to enforce the
15 lease. You have the landlord...

16 1146. MR. SHEA: How is that different from
17 the...

18 MR. JONES: You have the landlord
19 telling the bank they're going to terminate
20 the lease.

21 1147. MR. SHEA: "...We're going to exercise
22 our remedies under the lease." I don't
23 understand how that is responsive to my
24 question, but you may think it is.

1 BY MR. SHEA:

2 1148. Q. So let's move on then. Was there by
3 the 15th of November any arrangement between our
4 clients with respect to the lease? Was there a
5 resolution?

6 A. Was there an amending lease or
7 anything?

8 1149. Q. No, was there a resolution reached
9 between our clients with respect to the lease that
10 would preserve the lease?

11 A. Maybe from a non-legal standpoint.
12 We are still there. So is that kind of a...

13 1150. Q. I'm not asking.

14 A. You didn't lock the doors. You
15 didn't take it over, so...

16 1151. Q. But isn't the only reason we didn't
17 take it over and lock the doors is because you had
18 the benefit of the provincial moratorium?

19 A. I don't know.

20 MR. JONES: Is that the only reason?

21 1152. MR. SHEA: I'm asking him if he things
22 that's the only reason. I'm not asking
23 your question, sir.

24 THE DEPONENT: I don't know.
25

1 BY MR. SHEA:

2 1153. Q. So let me ask you this, then. Let's
3 go to document 57. Document 57 is a proposal to the
4 Authority from the duty free, correct?

5 A. Yes.

6 1154. Q. And this proposal...you're familiar
7 with this proposal?

8 A. Yes.

9 1155. Q. And this proposal contemplates a
10 base rent ramp-up. So the base rent will ramp back
11 up to four million. This is the first time you have
12 ever proposed this, correct? Previously your
13 proposals we were all, "We want the lease amended to
14 20 percent base rent going forward."

15 A. I think there is back...one of those
16 ones we just went through, there was a...

17 1156. Q. Which one?

18 A. I thought we had offered up two
19 million dollars at one time.

20 1157. Q. No, this is...

21 A. This is the first time?

22 1158. Q. "...Covenantor agrees to pay to the
23 landlord from the amendment date annual
24 base rent in 12 monthly installments on the
25 1st day of the month..."

1 This is the annual base rent. You're agreeing to
2 keep the annual...you keep the base rent. You don't
3 want an amendment to remove base rent. Paragraph
4 (b), you're going to ramp up the base rent beginning
5 at two million and back up to four million. Do you
6 see that?

7 A. Yes.

8 1159. Q. (c) relates to how you're going to
9 pay it. The next page over, you propose to pay back
10 two million in back rent. So this is the first time
11 you agree to pay back back rent, two million, but
12 you want it to be a non-interest bearing loan
13 amortized over the term of the lease, and you want a
14 five-year lease extension, correct? That's what
15 you're asking for?

16 A. Yes.

17 1160. Q. Turn the page, please.

18 A. Okay.

19 1161. Q. November 26th.

20 A. Fifty-eight?

21 1162. Q. Fifty-eight, yes. This is the
22 response to that. You have seen this letter before?

23 A. Yes.

24 1163. Q. So the Authority proposed 50 percent
25 of the back rent being paid back instead of a fixed

1 two million. Then future rent...

2 MR. JONES: It has also got a clause
3 about HST credits.

4 1164. MR. SHEA: Yes.

5
6 BY MR. SHEA:

7 1165. Q. I mean, I'm not...I'm worried about
8 comparing apples to apples. The 50 percent and then
9 the base rent ramp up, so they are both in accord
10 with each other. You're both talking about
11 something along those lines.

12 A. Okay.

13 1166. Q. And then my friend is right. There
14 is an application of HST credits to the old rent,
15 and food services tenant rents at market rates,
16 approved and payable to our client, the Authority.
17 So that was an offer made on October 26th.

18 Then if you go over to the next page, on
19 November 10th there is a follow-up, because we
20 haven't received a response yet.

21 A. Okay.

22 1167. Q. Do you recall that letter?

23 A. Yes.

24 1168. Q. Okay. Then over on to 60.

25 A. Okay.

1 1169. Q. This is your November 16th, and
2 you'll agree that this offer is coming a day after
3 the deadline to provide...sorry, the deadline in the
4 forbearance agreement, which is November 15th.

5 So your proposal to us is coming the day
6 after the deadline in the forbearance agreement.

7 A. Yes, they talked to the bank that
8 they were satisfactory that our negotiations, which
9 we believed were going with you guys, was content to
10 them to get things done.

11 1170. Q. Did you communicate that to them?

12 A. You have to ask them. I don't know.

13 1171. Q. I have to ask them whether you
14 communicated that to them, but you were having
15 ongoing negotiations?

16 A. We'll have to check if there is a
17 communication, but...

18 1172. Q. So sorry, stop for a...

19 A. When did the forbearance
20 thing...when did that kick in?

21 1173. Q. Your forbearance agreement was
22 October of 2021.

23 A. No, when did it end?

24 MR. JONES: When was it terminated?

25 THE DEPONENT: Yes.

1 MR. JONES: November 23rd.

2
3 BY MR. SHEA:

4 1174. Q. So what I'm interested in...I want
5 to step back. So you said I would have to ask the
6 bank whether you communicated with them to explain
7 to them where you were at with us. I'm going to ask
8 for an undertaking for your communications, if any,
9 with the bank prior to November 15th, advising them
10 as to where matters were at in the negotiation with
11 our client, the Authority. Will you give that
12 undertaking?

13 MR. JONES: I'll take that under
14 advisement...

U/A

15 1175. MR. SHEA: Okay.

16 MR. JONES: ...communications with RBC.

17 1176. MR. SHEA: As long as we're clear that
18 he said I have to ask RBC, and...

19 MR. JONES: Who said what?

20 1177. MR. SHEA: Your client said I had to ask
21 RBC what communications were had between...

22 MR. JONES: No, I think you
23 misunderstood. There was a
24 miscommunication there. I don't think that
25 is what he was saying.

1 BY MR. SHEA:

2 1178. Q. Okay, so but you'll agree that
3 November 16th you make a counteroffer to us, and
4 that counteroffer is made November 16th, is one day
5 after the deadline in the forbearance agreement,
6 okay, great.

7 You'll agree that this offer is not
8 substantially different from your October 26th,
9 except...I'm going to point out on the second page
10 you now want two five-year extensions. So you want
11 10 extra years on the lease. You will agree that
12 that offer...

13 A. It's pretty consistent with two
14 million dollars back rent, and then we...yes, asked
15 for two...

16 1179. Q. Up from one five-year in your
17 initial offer that was rejected.

18 A. We don't know the reasons why it got
19 rejected. We thought that was a fair ask.

20 1180. Q. When did you...where is the document
21 where you asked why it was rejected?

22 A. We don't have it.

23 1181. Q. Okay. So and you'll agree that the
24 offer you made on November 16th was rejected? Well,
25 put it this way. Was it accepted?

1 A. Communication.

2 1182. Q. Either he's aware of it being
3 accepted or not.

4 MR. JONES: Well, I think the way it was
5 rejected was that the landlord
6 contacted...e-mailed RBC and told them that
7 they were enforcing the lease within a few
8 days.

9 1183. MR. SHEA: Is that your evidence, sir?

10 MR. JONES: Well, I'm just...unless...

11 THE DEPONENT: I don't see a letter from
12 Ron.

13 MR. JONES: Those are the documents that
14 we're working with. Do you have something
15 else?

16 1184. MR. SHEA: Those are not the...well,
17 sorry. If you would have given me a moment
18 instead of providing an answer, which was
19 wrong...are you familiar with this document
20 from November 29th, from Ron to
21 Greg...sorry, November 26th, I apologize.

22 THE DEPONENT: Right, right.

23 MR. JONES: So it's after the...

24 THE DEPONENT: Okay. So your question
25 was did they reject it?

1 BY MR. SHEA:

2 1185. Q. "...In response to your letter of
3 November 16th, the board has reviewed and
4 discussed it in detail and does not accept
5 the counterproposal..."

6 A. Okay.

7 MR. JONES: But that's after...

8 1186. MR. SHEA: Sir, I'm not interested in
9 your evidence.

10 MR. JONES: I mean, it's after they told
11 RBC that they intend to exercise their
12 remedies under the default clause of the
13 lease.

14 1187. MR. SHEA: And that was in response to
15 an inquiry from RBC as to what our
16 intentions were, and we provided them with
17 our intentions, as we were permitted to do
18 by the terms of the forbearance agreement.
19 So this one is...no, you can keep that. So
20 mark that as Exhibit 7.

21
22 --- EXHIBIT NO. 7: E-mail dated November 26, 2021, from
23 Mr. Rienas to Mr. O'Hara
24

25 BY MR. SHEA:

1 1188. Q. So back over to the affidavits. So
2 we're now going to ask some questions on the 13th
3 November, 2022 affidavit. The first question is
4 paragraph 11, if that assists.

5 So paragraph 11...this also...you assert
6 that the Peace Bridge Duty Free closed the store in
7 response to, I believe...let me get the exact
8 wording here:

9 "...in response to government emergency
10 mandated closures due to Covid-19..."

11 What government mandated closures required you to
12 close the store?

13 A. I don't have an answer for that.

14 1189. Q. Will you undertake to identify the
15 mandated closures that required that you close the
16 store?

17 MR. JONES: I think there is a list of
18 some of the restrictions in the next
19 paragraph.

20 1190. MR. SHEA: I didn't ask that. I asked
21 him to...he said he couldn't, and I'm
22 asking him to identify what government
23 emergency mandated closures...

24 MR. JONES: Okay.

U/T

1 BY MR. SHEA:

2 1191. Q. You also operate a duty free store
3 at the Hamilton airport, do you not?

4 A. Correct.

5 1192. Q. And that duty free did not close,
6 did it?

7 A. No, it did not.

8 1193. Q. So what is the difference between
9 the Hamilton...the duty free in the Peace Bridge and
10 the duty free in Hamilton that permitted that one to
11 operate in the face of government emergency mandated
12 closures, but did not permit the duty free at the
13 Peace Bridge to operate?

14 A. I have to check that out.

15 1194. Q. Okay, so you...

16 A. I don't have the answer to that.

17 1195. Q. So will you undertake to provide me
18 with the reason the Hamilton duty free could remain
19 open while the Peace Bridge Duty Free could not
20 legally remain open? To clarify, why the Hamilton
21 Duty Free could legally remain open, while the Peace
22 Bridge Duty Free could not legally remain open.

23 MR. JONES: Okay.

U/T

24
25 BY MR. SHEA:

1 1196. Q. Okay, paragraph 13. You identify
2 what you call a "non-exclusive summary of border
3 restrictions" stretching from March 17th, and that
4 was the day you closed the duty free, correct?

5 A. I would have to check.

6 MR. JONES: The 21st.

7
8 BY MR. SHEA:

9 1197. Q. The 21st, you closed it on the 21st.
10 So that was the 2nd...or the border was closed,
11 through to October 1st of 2022, and you say...

12 A. Sorry, what is the October?

13 1198. Q. That's the last.

14 A. Okay.

15 1199. Q. And you assert or you did...you
16 reopened the duty free for business on September
17 7th?

18 A. 21st.

19 1200. Q. September 21st?

20 A. I believe so.

21 1201. Q. Okay. So can you explain to me how
22 any restrictions put into place...let me back up a
23 second. So from March 21st Peace Bridge Duty Free
24 was closed. They weren't carrying on any business.
25 Their sales dropped to zero. Is that correct?

1 A. From...yes, no sales.

2 1202. Q. No sales, sales dropped to zero.

3 Can you explain to me how any border restrictions,
4 either increasing them or decreasing them, from
5 March 21st to September 7th, could have had a
6 material adverse effect on your business?

7 MR. JONES: I don't understand the
8 question.

9 THE DEPONENT: Once again, please.

10 1203. MR. SHEA: Sorry, the assertion...

11 MR. JONES: Like, are you asking how the
12 border closure could affect their business?

13
14 BY MR. SHEA:

15 1204. Q. No. So the border closure closed
16 the business. The business was closed. There was
17 zero sales. How could anything that happened from a
18 legislative perspective during a time when this
19 company was generating zero sales have resulted in
20 your situation being any worse?

21 MR. JONES: So if I can understand, is
22 the Authority suggesting that this clause
23 is not in effect after the initial period
24 of the border closure?

25 1205. MR. SHEA: This clause is triggered by a

1 change in applicable laws that results in a
2 material adverse impact. There is a link
3 between applicable...change in applicable
4 laws and material adverse impact. If there
5 is zero sales, how can a change in
6 applicable laws have a negative impact?

7 MR. JONES: I think I understand what
8 you're saying is that...you're suggesting
9 that the Authority's position is they don't
10 have to do anything after the initial
11 closure because it didn't get any worse for
12 you by the border remaining closed?

13 1206. MR. SHEA: No, no. Please
14 don't...sir...

15 MR. JONES: No, I'm trying to ask is
16 that...

17 1207. MR. SHEA: I am asking a question. I
18 don't have to state the legal argument upon
19 which I'm basing it. I'm asking a legal
20 question. You are asserting that there
21 were various border restrictions that
22 caused a material adverse impact on the
23 business, correct? Are you not asserting
24 that? Are you asserting...

25 MR. JONES: Of course.

1 1208. MR. SHEA: Okay.

2 MR. JONES: The closure of the border
3 adversely affects them.
4

5 BY MR. SHEA:

6 1209. Q. But then how does...once the effect
7 has happened and there is an obligation to consult,
8 how does anything else give rise to a new obligation
9 to consult, unless it results in a material adverse
10 impact?

11 MR. JONES: You don't think extending
12 the border closure would have a material
13 adverse impact?

14 1210. MR. SHEA: Their sales are already zero.
15 How much worse are they going to get?

16 MR. JONES: Okay, that's the Authority's
17 position.

18 1211. MR. SHEA: And I'm asking a question.
19 So now that you understand the Authority's
20 position...

21 THE DEPONENT: I don't have an answer.
22 That's a legal...I don't have an answer.
23

24 BY MR. SHEA:

25 1212. Q. Sorry, was your business...so after

1 the 21st...so on April 15th did your sales drop
2 further?

3 A. April 15th, 2020?

4 MR. JONES: Below zero?

5
6 BY MR. SHEA:

7 1213. Q. Yes. Did you have to spend any
8 money? Did you have to incur any costs?

9 A. Oh, yes, yes.

10 1214. Q. As a result of the enhanced border
11 measures and quarantine plan for 14 days, did you
12 have to spend any money?

13 A. Well, we spent money throughout
14 the...

15 1215. Q. No, as a result of that.

16 A. I would have to...we would have to
17 read that.

18 1216. Q. Okay. Well, we don't have a lot of
19 time, so let's do it this way. I'm going to ask for
20 an undertaking...

21 MR. JONES: No, ask him the question if
22 you want.

23 1217. MR. SHEA: I'm not going to go through
24 each of these while he says, "I have to do
25 this. I have to do that." I asked the

1 question.

2 THE DEPONENT: Right.

3
4 BY MR. SHEA:

5 1218. Q. On April 15th, as a result of the
6 enhanced federal border measures and quarantine
7 plan...

8 A. Our sales were still zero.

9 1219. Q. Your sales were still zero. You
10 didn't have to spend any money as a result of that?

11 A. No, it's that part. Our sales were
12 still zero.

13 1220. Q. Okay, (d), April 22nd, 2020:
14 "...Extension of restrictions on non-
15 essential travel..."

16 A. Zero sales.

17 1221. Q. (e)?

18 A. Zero sales.

19 1222. Q. (f)?

20 A. Zero sales.

21 1223. Q. (g)?

22 A. Zero sales.

23 1224. Q. (h)?

24 A. Zero sales.

25 1225. Q. Do you want me to go through them

1 all or do you just want...

2 MR. JONES: Well, what is the question?

3 Like, did sales go below zero?

4 1226. MR. SHEA: Sir...

5 THE DEPONENT: Up until (u).

6
7 BY MR. SHEA:

8 1227. Q. Up until (u)?

9 A. Yes.

10 1228. Q. And then...

11 A. Zero, zero, zero, zero.

12 1229. Q. So after (u), so after that, is it
13 not the case that sales began to increase? Once the
14 border opened, your sales increased?

15 A. Once we opened, the sales...

16 1230. Q. Once you opened, the sales
17 increased?

18 A. Yes.

19 1231. Q. And is it not the case that sales
20 increased from about 200,000 a month? I can get you
21 the exact numbers, but they increased significantly
22 up to...ramped up to about 1.2 million?

23 A. That's not...

24 MR. JONES: Do you have a document to
25 put to him?

1 THE DEPONENT: That's not significant.

2
3 BY MR. SHEA:

4 1232. Q. Yes, I will.

5 A. You have our sales numbers.

6 1233. Q. So you agree with your sales
7 numbers, that you did ramp...your sales did increase
8 month over month after the border opened, after you
9 opened?

10 A. After we opened, yes.

11 1234. Q. So as these things happened from
12 October through to...October, 2021 through October
13 of 2022, your sales increased month over month?

14 A. Yes.

15 1235. Q. Yes, okay, thank you. So...

16 A. But still below...

17 1236. Q. Still below your other, but your
18 sales increased month over month.

19 A. Yes.

20 1237. Q. And I believe if you want an exact
21 document, your 2 December, 2022 affidavit, Exhibit
22 B, identifies your sales increasing from 266,000 per
23 month to 1.2 million per month.

24 MR. JONES: Do you want him to go to
25 those documents?

1 1238. MR. SHEA: He just said that he agreed
2 that increased month over month. That was
3 for you.
4

5 BY MR. SHEA:

6 1239. Q. So we're going to go on to paragraph
7 18, please, of that affidavit. So this is an
8 affidavit that you swore 13 November, 2022, and you
9 appear...you assert in the last part, the foot of
10 that clause, that:

11 "...The authority appears to be taking the
12 position that full base rent under the
13 lease is payable from July 31st..."

14 MR. JONES: What part of that?

15 1240. MR. SHEA: The foot, on page...

16 MR. JONES: I see, yes.
17

18 BY MR. SHEA:

19 1241. Q. You'll agree with me...we just went
20 through the documents, that the Authority has
21 offered to grant a 50 percent abatement. Is that
22 not correct?

23 MR. JONES: Sorry, are you asking about
24 this paragraph or are you asking about the
25 abatement?

1 BY MR. SHEA:

2 1242. Q. No, it says:
3 "...The authority appears to be taking the
4 position [appears to be taking the
5 position] that full base rent under the
6 lease is payable from July 31st, 2020
7 onwards..."

8 But you will agree that we have offered to give you
9 a 50 percent abatement on that same rent?

10 MR. JONES: Well, you're asking him two
11 different things. Like...

12 1243. MR. SHEA: I'm challenging his
13 statements.

14 MR. JONES: Well, what did the notice of
15 default say?

16 1244. MR. SHEA: That's not what he says.

17 MR. JONES: That's exactly what he says.

18 1245. MR. SHEA: No, he says...

19 MR. JONES: They demanded the rent.

20 1246. MR. SHEA: That's not what he said.

21 MR. JONES: They threatened to terminate
22 the lease unless...

23 1247. MR. SHEA: Sir, sir...

24 MR. JONES: ...they paid the full rent.

25 1248. MR. SHEA: The authority appears to take

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1 the position in the affidavit of Ron Rienas
2 that the full base rent under the lease is
3 payable, notwithstanding these. He never
4 references the default notice, because
5 that's not...

6 MR. JONES: That's wrong. You're wrong.
7 It's in his affidavit.

8 1249. MR. SHEA: Sir, I am asking a question.
9 Did we not agree to give a 50 percent rent
10 abatement?

11 MR. JONES: No. Where has rent been
12 abated 50 percent?

13 1250. MR. SHEA: Did we not agree to give you
14 a 50 percent rent abatement?

15 MR. JONES: Where? Put the statement of
16 account where rent has been abated 50
17 percent.

18 1251. MR. SHEA: I said offer. Sir, did we
19 not offer to give a 50 percent rent
20 abatement, yes or no?

21 MR. JONES: On what terms?

22 THE DEPONENT: I believe also you want
23 the full rent.

24
25 BY MR. SHEA:

1 1252. Q. We offered to give you a 50 percent
2 rent abatement, did we not?

3 A. Didn't you sometime also demand all
4 the money, like 5.9 million or something?

5 1253. Q. And sir, you won't pay any of it.
6 I'm just saying did we or did we not offer a 50
7 percent rent abatement?

8 MR. JONES: Rent has either been abated
9 or it hasn't.

10
11 BY MR. SHEA:

12 1254. Q. Sir, did we offer a 50 percent rent
13 abatement, yes or no?

14 A. Along with demanding the full rent.

15 1255. Q. Okay, but we did offer a 50 percent
16 rent abatement and you demanded more?

17 A. But we...

18 MR. JONES: We have gone through these
19 documents. Like, what are you trying to
20 get him to say?

21 1256. MR. SHEA: I'm trying to get him to
22 agree what he already agreed to, that we
23 offered a 50 percent rent abatement.
24 Again, I'm going to ask you to please not
25 interrupt.

1 THE DEPONENT: There are a few things
2 you guys put out there, and one of them was
3 we had to pay the full 5.9 million dollars,
4 or whatever it was.

5
6 BY MR. SHEA:

7 1257. Q. Yes.

8 A. Yes.

9 1258. Q. Keep going, keep going. Go ahead.

10 Keep talking, sir.

11 MR. JONES: Right, so the Authority sent
12 a notice of default demanding full rent or
13 the lease would be terminated during the
14 eviction moratorium.

15 1259. MR. SHEA: Keep going. Is there
16 something else you want to say?

17 MR. JONES: No.

18
19 BY MR. SHEA:

20 1260. Q. Okay, let's keep going then. Okay,
21 so in the offer made by the Authority to Peace
22 Bridge Duty Free, does it not include a 50 percent
23 rent abatement?

24 MR. JONES: Which offer are you
25 referring to?

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1 1261. MR. SHEA: I will refer to the specific
2 offer.

3 THE DEPONENT: After...
4

5 BY MR. SHEA:

6 1262. Q. The offer made on October 26th,
7 2021, did we not offer a 50 percent rent abatement?

8 MR. JONES: What document are you
9 referring to?

10 1263. MR. SHEA: Document 58, October 26th,
11 2021.

12 THE DEPONENT: Followed up by the full
13 rent, and then after you wanted the 5.9.
14 Is that what it...
15

16 BY MR. SHEA:

17 1264. Q. We made demand when you didn't
18 accept our offer, yes. My question is whether we
19 made the offer or not.

20 MR. JONES: So it's not exactly correct.
21

22 BY MR. SHEA:

23 1265. Q. What does it say:
24 "...Fifty percent of the back rent due and
25 owing shall be paid upon execution of the

1 amendment of the lease..."

2 What part of that is not a 50 percent abatement?

3 MR. JONES: Then:

4 "...and will apply HST credits
5 received to the remaining
6 outstanding rent..."

7 1266. MR. SHEA: How much are the HST credits?

8 THE DEPONENT: Maybe \$40,000 a month, a
9 month.

10
11 BY MR. SHEA:

12 1267. Q. Forty thousand a month, and so the
13 back rent...

14 MR. JONES: Like, a million dollars.

15 1268. MR. SHEA: How if \$40,000 a month a
16 million dollars?

17 THE DEPONENT: Like, over the time.

18 MR. JONES: Over 18 months it's close to
19 a million dollars.

20
21 BY MR. SHEA:

22 1269. Q. And the interest on the unpaid rent
23 at 24 percent?

24 MR. JONES: Counsel, what is the point
25 you're trying to make?

1 1270. MR. SHEA: I asked the question. You
2 don't want...

3 MR. JONES: You're trying to tell him
4 that they have offered to abate 50 percent
5 rent. Here is the offer.

6 1271. MR. SHEA: Okay.

7 THE DEPONENT: But then you guys...

8 MR. JONES: But it's not exactly a 50
9 percent rent abatement, and it's demanding
10 immediate payment of monies that the
11 Authority knew was not possible. It's a
12 non-offer.

13 1272. MR. SHEA: Yes, sir, I'm sure you think
14 that. Okay, let's keep going.

15
16 BY MR. SHEA:

17 1273. Q. So on paragraph 37...do you see
18 paragraph 37 there?

19 A. Yes.

20 1274. Q. Sorry, I have got to find my
21 document again. I apologize. I may have to...

22 A. No rush.

23 1275. Q. Sorry. I apologize, that was the
24 wrong...I need to refer you to...we'll just skip
25 over that. I was going to refer you to your 12th

1 December, 2021 affidavit. So let's go to that one,
2 please. So December 1...sorry, December 12, 2021.

3 So paragraph 37 says that we demanded the
4 5.9...sorry, are you there yet?

5 A. Yes.

6 1276. Q. It says that we demanded the 5.9
7 million, which is correct.

8 A. Okay.

9 1277. Q. And you say that you don't owe the
10 5.9 million, or you say that:

11 "...The notice was issued despite the fact
12 that deferred rent was to be payable in
13 equal instalments over two years..."

14 But you'll agree that those instalment payments were
15 to start in the case of the first rent deferral
16 agreement in July of 2020, correct?

17 A. Okay. Walk me through this again.

18 1278. Q. So you say...

19 A. Yes.

20 1279. Q. ...that...well, not say. You
21 challenge the fact that we made a 5.9 million dollar
22 demand.

23 A. Right.

24 1280. Q. And you say we did that wrongly,
25 despite the fact that the rent deferral...the

1 deferred rent was to be payable in equal instalments
2 over a two-year period, but...

3 A. That's the November deferral
4 agreement.

5 1281. Q. But the November deferral agreement
6 was never signed. You will agree that you never
7 even started to make the payments under either
8 deferral agreement. You have never made any
9 payments under either deferral agreement, have you?

10 A. Correct.

11 1282. Q. Let's go to the 2 December...no,
12 stop, stop. That's 110, the 13 November. I
13 apologize.

14 MR. JONES: Sorry, what are you on?

15 1283. MR. SHEA: 110 and 111 of the 13
16 November.

17
18 BY MR. SHEA:

19 1284. Q. You raised the business interruption
20 insurance that you assert the Authority was to have
21 access to. Is it not correct that Peace Bridge Duty
22 Free was also required to have business interruption
23 insurance?

24 So let's go to the lease, which is volume
25 1, tab 1. Have you got that in front of you? Page

1 61, 11.01 under "Insurance and indemnity".

2 MR. JONES: That's page 60?

3 1285. MR. SHEA: Sixty-one is the operative
4 part.

5
6 BY MR. SHEA:

7 1286. Q. So 11.01 requires that the tenant
8 obtain and maintain insurance.

9 A. Okay.

10 1287. Q. Correct?

11 A. Correct.

12 1288. Q. And (c) requires that you :
13 "...obtain and retain business interruption
14 insurance for a minimum period of 24 months
15 or such longer period that will reimburse
16 the tenant for direct and indirect loss of
17 earnings and profit attributable to damage
18 caused by the perils insured against
19 under...and other perils insured by prudent
20 tenants or attributable to prevention of
21 access to the leased premises by civil
22 authorities..."

23 Did you ever make a claim under that policy?

24 A. We didn't...it wasn't...it wasn't
25 allowed, and then we sued. It was a class action

1 suit that we joined.

2 1289. Q. So will you undertake to provide the
3 documents related to that, the claim made and the
4 response, please?

5 MR. JONES: No. I mean, for our
6 purposes there was no insurance recovery. /R

7 1290. MR. SHEA: Yet. So you're refusing to
8 provide documents relating to the claim
9 made under your business interruption
10 policy and the response?

11 MR. JONES: Well, ask...do you want to
12 ask questions about the outcome?

13 THE DEPONENT: Aviva turned us down.
14

15 BY MR. SHEA:

16 1291. Q. So I want to see the documents
17 relating to the insurance claim, which would be the
18 claim and the refusal, and then the class action
19 lawsuit that you have joined to try to recover under
20 the policy.

21 MR. JONES: I'll take that under
22 advisement. U/A

23
24 BY MR. SHEA:

25 1292. Q. 2 December, 2022 affidavit, please.

1 So 2 December, 2022, the reply affidavit of Jim
2 Pearce. Did you find that document?

3 A. Yes.

4 1293. Q. So in paragraph 8 you assert that:
5 "...Every authority proposal demands
6 payment of alleged arrears, monies that any
7 cursory analysis of gross sales would
8 obviously cannot and never could have been
9 funded through duty free's operations. As
10 such, the Authority's proposal can only
11 result if the duty free agree to them, of
12 the business failure of duty free and the
13 loss of shareholders' family assets..."

14 That assertion is based on the assumption that the
15 shareholders are not willing to contribute to the
16 company. Is that correct?

17 So let me put it, if the shareholders were
18 to contribute money to Peace Bridge Duty Free, you
19 would be able to satisfy...to meet...

20 A. I don't have that answer.

21 1294. Q. Sorry. If the shareholders were to
22 contribute money...I'm not asking would they. If
23 they were to contribute money...

24 A. If anybody would give in the 5.9
25 million? Is that what you mean?

1 MR. JONES: If anybody gave them the
2 money.
3

4 BY MR. SHEA:

5 1295. Q. But I'm not asking if anybody. Have
6 you asked the shareholders to contribute money to
7 this enterprise?

8 A. Me, personally, no.

9 1296. Q. Has Mr. O'Hara asked the
10 shareholders to contribute money?

11 A. I don't know.

12 1297. Q. Sorry?

13 A. I don't know.

14 1298. Q. Will you inquire as to whether Mr.
15 O'Hara has asked the shareholders to contribute
16 money to this enterprise?

17 MR. JONES: No.

/R

18 1299. MR. SHEA: So you're refusing to ask
19 whether the shareholders have been asked to
20 contribute. Isn't it the shareholders who
21 are going to benefit if this company
22 survives and profits?

23 THE DEPONENT: Is that a question?

24 MR. JONES: Is that a question?
25

1 BY MR. SHEA:

2 1300. Q. Yes, isn't it the shareholders that
3 are going to benefit?

4 MR. JONES: Well, it depends.

5 1301. MR. SHEA: I would like him to answer
6 the question, sir.

7 MR. JONES: Can you give him a more
8 specific question? Like, if they accept
9 the offer that has been given where the
10 shareholders give a guarantee? I don't
11 think so.

12 THE DEPONENT: If it's six million
13 dollars...

14
15 BY MR. SHEA:

16 1302. Q. Do your projections in terms of go
17 forward business not project that this company will
18 be profitable in the future?

19 A. Depending on the agreement made with
20 the Authority.

21 1303. Q. Have you projected out whether this
22 company will be profitable based on...sorry, have
23 you projected out what capital infusion will be
24 necessary to be made into this company to comply
25 with or to accept Peace Bridge's offer? I'm sorry,

1 the Authority's offer?

2 A. The 5.9 million.

3 1304. Q. No, the offer that we made.

4 MR. JONES: Which offer are you
5 referring to?

6
7 BY MR. SHEA:

8 1305. Q. So let's go to...maybe we can cut
9 this down. So do you recall a letter that Mr. Wolf
10 sent to Gowling on January 14th, 2022? Do you
11 recall that letter?

12 A. No.

13 1306. Q. Okay, it's attached to your
14 affidavit.

15 A. Okay.

16 1307. Q. It's 13 November, 2022, tab A.

17 A. Tab A?

18 1308. Q. Yes. So...

19 A. The same one, December 2?

20 1309. Q. January 14th.

21 A. Which affidavit?

22 1310. Q. November...

23 A. The November one?

24 1311. Q. November 13th, 2022.

25 A. And tab A?

1 1312. Q. Tab A.

2 A. Okay, yes, John Wolf to you guys.

3 1313. Q. So paragraph...do you recall this
4 letter?

5 A. Yes, I have seen this letter.

6 1314. Q. Okay. So on page 2...

7 MR. JONES: Do you want him to read it?

8 1315. MR. SHEA: He can read the whole letter,
9 but I'm asking about a specific paragraph
10 of it, or two specific paragraphs of it.

11 THE DEPONENT: Go ahead.
12

13 BY MR. SHEA:

14 1316. Q. So page 2, you will note that Mr.
15 Wolf asserts that:

16 "...From the exchanges to date, it appears
17 that prior to Omicron, when it was
18 anticipated that the pandemic was moving
19 behind the parties and a gradual return to
20 normal bridge traffic could be reasonably
21 contemplated, the parties indicated in
22 without prejudice proposals in general
23 agreement as follows..."

24 So he asserts that we had reached agreement on the
25 material points. Would you read through those and

1 see if you agree with that?

2 A. Number 1:

3 "...Security deposit, \$50,000, to be
4 replenished..."

5 It's done. HST was paid by duty free on rent. Yes,
6 we submit HST to you guys. Food tenant be sought
7 for full market. It's underway. Lease to be
8 amended. So that's the offer.

9 1317. Q. No, these are the...sorry. He
10 asserts that these are the areas where we have
11 already reached agreement.

12 A. I think a lot of this, yes, we
13 were...it's in your offers and ours, too, right.

14 1318. Q. Yes, so these are areas we have
15 reached agreements.

16 A. Okay, existing lease.

17 MR. JONES: Do you want to compare the
18 two?

19
20 BY MR. SHEA:

21 1319. Q. No, I want to ask him a question.
22 So I'm asking him...

23 A. To read this.

24 1320. Q. So the second...there is a
25 paragraph, "Obviously, given developments..."

1 A. Okay.

2 1321. Q. And then he indicates where the
3 parties are apart. Do you agree that that is where
4 we're apart?

5 MR. JONES: Do you want him to review
6 the...

7 THE DEPONENT: Like, I think this is in
8 reference to other documents.

9
10 BY MR. SHEA:

11 1322. Q. So this is what your lawyer has...

12 A. Stated.

13 1323. Q. ...put in a letter, attached to an
14 affidavit you swore, and delivered to the court,
15 saying, "This is where the parties are apart."

16 A. Right.

17 1324. Q. Do you agree...

18 MR. JONES: Do you know that there is
19 something out there that suggests that's
20 inaccurate?

21 1325. MR. SHEA: No, I think it's accurate.

22 THE DEPONENT: Okay.

23
24 BY MR. SHEA:

25 1326. Q. But that's my issue. I'm asking do

1 you agree it's accurate. I think it's accurate.

2 MR. JONES: I think, in fairness, you
3 have got to have him review the documents
4 and form an opinion before putting that to
5 him.

6 1327. MR. SHEA: I'm not sure I need to. It's
7 his evidence that this letter was sent. I
8 assume he had discussions with Mr. Wolf
9 about this letter, and confirmed this...Mr.
10 Wolf didn't get this information himself.

11 MR. JONES: Okay, so you're saying that
12 this is accurate?

13 1328. MR. SHEA: I think that this is
14 accurate.

15 MR. JONES: Okay.

16 1329. MR. SHEA: But I could be wrong. Our
17 client thinks this is accurate, that this
18 is where we're apart.

19 MR. JONES: Okay. Then what is the
20 issue?

21
22 BY MR. SHEA:

23 1330. Q. My ask is have you run projections
24 to determine how much capital this company needs
25 based on these disputes? So you say your proposal

1 is two million dollars of rent arrears. We say 50
2 percent. Have you run projections to determine how
3 much capital you would need to meet our demand or to
4 accept our proposal?

5 A. This is your...what, our proposal of
6 October something? Which one?

7 1331. Q. You asked...you suggested two
8 million...

9 A. Right.

10 1332. Q. ...payable over infinity.

11 A. Right.

12 1333. Q. We suggested 50 percent payable on a
13 fixed period of time. Did you run proposals?

14 A. We don't know what that 50 percent
15 is, right, because it...

16 1334. Q. Okay, but...

17 A. What is that 50 percent?

18 1335. Q. Sir, maybe we'll get into this now
19 then. In...

20 A. Is it 5.9?

21 1336. Q. ...your disclosures...

22 A. Or this number 3, how to address
23 rent arrears?

24 1337. Q. How to address rent arrears.

25 A. I'm trying to figure dates out here.

1 We have got October 24th to December, 2021. So
2 we're...

3 1338. Q. Did you not provide this information
4 to Mr. Wolf?

5 A. Yes, how do we address rent arrears,
6 I guess that's the...

7 1339. Q. Partial forgiveness and balance
8 abatement over future...

9 A. Do up a cash flow? Is that...

10 1340. Q. What I am asking is did you do any
11 analysis to determine what it would take to accept
12 our proposal?

13 A. I believe not.

14 1341. Q. Okay. So you did not do any
15 analysis to determine what would it take to accept
16 our proposal?

17 A. Your October proposal?

18 1342. Q. Yes.

19 MR. JONES: It would take...isn't it...

20 1343. MR. SHEA: I asked him if he did the
21 analysis. I assume you didn't do the
22 analysis either?

23 MR. JONES: No, but, like, it says 50
24 percent payable immediately, right. So
25 isn't that what would be required?

1 1344. MR. SHEA: No, because there are other
2 differences in terms of basic rent for
3 certain periods. I'm asking whether he did
4 an analysis to determine what it would take
5 in terms of a capital injection...

6 THE DEPONENT: No.

7
8 BY MR. SHEA:

9 1345. Q. No, you did not.

10 A. Because I don't think we agreed on
11 that 50 percent number. I don't think we're still
12 in agreement on that.

13 1346. Q. Okay, but you are aware of the
14 amount of rent that is being claimed as owing, are
15 you not?

16 MR. JONES: As of when?

17 THE DEPONENT: Yes.

18
19 BY MR. SHEA:

20 1347. Q. Were you not given documents...

21 A. Is it the nine million? 5.9
22 million, sorry.

23 1348. Q. I'm going to show you a...this is...

24 A. The latest one?

25 1349. Q. Well, this is a document. So it's

1 57.

2 MR. JONES: So this is as of when,
3 March, 2021?

4 THE DEPONENT: That's really early on in
5 the...
6

7 BY MR. SHEA:

8 1350. Q. Sorry, did you not get...let me
9 finish my question.

10 A. Yes.

11 1351. Q. So you recognize that document?

12 A. Yes, I remember that.

13 1352. Q. So did you not get statements like
14 this from the Authority on a regular basis?

15 A. We had printouts, but we could never
16 reconcile to the number. Like, there is...I don't
17 know where the 5.9 million came from.

18 1353. Q. Well, is it not...I'm sorry, can you
19 turn up the document? Do you have...

20 A. 5.9 from your legal thing.

21 1354. Q. No, but that would be...is it not
22 attached? Is there not an analysis of the rent
23 owing attached? I'm just trying to understand...so
24 your position is you can't run the analysis of what
25 capital it would take to accept the offer because

J. Pearce - 264

1 you don't know what 50 percent of the rent would be.

2
3 A. Yes.

4 1355. Q. Did you ever ask us for that number
5 so you could run the analysis?

6 A. I don't recall.

7 1356. MR. SHEA: Okay, give me a moment here.
8 Just go off the record for a second while I
9 go through these notes here.

10
11 --- upon recessing at 4:48 p.m.

12 --- A BRIEF RECESS

13 --- upon resuming at 4:53 p.m.

14
15 JIM PEARCE, resumed

16 CONTINUED CROSS-EXAMINATION BY MR. SHEA:

17
18 1357. Q. So you indicated that you hadn't
19 asked the Authority how they calculated what they
20 thought was owing. How did you...

21 A. No, I wasn't sure.

22 1358. Q. You weren't sure how. Have you ever
23 asked them?

24 A. I'm not sure.

25 1359. Q. You're not sure if you asked them?

1 A. Yes.

2 1360. Q. Okay. Will you undertake to make
3 inquiries to determine if you asked them how the
4 rent was calculated?

5 A. Which one? Like, we have got lots
6 of...

7 1361. Q. How the document...you said that you
8 didn't understand...

9 A. Well, no, they sent a bunch of
10 documents on a regular basis, as you commented. So
11 which...

12 1362. Q. Okay, so on the one I gave you. The
13 one I gave you.

14 A. The March one?

15 1363. Q. It's right here.

16 A. March, 2021.

17 1364. Q. So this one, you do not agree with
18 the calculation of rent, I take it?

19 A. Like, we could never reconcile it
20 from our end.

21 1365. Q. But I want to just understand
22 whether you ever asked them. You said you can't
23 recall whether you ever asked them...

24 A. Correct.

25 1366. Q. ...to reconcile for you or assist

1 you to reconcile.

2 A. Correct.

3 1367. Q. Will you agree...

4 MR. JONES: Just so I can get my notes
5 correctly, what are you showing me, though?

6 1368. MR. SHEA: Exhibit 8 which is the rent
7 document from us from March 26th, 2021.

8 MR. JONES: So whether they ever asked
9 about that specific one?

10 1369. MR. SHEA: Yes, sure. He says he can't
11 recall if they asked about any. I'm not
12 going to put them all in because it will
13 have here all afternoon or all evening. So
14 let's just ask about that one.

15
16 --- EXHIBIT NO. 8: Rent document from Peace Bridge
17 Authority, dated March

18
19 BY MR. SHEA:

20 1370. Q. What percentage of the rent do you
21 claim two million dollars equates to?

22 A. At that time are you asking?

23 Like...

24 1371. Q. Sorry, yes, so as at the time the
25 offer was made to pay two million dollars in

1 rent...so I believe it's October of 2021, what do
2 you assert the two...what percentage of the rent do
3 you assert the two million dollars equates to?

4 A. I don't know.

5 1372. Q. So it has no basis to the rent
6 owing. It's just a lump sum?

7 MR. JONES: It's a...sorry, I don't
8 want...it's a number.

9 THE DEPONENT: Yes, so I don't know.

10
11 BY MR. SHEA:

12 1373. Q. So it's not based on any percentage
13 of...

14 A. I would have to go through and
15 reconcile.

16 1374. Q. So you did not calculate that number
17 based on any percentage of rent. It's just a lump
18 sum?

19 MR. JONES: It's a gross number.

20 THE DEPONENT: Yes.

21
22 BY MR. SHEA:

23 1375. Q. And is there any basis for the gross
24 number or is it just...is that the most you can
25 raise? How did you determine two million?

1 A. I don't have that answer.

2 1376. Q. So you don't recall...

3 A. Yes.

4 1377. Q. ...how you came to two million
5 dollars?

6 A. Yes.

7 1378. Q. So it's not...sorry, let me ask you
8 this. Is it based on the financial projections,
9 some account on the financial projections? Is it
10 based on anything you can recall?

11 A. In 2021, I can't recall.

12 1379. MR. SHEA: Okay. So those are my
13 questions.

14

15 --- upon adjourning at 4:55 p.m.

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REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **31st DAY OF AUGUST, 2023** and taken to the best of my skill, ability and understanding.

Certified Correct:



Briana Lee
Verbatim Reporter



TAB 10

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

SJ/saa

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

- - - - -

This is the Cross-Examination of EPHRAIM STULBERG, on his Affidavit sworn the 26th day of September, 2023, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Toronto-Dominion Centre, Toronto, Ontario, on the 29th day of September, 2023.

- - - - -

A P P E A R A N C E S:

E. PATRICK SHEA	-- for Buffalo and Fort Erie Public Bridge Authority
BRENDAN JONES	-- for the Respondent

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1 --- upon convening at 9:30 a.m.

2 --- upon commencing at 9:37 a.m.

3
4 EPHRAIM STULBERG, affirmed

5 CROSS-EXAMINATION BY MR. SHEA:

6 1. Q. Good morning, sir. You are here
7 to be examined on a report you produced?

8 A. Yes.

9 2. Q. And you have a copy of that
10 report with you?

11 A. Yes, I do.

12 3. Q. And the report is actually
13 attached, just so we have it on the record, as
14 Exhibit A to an affidavit that you swore, I
15 believe it was the 26th of September 2023, is
16 that correct?

17 A. Yes, that is correct.

18 4. Q. And you have no changes that you
19 want to make to the report, save and except for
20 the change that we discussed which relates to the
21 RFP not being referred to in the documents you
22 considered, no other changes?

23 A. Other than minor typos that I
24 identified in going through things, no.

25 5. Q. We don't worry about typos. If

E. Stulberg - 4

1 one of them is significant I am sure you will
2 point it out to me as we go. So, I want to begin
3 with a little bit of background. So, I take it
4 you are an accountant by training?

5 A. Yes.

6 6. Q. And you have experience in loss
7 evaluation as well?

8 A. Correct.

9 7. Q. But I take it you have no
10 specific experience in the duty free space?

11 A. That is correct.

12 8. Q. So you have never advised a
13 tenant, a duty free tenant, on the negotiation of
14 a lease for a duty free store?

15 A. I have not.

16 9. Q. And you have never advised or
17 consulted for a bridge authority or operator of a
18 border crossing with respect to a duty free
19 lease?

20 A. That is correct.

21 10. Q. And can you tell me when you were
22 first approached by Peace Bridge Duty Free or
23 Blaney to provide a report?

24 MR. JONES: Counsel, I don't think it
25 is relevant when they were first

11. MR. SHEA: I don't know that you are in a position to refuse to answer a question. We have an expert, I am asking the question.

12. Q. So, can you tell me when you were first approached?

$$/\mathbb{R}$$

13. MR. SHEA: Are you acting as counsel for the expert here or are you acting as counsel for Peace Bridge Duty Free?

MR. JONES: Well, Counsel, we are
acting for Peace Bridge Duty Free.

14. MR. SHEA: So, just to be clear, the expert is refusing to tell me when they were first approached to produce the report. Is that correct, sir?

MR. JONES: Yes, Counsel.

15. Q. Okay. And I notice that, in the documents we were provided, there is no document,

E. Stulberg - 6

1 memo or letter providing you with your
2 instructions or assumptions. Were there such
3 documents? Were you, in writing, given the
4 questions you were to answer and any assumptions?

5 A. I was not given a set of
6 assumptions or a written set of questions, no.

7 16. Q. Okay. So how did you come to
8 know the questions you were to answer or the
9 assumptions you were to make?

10 A. I had a phone conversation with
11 John Wolf.

12 17. Q. Okay. And do you have notes from
13 that phone conversation?

14 A. I did take notes of that
15 conversation.

16 18. Q. You did not produce those notes?

17 MR. JONES: Counsel, I don't believe
18 that the communications between the
19 expert and counsel are producible,
20 unless you can refer to me to something
21 and I am mistaken.

22 19. MR. SHEA: I am not asking for
23 privileged communication. I am asking
24 for notes that he took of a conversation
25 with respect to the facts that he was to

E. Stulberg - 7

1 rely upon and the questions that he was
2 to answer.

3 MR. JONES: Okay. So, again, if you
4 can provide me with some authority that
5 that would be producible in these
6 circumstances...

7 20. MR. SHEA: The rules of civil
8 procedure contemplate that we are
9 entitled, as I understand, to know the
10 assumptions upon which...

11 MR. JONES: They are in the report.

12 21. MR. SHEA: Okay. So you are refusing
13 to produce documents or the notes from
14 the communications with Mr. Wolf in
15 which the expert was provided the
16 questions they were to answer and the
17 assumptions they were to make?

18 MR. JONES: Yes.

/R

19 22. MR. SHEA: That's fine.

20 MR. JONES: And what I've asked
21 you...

22 23. MR. SHEA: So I'd like to go on,
23 please.

24 MR. JONES: ...if you'd be able to
25 provide me with...

E. Stulberg - 8

1 24. MR. SHEA: Sorry, sir...

2 MR. JONES: No, Counsel, you've asked

3 me a question...

4 25. MR. SHEA: Sir, to be clear...

5 MR. JONES: Counsel, stop. I am

6 going to finish my answer, okay?

7 26. MR. SHEA: This examination is over.

8 We are going back to the judge.

9 MR. JONES: Why?

10 27. MR. SHEA: If I can't ask the

11 questions without interruptions...

12 MR. JONES: Sit down...

13 28. MR. SHEA: I adjourn this

14 examination...

15 MR. JONES: Sit down...

16 29. MR. SHEA: ...we are going back to the

17 judge. Sit down. No, on the record.

18 Finish answering your question, sir. Go

19 ahead. Go ahead.

20 MR. JONES: The answer to my question

21 was, my understanding is that there is

22 no requirement to provide the

23 communication with counsel, however, if

24 you'd be good enough to provide us with

25 some authority, if I am mistaken on that

E. Stulberg - 9

1 point, I would be happy to review it.

2 30. MR. SHEA: Perfect.

3
4 BY MR. SHEA:

5 31. Q. Paragraph 5. You indicate in
6 paragraph 5...can you open that up, please? That
7 you understand that,

8 "...It's Peace Bridge Duty Free's
9 position that, absent an agreement
10 between the landlord [that is our
11 client] and Peace Bridge Duty Free, the
12 court will set the amount of base rent
13 in a manner that is commercially
14 reasonable for both parties..."

15 Do you see that?

16 A. Yes, correct.

17 32. Q. How did you come to that
18 understanding?

19 A. That was based on a discussion
20 with Mr. Wolf.

21 33. Q. So Mr. Wolf told you that?

22 A. Yes.

23 34. Q. And did he tell you that in
24 writing?

25 A. No.

E. Stulberg - 10

1 35. Q. Did he tell you that during the
2 conversation you had with him on the phone?

3 A. Yes, this was part of the
4 conversation we had on the phone.

5 36. Q. And those are the notes that you
6 are refusing to produce?

7 MR. JONES: Sorry, Counsel, you have
8 the assumption right there.

9 37. MR. SHEA: I didn't ask that.

10
11 BY MR. SHEA:

12 38. Q. So you are refusing to produce
13 those notes? Thank you.

14 MR. JONES: Yes, we've already gone
15 over that.

16
17 BY MR. SHEA:

18 39. Q. So, am I correct that it is your
19 understanding that the purpose of the report was
20 to provide the court with guidance as to the
21 commercially reasonable amount of rent, base
22 rent?

23 A. It was to provide the court with
24 financial background that would be relevant to it
25 if that was the approach that we are taking, yes.

A. To determine what a commercially reasonable level of rent would have been during the subject periods that I analyzed.

A. Yes.

A. Correct.

A. That is not correct.

A. I didn't rely on any financial projections. The projections that I made for fiscal 2023 were my own.

A. It is outlined in my report. So I have sales data at schedule 5 of the report.

46. Q. M' hmmm. And where did get...that

E. Stulberg - 12

1 information came from?

2 A. This was based on a spreadsheet
3 containing sales and traffic count data for the
4 first half of 2023.

5 47. Q. Okay. And that data came...

6 A. From Jim Pearce.

7 48. Q. Mr. Pearce. So, Mr. Pearce never
8 gave you projections?

9 A. No, not directly.

10 49. Q. Indirectly, did he give you
11 projections?

12 A. There may have been something in
13 one of the affidavits that was produced. They
14 were quite voluminous, though, and I don't want
15 to definitively say there wasn't anything in
16 there, but I certainly didn't rely on any
17 projections in looking at the 2023 likely
18 profitability of the business.

19 50. Q. And you never produced any
20 productions beyond 2023?

21 A. Correct.

22 51. Q. And Mr. Pierce didn't give you
23 any projections for anything beyond 2023
24 directly?

25 A. No.

E. Stulberg - 13

52. Q. Now, I take it you'd agree that what rent is commercially reasonable as between two parties would generally be determined by the parties' negotiations?

A. In a typical situation, yes, the parties would look at the factors when they were entering into a lease and would negotiate what they felt was reasonable.

53. Q. Thank you. So, you've seen the lease, correct?

A. Yes, I have.

54. Q. So, I am going to show you a copy
of the lease. Counsel, here is a copy for you.

A. Thank you.

55. Q. So, this is a copy of the lease, can you look through it? Is this the copy that you saw?

A. It appears to be.

56. MR. SHEA: Okay. So this will be Exhibit A. Exhibit A is a copy of the lease between the Authority and Peace Bridge Duty Free.

--- EXHIBIT NO. 1: Lease between the Buffalo and
Fort Erie Public Bridge Authority

E. Stulberg - 14

1 and Peace Bridge Duty Free dated
2 July 28, 2016
3

4 BY MR. SHEA:

5 57. Q. Sir, in paragraph 2, you
6 outline...of your report, this is just in the
7 summary, I think you outlined it elsewhere as
8 well. So you are aware that this rent in the
9 lease is what Peace Bridge Duty Free offered the
10 Authority?

11 A. Yes.

12 58. Q. So, in response to the RFP, Peace
13 Bridge Duty Free made an offer to pay rent, and
14 this was the rent they offered to pay?

15 A. Yes, that is correct.

16 59. Q. And you are aware, are you not,
17 that Peace Bridge Duty Free was the operator of
18 the duty free store since 1986?

19 A. I believe that is correct, yes.

20 60. Q. It is in paragraph 25 of your
21 affidavit, if you'd like to confirm.

22 A. Paragraph 1 as well, I see it.

23 61. Q. Okay. So, you'd agree with me
24 that, having run the store since 1986, Peace
25 Bridge Duty Free would be in the best position to

E. Stulberg - 15

1 determine the rent that was commercially
2 reasonable for it to pay?

3 A. I would say that Peace Bridge,
4 when they negotiated and when they bid on the RFP
5 when they did...again, not seeing COVID
6 coming...yes, they would have been in a good
7 position to understand what was a reasonable
8 amount to pay.

9 62. Q. And they would be in the best
10 position to project how much they could earn from
11 this business and what the sales would be?

12 A. They would have had a decent
13 amount of track record to make that projection,
14 yes.

15 63. Q. Since 1986, yes. And do you have
16 any information as to what Peace Bridge was
17 paying in rent prior to this lease?

18 A. I believe I did and I am going to
19 check my report. I believe it was 12 percent of
20 gross revenue.

21 64. Q. And you'll agree with me that it
22 was Peace Bridge Duty Free that agreed to
23 significantly increase the rent that it was
24 offering when it responded to the RFP?

25 A. Yes, I believe that is correct.

E. Stulberg - 16

1 65. Q. And I'll refer you to paragraph
2 26, and I believe that you say in paragraph 26
3 that,

4 "...The Authority was requesting base
5 rent of 2.5 million a year..."

6 A. Yes, that was, I think, a
7 requirement to bid on that RFP.

8 66. Q. And you'll agree with me that
9 Peace Bridge Duty Free offered significantly more
10 than 2.5 million a year?

11 A. Yes.

12 67. Q. Now, I am going to ask you in the
13 lease to turn to Schedule D to the lease, and it
14 begins at the top right.

15 A. Is there a page?

16 68. Q. 98.

17 A. Page 98.

18 69. Q. Top right, 98.

19 A. Okay.

20 70. Q. Do you recall seeing these
21 documents?

22 MR. JONES: Sorry, which page are we
23 on?

24 71. MR. SHEA: 98 of the lease.

25

1 BY MR. SHEA:

2 72. Q. Do you recall seeing...

3 MR. JONES: Bear with me for one
4 second, Counsel.

5 73. MR. SHEA: Top right.

6
7 BY MR. SHEA:

8 74. Q. Do you recall seeing these...

9 MR. JONES: Sorry, my number 98 is
10 something different. So its tab 4.

11 75. MR. SHEA: Qualifications and
12 expertise of the lease?

13 MR. JONES: Yes, I think we are
14 looking at the same one.

15 76. MR. SHEA: Okay. Tab 4?

16 MR. JONES: Yes.

17
18 BY MR. SHEA:

19 77. Q. So, do you recall seeing this
20 document attached to the lease?

21 A. I'll be casual with you, I don't
22 immediately recall it.

23 78. Q. Okay. So I am going to ask
24 you...but you did see it, you were given a copy
25 of the lease?

E. Stulberg - 18

1 A. I did get a copy of the lease,
2 but I didn't review every page of it.

3 79. Q. Well, I'm going to ask you to
4 turn to pages 122 and 123. So do you recall at
5 the bottom, these are forecasted sales and if you
6 turn over the page to 123, you'll see,

7 "...Forecasted Operating and Capital
8 Costs..."
9 Do you recall seeing these?

10 A. I don't.

11 80. Q. Okay. Can you take a moment to
12 review the projections of the sales and the
13 projection of the operating costs?

14 MR. JONES: Should we go off the
15 record?

16 81. MR. SHEA: Sure if you want to take a
17 minute off the record.

18
19 --- DISCUSSION OFF THE RECORD

20
21 BY MR. SHEA:

22 82. Q. So, based on these projections
23 and these costs, total operating costs, do you
24 have any opinion on whether the rent that Peace
25 Bridge Duty Free offered to pay was reasonable?

E. Stulberg - 19

1 A. I guess the first thing I'll
2 point out is that...so this would have been
3 prepared by 2016.

4 83. Q. M'hmm.

5 A. I mean, I can say that, by year
6 three, the sales were nowhere near the 30 million
7 dollars that is forecasted.

8 84. Q. M'hmm.

9 A. Certainly, if they are hitting
10 those sales, then the rent is still leaving them
11 with a nice profit.

12 85. Q. So you have no issue with the
13 commercial reasonability of the rent that was
14 offered in the lease, based on the projections
15 that were prepared by Peace Bridge Duty Free?

16 A. Based on the projections, the
17 rent would have left Peace Bridge Duty Free with
18 a reasonable rate of return, certainly.

19 86. Q. And you'll agree with me that, if
20 Peace Bridge Duty Free didn't hit these levels of
21 sales, they wouldn't be entitled to pay less
22 rent?

23 A. Less rent than what?

24 87. Q. Than what the lease provided for.

25 A. You are asking for my

1 interpretation of the lease?

2 88. Q. Well, you've reviewed the lease.
3 I am not asking for your interpretation. Do you
4 understand that the lease provides a clause that
5 says that, if they don't meet these levels of
6 sales, they get a discount on the rent. Are you
7 aware of...

8 A. I don't believe there is a clause
9 that says that.

10 MR. JONES: You are asking him
11 specifically about sales targets?

12 89. MR. SHEA: Yes.

13
14 BY MR. SHEA:

15 90. Q. And, as I understand, your report
16 assesses what is commercial reasonable rent based
17 on Peace Bridge Duty Free achieving a particular
18 return on assets or particular net income
19 percentage, is that correct?

20 A. It depends which period you are
21 referring to.

22 91. Q. You are right. In the post-2023
23 and potentially beyond, do you not base
24 your...what you believe to be commercially
25 reasonable rent, on Peace Bridge Duty Free

E. Stulberg - 21

1 achieving, I believe it is, 11 point something
2 return on assets and 6.6 net income?

3 A. No, that is correct. I do use
4 those metrics to come up with what one might
5 argue is a reasonable rate of return and the rent
6 is sort of a plug to get to those rates of
7 return.

8 92. Q. You'll agree with me, though,
9 that that is not in the lease?

10 A. I would agree that the lease does
11 not outline those particular rates of return.

12 93. Q. So, your analysis of what is
13 commercially reasonable assumes that the lease
14 doesn't apply?

15 A. I don't think that is a fair
16 characterization.

17 94. Q. Okay. But you do agree with me
18 that the lease doesn't contemplate that Peace
19 Bridge Duty Free will achieve, in any given year,
20 a particular net income?

21 A. I think what I said was that the
22 lease doesn't specifically mention a net income
23 amount or percentage. There is a clause in the
24 lease which I understand is in dispute in this
25 case, which does speak to if there was a change

E. Stulberg - 22

1 in laws, et cetera, then something will happen...

2 95. Q. There will be a consultation...

3 A. And I understand the parties
4 disagree over that and I have no opinion as to
5 what that means. I am not here to interpret that
6 clause.

7 96. Q. So you are not providing anything
8 to interpret that clause?

9 A. I am not interpreting what that
10 clause means directly, no.

11 97. Q. Okay. And I take it there is no
12 dispute that the lease contemplates base rent of
13 four million?

14 A. The lease outlines a base rent of
15 four million dollars per year.

16 98. Q. And there is also no dispute that
17 if, under the terms of the lease, subject to
18 18.07, if Peace Bridge Duty Free does not achieve
19 the sales, the level of sales outlined in its
20 response to the RFP, it still has to pay four
21 million dollars minimum?

22 MR. JONES: Counsel, I think, as you
23 know, there is a dispute...

24 99. MR. SHEA: I said in my question
25 subject to the dispute.

E. Stulberg - 23

1 MR. JONES: Right. I mean, subject
2 to COVID and changes in applicable laws.

3 100. MR. SHEA: Okay.

4
5 BY MR. SHEA:

6 101. Q. So, subject to COVID and
7 applicable laws and whatever 18.07 means...

8 MR. JONES: And the rest of the
9 lease...

10
11 BY MR. SHEA:

12 102. Q. ...the lease does not contemplate
13 that, as of right, if they fail to meet the
14 sales, there is a reduction in the four million
15 dollar minimum rent...there is no tie-in, four
16 million dollars and the sales projections?

17 MR. JONES: Counsel, I am struggling
18 to understand your question. You are
19 asking him to interpret the lease?

20 103. MR. SHEA: I am asking him whether he
21 understands there is any linkage between
22 the minimum rent and the sales
23 projections.

24 MR. JONES: Sorry, you are asking
25 whether...I need to understand the

E. Stulberg - 24

1 question...in coming to the base rent
2 number, there is a linkage...

3 104. MR. SHEA: No...

4 MR. JONES: ...in terms of what the
5 projected sales would be?
6

7 BY MR. SHEA:

8 105. Q. No. Is there a link between the
9 obligation to pay minimum rent and the sales
10 projection? Do you understand whether...so let
11 me ask you this. Based on your understanding, is
12 there a linkage between the obligation to pay
13 rent and the sales projections?

14 A. There is no direct linkage or
15 language to that effect in the lease, as far as I
16 can tell.

17 106. Q. Okay. Thank you. So, your first
18 analysis is the ability to pay in 2020 and 2022,
19 correct?

20 A. 2020 until 2022, so the three-
21 year period.

22 107. Q. Okay. So this period includes
23 the time that the duty free was closed, and a
24 period of time when it was open?

25 A. Yes.

E. Stulberg - 25

1 108. Q. So I assume you were instructed
2 to group 2020 through 2022 as a package?

3 A. I don't recall being directly
4 instructed to do that.

5 109. Q. Okay. So you are aware the duty
6 free store was closed from March 2020 to
7 September of 2021, correct?

8 A. Roughly, yes.

9 110. Q. Well, that is paragraph 38, if
10 you want to check.

11 A. No, mid-march, I think, is the
12 only qualification I would make to that
13 statement.

14 111. Q. So, why, then, did you include in
15 this analysis the period after September of 2021
16 when the duty free was opened?

17 A. The reason I did that was because
18 my understanding of section 18.07, is that it
19 speaks to changes and applicable laws and there
20 were still applicable laws or regulations which
21 would have impacted the financial results of the
22 business. As I outlined at some length in the
23 "Background" section of my report at paragraph 37
24 and, I guess, in fact, even extending beyond
25 that, the US didn't remove the requirement for

E. Stulberg - 26

1 foreign visitors to have a vaccination until the
2 spring of 2023.

3 112. Q. So why didn't you include up to
4 the spring of 2023 in that period, then?

5 A. Because I don't have full
6 financial statements for that period. So I have
7 made estimates for 2023.

8 113. Q. So I am just trying to
9 understand, the reason you included up
10 until...included 2021 from September through 2022
11 in your analysis, is because you were told that
12 there were impacts by legislation during that
13 period?

14 A. I wasn't told that. It seems
15 quite clear from the results and there certainly
16 was, I think, regulations or legislation that
17 would have had an impact on customer flow to the
18 business.

19 114. Q. And you didn't include the period
20 beyond 2022 even though there continued to be
21 impacts because you didn't have numbers for
22 those?

23 A. I don't have a full year of
24 financials statements, so I thought it made sense
25 to segregate the 2020 to 2022 period, in one

E. Stulberg - 27

1 analysis, and then, the 2023, in a second
2 analysis.

3 115. Q. Okay. And during the period
4 March of 2020 to September of 2021, you'll agree
5 that the primary impact on the ability to pay
6 rent was the fact the store was closed?

7 A. From a causation perspective, I
8 don't think that is correct. I would say that
9 the ultimate causation would have been the lack
10 of vehicle traffic as you can see on schedule 6
11 of my report. Vehicle traffic is down to five to
12 10 percent of normal levels during pretty much
13 that entire period. So regardless of whether
14 they were open or not, they would have had great
15 difficulty paying rent.

16 116. Q. But, you'll agree, that, if they
17 would have remained open, they would have had an
18 increased ability to pay rent based on five
19 percent traffic that was still flowing?

20 A. I think that is possible, but I
21 don't know that it's, by any stretch, a
22 certainty. Don't forget, if they are staying
23 open, they are going to generate, let's say, five
24 percent of their normal rent, there is the cost
25 of sales and you've got to staff the place.

E. Stulberg - 28

1 You've got other costs to keep the lights on.
2 Its difficult to say whether they would have been
3 better off having done that.

4 117. Q. But you don't know? You never
5 got the numbers?

6 A. It is difficult to model.

7 118. Q. Okay. Did you try to model that?

8 A. No.

9 119. Q. And you'll agree with me that, in
10 paragraph 55, you say that there is no standard
11 or definitive metric that can be applied to
12 determine reasonable level of rent that would be
13 applicable for the period of COVID?

14 A. Yes, that is correct. There is
15 no standard or definitive metric.

16 120. Q. And are you aware that Peace
17 Bridge Duty Free negotiated a rent deferral
18 arrangement with the Authority?

19 A. I am aware of one such
20 arrangement, yes.

21 121. Q. Did that factor into your
22 analysis at all?

23 A. In what sense?

24 122. Q. Did you consider the fact that,
25 as a contractual matter, the Peace Bridge Duty

E. Stulberg - 29

1 Free had agreed to a rent deferral as opposed to
2 any rent abatement?

3 A. So it is not directly reflected
4 in my calculations.

5 123. Q. And if you turn to paragraph 58.
6 In paragraph 58 you assert that,
7 "...If it would be appropriate for Peace
8 Bridge Duty Free to suffer a loss of 50
9 percent of its retained earnings, then
10 the total base rent that Peace Bridge
11 Duty Free would pay would be 4.6
12 million..."

13 You'll agree with me that that is not what the
14 lease requires?

15 A. You are asking for my
16 interpretation of the lease?

17 124. Q. Well, 4.6 million...you are
18 saying that Peace Bridge Duty Free would have
19 been required to pay 4.6 million in rent between
20 2020 and 2022, is that what you are saying?

21 A. Well, I am saying...there is an
22 "if" at the beginning of the sentence. So, the
23 analysis, again, is premised on a particular
24 understanding or instruction with respect to
25 section 18.07 of the lease.

125. Q. So what is the premise of the understanding? What do you understand 18.07 to say? What is the premise?

A. So, the premise or the assumption of that, the paragraph we just went through, is outlined at paragraph 5 of the report and, again, my understanding is that Peace Bridge's position is that, absent an agreement between the landlord and Peace Bridge, the court will set an amount of base rent in a manner that is commercial and made reasonable. The calculation I have described at paragraph 58 is, what, I thought, one way of looking at what a commercially reasonable amount would be.

126. Q. But it is not based on the section...it is not based on how the lease provides for the calculation of rent as set out in paragraph 2 of your report?

A. It is not based on the four million dollar minimum [inaudible], correct.

127. Q. Okay. So it is a freestanding calculation that does not consider how you interpret the lease as requiring the rent be calculated as set out in paragraph 2. In paragraph 2 you say...let me clarify. In

E. Stulberg - 31

1 paragraph 2 you interpret the lease and say this
2 is what it provides in terms of rent. In
3 paragraph 58, that is an entirely different
4 calculation.

5 A. The amounts in paragraph 58 are
6 not based on the four million dollars per year
7 minimum base rent.

8 128. Q. Okay. Now, your analysis of
9 ability to pay in 2023 and possibly beyond. So I
10 want to make sure I understand this right. So I
11 am looking at table 1 and schedules 1B and 2B.

12 A. Okay.

13 129. Q. So, your opinion is that, with
14 sales of 16 million and assuming a return on
15 assets of 11.6, Peace Bridge Duty Free can afford
16 to pay 2.7 million in rent, and will realize a
17 net income of 1.3 million for its shareholders?

18 A. Yes, you are reading that table
19 correctly.

20 130. Q. And with the same level of sales,
21 16 million, and with a net income percentage of
22 6.6, Peace Bridge Duty Free can afford to pay 2.9
23 million in rent in your view, and will realize
24 1.05 million in net income for its shareholders?

25 A. Correct.

E. Stulberg - 32

1 131. Q. Okay. So your analysis assumes
2 that Peace Bridge Duty Free and its shareholders
3 have to earn a specific return or will earn a
4 specific return. So your analysis assumes a
5 specific rate of return?

6 A. It assumes that a commercially
7 reasonable lease, based on the circumstances
8 known, would give the business owner a rate of
9 return on their assets, or a level of
10 profitability.

11 132. Q. And were you told my anyone that
12 the level of profitability that Peace Bridge Duty
13 Free expects is 11.6 return on assets or 6.6 net
14 income percentage?

15 A. I wasn't told that and, in fact,
16 based on the forecast that you provided earlier,
17 clearly they were hoping for more. So this is
18 meant to be more of an objective benchmark
19 looking at other companies in this broad industry
20 and what they are renting.

21 133. Q. Okay. But you agree that it
22 would be reasonable for Peace Bridge Duty Free to
23 accept a lower level of profitability?

24 A. I think there is room to maneuver
25 around those numbers. It is not a hard and fast

E. Stulberg - 33

1 thing. It is a benchmark. It's an average. But
2 certainly, the expectation of it would be this.
3 If you are running a business, you hope to earn a
4 profit and the return on your capital over time.

5 134. Q. Return on capital over the length
6 of the lease or immediately?

7 A. Into the future.

8 135. Q. So, in your report, you refer to
9 offers that were made in October of 2021, which,
10 you will agree, is before this litigation began,
11 and in March of 2023, which is after this
12 litigation began, is that correct?

13 A. I do refer to those offers of
14 those two dates. I confess I am not actually
15 aware of precisely when the litigation began, but
16 I will take your word for it.

17 136. Q. Okay. And those were offers that
18 were made by who to who?

19 A. These were both offers presented
20 on behalf of the Authority to Peace Bridge Duty
21 Free.

22 137. Q. Okay. So I am going to show
23 you...this is...I'll give you the copy without
24 the stamp on it...this is the October 26th copy
25 for you to look at as well. Do you recall this,

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1 is this the document?

2 A. I believe so.

3 138. Q. And here is a copy of the
4 March...so I am going to...this is a copy for
5 you. Is that copy correct?

6 A. Yes, I believe so.

7 139. Q. Okay. I am going to mark the
8 October 26th as Exhibit B, I believe...or Exhibit
9 2...I apologize, Exhibit 2. And the March will
10 be Exhibit 3, okay?

11
12 --- EXHIBIT NO. 2: October 26th 2021 offer

13
14 --- EXHIBIT NO. 3: March 21st 2023 offer

15
16 BY MR. SHEA:

17 140. Q. Okay. And I am going to assume
18 that these were the only offers you were
19 provided. So you were never provided with any of
20 the other offers exchanged between the parties?

21 A. I believe that is correct.

22 141. Q. Okay. So I am going to show
23 you...I don't know if you have seen it, but...so
24 we have the 26th. So I am going to show you an
25 offer made on 16 November. So, I take it, you've

E. Stulberg - 35

1 never seen this offer before?

2 A. It does not look familiar to me.

3 142. MR. SHEA: Okay. We are going to
4 mark this...Counsel, do we want to mark
5 this for information? Because he has
6 never seen it, but I am going to ask him
7 questions on it, and it is on the
8 record.

9 MR. JONES: So why don't we mark it
10 for identification purposes as we
11 discussed.

12 143. MR. SHEA: So, this is going to be
13 Exhibit A for identification. I
14 apologize, we will give you the list of
15 the Exhibits. The lease is Exhibit 1,
16 not A. Sorry, my mistake.

17
18 --- EXHIBIT A: November 16th, 2021 offer

19
20 BY MR. SHEA:

21 144. Q. Do you want to take few minutes
22 to review that?

23 A. Please, if you don't mind.

24 145. MR. SHEA: Okay. So, we are going to
25 go off the record for a few minutes to

1 review that.

2
3 --- DISCUSSION OFF THE RECORD

4
5 BY MR. SHEA:

6 146. Q. So, your report and your analysis
7 deals with base rent, the payment of rent,
8 correct?

9 A. Yes, that is right.

10 147. Q. And I am going to ask you to have
11 these two side-by-side if you don't mind. You
12 reviewed Exhibit A. You will agree with me that
13 the October 26th, 2021 proposal from Gowlings on
14 behalf of the Authority, contemplates, or offers,
15 an escalation in the base rent from 2.5 million,
16 or 20 percent of sales, in 2022? And I will
17 confess that all these documents...because the
18 lease starts in the middle of a year, what that
19 means, but what exactly that means in terms of
20 when it starts...but, an escalation from 2.5
21 million to 4 million by 2025, and that, beyond
22 2025, the existing lease applies. And that is
23 the offer you considered or that you had before
24 you?

25 A. Yes, that is right.

E. Stulberg - 37

1 148. Q. And I am going to refer you to
2 the November 16th, 2021 response from Peace
3 Bridge Duty Free. You were not given a copy of
4 this document?

5 A. Correct.

6 149. Q. And you will note that what Peace
7 Bridge Duty Free proposes essentially parallels
8 what the Authority was prepared to agree to?

9 A. What do you mean by
10 "essentially"?

11 150. Q. Well, aside from 2022, where
12 there would be a makeup payment to get them to
13 2.5 million or 20 percent of sales, the base rent
14 proposed by the parties is identical?

15 A. Are you talking about the
16 escalations?

17 151. Q. Yes, the escalations are
18 identical, are they not?

19 A. So, the base rent amounts for
20 2023, '24 and '25 are identical. There are
21 differences in the 2022 proposal and there are
22 also differences with respect to how back rent
23 would be treated.

24 152. Q. But you didn't deal with back
25 rent?

1 A. I did.

2 153. Q. Your report dealt with back rent?
3 And what amount of bank rent would be reasonable
4 for them to pay?

5 A. It's looking at the amount of
6 rent that they had paid during that time frame
7 and looking at what additional rents would be
8 payable, and so, yes, it considers all forms of
9 rent that were paid and unpaid.

10 154. Q. So, please point out to me where,
11 in your report, you identify what amount of back
12 rent it would be reasonable for Peace Bridge Duty
13 Free to repay?

14 A. So, I'll take you to schedule 1A
15 and I go through three different scenarios.

16 155. Q. M'hmm.

17 A. In the first one, my conclusion
18 is that, in order for them to break even, on the
19 break even analysis scenario, there wouldn't be
20 any additional back rent paid.

21 156. Q. M'hmm.

22 A. Similarly, if the goal of the
23 commercially reasonable amount to pay would be 20
24 percent of revenue, again, there would be no back
25 rent to pay. They'd already paid in excess of

E. Stulberg - 39

1 that. And in scenario 3, the loss of 50 percent
2 with the book value of their equity, they would
3 have had to pay 1.1 million dollars in rent that
4 they had not paid for that period of time.

5 157. Q. So your opinion is that it would
6 be commercially reasonable for Peace Bridge Duty
7 Free to have to pay back none of the back rent?

8 A. If one viewed a commercially
9 reasonable result for a business affected by
10 COVID during that three-year period for them to
11 earn absolutely no profit, and in fact, to suffer
12 a loss, then, yes, that would be the corollary.

13 158. Q. That they have to pay nothing,
14 but if...explain that to me again...so, if the
15 assumption is that, during that period, Peace
16 Bridge Duty Free must make a profit...

17 A. No.

18 159. Q. Okay.

19 A. If Peace Bridge were to...if the
20 desired commercially reasonable result were for
21 Peace Bridge to break even during that three-year
22 window of 2020 to 2022, based on the amount of
23 income they made and based on the amount of rent
24 they had already paid, they would not be required
25 to pay any more rent than they have already done.

160. Q. If the desired result is to break even?

A. Yes, correct.

161. Q. But if it is acceptable for them to generate a loss during any particular period, then you would agree that some amount of the back rent should be paid?

A. It depends on the magnitude of the loss. As you can see in schedule 1A, I've shown that they made 1.8 million dollars. Before consideration of any base rent paid, they actually paid 3.4 million dollars. So they have, in fact, suffered a loss just based on what they have paid.

162. Q. But you will agree...let's come back to that in a second...so, you agree that the escalation that the parties were discussing in October and November, they were in accord as to what the escalation would be?

A. Yes, for 2023, '24 and '25.

163. Q. And what is the your difference in 2022? Is it not a difference of when it is going to be paid, as opposed to what it is?

A. No, you are right. That is what the difference relates to, but they are

E. Stulberg - 41

1 different. They are not exactly the same.

2 164. Q. The difference is not what rent
3 will be paid in 2022, it is when the makeup will
4 happen?

5 A. That is correct.

6 165. Q. And in terms of the amount,
7 you'll agree with me that, in November of 2021,
8 Peace Bridge Duty Free was agreeing to pay back 2
9 million dollars in back rent?

10 A. In nominal terms, yes, although
11 they were proposing to do so over a period of 14
12 years, roughly.

13 166. Q. And what the Authority was
14 requesting was 50 percent of the back rent?

15 A. Yes, immediately.

16 167. Q. Immediately. And I believe the
17 parties are in accord that the back rent was 5.7
18 million, are you aware of that?

19 A. At that particular point in time
20 I haven't seen that number.

21 MR. JONES: I don't think the numbers
22 are in the index.

23

24 BY MR. SHEA:

25 168. Q. Okay. We are going to get to

E. Stulberg - 42

1 that. I just asked if you were told what the
2 number was?

3 A. I am not aware of what the number
4 was at that point in time.

5 169. Q. So you were not aware of what the
6 number is, okay. So I am going to show
7 you...because, I take it, you were not, since it
8 was after you were shown an offer that was made
9 by Peace Bridge Duty Free on August 22nd, 2023,
10 were you?

11 A. I was not shown that.

12 170. Q. So I am going to show you a copy
13 of that. So here's a copy for you and a copy for
14 your counsel. This would also be marked as an
15 exhibit for identification purposes and it would
16 be B for identification.

17
18 --- EXHIBIT B: Letter from Blaney McMurtry dated
19 August 22, 2023, for
20 identification
21

22 MR. JONES: We will go off the record
23 while...

24 171. MR. SHEA: Of course. What I am
25 going to take him to starts on

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1 page...top right-hand corner, 17, it is
2 our March 22nd, 2023 letter and it is
3 the comments from Peace Bridge Duty Free
4 what is agreed to, and what isn't.

5 MR. JONES: Okay. Well let's read
6 the whole thing.

7 172. MR. SHEA: Yes, read the whole thing.
8 Take your time.

9
10 --- DISCUSSION OFF THE RECORD
11

12 BY MR. SHEA:

13 173. Q. So, we were looking at a little
14 bit of context here. So one of the offers that
15 you had talked about and referred to in your
16 report was the 21 March 2023 offer that was made
17 to the Peace Bridge Duty Free and that is Exhibit
18 3. And I am going to refer you to the markup of
19 that that is attached to Exhibit B which you have
20 just looked at, and that begins, top right on
21 mine is page 17, and I don't know why it's 17.
22 So its after Mr. Ullmann's letter, which I am not
23 going to refer you to.

24 A. I have it.

25 174. Q. Okay. And these are Peace Bridge

E. Stulberg - 44

1 Duty Free's position. And you will note that, on
2 the first page, Peace Bridge Duty Free accepts
3 that the amount of rent to be paid, the arrears
4 to be paid, is 2.85 million, which they say is 50
5 percent, and I am going to suggest to you, you
6 multiply that by two and you get to 5.7?

7 A. Yes.

8 175. Q. And then we talk about the next
9 page over is what is agreeable to them in terms
10 of the escalation of the base rent. And you'll
11 note that, beside, is reference that Peace Bridge
12 Duty Free accepts this as being an appropriate
13 escalation, do you see that?

14 A. I do, although I am a little bit
15 confused by that because, when I compare the
16 Blaney McMurtry letter with the Gowling markup
17 letter, the years seem to be off by a year.

18 176. Q. That is what I was talking about,
19 I think there is a typo in terms of how we are
20 treating the years. So if you go back and look
21 at Exhibit 2 and Exhibit A...

22 A. Which is this?

23 177. Q. So, Exhibit 2 is the October
24 26th, 2021.

25 A. Right.

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1 178. Q. So it looks like an extra year
2 just got added in by Gowlings for 2021, a minimum
3 rent level for 2021. Everything else lines up.

4 A. So this, just so I understand,
5 the Gowlings letter 2021, means November 1st,
6 2021 to October 31st, 2022?

7 179. Q. I can't say for certain. I
8 believe that is the right...I believe that is the
9 answer.

10 A. That was my reading of the
11 document.

12 MR. JONES: I believe that is the
13 right answer, but I just want
14 to...whatever...it is a Gowlings letter.
15 I can take you to another document that
16 has that laid out, but that other
17 document was just delivered two or three
18 days ago so I don't know if we want
19 to...and it also has no relation to what
20 this witness has seen.

21
22 BY MR. SHEA:

23 180. Q. Okay. As long as what I just
24 suggested to you, does that square with all the
25 other letters?

1 A. Everything squares with all the
2 other letters.

3 181. Q. If we read it that way.

4 A. Yes, I guess...the point of
5 confusion I have is that...okay, I am still a
6 little bit confused. I guess the Blaney McMurtry
7 letter is much more explicit in terms of the
8 periods that it is relating to and I don't...

9 182. Q. I guess my point is...you'll
10 agree that what is indicated in the notation on
11 the letter is that Peace Bridge Duty Free excepts
12 the escalation?

13 A. Those are the notations, I guess,
14 subject to confirmation that they had a correct
15 understanding of what the chronology was meant to
16 signify.

17 183. Q. But you would also agree with me
18 that, when we compare the October 26th, which is
19 Exhibit 2, and Exhibit A for identification,
20 there is also an accord there in terms of the
21 escalation? And those numbers match, the numbers
22 here.

23 A. No, you are right, they do. My
24 concern is it is...at least, a literal reading of
25 the most recent Blaney McMurtry letter suggests

1 that the numbers are off by a year.

2 184. Q. The numbers are off by the year,
3 but the escalation is the same?

4 A. The flow of the escalation is the
5 same.

6 185. Q. Okay. You are right. So...

7 A. Although they are not accepting,
8 I guess, the last escalation.

9 186. Q. Explain that to me.

10 A. Well, in the Blaney McMurtry
11 letter it says,

12 "...For the year ended October 31st,
13 2026..."

14 Which seems, for our purposes, a correspondence
15 to the Gowling letter year 2025, Gowling is just
16 saying that it is 4 million dollars or 20 percent
17 of sales, whichever is greater. Blaney is saying
18 that it is going to be somewhat different, or
19 slightly amends it.

20 187. Q. Well, it is going to say that
21 base rent will be equal to the previous base rent
22 until 4 million dollars is reached, but 2025,
23 they agree...

24 A. I guess they are the same until
25 the 3.5 million threshold, but then they're

1 slightly different.

2 188. Q. But there is that escalation?

3 A. They contain the same escalation,
4 yes.

5 189. Q. Okay. So, we can put these away
6 now, so we can free the table a little bit. I am
7 going to now show you projections. So, in March
8 of...are you aware that, in March of 2021 and
9 August of 2021, Peace Bridge Duty Free provided
10 projections and proposals to the Authority?

11 A. I don't recall that.

12 190. Q. I think they were referenced in
13 the affidavits, but you may not have read them.

14 A. As I mentioned, I didn't go
15 through everything.

16 191. Q. So I am going to show you these
17 and these are...and I am going to show counsel,
18 these are the March 25th and August...there is no
19 date on it, but, from the evidence, it is August
20 the 20th proposals made by the Duty Free that
21 includes cash flow projection...or, not cash flow
22 projections but business projections. So
23 Counsel, do you want to identify these for...I
24 mean, they're in the record.

25 MR. JONES: We will take your word

E. Stulberg - 49

1 for it that it's in the record.

2 192. MR. SHEA: But we can just identify
3 them as C and D. I don't mind that,
4 because they are in the record. And the
5 witness hasn't seen them, so the witness
6 has not been provided with these
7 directly, although, presumably, he has
8 been given the documents in the records,
9 but he can't identify them. So, I am
10 happy with C and D.

11 MR. JONES: So you want to mark these
12 as C and D?

13 193. MR. SHEA: I am fine with that. So,
14 March 25th, 2021 document will be C.
15 And the other document that just has on
16 the front, "Duty Free Peace Bridge
17 proposal made to Buffalo and Fort Erie
18 Bridge Authority will be D.

19
20 --- EXHIBIT C: Letter from Peace Bridge Duty
21 Free, dated March 25, 2021
22

23 --- EXHIBIT D: Duty Free Peace Bridge proposal
24 made to Buffalo and Fort Erie
25 Bridge Authority

E. Stulberg - 50

1
2 BY MR. SHEA:

3 194. Q. Okay. Now, I know you are going
4 to have to take some time to look at these. So,
5 the specific...if it assists, what I am going to
6 specifically take you to are the financial
7 projections in these documents and, because these
8 come from the record, top right you'll see the
9 page numbers.

10 A. Yes.

11 195. Q. So on the March, the projection I
12 am going to take you to is...where is it,
13 2019...obviously you will read what you wish to
14 read. And on the other document, on the top
15 right, it is page 292. And maybe now is an
16 opportune moment...there isn't a lot left to go,
17 but now is an opportune moment to take the break,
18 is that okay? So we will go off the record. We
19 will take the break.

20
21 --- upon recessing at 10:47 a.m.

22 --- A BRIEF RECESS

23 --- upon resuming at 11:04 a.m.

24
25 EPHRAIM STULBERG, resumed

1 CONTINUED CROSS-EXAMINATION BY MR. SHEA:

2 196. Q. I want you to turn to C and D.

3 So, you've had an opportunity to review the
4 projections?

5 A. I have, yes.

6 197. Q. And you'll agree with me that the
7 projections provided in the March document and
8 the August document are essentially the same?

9 A. Yes.

10 198. Q. The difference is that, as far as
11 I can tell, the difference is that the March
12 includes a running cash balance that is not
13 included in the August documents, but the other
14 numbers appear to be the same?

15 A. They do based on the numbers that
16 I looked at.

17 199. Q. So, you'll agree with me that,
18 for 2022, again we don't know...I will confess
19 that we don't know what "2022" means, whether it
20 means as of 2022 calendar or lease year. I
21 assume it means lease year, but we don't know
22 that from the document. But, in 2022, the
23 projections were 16 million dollars in sales, and
24 I believe they were looking at net income of
25 330,000, correct?

1 A. Yes. Based on the scenario which
2 has them paying rent as a percentage of sales, 20
3 percent of sales.

4 200. Q. Yes, 20 percent of sales...

5 A. Right.

6 201. Q. ...but that is in accord...you'll
7 agree that that's, at least for the escalation
8 period, generally in accordance with the offers
9 that were made? The offers that were made were
10 the greater of x and 20 percent of sales?

11 A. Yes, you are correct.

12 202. Q. So, in 2022, they were looking at
13 percentage rent of 3.2 million, which would be
14 the greater of the amount in the offers and 20
15 percent of sales...so, the greater of 2.5 million
16 and 20 percent of sales?

17 A. Yes. So assuming sales would
18 have been 16 million, the 20 percent would have
19 been higher.

20 203. Q. So that is the projection and
21 they were projecting 333,000 in net income?

22 A. Yes, that's correct.

23 204. Q. And I don't know if you have a
24 calculator there, I could be wrong, but I
25 calculate that as two percent.

1 A. Roughly speaking?

2 205. Q. Roughly speaking, two percent.

3 A. As a net income...well that is
4 after tax, but yes.

5 206. Q. So it would more than that pre-
6 tax?

7 A. The pre-tax number would be
8 higher.

9 207. Q. And when you were calculating
10 your numbers, you were dealing with pre-tax?

11 A. Pre-tax, correct.

12 208. Q. Okay. So the pre-tax number,
13 then, is operating at 6.3 is what they have as
14 operating income?

15 A. Yes, operating income is 636,000
16 it looks like.

17 209. Q. So, it is probably four percent
18 then? Using your calculation method, though,
19 that is four percent roughly?

20 A. Give or take.

21 210. Q. Okay. And then we go over to
22 2023 where they are projecting 18 million in
23 sales. And again, we've got the percentage rent
24 at 20 percent because in that year, again, the
25 proposal made was three million or 20 percent.

1 So they were projecting they would make more, so
2 higher rent. And the income is higher, operating
3 income of 1.162 million and net income of
4 747,000. So that is an increase of net income
5 percentage almost double?

6 A. Yes, a little bit less.

7 211. Q. Yes. So they are projecting
8 increasing net income?

9 A. Yes, that is correct.

10 212. Q. And that pattern continues
11 throughout these projections, does it not?

12 A. Yes, the projection assumes that
13 sales would increase over time and,
14 correspondingly, profitability would generally
15 increase, with the exception of maybe one year in
16 the middle.

17 213. Q. Yes, and, I believe, up until the
18 initial term of the lease is 2031. So there is
19 an extension. 2031 is what I refer to as, I
20 guess, the natural expiry of the lease term. And
21 you'll agree with me that by, that point in time,
22 they were projecting that they would have reached
23 on 21.09 million in sales, they would have an
24 operating income of 2.3 million, and that is
25 significantly higher than 6.6?

1 A. It's about 10 percent.

2 214. Q. 10 percent, yes. So they are
3 proposing a ramp-up...they are projecting a ramp-
4 up of their net income over time and they are
5 also projecting an increase of the cash available
6 in the bank, so to speak, so by the time we get
7 to the end of the lease, there is 12.5 million in
8 the bank, the natural term, 2021. Not going to
9 assume an extension would be available?

10 A. Yes, assuming they never paid out
11 any profits, yes...

12 215. Q. Yes. So, at the end...yes, you
13 are right.

14 A. ...that is what the document
15 says.

16 216. Q. But, they might pay out profits
17 to the shareholders but that would be the
18 shareholders' profit at the end, 12.5?

19 A. Yes.

20 217. Q. Okay. And you'll recall that
21 what Peace Bridge Duty Free offered was the ramp-
22 up in rent and that they would pay back two
23 million dollars of the back rent over the term of
24 the lease? Do you want to refresh your memory on
25 that?

E. Stulberg - 56

1 A. You are referring to?

2 218. Q. To their offer. So that would be
3 November 16th, 2021...

4 A. You are correct.

5 219. Q. So that offer, they would ramp it
6 up, they say out to October of 2036, and, by
7 2036, on this projection, they would have 21
8 million, 687 in the bank?

9 A. Yes, that is what the document
10 says.

11 220. Q. So their proposal was to pay 2
12 million, from the 21,687,000 that they were
13 projecting to earn, as back rent?

14 A. They were proposing yes, to pay
15 it over time, in monthly installments between
16 November 2022 and October 2036.

17 221. Q. So, I assume that you would agree
18 that it would be reasonable for the shareholders
19 to be willing to contribute money to the company
20 to preserve or to realize this sort of projected
21 profit?

22 A. What do you mean by that?

23 222. Q. Well, if shareholders stand to
24 gain 21.68 million dollars over the course of the
25 lease, and the cost of that is 2.8 million

E. Stulberg - 57

1 upfront, would that not be a reasonable bet?

2 A. Certainly, if that were to be the
3 profitability over time, it would be, yes.

4 223. Q. This is the profitability they
5 were projecting...

6 A. They were...although, I mean, in
7 retrospect, the 2022 results didn't materialize.

8 224. Q. Okay. But this is the
9 information that was available when those offers
10 were made.

11 MR. JONES: So are you asking him to
12 assume that this is like the risk-free
13 revenues and profits?

14 225. MR. SHEA: No, I am asking him, this
15 is what the projections were.

16 MR. JONES: Okay.

17

18 BY MR. SHEA:

19 226. Q. Are you aware of any other
20 projections provided to the Peace Bridge
21 Authority by the fall of 2021?

22 A. No, I am not.

23 227. Q. And you weren't provided with any
24 projections that differ from these?

25 A. No, I don't believe so.

E. Stulberg - 58

1 228. Q. And you'll appreciate that these
2 projections are significantly less than the
3 projections in the lease?

4 A. I would agree with that.

5 229. Q. Okay. I want to...the only other
6 documents that I am going to introduce, and this,
7 again, it will be for information or
8 identification, is, I am showing you a March
9 13th, 2023, letter from Blaney. Have you seen
10 that before?

11 A. I don't believe so.

12 230. Q. So, you did...

13 A. Sorry, do you want me to take
14 this copy? This is the...

15 231. Q. Yes, I want that one. So you
16 were not advised that this is the offer that
17 Gowlings was responding to when it made its March
18 21, 2023 offer that you were provided with a copy
19 of?

20 A. That is correct.

21 232. Q. And I believe we get to this one
22 is for identification, are we up to E now? Or D?
23 This is D for identification...E, sorry, E.

24
25 --- EXHIBIT E: Letter from Blaney McMurtry dated

1 March 13, 2023, for
2 identification
3

4 BY MR. SHEA:

5 233. Q. So I assume you have no
6 particular expertise in corporate finance?

7 A. I mean I took courses as part of
8 my MBA...

9 234. Q. Okay.

10 A. ...but it is not a discipline in
11 which I work full-time.

12 235. Q. Okay. Did you consider what
13 level of debt Peace Bridge Duty Free could
14 support based on the projections that were
15 provided? I guess you weren't provided with any
16 projections.

17 A. I didn't have the projections.

18 236. Q. So you were not given an
19 opportunity to...so you have no opinion on what
20 level of debt Peace Bridge Duty Free could
21 support, based on projections, because you
22 weren't given any projections?

23 A. It would very much depend on the
24 level of projections and what debt was already in
25 place and other factors as well.

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1 237. Q. Okay. So in paragraphs 62 and 65
2 of your report, you assert that, if the offers
3 were accepted, it would wipe out the shareholders
4 equity. You are talking the equity at the time?

5 A. I am talking about the equity
6 that existed on January 1st, 2020.

7 238. Q. Okay. And you weren't provided
8 any information on the dividends that the
9 shareholders had taken out of Peace Bridge Duty
10 Free before that time?

11 A. I think I had the financial
12 statements for the company for a couple of years
13 before, but, no, I don't have the broader history
14 or really any information on the financial
15 situation of the shareholders.

16 239. Q. And were you aware that the
17 shareholders...as to what capital contribution
18 the shareholders had made to this company?

19 A. What do you mean by that?

20 240. Q. Well, were you aware whether they
21 put any cash into the company to buy their shares
22 or loan the company money?

23 A. So that should be apparent in the
24 balance sheet that I have summarized here. The
25 common stock is \$21,000. So that would have been

1 the initial share capital.

2 241. Q. \$21,000?

3 A. Yes.

4 242. Q. And you are not aware of how much
5 profit they took out of the company over the
6 years, or even in the immediate years leading up
7 to?

8 A. No, I don't have that broader
9 context.

10 243. Q. You will agree that the
11 projections that we looked at contemplate
12 that...at least at 2031, that the shareholders
13 will have realized 12.5 million in profit?

14 A. Yes, or I guess, more
15 specifically, that would be the increase in cash
16 available, yes.

17 244. Q. And that cash available
18 presumably for distribution?

19 A. Based on this model, yes.

20 245. Q. And if the lease was extended to
21 2036, that would grow to 21 million?

22 A. Yes, that is what the model says.

23 246. Q. Okay. And since you weren't
24 given projections, you have no opinion, I take
25 it, on whether the shareholders should contribute

E. Stulberg - 62

1 money to this company to allow it to realize
2 that, or whether it would be reasonable for them
3 to contribute money to the company to allow them
4 to realize that level of profit?

5 A. Well, I suppose the other
6 question is, do they have the capacity to do
7 that? And I don't know. I've analyzed the
8 company just based on its own books and records
9 without considering...or knowledge of the extent
10 to which the shareholders had the ability to fund
11 it.

12 247. Q. Okay, that is fair. And this is
13 the last few questions. In your report you refer
14 in a number of places to how the Peace Bridge
15 Authority was less impacted by COVID than the
16 Peace Bridge company, the duty free operator.
17 Why is the landlord's level of profitability
18 relevant to what a commercial tenant...what would
19 be reasonable for a commercial tenant to pay?

20 A. The idea is simply that COVID was
21 an unforeseen event. Based on at least one
22 interpretation of the lease agreement, there was
23 a duty to, perhaps, do something about it, given
24 there was a change in government regulation...

25 248. Q. But you are not finding that's

E. Stulberg - 63

1 how the lease should be interpreted?

2 A. No, to be clear I am not
3 interpreting the lease at all, but that is my
4 understanding of Peace Bridge's view, and just to
5 finish my answer, in that context, it is relevant
6 to look at the financial position, the financial
7 capacity of both parties.

8 249. Q. So is it your view that
9 reasonable rent, as an objective matter, should
10 be determined based on the profitability of the
11 landlord?

12 A. My view is that, when one looks
13 at the capacity to bear the burden of COVID, then
14 the financial situation of both parties would be
15 a relevant factor.

16 250. Q. And that is to bear the financial
17 burden of COVID?

18 A. Of COVID and the impact of COVID
19 on the respective entities.

20 251. Q. And do you express any...let me
21 ask you this. Do you have any knowledge of,
22 aside from the publicly available information, do
23 you have any knowledge of Peace Bridge Duty Free
24 obligations...sorry, Peace Bridge Authority's
25 obligations?

E. Stulberg - 64

1 A. In what sense?

2 252. Q. Well, do you have any knowledge
3 of how concessions given might impact the
4 covenants under their bonds?

5 A. I know they have about 80 million
6 dollars of unrestricted cash, but no, I am not
7 familiar with the covenants that might relate to
8 their particular financial...

9 253. Q. So you have no knowledge as to
10 what, if any, impact financial concessions given
11 to Peace Bridge Duty Free might impact the
12 Authority's obligations under its bonds?

13 A. I don't have a specific knowledge
14 of that.

15 254. Q. And do you have...did you conduct
16 PPSA searches of the Authority to determine
17 whether they have secure creditors, security over
18 these assets?

19 MR. JONES: Which assets?

20 THE DEPONENT: Over which assets?

21

22 BY MR. SHEA:

23 255. Q. The assets of the company
24 generally. So, the cash. Did you conduct a PPSA
25 search?

E. Stulberg - 65

1 A. I did not, although I wouldn't
2 have been surprised, just given the level of cash
3 they have on their books.

4 256. Q. Sorry, they also have debt on
5 their books.

6 A. Sure, but the excess of assets...

7 257. Q. I am a little concerned. So you
8 are saying that the fact that someone has excess
9 cash over their debts, means that there would not
10 be security over the cash?

11 A. I am saying, given the size of
12 the book value of equity...so, in excess of the
13 debts that they have, it would strike me as
14 unusual, or unlikely, that they would do that.

15 MR. JONES: Do you want to direct him
16 to anything in the records?

17 258. MR. SHEA: No, I am just asking
18 whether he did a PPSA search to
19 determine whether there was security
20 interest, and the answer is no.

21 MR. JONES: That is correct.

22
23 BY MR. SHEA:

24 259. Q. So, I want to turn to schedule 2B
25 of your report. So my understanding is, when you

E. Stulberg - 66

1 are talking about rent, or what you consider to
2 be commercially reasonable rent, you are talking
3 about it being based on the sales at the Peace
4 Bridge Duty Free?

5 A. As opposed to what?

6 260. Q. Well, as opposed to any other
7 place?

8 A. Sure. In particular, the
9 reference to schedule 2B, yes, the model is based
10 on the sales at that store.

11 261. Q. But when you include the
12 expenses, you appear to include expenses from the
13 Hamilton International Airport?

14 A. \$59,000, yes.

15 262. Q. Well, what about...are you aware
16 of whether the Hamilton International Airport
17 expenses are included elsewhere in here?

18 A. I assume whatever expenses would
19 be included in here, but they would be de minimis
20 though.

21 263. Q. How do you know that?

22 A. Because I have reconciled between
23 the annual financial statements of the company
24 and the specific store level data that was
25 provided and the deduction is quite small.

1 264. Q. So you have analyzed these
2 numbers without the Hamilton Airport in them?

3 A. What I am saying is the impact of
4 the Hamilton Airport would be de minimis. And
5 the truth is that I have made an assumption that
6 it would be equal to precisely 75 percent of pre-
7 COVID sales. The truth is, year-to-date, it has
8 been closer to 71 percent. So we are talking
9 about relatively minor rounding issues.

10 265. Q. So your view is, it all works out
11 in the wash, even though you have included
12 Hamilton expenses in this?

13 A. Yes, the Hamilton revenues or
14 expenses really would be an insignificant factor
15 in this analysis.

16 266. Q. Okay. Footnote 5. Sorry,
17 footnote 4, I apologize. You refer to
18 discussions with Jim Pearce.

19 A. Yes.

20 267. Q. Did you have those discussions, I
21 assume, verbally?

22 A. Yes.

23 268. Q. And did you keep notes from those
24 discussions?

25 A. I did.

1 statements of those entities.

2 273. Q. So you have no idea whether
3 agreements were reached with these duty free
4 tenants or not?

5 A. I see the level of rental income
6 going down in the respective years and...

7 274. Q. But that could be because they
8 are just not paying rent?

9 A. I didn't see a bad debt expense
10 and so, my reading of that, was that something
11 had been agreed to.

12 275. Q. But you made that assumption?

13 A. I did, yes, as opposed to when I
14 looked at the financials of the Authority in our
15 matter, they do show a bad debt expense.

16 276. Q. Did you reach out to anyone to
17 confirm that there were agreements with these
18 tenants?

19 A. I did not.

20 277. Q. And even if there are agreements,
21 you have no idea what the terms of those
22 agreements are?

23 A. All I can see is the net impact
24 on the rental revenue on the financial
25 statements.

E. Stulberg - 70

1 278. Q. Okay. So the answer to that is,
2 you don't have any knowledge as to what the terms
3 of any agreements were?

4 A. I see the end result but no, I
5 don't have any "inside baseball", so to speak.

6 279. Q. And with respect to footnote 5,
7 my understanding is that a copy of the RFP that
8 you were given will be given to us, am I correct
9 on that?

10 A. Yes, that is correct.

11 280. Q. So the RFP will be given.

12 A. I apologize for that.

13 281. MR. SHEA: No, it's fine. Just give
14 me a moment. That's it, we are done.

15 MR. JONES: I just have one question.

16
17 RE-EXAMINATION BY MR. JONES:

18 282. Q. When you were being asked
19 questions about the financial projections on
20 Exhibits C and D, I thought I heard you say that
21 the actual sales didn't pan out as the
22 projections provided for. Did I hear you
23 correctly?

24 A. Yes, that is correct. So the
25 projection says the 2022 sales would be 16

E. Stulberg - 71

1 million dollars, and, in point of fact, was
2 substantially less than that. It was 11.7
3 million dollars.

4 283. MR. JONES: Thank you.

5
6 --- upon adjourning at 11:30 a.m.
7
8

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Sage Jackson
Verbatim Reporter

TAB 11

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

SJ/saa

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

- - - - -

This is the Cross-Examination of LISA HUTCHESON, on her Affidavit sworn the 26th day of September, 2023, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., 222 Bay Street, Suite 900, Toronto-Dominion Centre, Toronto, Ontario, on the 29th day of September, 2023.

- - - - -

A P P E A R A N C E S:

E. PATRICK SHEA	-- for Buffalo and Fort Erie Public Bridge Authority
BRENDAN JONES	-- for the Respondent

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Cross-Examination by Mr. Shea

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1 --- upon commencing at 1:02 p.m.

2
3 LISA HUTCHESON, affirmed

4 CROSS-EXAMINATION BY MR. SHEA:

5 1. Q. Good afternoon, Ms. Hutcheson,
6 how are you?

7 A. Good thanks.

8 2. Q. So, I am going to examine you
9 today on a report that you produced dated August
10 16th, 2023. Do you have a copy of that report
11 with you?

12 A. I do.

13 3. Q. And are there any changes that
14 you want to make to the report?

15 A. I just wanted to highlight
16 actually, I noticed an error related to the date
17 of the lease.

18 4. Q. The date of the lease?

19 A. Yes, it's just a typo.

20 5. Q. Oh, where it says '19 instead of
21 '16?

22 A. '16, yes.

23 6. Q. Okay. So, when were you first
24 approached to do your report? You are going to
25 object.

L. Hutcheson - 4

1 MR. JONES: Yes, I am.

2 7. MR. SHEA: So, that is a refusal, and
3 we will deal with that. /R

4

5 BY MR. SHEA:

6 8. Q. So, for the purposes of your
7 report you interviewed both Greg O'Hara and Jim
8 Pearce, correct?

9 A. That is correct.

10 9. Q. And we don't seem to have
11 received any notes from those meetings. Did you
12 keep notes from those meetings?

13 A. We have notes from a call with
14 Jim Pearce. Greg O'Hara was out of the province
15 at the time when I spoke to him, so it was a very
16 brief phone call. So I don't have official notes
17 from that.

18 10. Q. And for Mr. Pearce, did you
19 produce those notes?

20 A. I thought we did.

21 11. Q. I can tell you what we received
22 was...okay, well, to the extent you do have
23 notes, will you please produce those?

24 A. Sure. I think there were
25 emails...

L. Hutcheson - 5

1 12. Q. I have those emails.

2 A. Okay.

3 13. Q. We have emails, but I am asking
4 were there actual notes of your conversation,
5 handwritten notes?

6 A. I don't believe so. Not
7 handwritten. There would be emails.

8 14. Q. If there were typed notes, okay.
9 If you can produce those, that would be
10 excellent.

11 A. M'hmm. U/T

12 15. Q. And hopefully I'll pronounce his
13 name, Mr. Heuman, of your firm, called duty free
14 operators, correct?

15 A. He did.

16 16. Q. And we don't seem to have any
17 notes from those calls, did he keep notes?

18 A. It was a random sampling and it
19 was just to...so I don't know the answer to that
20 off the top of my head.

21 17. Q. Can you inquire to see if he kept
22 notes and, if he did keep notes, produce those
23 notes?

24 A. Sure. U/T

25 18. Q. And Mr. Neuman (sic) visited...

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1 A. Heuman...

2 19. Q. Heuman?

3 A. Yes.

4 20. Q. Oh, Heuman, sorry. Mr. Heuman

5 visited the duty free on 19th May 2023, is that

6 correct?

7 A. That's correct.

8 21. Q. Did he take any pictures while he

9 was in attendance?

10 A. I don't recall. He may have.

11 22. Q. Can you inquire as to whether he

12 took any pictures... U/T

13 A. Sure.

14 23. Q. ...and provide those if he did?

15 A. Sure. U/T

16 24. Q. And did he take any notes?

17 A. No.

18 25. Q. Okay. So, as I understand, your

19 expertise is in the retail sector, am I correct?

20 A. That is correct.

21 26. Q. And you have had experience

22 advising store operators, retail store operators,

23 correct?

24 A. Yes.

25 27. Q. And shopping mall operators?

L. Hutcheson - 7

1 A. Yes.

2 28. Q. And, I believe, municipalities as
3 well?

4 A. Yes.

5 29. Q. Have you had any specific
6 experience concerning duty free operators?

7 A. Not specifically.

8 30. Q. And have you ever assisted a duty
9 free operator in negotiating their lease or
10 advised them on their lease?

11 A. No.

12 31. Q. Have you ever acted for a bridge
13 authority or other operator of a cross border
14 crossing?

15 A. No.

16 32. Q. Have you done any studies of duty
17 free stores?

18 A. Not that I am aware of.

19 33. Q. Have you ever included duty free
20 stores in any of your other studies? For
21 example, I believe you did a study of May this
22 year, growth in the retail sector?

23 A. I don't believe that duty free
24 was isolated.

25 34. Q. Did you...were duty frees even

1 included in that study?

2 A. No.

3 35. Q. Okay. I am going to talk first
4 about leasing rates in the Niagara region. So
5 your opinion as to a typical leasing rate in Fort
6 Erie is based on the comparables at Exhibit D, is
7 that correct?

8 A. Yes.

9 36. Q. And no other comparables?

10 A. No.

11 37. Q. And with the exception of 1 which
12 I believe is 1127 Garrison Road South, all of
13 those comparables seem to be units in strip
14 malls, is that accurate?

15 A. They could be, I can cross-
16 reference.

17 38. Q. Well, can you check the pictures
18 in Exhibit D? I believe...so it's 87 of your
19 report.

20 A. Yes.

21 39. Q. So those appear to be units in
22 strip malls?

23 A. Yes.

24 40. Q. Except for 1127 Garrison Road
25 South. Do you know what that is? It looks like

1 a restaurant.

2 A. It could be. We were just doing
3 a sampling of what was available at the time of
4 the audit, just to get a cross-reference of what
5 was available.

6 41. Q. So, on page 21 of your report...

7 A. M'hmm.

8 42. Q. ...I am going to refer you to
9 just in 6.3. And I think this rough statement is
10 made elsewhere as well. You say,

11 "...Duty free stores can be desirable
12 for retail operators. As such, the base
13 rents are higher than comparable lease
14 rates in the surrounding trade area.
15 For this reason, in my opinion, it is
16 most relevant to compare the base rent
17 of Peace Bridge Duty Free to other duty
18 free stores in Canada as opposed to the
19 local trade area, as it would be
20 expected that Fort Erie, Ontario would
21 have generally, on average, lower retail
22 lease rates as a ratio of gross sales
23 compared to Peace Bridge Duty Free..."

24 Given that opinion, why did you proceed to do a
25 comparison of local retail operations or retail

L. Hutcheson - 10

1 locations in Fort Erie?

2 A. I don't recall which was done
3 first, actually, in terms of forming an opinion,
4 but I thought it was important to consider what
5 was in the trade area, just to provide a
6 comparison, just to have an understanding.

7 43. Q. But, you'll agree, it's not a
8 good comparison?

9 A. It was the only comparison
10 available.

11 44. Q. Okay. And have you seen a copy
12 of the lease? I assume you have.

13 A. Yes.

14 45. Q. He's already got a copy, so I am
15 going to give you...or you want another one?

16 A. Sure.

17 46. Q. I'll give you a copy of the
18 lease, thank you.

19 MR. JONES: [inaudible] copies of the
20 lease, thank you.

21

22 BY MR. SHEA:

23 47. Q. This is a copy of the lease that
24 was provided to you. Can you look through it and
25 make sure?

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1 A. Oh, yes, I apologize.

2 48. MR. SHEA: So, I am going to mark
3 this as Exhibit 1 on this examination.

4
5 --- EXHIBIT NO. 1: Lease dated July 28, 2016
6

7 BY MR. SHEA:

8 49. Q. So, you are generally familiar
9 with the lease I take it?

10 A. Yes.

11 50. Q. So you'll agree that...and you
12 are generally familiar with the process by which
13 the lease was negotiated or arrived at?

14 MR. JONES: What do you mean by that?
15

16 BY MR. SHEA:

17 51. Q. So, I am going to ask...are you
18 aware that the rent contemplated by the lease is
19 what Peace Bridge Duty Free offered to the
20 Authority?

21 A. Yes.

22 52. Q. And you'll agree that the lease
23 does not base rent on square footage?

24 A. Correct.

25 53. Q. The lease is based entirely on

L. Hutcheson - 12

1 sales with a base and then a percentage rent?

2 A. Yes.

3 54. Q. And you are aware that the duty
4 free has operated this location...Peace Bridge
5 Duty Free, the corporation, has operated this
6 location since 1986?

7 A. Yes.

8 55. Q. And you agree with me that Peace
9 Bridge Duty Free, the corporation, is in the best
10 position to determine what it would offer in
11 terms of rent to secure this location?

12 A. I believe that is correct.

13 56. Q. And I am going to ask you, so
14 given that this lease is not based on square
15 footage or dollars per square foot, but is based
16 on sales, is there any relevance of Schedule D in
17 your comparison to locations based on square
18 footage and what people are willing to pay per
19 square foot?

20 A. I believe it was important to
21 have some context in terms of what is happening
22 in the trade area. It could have been higher, it
23 could have been lower. It was important to us as
24 part of our analysis.

25 57. Q. But, you'll agree with me, the

1 rents in this lease is not based on square
2 footage?

3 A. The rents in the lease were also
4 negotiated some time ago, so it was important for
5 us to understand what is happening in the market
6 now as well.

7 58. Q. And I am interested in that. So,
8 what do you understand the purpose of your report
9 is? So, you understand that this is a case
10 involving the interpretation of a lease?

11 A. M'hmm.

12 59. Q. So, what do you understand the
13 information you are providing in this
14 report...how is that going to help the judge?

15 A. To understand what is happening
16 in the marketplace, what is happening in relation
17 to the pandemic and its effect on leasing.

18 60. Q. Okay. And you indicate, in page
19 4, that,

20 "... Peace Bridge Duty Free appears to
21 be paying the highest sales-to-rent
22 ratio in the duty free sector..."

23 But you'll agree that you have no independent
24 knowledge of what the sales-to-rent ratio being
25 paid by other operators is, correct?

1 A. Well, we were provided some
2 information from Mr. Pearce.

3 61. Q. That is what we will get to. So
4 the extent of your market data on rent paid in
5 the duty free sector comes, as I read your
6 report, from two sources, Mr. Pearce and a draft
7 set of minutes from the Sault Ste. Marie Bridge
8 Authority, is that correct?

9 A. That is correct.

10 62. Q. Did you have any other source of
11 information?

12 A. No.

13 63. Q. And as I understand, you were
14 unable to secure any information from other duty
15 free operators. They wouldn't give you the
16 information?

17 A. They would not.

18 64. Q. And, as I understand, the FDFA,
19 which is an organization that represents duty
20 free operators, indicated to you that they don't
21 collect that information and it is not provided
22 to them by their operators, is that correct?

23 A. That is my understanding.

24 65. Q. Now, Mr. Pearce appears to have
25 told you that the low end of the percentage rate

L. Hutcheson - 15

1 rent among duty frees would be 10 to 12 percent,
2 and the average is 14 to 16, do you recall that?

3 A. Yes.

4 66. Q. Did you ask him where he got
5 those numbers?

6 A. Yes, we had a conversation and he
7 said he was in contact with other operators
8 because of their relationship. And so, he was
9 aware of that, and I believe he had also been on
10 the board as well.

11 67. Q. But you'll agree with me that the
12 board, the FDFA, does not track minimum rents and
13 that information is not shared with FDFA,
14 correct?

15 A. Officially.

16 68. Q. Officially. So, do you believe
17 that Mr. Pearce obtained information that was not
18 otherwise shared with FDFA?

19 A. Perhaps. I have been in
20 environments like that, that I taught colleagues
21 to speak amongst themselves and have
22 conversations that don't end up getting
23 publicized.

24 69. Q. Did he give you any specific duty
25 free operators and what they were paying?

L. Hutcheson - 16

1 A. No.

2 70. Q. So he just told you that the low
3 end of the percentage rate was 10 to 12 and the
4 average would be 14 to 16?

5 A. That is correct.

6 71. Q. So how, from that, did you get
7 that they were paying at the top end, more than
8 everyone else?

9 A. Because they were paying...we did
10 the calculation based on what was in the lease,
11 as well as...I mean, the lease first and
12 foremost, and then the percentage rent that they
13 were paying over the last period...

14 72. Q. So, based on that, and the
15 information you got from Mr. Pierce, that's the
16 only information upon which you assert that Peace
17 Bridge Duty Free is paying the most in the
18 market?

19 A. Yes.

20 73. Q. Okay. But, again, you'll agree
21 that is the rent that they offered?

22 A. Yes.

23 74. Q. And when you were taking this
24 information from Mr. Pearce, you realized that
25 Mr. Pearce is an officer of Peace Bridge Duty

1 Free?

2 A. Yes.

3 75. Q. And you were aware that he swore
4 affidavits in these proceedings?

5 A. Yes.

6 76. Q. And you are aware that he is a
7 witness in these proceedings?

8 A. Yes.

9 77. Q. And you still accepted his
10 information as being accurate?

11 A. Yes.

12 78. Q. And you never sought to verify
13 that information with anyone?

14 A. We did, but it wasn't available.

15 79. Q. And that is because they wouldn't
16 share the information with you?

17 A. No, they are privately operated
18 businesses.

19 80. Q. And your information with respect
20 to the Sault Ste. Marie duty free comes from
21 draft minutes of a board meeting on 13 May, 2021,
22 correct?

23 A. Correct.

24 81. Q. Where did you get those draft
25 minutes?

1 A. Online.

2 82. Q. Okay. And did you ever ask for,
3 or receive, a final version of the minutes?

4 A. We did not.

5 83. Q. So you never asked?

6 A. No.

7 84. Q. Now, the reference to the
8 percentage rent paid by the Canadian operator in
9 those minutes is in reference to a comparison to
10 the American and the Canadian, correct?

11 A. Yes.

12 85. Q. And it simply refers to the
13 Canadian duty free paying rent equal to 16
14 percent of gross sales, correct?

15 A. Correct.

16 86. Q. You've never seen the lease with
17 the Sault Ste. Marie duty free have you?

18 A. No.

19 87. Q. And you don't know the
20 circumstances of the operator, correct?

21 A. No.

22 88. Q. Would it surprise you to learn
23 that the Authority in Sault Ste. Marie doesn't
24 own the land on which the duty free is situated?

25 A. No.

1 89. Q. Were you aware of that?

2 MR. JONES: Is there evidence to that
3 effect?

4 90. MR. SHEA: It is in their
5 financial...sorry, it is in there...

6 MR. JONES: Is it in the record?

7 91. MR. SHEA: No.

8
9 BY MR. SHEA:

10 92. Q. So let me ask this, so you don't
11 know. Let me rephrase the question. Are you
12 aware of the circumstances of the Sault Ste.
13 Marie duty free?

14 A. I really don't recall.

15 93. Q. Did you do any investigation?

16 A. We did, and it was several months
17 ago, so I can't remember off the top of my head.

18 94. Q. You are here to be cross-examined
19 today, Ma'am. So did you do any investigation
20 with respect to Sault Ste. Marie?

21 A. I don't believe so.

22 95. Q. So, when you said, before, you
23 don't recall, you do recall, you didn't do it?

24 A. My colleague may have.

25 96. Q. Can you make inquiries to Mr.

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1 Heuman to determine if he did any investigations
2 with respect to Sault Ste. Marie?

3 MR. JONES: What are you asking for?
4 What about Sault Ste. Marie, how it is
5 owned?

6 97. MR. SHEA: The circumstances
7 surrounding...the circumstances of the
8 operator of the Sault Ste. Marie duty
9 free. Did you do any investigations
10 concerning...

11 MR. JONES: What does that mean
12 though, "the circumstances of the
13 operator"?

14 98. MR. SHEA: I asked the question. You
15 can refuse it.

16 MR. JONES: But I am trying to
17 understand...

18 99. MR. SHEA: I'll take that as a
19 refusal.

20 MR. JONES: If you don't explain to
21 me what you mean by "circumstances",
22 then I can't...

23 100. MR. SHEA: But you are not counsel to
24 her.

25 MR. JONES: It is just a question

L. Hutcheson - 21

1 that doesn't make a lot of sense, in
2 fairness.

3 101. MR. SHEA: I asked if any
4 investigations were done. Her answer
5 was, she didn't recall. Then her answer
6 was, no. Then she said that Mr. Heuman
7 might...

8 MR. JONES: All I am trying to
9 understand is what you mean by
10 "circumstances".

11 102. MR. SHEA: Do they own...let's go
12 through all the details.

13
14 BY MR. SHEA:

15 103. Q. What are the terms of the lease?
16 Did you do any investigation as to what the terms
17 of the lease are?

18 A. No.

19 104. Q. Did you do any investigation as
20 to when they negotiated their lease?

21 A. I did not.

22 105. Q. Did Mr. Heuman?

23 A. He may have.

24 106. Q. Can you inquire with Mr. Heuman
25 as to whether he did any investigations to

L. Hutcheson - 22

1 determine when the Sault Ste. Marie operator
2 entered into their lease?

3 A. Of course. U/T

4 107. Q. Did you do any investigation to
5 determine if the Sault Ste. Marie operator owns
6 the land on which...whether the Bridge Authority
7 owns the land on which the operator has its
8 store?

9 A. Again, Mr. Heuman would probably
10 have to answer that for me.

11 108. Q. So, will you make inquiries of Mr.
12 Heuman to determine if he did any inquiries to
13 determine if the operator of the Sault Ste. Marie
14 store...the Authority owns the land on which the
15 operator has its store?

16 A. Of course. U/T

17 109. Q. And I assume you've never seen a
18 copy of their lease?

19 A. No.

20 110. Q. Did you review any other minutes
21 of any other meetings or the annual reports of
22 the Sault Ste. Marie Bridge Authority to
23 determine information concerning what the duty
24 free operator pays?

25 A. No.

L. Hutcheson - 23

1 111. Q. So the sole source of your
2 information on 16 percent is a reference in draft
3 minutes from 13 May 2021?

4 A. Yes.

5 112. Q. Thank you. So in 6...I am going
6 to talk about the NER analysis that you do.
7 Isn't...I'll start with this. Isn't the analysis
8 in 6.5 of your report? So what you are dealing
9 with in 6.5, is that not...are you at 6.5 yet?
10 71, if it helps.

11 A. I have a different numbering
12 system.

13 113. Q. So you indicate when you refer
14 the question, you are asked,

15 "...Having regard to a review of
16 historical gross sales and traffic
17 volume trends, what is a reasonable
18 range of expected outcomes for a
19 replacement tenant secured to an RFP
20 process? To the extent applicable,
21 please consider tenant improvement
22 allowances, fixture periods, free rent,
23 key money, minimum rent obligations et
24 cetera..."

25 Isn't all of that just setting the foundation for

L. Hutcheson - 24

1 the NER analysis? Because the NER analysis takes
2 all of these numbers and plugs them in as
3 deductions against the rent, or plugs them into
4 the analysis. Is that a fair assessment?

5 A. Yes.

6 114. Q. Okay. Can you explain to me how
7 understanding what my client might expect will
8 result from an RFP process, can assist in
9 interpreting article 18.7 of the lease?

10 A. Can you rephrase that?

11 115. Q. So you are aware that the issue
12 before the court is the interpretation of article
13 18.7 of the lease?

14 A. Yes.

15 116. Q. And article 18.07 of the lease,
16 in general terms...I can take you to it...
17 provides that, in the event changes in applicable
18 laws results in a material adverse change to the
19 business of Peace Bridge Duty Free, there will be
20 consultation?

21 MR. JONES: I don't think that is
22 the...

23 117. MR. SHEA: I said I would paraphrase.
24 If you want to take her to it, we will
25 take her to it.

1 MR. JONES: Fine.

2
3 BY MR. SHEA:

4 118. Q. Okay. Let's take you to the
5 exact section. So, 18.7 in the lease. It is at
6 page 80, top right 80.

7 A. M'hmm.

8 119. Q. So can you read that...take a
9 moment to read that, please?

10 A. Yes.

11 120. Q. So, how does understanding what
12 our client, the Authority, might expect in terms
13 of an outcome from an RFP process, assist in
14 understanding what this clause means?

15 A. Well, it helps understand whether
16 or not, if there was perhaps a negative
17 outcome...

18 121. Q. Yes, go on. There was a negative
19 outcome...

20 A. ...and a replacement tenant were
21 to be required.

22 122. Q. So is your point that the
23 Authority might not do as well if Peace Bridge
24 Duty Free vacates and we have to go to another
25 RFP, is that your point?

L. Hutcheson - 26

1 A. If...yes, in one way or another.

2 123. Q. Okay. So, in fact, on page 6, I
3 think you say that you think,
4 "... Peace Bridge Authority [our client]
5 would be better off going forward with
6 Peace Bridge Duty Free as a tenant..."
7 don't you?

8 A. Yes.

9 124. Q. But, first of all, isn't that a
10 business decision for Peace Bridge Duty Free to
11 make?

12 A. Sure.

13 125. Q. Okay. And, second of all, isn't
14 that assumption based on, I believe you find this
15 on page 41, it is based on the assumption that
16 Peace Bridge Duty Free pays rent, the 4 million
17 dollar minimum rent beginning in 2024, in
18 accordance with the lease, correct?

19 A. Yes.

20 126. Q. Were you advised that Peace
21 Bridge Duty Free is prepared to begin to pay rent
22 in accordance with the lease in 2024?

23 A. No.

24 127. Q. Okay. Thank you. So, then the
25 assumption is wrong.

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1 A. Counsel, the assumption is not
2 wrong. They are currently paying full rent.

3 128. Q. Sorry...

4 A. What are you talking about the
5 assumption is wrong? There is an assumption.

6 129. Q. And I asked whether, just to be
7 clear, your client is asking for that money back,
8 if they are unsuccessful. The assumption is
9 based on Peace Bridge Duty Free being prepared to
10 begin to pay 4 million dollars in minimum rent
11 beginning in 2024.

12 MR. JONES: So there is a comparison
13 of what the two outcomes would be?

14 130. MR. SHEA: I just...sorry, I am
15 asking her a question...

16 MR. JONES: No, but you...

17 131. MR. SHEA: Let's move on.

18 MR. JONES: You gave an unfair...

19 132. MR. SHEA: Let's move on...

20 MR. JONES: You gave an unfair...

21 133. MR. SHEA: I did not. Move on. We
22 are moving on, sir.

23 MR. JONES: You premised your
24 question unfairly.

25 134. MR. SHEA: It was answered. We are

1 moving on.

2 MR. JONES: No, you can't trick the
3 witness. That is not fair.

4 135. MR. SHEA: I did not trick...we are
5 moving on.

6 MR. JONES: I think you have to be...

7 136. MR. SHEA: You can raise it with the
8 judge if you wish.

9 MR. JONES: I think that is totally
10 inappropriate.

11 137. MR. SHEA: Yes, you may agree. You
12 may say that and you can raise that with
13 the judge if you wish.

14

15 BY MR. SHEA:

16 138. Q. So, your assumption that the
17 Peace Bridge Authority will generate lower NER if
18 the lease is terminated, is based on a few
19 factors, I think. And I want to take you through
20 those. So, I think one of those factors is gross
21 sales for the new operator. So your opinion
22 seems to be that a new duty free operator will
23 only realize 80 to 100 percent of the sales
24 generated by Peace Bridge Duty Free, is that
25 correct?

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1 A. Yes.

2 139. Q. But you have no experience in the
3 duty free space, correct?

4 A. I am an expert in terms of
5 general retail operations and turnover and so,
6 whether it is duty free or a fashion retailer or
7 an electronics retailer, there are lots of
8 similarities.

9 140. Q. But the other expert has equated
10 the Peace Bridge Duty Free to a liquor store,
11 liquor store/beer store based on the sales being
12 primarily liquor, beer and cigarettes?

13 MR. JONES: That is totally an unfair
14 characterization, Counsel. If you want
15 to put it to her that the...he was using
16 the profit calculations from Statistics
17 Canada.

18

19 BY MR. SHEA:

20 141. Q. Let us go to what he said. Give
21 me a moment and we will pull it up.

22 MR. JONES: It was profit rates.

23 142. MR. SHEA: No, he said percentage
24 sales, the primary sales were alcohol,
25 tobacco and therefore he equated the

1 business...he said,

2 "...According to the data published..."

3 You are right,

4 "...the NAICS, beer wine and liquor

5 stores is around 6.6..."

6 But he equates this operation to a beer, liquor,

7 or wine store based on the nature of this

8 historic sales. Did you consider that?

9 A. No, we went based on what we saw
10 as inventory on their website.

11 143. Q. And what...

12 A. We had more than just beer,
13 wine...

14 144. Q. But you did not analyze the
15 nature of their sales historically?

16 A. We did not.

17 145. Q. And when you say, "realize a low
18 of 80 percent", where do you get that number?
19 What analysis or what research founds that this
20 replacement operator may only be able to realize
21 80 percent?

22 A. My experience in terms of the
23 time it takes for a new operator in any business
24 to typically ramp up.

25 146. Q. Did you make any inquiries of any

1 other operators in the space to determine what
2 their views might be?

3 A. No.

4 MR. JONES: Like, other operators...

5 147. MR. SHEA: Other duty free operators.

6 MR. JONES: So, you are asking
7 whether she asked other duty free
8 retailers if they were replaced by
9 another retailer...

10
11 BY MR. SHEA:

12 148. Q. If they were to replace...because
13 you need to have a licence to do this...if they
14 were to replace Peace Bridge Duty Free, how
15 quickly could they ramp up sales?

16 A. No.

17 149. Q. In your analysis, you indicate...
18 one of your factors is what rent the Peace Bridge
19 Authority could expect, and you factored that
20 into your analysis, and you say that a new lease
21 negotiation would certainly not yield the same
22 base rent that Peace Bridge Duty Free is paying.
23 But, again, you have no experience in the duty
24 free space?

25 A. No. I am a generalist retail

1 expert.

2 150. Q. Thank you. And at the end, at
3 the high end of your range, you say that 20
4 percent of gross sales is reasonable. Where did
5 you get the 20 percent and what is the foundation
6 for the 20 percent?

7 A. Based on the estimate that Peace
8 Bridge...the current operator, was using.

9 151. Q. But that's what Peace Bridge Duty
10 Free offered in its RFP?

11 A. Correct.

12 152. Q. Could it be 22 percent?

13 MR. JONES: Could what be 22 percent?
14

15 BY MR. SHEA:

16 153. Q. Would a reasonable percentage
17 rent be 22 percent?

18 A. Not in my opinion.

19 154. Q. Could it be 18 percent?

20 A. I still think that that is very
21 high.

22 155. Q. But, yet, you say a reasonable is
23 20 percent and that is just because that's what
24 they agreed to?

25 A. That's what they had agreed to.

1 156. Q. So you agree that, what Peace
2 Bridge Duty Free proposed, is reasonable?

3 A. In 2016.

4 157. Q. But that is what they agreed to
5 in 2016 and the lease term goes out to 2031. So,
6 in your experience, if a party enters into a bad
7 lease, does the landlord have to renegotiate it?

8 A. Times have changed. COVID has
9 had a dramatic impact on commercial real estate
10 and retail.

11 158. Q. That is not answering my
12 question. So, if there is a bad lease...

13 MR. JONES: Counsel, in fairness,
14 what does that question have to do with
15 anything in the record...

16 159. MR. SHEA: Her answer to the question
17 was that the lease was reasonable in
18 2016, but things have now changed.

19
20 BY MR. SHEA:

21 160. Q. But the lease goes out to 2031,
22 correct?

23 A. Yes.

24 161. Q. So the lease was negotiated in
25 2016, it goes out to 2031, minimum. Okay. So

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1 tenant improvement allowances. You indicate that
2 in your opinion, the Authority may need to offer
3 a \$40-a-square-foot tenant improvement allowance.
4 Are you aware of any other duty free operator who
5 was given a tenant improvement allowance?

6 A. No.

7 162. Q. And you'll agree that, in the
8 lease, Peace Bridge Duty Free wasn't given a
9 tenant improvement allowance?

10 A. Correct.

11 163. Q. Have you seen the RFP?

12 A. I did...I saw the response.

13 164. Q. Okay. But you never saw the RFP?

14 A. No.

15 165. Q. So you have no knowledge as to
16 whether a tenant improvement allowance was
17 offered?

18 A. No.

19 166. Q. You indicate in your opinion that
20 there would be a three-month rent free fixturing
21 period, correct?

22 A. Yes.

23 167. Q. And you'll agree that, in the
24 lease, Peace Bridge Duty Free wasn't given a rent
25 fee fixturing period?

1 A. That is correct.

2 168. Q. And you'll agree that, even
3 during the time they were required to make major
4 renovations, they were still required to pay rent
5 in accordance with the lease?

6 A. Yes.

7 169. Q. Are you aware of any other duty
8 free operator who was given a rent free fixturing
9 period?

10 MR. JONES: During COVID or at all?

11 170. MR. SHEA: I am asking the
12 questions...

13 MR. JONES: She has told you...

14 171. MR. SHEA: Sir, you can re-examine if
15 you'd like. I am asking the questions.

16 MR. JONES: She told you that there
17 was...

18 172. MR. SHEA: Sir, you can re-examine if
19 you'd like. I am asking the questions.

20 I'd ask you to be quiet.

21 MR. JONES: As long as your questions
22 are fair.

23
24 BY MR. SHEA:

25 173. Q. Are you aware of any duty free

1 operator who was given a rent free fixturing
2 period ever?

3 A. I am not aware.

4 174. Q. You also said that, in your
5 opinion, my client would give a prospective
6 tenant a three month rent free period so they
7 could generate rent free income, is that correct?

8 A. Can you point me to the section
9 again?

10 175. Q. Hold for a second. 71 is where
11 it starts. "Rent free period", 74. Last
12 paragraph.

13 A. M'hmm. I am just refreshing.
14 And can you repeat your question?

15 176. Q. So, the first one was confirming
16 that it was your opinion that a prospective
17 tenant would be offered a three-month rent free
18 period?

19 A. Likely, yes.

20 177. Q. Are you aware that any duty free
21 operator, at any time, was given a three-month
22 rent free period?

23 A. Not to my knowledge.

24 178. Q. And you'll agree that Peace
25 Bridge Duty Free was not given a rent free

1 period?

2 A. Correct.

3 179. Q. You indicate in your opinion that
4 key money would not be considered by the
5 landlord, by my client. Did you have a
6 discussion with my client and ask them that?

7 A. I did not.

8 180. Q. And your opinion with respect to
9 key money is based entirely on your general
10 experience in retail?

11 A. Correct.

12 181. Q. Did you reach out to any other
13 authority to determine what they feel about, what
14 you refer to as, "key money"?

15 A. Can you define "authority"?

16 182. Q. Bridge authority, or other
17 operator of a cross border crossing?

18 A. No.

19 183. Q. You indicate that there will be a
20 delay in finding a new tenant. Are you implying
21 that the store will go dark for a period of time?

22 A. It could. That's what it could
23 mean.

24 184. Q. Did you consider that Royal Bank
25 of Canada has sought an order appointing a

1 receiver, and giving the receiver the ability to
2 operate the duty free store?

3 A. No, I don't believe I did.

4 185. Q. Did you consider that Peace
5 Bridge Duty Free is engaged in contingency
6 planning to mitigate against the store going
7 dark?

8 A. No.

9 186. Q. And these are the factors that
10 play into your analysis of NER, correct?

11 A. Yes.

12 187. Q. So at the end of the day, don't
13 all of the factors you have identified create a
14 risk for the Authority? I mean it's the
15 Authority's risk to take, is it not?

16 MR. JONES: What do you mean is it...
17

18 BY MR. SHEA:

19 188. Q. Well, it's the Authority...the
20 issue here is that the Authority may make less
21 rent, may recover less rent...less rent if the go
22 to an RFP? Is that not a risk for the Authority
23 to take?

24 A. Yes.

25 189. Q. Given that Peace Bridge Duty Free

1 (sic) has experience in the sector and has access
2 to information from other authorities...

3 MR. JONES: Sorry, Peace Bridge Duty
4 Free has access to...

5 190. MR. SHEA: No, no, Peace Bridge
6 Authority has access...

7 MR. JONES: Where...

8 191. MR. SHEA: Sir...

9 MR. JONES: No, but you are putting a
10 fact to her, and I don't know that that
11 fact is in the record anywhere.

12 192. MR. SHEA: That we don't have
13 experience in the duty free sector?

14 MR. JONES: No, that you have access
15 to other authorities.

16 193. MR. SHEA: In the record there is
17 disclosure by our client that they have
18 contacted the other duty free operators
19 and there is evidence of what he found
20 out from them.

21 MR. JONES: Where?

22 194. MR. SHEA: If you want to refuse the
23 question, I'll treat it as refusal and
24 we will move on.

25 MR. JONES: No, what I am...

1 195. MR. SHEA: Then let me ask...

2 MR. JONES: ...if you are putting a
3 fact, an assumed fact, it needs to be in
4 the record.

5 196. MR. SHEA: Okay. Given...

6 MR. JONES: You are putting to her
7 that the Authority has general access to
8 other authorities information...

9 197. MR. SHEA: Let's make an
10 assumption...

11 MR. JONES: ...which is not in the
12 record.

13 198. MR. SHEA: Let's make an
14 assumption...

15 MR. JONES: Counsel, no...

16 199. MR. SHEA: Let's assume...

17

18 BY MR. SHEA:

19 200. Q. Let's assume that the Peace
20 Bridge Authority has the ability to talk to other
21 authorities, can we accept that as an assumption,
22 a reasonable assumption? They have the ability
23 to talk to other authorities?

24 A. Canadian authorities?

25 201. Q. I guess. They could probably

1 talk to anyone they want. What makes your
2 opinion with respect to these matters...so key
3 money, how long it will take them to get someone
4 in there, rent free periods, what makes your
5 opinion on those matters more valuable or more
6 valid than my client's opinion.

7 A. Well, I have experience, while
8 not with duty free, I have experience in public
9 sector and doing RFP processes for other
10 government...or public sector organizations and
11 understand the factors and the steps that are
12 required.

13 202. Q. Okay. Outline some of that
14 experience. So who have you acted for in terms
15 of RFP processes for tenancies?

16 A. Numerous hospitals, numerous
17 universities and colleges.

18 203. Q. And all of those, how many of
19 those have involved duty free operations?

20 A. They are just various types of
21 retail operations and food service.

22 204. Q. In food service?

23 A. And food service.

24 205. Q. But the Authority runs the
25 bridge. So are you saying that your opinion with

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1 respect to what they can expect is more valid
2 than their own business views?

3 A. No. I do know, particularly the
4 RFP process, did run four months in the
5 last...with the current incumbent.

6 206. Q. And did the store go dark during
7 that period?

8 A. No, they were the current
9 operator.

10 207. Q. And, in that process, you'll also
11 agree that there was no rent free period
12 provided?

13 A. Correct.

14 208. Q. And there was no tenant
15 improvement allowance provided?

16 MR. JONES: We've already answered
17 these questions.

18 209. MR. SHEA: I'm asking them again,
19 sir. You can't use "we", because you
20 are not her lawyer.

21 MR. JONES: Sorry, we've already
22 listened to the answers of these
23 questions.

24 210. MR. SHEA: I am going to ask them
25 again.

1
2 BY MR. SHEA:

3 211. Q. And you'll agree there was no
4 fixturing period provided?

5 A. No.

6 212. Q. Thank you. So you also raise
7 "capture rate" and you say that there were a
8 limited number of benchmarks against which to
9 compare Peace Bridge Duty Free's capture rate,
10 but you don't identify any benchmarks in your
11 report, do you?

12 A. No.

13 213. Q. So you weren't able to obtain any
14 data from any duty free operator concerning their
15 capture rate?

16 A. We had some discussion with Ms.
17 Barrett, but I don't think they were provided.

18 214. Q. Okay. So, really, when you talk
19 about comparing capture rates, you are comparing
20 Peace Bridge Duty Free capture rate against Peace
21 Bridge Duty Free's capture rate, there is no
22 comparison?

23 A. Pre-COVID and after COVID.

24 215. Q. Yes. But a capture rate is based
25 on the percentage of cars that go over the Peace

1 Bridge that turn into the duty free, correct?

2 A. And go in, yes.

3 216. Q. Yes. So what...of the traffic
4 going by that you capture, how would a capture
5 rate be implemented by bridge closures or border
6 restrictions? Isn't it the case that, if 100
7 cars go by and 20 pull in, it's a 20 percent
8 capture rate, and, if 10 cars go by and 2 go in,
9 it's a 20 percent capture rate? So how does
10 bridge closure impact capture rate?

11 A. During COVID, in my
12 understanding, during the pandemic, customers
13 were reluctant to get out of their cars. So
14 while they may have been 20 percent, if they were
15 nervous, there was less inclination to go into a
16 store, rather than pre-COVID, pre-pandemic.

17 217. Q. So, during the pandemic they were
18 less likely to go into the store than pre-
19 pandemic?

20 A. Correct.

21 218. Q. But Peace Bridge Duty Free was
22 closed?

23 A. Yes, I am talking about the
24 capture rates. You asked me about capture rates.

25 219. Q. You are talking capture rates for

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1 other retail, not capture rates for Peace Bridge?

2 A. No, you were asking me about
3 capture rates related to a moment comparing, like
4 we have to compare apples to apples.

5 220. Q. Okay. So how would Peace Bridge
6 Duty Free's capture rate be impacted by a bridge
7 closure, the rate be impacted by a bridge closure
8 or border restrictions?

9 A. The customers...with having a
10 bridge restriction or a closure, makes for
11 different customers that are going across,
12 whether they are leisure or whether they are
13 going across for essential services, and,
14 therefore, their needs are different in terms of
15 going into a store or not into a store.

16 221. Q. But you divide capture rate out
17 by different users?

18 A. Yes, we did.

19 222. Q. But the capture rate is the
20 percentage of cars going by that turn in. So how
21 does the fact that the bridge is closed to, say,
22 passenger traffic, how does that change the
23 capture rate for passenger vehicles?

24 A. So it is the amount of people
25 that get out of their cars to come into the

1 store.

2 223. Q. Sure. But if you've got zero
3 people going over, zero people getting out,
4 you've got a capture rate of what?

5 A. Zero, yes.

6 224. Q. If...or is it 100 percent because
7 you have got no people going over. So if you've
8 got 2 cars going over and one turns in, it is 50
9 percent?

10 A. Yes.

11 225. Q. So, I am struggling with how the
12 Peace Bridge Duty Free's capture rate is
13 connected to legislation to close the bridge. I
14 understand why the gross traffic is connected.
15 What I don't understand is how the capture rate
16 is connected.

17 MR. JONES: Are you referring to
18 18.07?

19 226. MR. SHEA: No, I am referring to how
20 a bridge...

21 MR. JONES: But only the laws
22 affecting the bridge closer?

23 227. MR. SHEA: I am asking in general,
24 how does any bridge closure impact the
25 percentage of cars that turn in?

1 MR. JONES: But what I am trying to
2 understand is, are you trying to isolate
3 the bridge closure legislation versus
4 the health legislation generally?

5 228. MR. SHEA: I am not talking about the
6 legislation.

7
8 BY MR. SHEA:

9 229. Q. I'm talking about, generally, a
10 bridge closure. I am trying to understand why,
11 aside from the fact Mr. Wolf wanted it in here,
12 why capture rate is relevant.

13 A. To understand...it gets
14 at...there is not one metric that has shaped our
15 opinion in this, and we take it into
16 consideration when we do a report in this nature,
17 to consider numerous variables to help us shape
18 our opinion.

19 230. Q. But what is your opinion?

20 A. Okay, I am getting there...

21 MR. JONES: You've got to let her
22 answer the question.

23 THE DEPONENT: So, capture rate is
24 just another metric that helps us
25 understand what was happening at

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1 this...to understand the trends, what
2 was happening in terms of consumer
3 sentiment and what the capture rate
4 demonstrates to us that...you are
5 correct in terms of how it is captured,
6 but it points to the fact that if
7 capture rate is lower, there
8 was...during the time of the pandemic
9 and still to this day, traffic and
10 capture rate are down in retail because
11 people are still a bit nervous to go out
12 and do non-essential shopping. And so,
13 if the capture rate is down as they
14 cross the bridge, it is because they
15 don't want to go into a high traffic
16 area, and just points to the fact that
17 going into a duty free shop may not be
18 desirable for them and, therefore, they
19 don't go in, and the capture rate is
20 lower.

21
22 BY MR. SHEA:

23 231. Q. So, how is that linked to changes
24 in legislation?

25 A. Because...can you clarify and

1 expand on that?

2 232. Q. So, the fact that the border was
3 closed, do you have any data to directly link a
4 border closure with reduced capture rates?

5 A. I am sorry, I am just trying to
6 frame up the question.

7 233. Q. So 18.07...

8 A. Yes.

9 234. Q. ...is triggered by changes in
10 applicable legislation.

11 A. Yes.

12 235. Q. The assertion appears to be that
13 border restrictions...they use the term "border
14 restrictions", you see in the affidavits...border
15 restrictions were imposed, which had a negative
16 effect. How, based on what you've said...I hear
17 you that the pandemic has had a carry-on effect
18 and people are less likely to go into crowded
19 place, the pandemic, how is that connected to
20 border restrictions in your view?

21 MR. JONES: I think you said how are
22 the border restrictions impacting border
23 restrictions? I think what you meant to
24 say is capture rates.

25

1 BY MR. SHEA:

2 236. Q. Okay. How are the border
3 restrictions...

4 MR. JONES: But, one thing I do want
5 to clarify, because you are limiting it
6 to border restrictions, and I think the
7 health restrictions as well are in the
8 affidavit material, the vaccine mandates
9 and the...

10 237. MR. SHEA: You define...I said define
11 border restrictions...capital B and R,
12 that's what you define them all as.

13 MR. JONES: But...

14 238. MR. SHEA: And I asked her if she
15 read the affidavit.

16 MR. JONES: Okay. Counsel, in
17 fairness, you can't give her a defined
18 term without...

19 239. MR. SHEA: Okay, let's move on.

20
21 BY MR. SHEA:

22 240. Q. So, you'll agree that capture
23 rate is about getting people into the store?

24 A. Yes,

25 241. Q. And other factors influence that.

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1 I believe you wrote a study for a municipality, I
2 can't remember if it was Toronto or Wasaga Beach
3 where you talked about...I think you talked about
4 the retail environment or how it looked being
5 related to capture rates, so, it has to be
6 welcoming?

7 A. Yes.

8 242. Q. Do you recall that?

9 A. I am not sure if I worked on that
10 specifically, but they...

11 243. Q. It was a good report. So I am
12 going to show you some pictures of the duty free.
13 So, since you haven't seen these before, we are
14 going to mark them as Exhibit A for
15 identification.

16
17 --- EXHIBIT A: Photographs of Duty Free Store,
18 taken in spring 2023, for
19 identification

20
21 MR. JONES: Are these in the record
22 somewhere?

23 244. MR. SHEA: Yes, they are. These were
24 in the record that you indicated that
25 one of the reasons that you had this

1 report and required it in the record is
2 because we put these pictures in.

3
4 BY MR. SHEA:

5 245. Q. So these are pictures of the
6 interior of the store, the first two pictures.

7 A. Can you tell me when they were
8 taken?

9 246. Q. These were taken in the spring,
10 so various times in the spring of this year.

11 A. Okay.

12 247. Q. And then we got a picture of the
13 store from the road, a picture of the store from
14 the highway, that thing sticking up is the duty
15 free store, then we have a sign, the duty free
16 sign, and we have the parking lot. I am going to
17 refer you to, if you don't mind, the lease and
18 the lease includes how the duty free...some
19 pictures of how the duty free envisioned it. And
20 I am going to refer you to page...let's start at
21 125 and then, over on the page, is the layout.
22 127 is the main stand, and 128 is again, the
23 layout. You'll agree with me that, from a
24 retailer's perspective, those pictures don't look
25 very inviting when compared to the proposal?

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1 MR. JONES: Well, Counsel...

2 248. MR. SHEA: She is an expert.

3 MR. JONES: First of all, you
4 directed her to a mood board and you've
5 taken some very isolated pictures, one
6 of them is crooked...

7 249. MR. SHEA: I am sorry my client
8 doesn't take very straight pictures...

9 MR. JONES: It is not of the entire
10 store, it is of two shelves...

11
12 BY MR. SHEA:

13 250. Q. Okay. So let's start with the
14 duty free sign...no, look on these pictures,
15 please. Let's go from the back forward, so the
16 last picture of the parking lot. Is that going
17 to attract people into the business, in your
18 opinion?

19 A. Again...

20 MR. JONES: Counsel, what
21 direction...you've got to orient the
22 witness.

23
24 BY MR. SHEA:

25 251. Q. There is the highway behind.

MR. JONES: Looking at the highway?

A. Again, when was this taken?

A. No.

A. Not that particular sign.

MR. JONES: Well, Counsel, in fairness, this one appears to be in the process of being taken down by a construction vehicle?

MR. JONES: As I understand it, the

1 property has been sold and its...

2 257. MR. SHEA: Where in the record am I
3 going to find that?

4 MR. JONES: You are the one putting
5 this document to her without proper
6 context.

7
8 BY MR. SHEA:

9 258. Q. It doesn't look very inviting,
10 does it?

11 A. Again, I need to understand the
12 context. I don't know if a storm was the day
13 before and its, you know, it happened the day
14 before. I don't know. The others do look like
15 they may have been...

16 259. Q. Fair enough. Go to the next
17 picture on. This is the tower in front of the
18 store. If you were driving by, would you, in
19 your opinion, would you think that indicates that
20 there is even a store there?

21 A. I recall seeing a sign in
22 previous pictures that I had gone back...again, I
23 don't know the context. I don't know if they are
24 in the middle of a sign change. Is it a one day
25 at a time? I don't...

1 260. Q. But, you will agree, that various
2 other factors can influence capture rates?

3 A. Yes.

4 261. Q. And various other factors can
5 influence sales? It is not just the pandemic?

6 A. Well, the pandemic influenced a
7 lot of things, particularly around marketing. In
8 fact, the government encouraged people to stay at
9 home and, therefore, a lot of retailers were not
10 marketing and trying to encourage traffic.

11 262. Q. And has that changed now? What
12 are people doing now?

13 A. Now that restrictions...which
14 were not fully lifted until Victoria Day of this
15 year, which is encroaching summer.

16 263. Q. And when you say...that was U.S.-
17 based restrictions?

18 A. Yes.

19 264. Q. Not Canadian restrictions?

20 A. No.

21 MR. JONES: Counsel, in fairness, it
22 was restrictions for people travelling
23 across the border from Canada.

24 265. MR. SHEA: I asked whether they were
25 U.S. based or Canadian-based. Your

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1 propensity to interrupt examinations is
2 frustrating to say the least.

3 MR. JONES: Counsel, I expect you
4 will get your...

5 266. MR. SHEA: I think we are almost
6 done.

7 MR. JONES: The examinations that we
8 conducted were interrupted constantly.

9 267. MR. SHEA: Not by me. You're
10 asserting I interrupted on your
11 examinations? I wasn't there.

12 MR. JONES: No, I agree you weren't
13 there, but whether it was you or your
14 colleague...

15 268. MR. SHEA: Let's go on.

16 MR. JONES: ...the interruptions were
17 far more often than you are suggesting
18 that I am interrupting you.

19
20 BY MR. SHEA:

21 269. Q. Let's go on. So I just want
22 to...so as I understand your report, and just to
23 summarize, the just of your report is that there
24 is risk to Peace Bridge Authority in going to
25 another RFP, does that summarize it accurately?

1 A. Yes.

2 270. Q. And so then I'll ask...so what is
3 to be made of that? Your opinion is, the
4 Authority should negotiate a deal with the Peace
5 Bridge Duty Free to let them stay? Is that what
6 you are getting at?

7 A. I think it should be a
8 consideration.

9 271. Q. Okay. And what about from the
10 other side? So are you aware...actually you've
11 seen the projections in the lease. Peace Bridge
12 Duty Free appears to be...at least was,
13 projecting a very large profit. Is it not
14 incumbent on them to negotiate with the Authority
15 to preserve the lease?

16 A. Sure.

17 272. Q. So, you believe that it is
18 incumbent on the parties, given the risk to the
19 Authority, to try to come to terms on a new
20 lease?

21 A. Well, I think it is
22 important...in my experience through the
23 pandemic, landlords and tenants tried to work
24 together to be good partners.

25 273. Q. And did they always succeed?

1 A. I can't think of an example that
2 wasn't good.

3 274. Q. Hudson's Bay and their commercial
4 leases? That didn't work out so well and you
5 were involved in some of that, weren't you?

6 A. Correct.

7 275. Q. Did Hudson's Bay not end up
8 having to pay 100 percent of the rent they owed,
9 yes?

10 A. Yes.

11 276. Q. And are you familiar with the
12 situation involving The Duke restaurants? Were
13 you involved in that?

14 A. No.

15 277. Q. Were you involved in any other
16 negotiations between retailers and landlords as a
17 result of COVID?

18 A. No.

19 278. Q. No?

20 A. Well, one. It is not rectified
21 yet.

22 279. Q. So you have experience with one
23 negotiation of a lease between a landlord and
24 tenant during COVID?

25 A. In addition to the Hudson's Bay.

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1 280. Q. Yes, and the Hudson's Bay...well,
2 we talked about how the Hudson's Bay came out.
3 Those are my questions. That is all. Thank you.

4 MR. JONES: I just have a few
5 questions.
6

7 RE-EXAMINATION BY MR. JONES:

8 281. Q. So, in the Hudson's Bay lease,
9 are you aware, did it have a provision similar to
10 section 18.07 of the Peace Bridge lease?

11 A. There were several and I would
12 have to go back to refresh myself.

13 282. Q. Whether they had an 18.07 clause?

14 A. Correct. Those cases were
15 specifically just in terms of operating practices
16 as it related to the pandemic.

17 283. Q. So they didn't involve an
18 analysis...

19 A. They did review...

20 284. Q. ...of 18.07?

21 MR. SHEA: Stop, you asked her
22 whether she was aware they had 18.07.
23 Her answer was she was not. You then
24 can't put to her, "Did they involve
25 18.07".

285. MR. JONES: No, no. I said, "They did not involve an analysis". The matter in issue was not an analysis of a clause similar to 18.07. Anyways.

BY MR. JONES:

286. Q. Now, in your experience, have the tenant inducements in the retail sector that are being provided by landlords, have they changed since the onset of COVID?

A. Yes.

287. Q. In what sense?

A. There are more. There is much negotiating and deal-making that has all the factors involved in it now.

288. Q. And so, would the level of tenant inducements be higher or lower, or, in other words, are landlords giving tenants more or less to induce them to enter into leases?

A. I think it is a case-by-case basis.

289. Q. And in terms of the capture rates, would those be affected by health restrictions beyond the border closures, things like mask mandates and vaccine mandates?

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1 A. Yes.

2 290. Q. So in what sense would the
3 capture rates be affected?

4 A. Negatively. Customers are
5 still...there is still some reluctance. We are
6 still experiencing, in certain markets, that
7 traffic is down and capture rate customers have
8 still not recovered in terms of their sentiment
9 with regards to the pandemic.

10 291. MR. JONES: Okay. Thank you, those
11 are my questions.

12

13 --- upon adjourning at 2:05 p.m.

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TAB 12

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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. Capitalized terms not defined in the affidavit have the same meaning as in the Lease (as defined below).

3. Having reviewed the application record of the Royal Bank of Canada ("**RBC**"), and based on my involvement in this matter, it is my understanding that RBC is acting out of concern that our landlord will shortly take steps to terminate the lease. Duty Free is not in monetary default

with RBC and had entered into a forbearance with RBC, which was terminated over concerns with the landlord. Absent RBC's concerns about the landlord terminating our lease, I believe that RBC would not be bringing a receivership application.

4. I make this affidavit in support of Duty Free's request to have the receivership application adjourned to allow for more time for good faith negotiations with the landlord and RBC to reach an acceptable resolution. If negotiations stall and the landlord continues to dispute that its enforcement rights are stayed under Part IV of the *Commercial Tenancies Act* (the "**Act**"), Duty Free seeks an opportunity to bring an application for an order enjoining the landlord from taking any enforcement steps in accordance with the Act.

Background

5. Duty Free is an Ontario corporation with a registered office address located at 1 Peace Bridge Plaza, Fort Erie, Ontario (the "**Leased Premises**").

6. By lease dated July 28, 2016, Duty Free leased the Leased Premises from the Buffalo and Fort Erie Public Bridge Authority (the "**Landlord**") for a fifteen (15) year term commencing on November 1, 2016 and ending on October 31, 2031, subject to Duty Free's option to extend for an additional period of five (5) years through 2036 (the "**Lease**"). The terms of the Lease were amended by rent deferral agreements, which are further detailed below. Attached as **Exhibit "A"** is a copy of the Lease.

7. The Landlord is an international entity created by the State of New York and the Government of Canada. It is governed by a 10 member Board of Directors consisting of five members from New York State and five members from Canada.

8. As the name suggests, Duty Free operates a land border duty free shop with 26,000 square feet of retail space from the Leased Premises. The retail store sells alcohol, tobacco and other products such as fragrances, cosmetics, jewelry and sunglasses. Other services provided at the store include currency exchange, motor coach parking and travel services, such as processing customs paperwork for truck drivers. The duty-free store is located at the border crossing with Buffalo, New York, which is the main north-south travel corridor between Canada and the United States.

9. Before the pandemic, the duty free shop would at times have more than 500 customers in the store, with approximately 60% of customers from Canada and 40% from the United States. Particularly during busy travel times, the store would be at capacity and the parking lot full of buses and cars. The duty free shop is a destination retail store for Western New York State. Duty Free has also done extensive marketing campaigns to bring tourists to Canada, including bus tour companies from Asia and Southern United States. Duty Free was awarded second place as the Best Land Border Store in the Americas and was a finalist in the Best Land Border store in the world.

10. Prior to the COVID-19 pandemic, the retail store also had a full-service Tim Hortons on site, but it closed in August 2020. There is currently no food vendor in the Leased Premises.

11. The duty free store is typically open 24 hours a day and 365 days a year, although the store's hours were impacted by the pandemic. The business previously employed approximately 90 staff, including cashiers, product specialists/buyers, customer service, sales staff, supervisors, marketing professionals, and support staff in replenishment, customs paperwork, inventory and cash control. Forty employees were full-time staff, including myself. All staff live locally and all

functions are performed at the store location. The Fort Erie store is one of the busiest stores in the 49th Parallel and is steady from mid-March through to December.

12. The pandemic, and particularly the border closures between Canada and the United States, greatly impacted Duty Free's business. The land border was closed between March 2020 and August 2021 for all non-essential travel. The retail store entirely closed on or about March 21, 2020 and was partially reopened on September 19, 2021. Canada only reopened its land border to fully vaccinated Americans on August 9, 2021, and the United States did not re-open its border to Canadian travelers until November 8, 2021.

13. When the retail store was closed for approximately a year and a half, Duty Free maintained staff to secure the Leased Premises. Washroom facilities were opened for truckers and essential workers in the Spring of 2020. Since the store reopened to retail customers in mid-September 2021, the business has approximately 20 employees and is operating at 30% capacity as compared to pre-pandemic levels.

14. In addition to the duty free store operating from the Leased Premises, Duty Free also operates a duty free shop and convenience store at the Hamilton International Airport by way of a lease with Hamilton International Airport Limited. Inventory for the Hamilton store is shipped from the Leased Premises. There are no issues with the lease or the landlord relating to the Hamilton Airport location.

Tenant Improvements to the Leased Premises

15. Duty Free was the successful bidder in a request for proposal ("RFP") process initiated by the Landlord prior to entering into the Lease. As part of the RFP, Duty Free was required to and

agreed that it would undertake significant capital improvements to the Leased Premises. As a result, Duty Free undertook a major renovation of the Leased Premises, including reconfiguring the space with new entrance and exit ways, redoing the stucco and exterior, installing a new roof, gutting the interior and putting in new floors, ceiling, and walls, and fixing the parking lot. The renovation work started in August 2018 and finished in May 2019. During the renovation, the duty free shop operated at half capacity because we renovated half of the store at a time.

16. The renovations were significant in scale and cost Duty Free over \$6 million. As will be explained in greater detail below, Duty Free obtained financing from RBC in the amount of approximately \$4.2 to fund the project. In addition, Duty Free invested more than \$1.8 million of company assets into the improvements.

The Fort Erie Tenancy

17. Under the Lease, Duty Free agreed to pay Base Rent, Percentage Rent and Additional Rent. As a result, the Rent payable is tied to Duty Free's Gross Sales.

18. The amount payable for Base Rent and Percentage Rent are set out in subsections 4.02 and 4.03 of the Lease and can generally be described as approximately 20% of sales with a floor of \$4,000,000.

19. The agreement on the amount of Rent was largely based on traffic and revenue expectations, as attached at Schedule D to the Lease. Obviously, the worldwide pandemic that prohibited virtually all cross-border travel destroyed any business during the time the bridge was closed to non-essential travel.

20. The parties realized that the nature of this tenancy and the control exercised by other parties needed to be accounted for. Pursuant to subsection 18.07 of the Lease the Landlord agreed to consult with Duty Free about the impact of changes to Applicable Laws on the Lease as follows:

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 Premiers, 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]

21. Adverse Effect is defined as paragraph 2.01(c) of the Lease:

“Adverse Effect” means any one or more of:

...

(vii) loss of **enjoyment of a normal use** of property; and

(viii) **interference with the normal conduct of business.** [emphasis added]

22. Applicable Laws is defined as paragraph 2.01(e) of the Lease:

“Applicable Laws” means any statutes, laws, by-laws, regulations, ordinances and requirement of governmental and other public authorities having jurisdiction over or in respect of the Leased Premises or the Property, or any portion thereof, and all amendments thereto at any time and from time to time, and including but not limited to the Environmental Laws. (emphasis added).

Rent Deferral Agreements

23. Duty Free’s revenues relied heavily on a retail duty-free store that catered exclusively to members of the public that are crossing the Canada-US border, and the pandemic had a profound impact on its business, particularly during the year and a half that the border was closed to non-essential travel.

24. On April 27, 2020, Duty Free entered into a rent deferral agreement prepared by the Landlord due to travel restrictions and economic hardship created by the Covid-19 pandemic. A copy of the April rental deferral agreement is attached hereto and marked as **Exhibit "B"**.

25. During the Rent Deferral Period, Duty Free was required to pay all Additional Rent, which it did, and Base Rent was deferred to be paid over an amortized period.

26. The first agreement expired on July 31, 2020. The parties continued to act as if the agreement had been extended.

27. In November 2020, Duty Free accepted the Landlord's offer to enter into a second deferral agreement, which had the same terms as the first agreement except that the amortization period to repay rent was doubled to two years. The Rent Deferral Period under the second deferral agreement was to be extended to the earlier of (i) March 31st, 2021 or (ii) the last day of the month following the date the duty free shop fully reopened for business after the restrictions on non-essential travel between Canada and the US are lifted.

28. Duty Free executed the second deferral agreement and delivered it to the Landlord in accordance with the Landlord's request on November 19, 2020. The Landlord has not yet delivered an executed copy of the agreement to us. A copy of the second rental deferral agreement is attached hereto and marked as **Exhibit "C"**. The parties have conducted themselves in accordance with the rental deferral agreement since November 19, 2020.

29. Notwithstanding that under the rent deferral agreement the Rent Deferral Period ended on March 31, 2021 and the Restart Date was April 1, 2021, the Canada-US border remained closed

and the retail duty-free store remained closed. Again, the parties continued to act as if the agreement had been extended.

30. During all Rental Deferral Periods, Duty Free paid all Additional Rent in accordance with its obligation under the rent deferral agreements.

31. The underlying principle of the deferral agreements was that Duty Free would not be required to pay Base Rent until traffic across the Canada-US border returned to normal levels and Duty Free was able to reopen its store to the public.

32. Duty Free continued to make payments and the Landlord continued to accept payment under the terms as set out in the rent deferral agreements. Duty Free also paid to the Landlord all government subsidies for rent, as set out below. It was my understanding that the parties agreed to continue these arrangements until the border reopened. The Landlord did not raise any objection until it demanded immediate payment of all Deferred Rent plus three months' accelerated rent on September 8, 2021, some 13 days before Duty Free opened for business.

Duty Free Participated in CERS

33. Duty Free participated in the government programs designed to assist small businesses that were affected by Covid-19 with rent payments.

34. In or about October 2020, the Canadian government announced the Canada Emergency Rent Subsidy ("**CERS**") that provided a subsidy to cover part of eligible commercial rent for small businesses impacted by Covid-19 to be administered in several four (4) week periods. The CERS program applied retroactively starting September 27, 2020, and ran until October 23, 2021.

35. Duty Free applied for and was approved for CERS. Duty Free obtained rent assistance under CERS between September 25, 2020 through to October 23, 2021, when the program was completed. A summary of the timing and amounts of funds received by Duty Free related to CERS is attached hereto and marked as **Exhibit "D"**.

Landlord Delivers Notices of Default

36. On September 8, 2021, the Landlord provided Duty Free with two Notices of Default, one relating to purported monetary defaults and one relating to non-monetary defaults. A copy of the Notices of Default are attached as Exhibit "G" to the Affidavit of Christopher Schulze, sworn December 2, 2021 ("**Schulze Affidavit**").

37. The monetary default sought payment of approximately \$5.9 million of rent arrears 9 days later, which represented the full amount of all unpaid Rent. The Landlord threatened to seize our property and/or terminate the Lease if this payment was not made.

38. The monetary Notice of Default asserts that Duty Free's arrears at the time were \$5,931,389, despite the fact that the Deferred Rent was to be payable in equal installments over a two-year period (as set out in the amortization schedule in subsection 2.3 of the November rent deferral agreement). There had been no previous Notice of default or allegation of an Event of Default. Duty Free disputes the accuracy of the amount of arrears of Rent identified in the monetary Notice of Default and takes the position that the Notice of Default is invalid.

39. The second Notice of Default was a non-monetary default alleging that Duty Free breached the Lease by not being open for business 24 hours a day, 7 days a week, 365 days a year, and also alleged Duty Free had abandoned the Leased Premises in March 2020. The notice further said that

Duty Free breached the Lease by being closed for 10 consecutive days without the prior consent of the Landlord. Finally, the notice alleged that Duty Free did not provide a replacement letter of credit after the Landlord, without notice and contrary to the parties' course of conduct to that point, applied Duty Free's full \$50,000 letter of credit toward Rent even though the Canada-US border and the duty free shop had not re-opened. The Landlord demanded payment in 14 days of three month's accelerated rent, being about \$1.2 million dollars plus \$10,000 of legal expenses and more taxes.

40. The total amount demanded to be paid by certified cheque in 14 days under the two Notices of Default exceeded \$7 million and the Duty Free was not yet open for business.

41. Regarding the second (non-monetary) notice of default, Duty Free has restored the \$50,000 letter of credit and reopened the duty-free store, thus curing the non-monetary defaults, to the extent they were *bona fide* defaults.

42. Since re-opening for business on September 19, 2021, in addition to Additional Rent and CERS payments, Duty Free has made the following payments to the Landlord, which represent 20% of gross sales: \$19,533 for September rent paid; \$61,600 for October rent; and \$109,400 for November rent. Unfortunately, as of November 2021, traffic across the bridge and Duty Free's gross sales remain down approximately 70-60% from pre-Covid-19 levels.

Duty Free Subject to Eviction Moratorium under the Act

43. Duty Free advised the Landlord that, as a result of qualifying for CERS, it was protected by the eviction moratorium mandated by the Ontario government as set out in the Act. Duty Free further advised the Landlord that it had applied for, been approved to receive and did receive CERS

payments, which had all been paid to the Landlord as rent. In total, Duty Free paid \$220,161.00 in CERS payments to the Landlord before September 20, 2021. Duty Free also provided the Landlord with retroactive CERS approval notices. These sums are in addition to the monthly payments of Additional Rent made during the deferment period.

44. Copies of letters between Duty Free and its Landlord in regards to the Notices of Default and Duty Free's CERS payments are attached hereto and marked as **Exhibit "E"**.

45. Duty Free and the Landlord entered into without prejudice negotiations to try and settle issues related to the Notice of Default and the Lease. These negotiations have not resulted in an agreement at this time.

46. Duty Free continued to qualify for and receive CERS payments after September 2021. Most recently, Duty Free was approved for CERS claim period 14 (September 26, 2021 to October 23, 2021) on November 8, 2021. Attached as **Exhibit "F"** is a copy of the CERS approval notice from CRA dated November 8, 2021.

47. On November 12, 2021, I provided evidence of Duty Free's CERS approval to the Landlord by sending a copy of the CERS approval notice to the Landlord by email. Attached as **Exhibit "G"** to this Affidavit is a copy of my email to the Landlord dated November 12th, 2021.

48. As a result of Duty Free receiving CERS up to the last CERS period, I believe that the Landlord cannot take any steps to terminate the Lease or take possession of the inventory at the store because of the eviction moratorium under the Act.

Licenses to Operate the Duty Free Store

49. Duty Free is authorized by the Liquor Control Board of Ontario (“**LCBO**”) to buy and sell alcohol. Alcohol sales amounts to approximately 50% of the company’s business. Spirits are typically re-stocked on a weekly basis, and wine is purchased bi-weekly. New orders for alcohol products for the Spring and Fall of 2022 need to be organized through the LCBO in the next month or two. Attached hereto and marked as **Exhibit “H”** is a copy of the Land Border Duty Free Shop Authorization between the LCBO and Duty Free.

50. Duty Free also holds two licenses from the Canada Border Services Agency (“**CBSA**”) which provides it with authority to operate the duty free stores at its two locations. The CBSA license for the Hamilton Airport location, which expires on April 30, 2027 is attached hereto and marked as **Exhibit “I”**. The CBSA license for the Leased Premises is valid until January 25, 2025 and is attached hereto and marked as **Exhibit “J”**.

51. The CBSA licenses are non-transferrable. It is my understanding that the store cannot be operated by a trustee in bankruptcy or receiver. This is being further reviewed by our counsel. The CBSA contacted me following service by the receiver to ascertain if, despite the application to appoint a receiver, we were continuing to operate. Attached hereto and marked as **Exhibit “K”** is a copy of the e-mail I received from the CBSA in regards to the appointment of a receiver.

52. As mentioned above, December is typically a top month for sales due to holiday travel between Canada and the United States. We expect that business will continue to improve because the Canadian government has recently lifted testing requirements for travellers returning to Canada. As of December 8th, fully vaccinated Canadian travelling to the United States for 72 hours

or less do not need to have a pre-entry test. In addition, there is a Buffalo Bills home game in December, which attracts tourists to Buffalo and is an extremely busy time for the store.

53. Given the complexities of dealing with the inventory in a highly regulated environment and the fact that December is a particularly busy month, it would be extremely difficult for a Receiver to manage the business, were it even allowed to do so. Obtaining key product, such as wine and spirits, while overseeing sales and navigating the CBSA requirements in December will be challenging for a party that is not familiar with the procedures between the CBSA and Duty Free.

54. Given the foregoing, my belief is that a Receiver appointed over the business is more likely to shut down the business than to operate it, at least initially. I note that the application materials provided by RBC do not say they intend for the Receiver to operate the business, nor do they say they intend to continue the employment of the staff.

Credit Facilities with RBC

55. Duty Free obtained financing from the Royal Bank of Canada ("**RBC**") pursuant to the terms of a credit agreement dated July 20, 2018, as amended on July 5, 2021 and October 8, 2021 (collectively, the "**Credit Agreement**"). A copy of the Credit Agreement is attached as Exhibit "D" to the Schulze Affidavit.

56. The Credit Agreement provided Duty Free access to the following facilities:

- a. Facility #1: \$900,000 revolving demand facility by way of Royal Bank Prime loans and Royal Bank US Base Rate loans;

- b. Facility #2: \$575,900 revolving demand facility by way of letters of guarantee;
- c. Facility #3: \$5,000,000 revolving lease line of credit by way of leases; and
- d. VISA Business credit card to a maximum of \$300,000.

57. As set out above, Duty Free financed renovations of the Leased Premises by way of borrowings against the revolving lease line of credit.

58. Duty Free has always had a productive and open relationship with RBC. Duty Free kept RBC apprised of issues it was facing during the COVID-19 pandemic and provided it with business plans and other financial reporting in a timely fashion, as required under the Credit Agreement.

59. Duty Free has made all payments to RBC when due and has continued to pay amounts owing in accordance with the terms of the Credit Facilities up to now.

60. As a result of the land border being closed between March 2020 and August 2021 (in the case of Americans entering Canada) and November 2021 (in the case of Canadians travelling to the United States), the duty free shop was closed to retail customers between March 2020 and September 2021. Since Duty Free had no sales revenue during this time, it was offside of its financial covenants under the Credit Agreement. On July 2, 2021, RBC sent Duty Free a letter indicating that it was aware of the company's plan to remedy the default by December 31, 2021, but took no further steps, which are appreciated. A copy of the July 2nd letter is attached hereto and marked as **Exhibit "L"**.

61. However, after the Landlord issued its Notice of Default on September 8, 2021, RBC made demand and sent a Notice of Intention to Enforce Security on September 23, 2021. A copy of the demand letter is attached as Exhibit "H" to the Schulze Affidavit.

62. On October 8, 2021, RBC and Duty Free entered into a Forbearance Agreement. The Forbearance Agreement was set to expire on the earlier of either January 4, 2022 or an "Intervening Event," which included if the Landlord purported to terminate the Lease or levy distress against the company's assets. A copy of the Forbearance Agreement is attached as Exhibit "D" to the Schulze Affidavit.

63. We allowed for the inclusion of this "Intervening Event" because we believed that the landlord was stayed from acting during the forbearance period due to the moratorium under the Act.

64. On November 23, 2021, RBC terminated the Forbearance Agreement on the grounds that Duty Free had failed to deliver by no later than November 15, 2022, "evidence that an arrangement satisfactory to the Lender, in its sole discretion, has been entered into between the Borrower and the Landlord in respect of the Lease and the defaults thereunder to ensure that the Landlord will not terminate the Lease before the end of its current term." A copy of RBC's termination letter is attached hereto and marked as **Exhibit "M"**.

65. I have reviewed the Schulze Affidavit and it appears that the termination notice was sent following an e-mail from counsel for the Landlord to counsel for RBC indicating that the parties have been unable to resolve their issues and that the Landlord "intends to exercise its remedies under the default provisions of the Lease." However, the letter does not mention that negotiations were still on-going at that time and RBC did not provide Duty Free with time to cure the default.

Duty Free a Viable Business

66. Under the Forbearance Agreement, Duty Free provided monthly cash flow statements to RBC for the months of October and November 2021. Cash flow statements from October to December are attached hereto and marked as **Exhibit "N"**.

67. The cash flows demonstrate the Duty Free is currently a viable business and will continue to stay that way as long as border restrictions stay the same. Indeed, in November, the business was profitable due to higher than expected sales revenue and lower than expected costs, and because Duty Free paid rent at 20% of sales to the Landlord.

68. As mentioned above, we expect that December will be a busy month for sales, especially because the testing requirements for short-term vaccinated travellers have reduced. I believe it is likely we will see an improvement in respect of our projections for December. I am hopeful that the business has weathered the worst of the pandemic and we can look forward to a continued increase in travellers and, therefore, customers at the Fort Erie land border.

69. However, terminating the lease will destroy the business. Since duty free stores can only be operated at airports or land borders, there are very few opportunities to conduct business elsewhere in Ontario. Duty Free spent approximately one year and more than \$6 million making significant improvements to the Leased Premises. It continued to secure the Leased Premises during the time when the land border was closed to non-essential travel and has reopened its retail store as quickly as possible once the border reopened. Having endured the challenges of the COVID-19 pandemic, it is not appropriate to now allow the Landlord to terminate the Lease, thereby precipitating RBC's receivership application, when an eviction moratorium is in place and the business' cash flow supports its continued operation.

70. Furthermore, terminating the Lease would also compromise Duty Free's ability to operate the duty free shop at the Hamilton Airport, which is otherwise in good standing with its landlord and the CBSA, because Duty Free ships inventory from its Leased Premises to the Hamilton location.

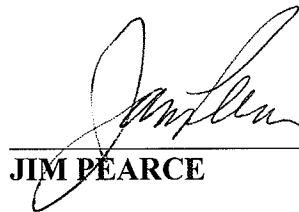
71. On December 8, 2021, the Duty Free retained Blaney McMurtry LLP ("**Blaney**") as local specialist counsel to assist in this matter. Blaney offered on December 10th to enter into negotiations with the Landlord. The Landlord replied that it was available for a meeting on Monday morning. A copy of the e-mail correspondence discussing a meeting is attached hereto and marked as **Exhibit "O"**.

72. I believe that, given more time, a commercial resolution can be reached with the Landlord reflecting a fair compromise to both parties. I believe our ability to make a proposal that will be found to be credible and reasonable by the Landlord will be enhanced by the passage of time as the business, which was once a very profitable business, returns to form over the next few months.

SWORN (OR AFFIRMED) remotely)
 by way of video conference by)
 Alexandra Teodorescu stated as being)
 located in the City of Oshawa, Province)
 of Ontario, on this 12th day of)
 December, 2021, in accordance with)
 O.Reg. 431/20, Administering the Oath)
 or Declaration remotely.)



A Commissioner for Taking Affidavits,
Alexandra Teodorescu



JIM PEARCE

Signature:

Email: jimp@dutyfree.ca

This is Exhibit “A” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read "Alexandra Teodorescu".

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

BUILDING LEASE

BETWEEN

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

- AND -

PEACE BRIDGE DUTY FREE INC.

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SCHEDULES:

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

THIS LEASE is dated as of the 28th day of July, 2016.

B E T W E E N:

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

(the "Landlord")

AND:

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

(the "Tenant")

ARTICLE I BASIC LEASE TERMS

1.01 Basic Lease Terms

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

Address of Landlord:

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

Address of Tenant:

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

ARTICLE II DEFINITIONS AND INTERPRETATION

2.01 Definitions

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

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

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

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

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

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

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

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

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

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

- (ii) deposits not refunded to purchasers; and

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

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

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

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

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

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

2.02 Net Lease

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

2.03 Extended Meanings

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

2.04 Entire Agreement

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

2.05 Governing Law

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

2.06 Time of the Essence

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

2.07 No Limitation

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

2.08 Headings and Captions

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

2.09 Severability

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

2.10 Successors and Assigns

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

2.11 No Partnership or Agency

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

2.12 Joint and Several Liability

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

2.13 Landlord as Agent

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

2.14 Interpretation

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

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

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

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

2.15 Reasonableness

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

2.16 Conflict with Schedules

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

2.17 Amendment and Waiver

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

ARTICLE III GRANT AND TERM

3.01 Demise

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

3.02 Commencement and Termination Date of Term

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

3.03 “As Is” Condition of Leased Premises

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

3.04 Delay in Possession

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

3.05 Restrictive Covenant

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

3.06 Right to Extend the Term

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

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

ARTICLE IV RENT

4.01 Covenant to Pay

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

4.02 Base Rent

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

4.03 Percentage Rent

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

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

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

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

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

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

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

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

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

4.04 Accrual of Rent

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

4.05 Rent and Payments Generally

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

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

4.06 Letter of Credit

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

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

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

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

ARTICLE V FINANCIAL INFORMATION

5.01 Monthly Statements

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

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

5.02 Annual Statements

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

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

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

5.03 Traffic Reports

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

5.04 Books and Records

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

5.05 Right to Examine

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

5.06 Audit

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

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

5.07 Confidentiality

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

5.08 Tenant's Failure

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

ARTICLE VI
PROPERTY TAXES AND OPERATING COSTS

6.01 Property Taxes Payable by the Tenant

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

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

6.02 Contesting Property Taxes

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

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

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

6.03 Business Taxes

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

6.04 Operating Costs

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

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

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

6.05 Payment of Operating Costs

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

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

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

ARTICLE VII UTILITIES

7.01 Charges for Utilities

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

7.02 Tenant Not to Overload Facilities

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

7.03 No Liability

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

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

ARTICLE VIII HVAC

8.01 HVAC System

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

8.02 Landlord's Right to Maintain / Repair HVAC System

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

8.03 Tenant's Responsibility

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

ARTICLE IX USE OF THE LEASED PREMISES

9.01 Use of the Leased Premises

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

9.02 Conduct and Operation of Business

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

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

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

9.03 Nuisance and Waste

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

9.04 Observance of Law

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

9.05 Additional Services of the Landlord

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

9.06 Traffic Direction

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

ARTICLE X
TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY

10.01 Compliance with Environmental Laws and Environmental Approvals

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

10.02 Release of a Contaminant

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

10.03 Environmental Site Assessment

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

10.04 Tenant's Environmental Indemnity

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

10.05 Governmental Authority Requirements

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

10.06 Pre Existing Contaminants

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

10.07 Responsibility for Environmental Contaminants

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

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

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

ARTICLE XI INSURANCE AND INDEMNITY

11.01 Tenant's Insurance

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

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

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

11.02 Requirements of Insurance

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

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

11.03 Sign Insurance

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

11.04 Increase in Insurance Premiums

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

11.05 Cancellation of Insurance

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

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

11.06 Landlord's Insurance

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

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

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

11.07 Loss or Damage

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

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

11.08 Indemnification of the Landlord

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

ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS

12.01 Maintenance and Repairs and Replacement by the Tenant

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

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

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

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

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

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

12.02 Landlord's Approval of Alterations

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

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

12.03 Landlord's Inspection

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

12.04 Surrender of the Leased Premises

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

12.05 Repair where Tenant at Fault

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

12.06 Tenant Not to Overload Floors

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

12.07 Removal and Restoration by the Tenant

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

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

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

12.08 Tenant Capital Expenditures and Improvements

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

12.09 Notice of Defects

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

12.10 Liens

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

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

12.11 Signs and Advertising

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

ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION

13.01 Damage or Destruction to the Leased Premises

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

13.02 Rights to Termination

Notwithstanding Section 13.01:

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

13.03 Certificate Conclusive

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

13.04 Insurance Proceeds

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

13.05 Landlord's Rights of Rebuilding

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

13.06 Negligence of the Tenant

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

13.07 Expropriation

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

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

ARTICLE XIV

ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL

14.01 Transfers

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

14.02 Landlord’s Option to Terminate

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

14.03 Consent Required

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

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

14.04 No Advertising of the Leased Premises

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

14.05 Corporate Ownership

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

14.06 Assignment or Transfer by the Landlord

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

ARTICLE XV ACCESS

15.01 Right to Show the Leased Premises

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

15.02 Emergencies

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

15.03 Access Not Re-entry

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

15.04 Roof Rights

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

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

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

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

15.05 Right to Install Solar Panels

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

ARTICLE XVI
STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

16.01 Status Statement

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

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

16.02 Subordination and Attornment

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

16.03 Financial Information

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

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

ARTICLE XVII DEFAULT

17.01 Event of Default

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

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

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

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

17.02 Rights of the Landlord

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

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

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

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

17.03 Expenses

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

17.04 Waiver of Exemption from Distress

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

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

17.05 Remedies Generally

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

ARTICLE XVIII MISCELLANEOUS

18.01 Rules and Regulations

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

18.02 Overholding

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

18.03 Notices

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

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

18.04 Registration

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

18.05 Quiet Enjoyment

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

18.06 Landlord's Co-Operation and Access

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

18.07 Regulatory Changes

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

18.08 Unavoidable Delay

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

[END OF PAGE]

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

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per 

Name: *Ron Kleins*

Title: *general manager* 7/28/16

Per _____

Name:

Title:

I/We have authority to bind the Compact

PEACE BRIDGE DUTY FREE INC.

Per 

Name: *GREGORY G. O'HARA*

Title: *PRESIDENT*

I have the authority to bind the Corporation

SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS

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

Being all of PIN 64220-0290 (LT)

SCHEDULE "B"
LEASED PREMISES PLAN



SCHEDULE "C"
RULES AND REGULATIONS

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

SCHEDULE "D"
TENANT'S PROPOSAL

Please see attached as labeled Schedule D

SCHEDULE D

**Response to Request for Proposal
Operation of a Duty Free Shop at the Peace Bridge
Issued by the Buffalo and Fort Erie Public Bridge Authority**

**The Technical Proposal
May 9, 2016**

Submitted to: Buffalo and Fort Erie Public Bridge Authority
Attn: Kimberlee Kaiser, Executive Assistant
100 Queen Street
Fort Erie, Ontario
L2A 3S6

Proponent: Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Contact: Gregory G. O'Hara
President and Chief Executive Officer
905-871-5400 ext. 107
gohara@dutyfree.ca

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

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P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

May 9, 2016

Kimberlee Kaiser
Executive Assistant
Buffalo & Fort Erie Public Bridge Authority
100 Queen Street
Fort Erie, ON L2A 3S6

Dear Ms. Kaiser:

Peace Bridge Duty Free Inc. ("PBDF") is pleased to submit a proposal in response to the Request for Proposal (the "RFP") issued by the Buffalo & Fort Erie Public Bridge Authority (the "Authority") to develop and operate a duty free Store on the Canadian side of the Peace Bridge.

PBDF has reviewed the lease included in Appendix A of the RFP and confirms that PBDF understands the principal terms of the lease. If successful in this RFP process, PBDF is committed to entering into the lease in a form to be agreed upon by PBDF and the Authority, including those provisions identified as mandatory provisions in Part V, Section B of the RFP.

Peace Bridge Duty Free Inc. is the incumbent operator at the Peace Bridge Plaza and firmly believes that it is the best qualified to operate the duty free Store. The reasons for PBDF's belief in this regard are set out in full detail our proposal, which PBDF confirms is a firm and irrevocable offer.

PBDF believes that it is the best qualified to develop and operate the duty free Store at the Peace Bridge for many key reasons including:

- PBDF has a senior management group and staff that have extensive duty free industry business experience and its ownership is stable and has a strong financial capability.
- PBDF is an award winning duty free operator that has received numerous duty free industry distinctions over the years including the "Platinum Award" from the Frontier Duty Free Association in recognition for being the "Best Canadian Land Border Duty Free Store."
- PBDF has demonstrated a track record of generating incremental sales and mitigating significant business challenges including dealing with declining Peace Bridge vehicle traffic from Canada to the United States for more than a decade.





P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

- PBDF has engaged a renowned design team SmartDesign Group, that has a tremendous amount of experience with respect to specialized retail environments, to assist PBDF in creating an unparalleled luxury land border duty free shopping experience.
- PBDF has entered into many strategic relationships. These relationships will significantly enhance the business at the Store.

PBDF owners, staff and partners look forward to the exciting opportunity to develop and operate a land border duty free store at the Peace Bridge Plaza in Fort Erie, Ontario.

I, Gregory G. O'Hara, am an official with PBDF and will be the primary contact person with the Authority.

Yours truly,

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario

Email: gohara@dutyfree.ca
Phone: 905-871-5400 ext. 107



Non-collusive Proposal Certification



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-5335

In accordance with Item (iv) of Part IV.A.1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify that:

- This proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person or corporation;
- Peace Bridge Duty Free Inc. has not directly or indirectly induced or solicited any other Proponent to submit a false or sham Proposal, or decline to submit a Proposal;
- Peace Bridge Duty Free Inc. has not sought, by collusion, to obtain any advantage over any other Proponent or over the Authority; and
- I, Gregory G. O'Hara, am entitled to represent Peace Bridge Duty Free Inc., empowered to submit the bid, and authorized to sign a lease with the Authority.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Conflict of Interest Declaration



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with item (v) of Part IV.A1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify, on behalf of Peace Bridge Duty Free Inc., that there is no actual or potential Conflict of Interest relating to the preparation of this proposal, and/or Peace Bridge Duty Free Inc. does not foresee an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

I also confirm that I have the power to bind Peace Bridge Duty Free Inc. and, therefore, I am entitled to make this certification and declaration on behalf of Peace Bridge Duty Free Inc.

In the interests of full disclosure, the only individual involved in the preparation of the proposal that has had any employment relationship with the Bridge Authority is an individual who worked as a summer student at the Buffalo and Fort Erie Public Bridge Authority ("**Authority**") over 35 years ago. The full details of his employment are:

Name: John Menchella

Last date of employment with the Authority: John Menchella was employed by the Authority for the summer terms of 1978 and 1979.

Name of last supervisor with the Authority: unknown

Description of individual's job functions at last position with the Authority: John Menchella was employed as a summer student with the Authority for a short period in 1978 and 1979. John Menchella was assigned tasks related to traffic direction.

Description of the nature of individual's participation in preparation of proposal: John Menchella acted as a consultant and provided advice regarding the preparation of the proposal.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Statement of Insurability



McAvoy, Belan & Campbell
Insurance and Financial Services Ltd.

April 26, 2016

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

Attention: Jim Pearce

Dear Sir:

I have examined the lease requirements and confirm that we are currently providing and/or exceeding the required types and levels of insurance as outlined in the leasing conditions. We will have no problem maintaining these requirements in the future.

In addition to the lease requirements, we have added the following enhancements:

- 1) Business interruption on the main location has been extended to cover the bridge itself. This will allow the Duty Free income stream to continue if one of the same perils befalls the structure
- 2) Terrorism insurance, which is a standard exclusion in Canada, has been purchased through the international markets to cover the main location for property and loss of income. It has also been extended to cover the bridge structure as described above
- 3) Other coverage added to the main location include:
 - a. Privacy Breach Liability
 - b. Pollution Liability
 - c. Flood & Earthquake Coverage

If you require further information, please do not hesitate to contact me.

Sincerely yours,

Tim McAvoy, BA, RIB
McAvoy, Belan & Campbell

351 CANBORO ROAD
RIDGEVILLE ON
L0S 1M0
905.892.9590

350 KING STREET
PORT COLBORNE ON
L3K 4H3
905.834.3666

mbefinancial.ca

Consent to Surety



RBC
Royal Bank

Chris Miotto
Senior Account Manager

Commercial Financial Services
Grantham Shopping Plaza Branch
380 Scott Street
St. Catharines, ON L2M 3W4
Transit 04242

Tel: (905) 934-4415
Fax: (905) 934-4676
E-mail: chris.miotto@rbc.com

April 6, 2016

Jim Pearce
Manager Finance
Peace Bridge Duty Free Inc.
P.O. Box 339, Peace Bridge Plaza
Fort Erie, Ontario, L2A 5N1

Dear Jim:

Further to our discussions, we congratulate Peace Bridge Duty Free Inc. for their outstanding historical financial performance. This letter will confirm that RBC Royal Bank and Peace Bridge Duty Free Inc. have an outstanding business relationship spanning several years. RBC Royal Bank currently supports and will continue to support the company's vision and future plans.

We at RBC Royal Bank acknowledge the strong relationship that Peace Bridge Duty Free Inc. has with the Buffalo & Fort Erie Public Bridge Authority and such, offer the following surety statement. Based on the company's strong historical financial results, Peace Bridge Duty Free Inc. would qualify and be eligible for a Letter of Credit to be issued to the benefit of the Landlord, the Buffalo & Fort Erie Public Bridge Authority in the amount of \$500,000.

Peace Bridge Duty Free Inc. has made notable contributions to Fort Erie's community & economic development, and such, the outstanding financial results could not have been reached without the company's strong leadership and commitment to quality customer service.

Congratulations again, we trust the foregoing meets your requirements; however, should you require further information, please feel free to give me a call.

Yours truly,

A handwritten signature in black ink, appearing to read 'Chris Miotto', written over a horizontal line.

Chris Miotto
Senior Account Manager

Independence Statement



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item 2 of Part IV.B of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify and declare, on behalf of Peace Bridge Duty Free Inc., that Peace Bridge Duty Free Inc. is independent of the Authority and that Peace Bridge Duty Free Inc. and its personnel will avoid any actual, apparent or perceived conflict of interest.

I, Gregory G. O'Hara, also confirm that I have the power to bind Peace Bridge Duty Free Inc. and, therefore, I am entitled to make this certification and declaration on behalf of Peace Bridge Duty Free Inc.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Representations by the Proponent



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item e of Part IV.B3. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify and represent, on behalf of Peace Bridge Duty Free Inc., that:

- i. All financial statements provided as part of Peace Bridge Duty Free Inc.'s proposal have been prepared in accordance with GAAP and present fairly the financial condition of Peace Bridge Duty Free Inc. at the dates of such statements;
- ii. No material adverse change in the business or financial condition of Peace Bridge Duty Free Inc. has occurred since the date of the most recent financial statements provided as part of the Proposal;
- iii. Peace Bridge Duty Free Inc. has filed all tax returns required to be filed at the date of the Proposal and has paid all taxes owing as at the date of the Proposal;
- iv. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not been a party to or otherwise subject to any material litigation or judicial proceeding nor is any such litigation or proceeding threatened at the date of the Proposal;
- v. Peace Bridge Duty Free Inc. is in compliance, in all material respects, with all laws applicable to Peace Bridge Duty Free Inc. and its business;
- vi. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not received any notice from any government or governmental body or agency of, or otherwise been involved in, any investigation, inquiry, charge or proceeding involving or affecting Peace Bridge Duty Free Inc.; other than issuance of a ticket for \$365 from the Niagara Region under the Smoke Free Ontario Act (which is being contested) which is automatically issued after one of our long-term staff erroneously sold cigarettes to someone under age. PBDF has re-educated all staff and is making additional system improvements to lessen any chance of reoccurrence.
- vii. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not made an assignment in bankruptcy, being petitioned into bankruptcy or been the subject of a receivership or other insolvency proceeding;





P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item (iv) of Part IV.A.1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify that:

- This proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person or corporation;
- Peace Bridge Duty Free Inc. has not directly or indirectly induced or solicited any other Proponent to submit a false or sham Proposal, or decline to submit a Proposal;
- Peace Bridge Duty Free Inc. has not sought, by collusion, to obtain any advantage over any other Proponent or over the Authority; and
- I, Gregory G. O'Hara, am entitled to represent Peace Bridge Duty Free Inc., empowered to submit the bid, and authorized to sign a lease with the Authority.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Qualifications and Experience

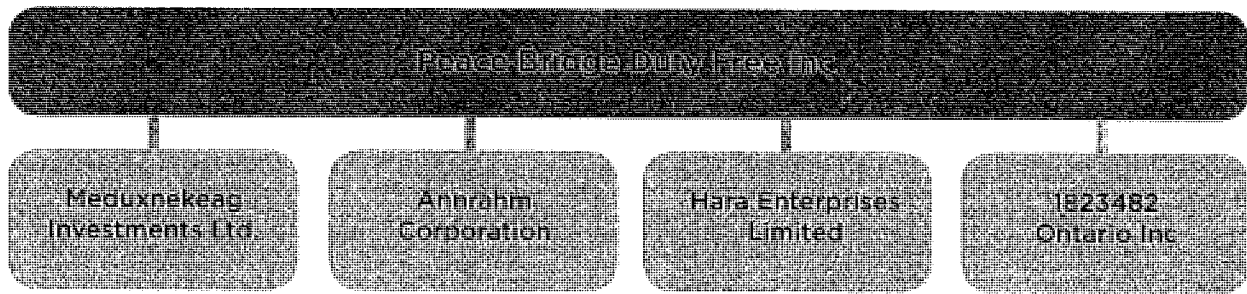
a. Proponent Name and Location of Proponent Headquarters

Peace Bridge Duty Free Inc. ("Proponent" or "PBDF") headquarters are located at 1 Peace Bridge Plaza, Fort Erie, Ontario, Canada where it operates the Peace Bridge duty free land border store ("Store").

All of the functions related to the duty free store will be based at 1 Peace Bridge Plaza in Fort Erie, Ontario. In addition, PBDF will have an off-site warehouse located at 1178 Concession Road, Fort Erie, Ontario to store fixtures not currently in use.

b. Description of Proponent

The ownership structure for Peace Bridge Duty Free Inc. is as follows:



Each shareholder has a 25% ownership in Peace Bridge Duty Free Inc.

The Directors and Officers of the Proponent are:

i) Directors

Barbara Slipp
Israel Harvey Rossman
John Michael Marsh
Gregory G. O'Hara

ii) Officers

Gregory G. O'Hara
Chairman
President
Chief Executive Officer

James Pearce
General Manager
Secretary-Treasurer

Brief Description of the Proponent's Business

PBDF is a business primarily focused on the operation of a land border duty free store. PBDF has operated a land border duty store on the Canadian side of the Peace Bridge crossing since November, 1986. PBDF is a major employer in the local community as it currently employs approximately 90 staff in its retail operations.

c. Proponent's Experience as an Operator of a Duty Free Store or Other Retail Operations for the Last Five Years.

Over the last five years PBDF has operated a land border duty free store and a duty free store at an international airport. Each will be described separately in response to the RFP information requested.

Land Border Duty Free Operations

i) Location:

Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario, Canada

ii) Years in Business:

PBDF has successfully operated a large scale land border duty free store for 30 years since November, 1986.

It was managed by a true industry leader and innovator, George W. Slipp, from 1986 until his death in 2012. PBDF continues to follow Mr. Slipp's innovative business approach.

iii) Brief Description of Services Provided

PBDF is a multi-award winning land border duty free shop operator which currently manages approximately 28,000 square feet of duty free retail space. Peace Bridge duty free has won many prestigious awards over the years including the 'Platinum Award' for being the 'Best Canadian Land Border Duty Free Store' from the Frontier Duty Free Association.

PBDF is a full-line, full-service land border duty free store operator dedicated to providing its customers with quality merchandise and exceptional service at the Canada/USA border crossing in Fort Erie, Ontario. The land border duty free operation is open 24 hours a day, 365 days a year, and has a Tim Horton's and McDonald's, as well as a large food court on-site. In addition to its retail offering, PBDF also provides a FINTRAC authorized currency exchange service at competitive rates (with the guarantee 'better than the bank'), ample motor coach parking, and other travel services tied to selected marketing programs.

PBDF is a well established, highly successful, locally owned Canadian company that has been in operation since November 1986. PBDF has been a duty free leader in marketing as evidenced by its numerous industry awards and is devoted to promoting the border crossing and the local area as a destination and as a travel stop. As the last stop travelers will encounter prior to exiting Canada, PBDF takes its ambassadorial responsibilities very seriously and strives to provide each visitor leaving the Country with a very favourable lasting impression of Canada thereby ensuring their return visit.

PBDF is noted for offering luxury name brand products such as Ray Ban, Coach, Michael Kors, Tory Burch, Kate Spade, Tom Ford and more all which are sold at tax and duty free prices. PBDF is famous for its offering of quality luxury brand names and excellent customer service and holds the esteemed distinction of selling more Crown Royal than any other retailer in the world.

iv) Average Sales

The Store operation has generated average annual sales of \$22.4 million (approximately \$1.9 million per month or \$60,000 per day) over the last five years at the Peace Bridge Plaza location.

Airport Retail Operations

i) Location:

Hamilton International Duty Free and Departures ("HIDF")

Hamilton International Airport
9300 Airport Rd W
Mount Hope, Ontario

ii) Years in Business:

Peace Bridge Duty Free Inc, doing business as Hamilton International Duty Free and Departures, has operated the duty free and duty paid retail operations since 2007.

iii) Brief Description of Services Provided

PBDF offers passengers traveling internationally through Hamilton International Airport a duty free shopping experience. The HIDF retail outlet is located post-security in the Departures Lounge and also provides passengers traveling domestically with duty-paid 'convenience' item purchase options.

iv) Average Sales

PBDF has generated average annual sales of \$.5 million (approximately \$40,000 per month or \$1,400 per day) over the past five years at Hamilton International Airport.

d) Financial Statements

PBDF has audited financial statements for 2013 and 2014.

Audited financial statements for 2015 are not yet available and therefore the 2015 financial statements included in this RFP response are indicated as "Notice to Reader" at the time of this submission.

2016 Interim Financial Statements have also been provided in accordance with RFP requirements.

All the financial statements are found at the end of Tab 4.

As evidenced by the financial statements provided, PBDF has consistently demonstrated a strong financial position and is fully capable of financing the proposed Store development and operational plan.

e) Representations by the Proponent

Please see Tab 3 for Representations by the Proponent.

f. Canadian Border Services Agency (“CBSA”) License

PBDF currently has a license to operate the land border duty free shop at Fort Erie, Ontario, Canada. The CBSA license is effective until January 25, 2025.

PBDF does not have an impediment that would prevent it from obtaining a license from CBSA. Its current license extends beyond the proposed lease commencement date indicated in the RFP.

g. Description of Past Marketing and Sales Program

PBDF's ownership believes that it is very important to continually invest in marketing and sales programs in order to stimulate sales. PBDF has directly invested approximately \$800,000 per year and in partnership with its brand partners invests well over \$1 million per year in marketing and sales programs.

PBDF has conducted a multitude of highly successful marketing and sales programs over the years in order to maximize sales at its land border duty free store located at Peace Bridge Plaza in Fort Erie, Ontario.

As an acknowledgment of PBDF's effective and successful marketing and sales programs, PBDF has won many duty free industry awards in recognition of its efforts including the 2015 “Best Marketing” and “Best New Idea Awards” from the Frontier Duty Free Association.



Some examples of the effective marketing and sales programs that PBDF has developed and executed are as follow.

Loyalty Club Program

This is a **proprietary** and **exclusive** program developed and managed by PBDF. This program is designed to stimulate repeat business by offering the Store loyalty club members exclusive offers and targeted communications. Members are given the opportunity to pre-order products, access exclusive limited editions and receive special introductory prices. E-blasts are sent to members on a weekly basis, at a minimum.



PBDF has built the largest Canadian land border duty free loyalty program and has in excess of 60,000 loyalty club members and has a Facebook following of approximately 30,000. PBDF's proprietary data indicates that this program is effective at generating loyalty and program members spend 15% more, on average, than the rest of its customers.

Partnerships

PBDF has entered into numerous partnerships in order to generate store awareness and stimulate sales.

A key partnership that PBDF has developed over the years is with Diageo, the largest liquor company in the world. Diageo has asked PBDF to participate in an exclusive global travel retail program. PBDF is the only Canadian land border duty free operator to be chosen by Diageo to participate in this initiative. This ongoing program involves special promotional displays, new branded fixtures, specialized training, targeted pricing promotions, external media and online campaigns, etc.

PBDF has established promotional based partnerships linked to Darien Lake Amusement Park, Kissing Bridge Ski Resort, Buffalo Bisons Baseball, Erie County Fair, Live Nation, Fantasy Island Amusement Park, etc. PBDF's partnership with these popular points of interest provides discounted tickets and coupon offers to the Store. These partnerships have led to many new customers visiting the Store.

PBDF has an exclusive partnership with the Buffalo Niagara International Airport ("BNIA"). As part of this exclusive agreement, PBDF is officially known as the duty free store of BNIA. Approximately 600,000 Canadians fly out of BNIA annually. PBDF created this partnership to increase the capture and sales of those travelers crossing the border on their way to BNIA. PBDF, as part of its travel services offering, coordinates Stay n Fly packages with hotels near the airport as well as discount parking and provides other Store discounts. PBDF is prominently marketed on the BNIA website and BNIA is featured on PBDF's website.

As the largest seller of beer on the Canada/USA border, PBDF has coordinated a tri-partnership with Budweiser/Labatt and Elite Sports, the number one bus company for sports trips. The purpose of this tri-promotion is to provide added value to the bus customer, generate more beer sales for Budweiser/Labatt and increase total sales for PBDF.

PBDF has a travel service which provides exclusive travel offers to key destinations in the states of New York and Pennsylvania. For example, PBDF offers Canadian customers the opportunity to utilize PBDF's travel service whereby PBDF will make hotel reservations to destinations such as Erie and Grove City, Pennsylvania Shopping Centers, Splash Lagoon Family Getaways, Peak n Peak Ski and Golf packages, Ellicottville promotional packages, etc. Customers not only get free travel services from PBDF but they also get discount coupons for products in the Store and offerings related to the outlet malls. Customers pick up their reservation materials at the Store and this results in increased customer traffic.

Media and Publications

For 30 years, PBDF has invested significant funds in traditional media venues. These include radio, newsprint, flyers, magazines, publications and television. Depending on the particular day of the week, month or season or the current economic, border or currency situations, PBDF would alternate target markets to Western New York, the Greater Toronto Area, the QEW corridor from Mississauga to Fort Erie as well as the Hamilton and Niagara regions.

PBDF has developed an excellent relationship with the LCBO and is one of their largest land border duty free customers. PBDF promotes its offering in the LCBO Food and Drink magazine, which has a distribution of over 500,000. The purpose of this promotional initiative is to create awareness for the Store, to highlight the savings to customers by shopping duty free and to promote exclusive products available only in the Store.





PBDF has launched a **proprietary** and **exclusive** "Freeway" magazine specifically developed to target potential duty free customers. Distribution of this magazine is done through LCBO stores and is a result of the unique relationship that PBDF has developed with the LCBO over the years. In addition, 50,000 copies of this magazine are distributed through Buffalo News and 10,000 copies are distributed through the Grimsby Travel Centre. This magazine promotes key products and is designed to stimulate sales into the Store.



PBDF has entered into key contracts for strategic billboard placements. PBDF strategically uses billboard signage located along major highways to direct vehicular traffic to the Peace Bridge Plaza. This signage has proven to be effective at creating awareness, to showcase specific product offers and to highlight that Tim Horton's and McDonald's are located in the Store. The Tim Horton's and McDonald's brands have proven to be high traffic generators.

In-store Promotional Areas

In-store promotional areas are important because they are utilized to showcase new product launches and to stimulate sales. Many of the in-store promotions are done in partnership with PBDF's key Brand partners.

PBDF has developed a seasonal marketing calendar that highlights promotions based on the month, holidays and the events on both sides of the border. Promotions are strategically planned with billboards, signage and displays in store based on the time of year. For example during May, promotions are run on both sides of the border for the start of summer for the Canadian and American long weekends. Special events such as Buffalo Bills, Buffalo Sabres and Buffalo Bison games are promoted with discount ticket, merchandise and product offers during their specific seasons. During the holidays, PBDF runs a very unique marketing campaign to encourage Americans to do their holiday shopping at PBDF during their lunch hours with a Let US Pay Your Toll reward for coming to shop during this time.

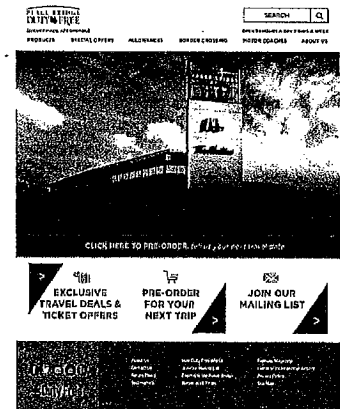


An example of a successful in-store promotion was one which involved celebrity **Dan Ackroyd**, who is brand owner of Crystal Head vodka. He drew over 1000 customers and as a result of his appearance, PBDF set a duty free industry record for one day sales of Crystal Head vodka.

Digital Marketing

PBDF has developed a **proprietary** and **exclusive** website which has the domain of www.dutyfree.ca. This site is used to create awareness for the Store and to highlight key promotions in order to generate sales. The domain www.dutyfree.ca is ranked #1 in the duty free industry by Google and has surpassed 1 million visitors to the site, over 4 million page views and achieved a 28% return rate.

PBDF has purchased strategic digital ad placements on many high traffic websites including The Toronto Star, buffalonews.com, Buffalo Niagara International Airport, The Globe and Mail, The Weather Network, Yelp, TripAdvisor, Google, Facebook, Chinese Professional Association and crossbordershopping.ca

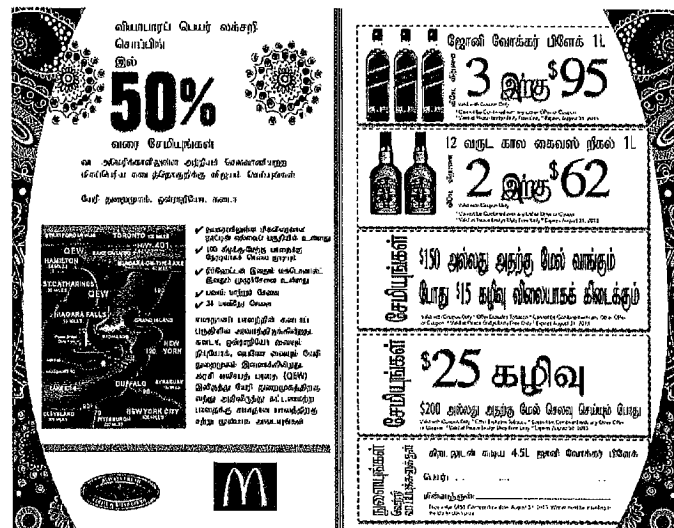


#Found@PBDF is an example of a digital campaign that leveraged Twitter, Facebook, and YouTube to generate social conversation around the brand. The campaign encouraged customers to share the great deals, interesting finds and favourite brands purchases at the Store, on their social networks, using #Found@PBDF. This initiative helped to create positive buzz and consumer advocacy and worked to brand the Store in terms of selection, uniqueness and exclusivity of products.

Another recent example of a digital marketing initiative is one that was conducted in March, 2016. PBDF enacted a heavily targeted online strategy with the Buffalo News and Western New York radio stations' email lists to encourage US audiences to travel to the Store as a destination stop. PBDF offered a "Pay Your Toll" reimbursement and gift cards as incentive offers and created a visual online campaign "This is What 30% more looks like" with a large money pile that visually enforced the additional savings our US customers would receive. The campaign was very successful and achieved 792,000 impressions with approximately 12,000 clicks.

Ethnic Marketing

PBDF has developed an Ethnic marketing program. PBDF utilizes this type of marketing to target specific groups with more focused and appropriately presented messages with the ultimate goals of generating increased store awareness and to stimulate sales. For example, PBDF utilized this type of marketing to target the almost one million East Indians that live in the Toronto area. Flyers were developed in their native language and distributed to neighborhoods populated by this customer segment. The flyers identified popular products and promoted special offers and pricing. This campaign was extremely successful and generated a noticeable increase in business.



Experience of Manager and Key Personnel

In 2010, PBDF made changes to its senior management team. Since these changes were implemented, PBDF sales have outperformed traffic by 10%. The current management team has been successful in creating a positive team focused culture to the complete satisfaction of staff.

All of PBDF's management, buying, accounting, marketing, sales and support staff live in the community where the Store is located. The key personnel that will be involved in the development and operation of the Store are indicated below. Their respective resumes are provided at the end of Tab 4.

Gregory G. O'Hara President and CEO

Greg has been President and CEO of PBDF since 2012 and has been a Director of PBDF since 1993. He has over 30 years of retail experience much of which has been in the duty free industry. In addition to PBDF, Greg is an owner in Hara Enterprises, a venture capital firm. Greg has a Master of Business Administration degree from Miami University, Ohio.

Greg will be the executive liaison with the Authority and will be responsible for leading the PBDF organization.

James Pearce

General Manager

Jim has been an employee of PBDF for 24 years and has experience in all aspects of the land border duty free business. He has held several key management positions throughout his career including at the PBDF Currency Exchange and Tourist Information Centre, PBDF retail at the Fort Erie Truck Plaza and duty free operations at Hamilton International Airport. Jim is a Chartered Professional Accountant and a Certified Management Accountant.

Jim will have oversight responsibilities for all aspects of the proposed operation including managing a team of 12 buyers for the various product categories sold at the PB store.

Bonnie Gates

Marketing Manager

Bonnie began her career at PBDF in 1997 as a retail floor supervisor. Since 2009, she has been the Marketing Manager at PBDF. She is responsible for the development and implementation of the PBDF marketing program and her efforts have resulted in PBDF receiving numerous marketing awards in recent years. Bonnie has a bachelor degree from the University of New Brunswick.

Bonnie will be responsible for developing and implementing the proposed marketing program and in-store merchandising.

Sandy Rienzo

Store and Operations Manager

Sandy has served in various management roles at PBDF for 25 years. Prior to joining PBDF, he held management positions in retail and in the food and beverage industry across Canada and Spain. Sandy attended the Western University - Engineering, Mohawk College - Electronic Technology and Niagara College - Operations Management.

Sandy will be responsible for providing oversight to PBDF full complement of ten supervisors and for effective sales and support of the operations.

Other PBDF Support

PBDF has entered into a consulting agreement with John Menchella, President of Menchella Consulting Group, Inc. John has over 30 years of business experience and has held various senior management positions at many large retail corporations in Canada during his career.

He has an extensive background in business development, marketing, general management and finance. John also has over 15 years of experience in the duty free industry. Prior to founding his own consulting company in 2014, John was Senior Vice President of Business Development and a member of the Executive Management team for one of the world's largest, global duty free organizations, The Nuance Group.

John attained a Bachelor of Business Administration from Wilfrid Laurier University and is a Chartered Professional Accountant and a Certified Management Accountant.

John has provided assistance to PBDF in their RFP response and if PBDF is the Successful Proponent, he will assist in the proposed store development. John will be part of an Advisory Board that will be established by PBDF to oversee the Store operations, be responsible for long range planning and business development initiatives.

Experience in Similar Retail Operations

Please see section c above for a description of other similar retail operations. In addition to its land border duty free operation at the Peace Bridge, PBDF has developed and operates a duty free operation at Hamilton International Airport. This operation serves customers traveling to international destinations and has been in existence since 2007.

The landlord contacts that can confirm PBDF's operational experience at these retail operations are:

<p>Ron Rienas <i>General Manager</i> Buffalo and Fort Erie Public Bridge Authority rr@peacebridge.com 905-871-1608</p>	<p>Lauren Yaksich <i>Director, Marketing and Communications</i> John C. Munro Hamilton International Airport lyaksich@flyhamilton.ca 905-679-1999</p>
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Distinguishing Features

PBDF is an award winning leader in the land border duty free industry since 1986 and has operated one of the largest land border duty free stores in the Americas since 1998. Over that time, it has gained unsurpassed knowledge of the challenges and opportunities of the Peace Bridge Plaza retail environment in which it operates. In recognition of its outstanding performance during the last several years, PBDF has received numerous awards including the prestigious "Platinum Award" bestowed by the Frontier Duty Free Association. This award has been received multiple times by PBDF and is for the distinction of being recognized as the "Best Canadian Land Border Duty Free Store."

PBDF has also been recognized in the duty free industry for its many outstanding marketing and sales programs. It is a multiple winner of industry awards in recognition of its exceptional marketing program including the 2015 "Best Marketing" award. Please see section g of this submission for examples of some of the many marketing and sales programs conducted by PBDF.

PBDF has major key distinguishing features when compared to other similar business. The key distinguishing features are commitment to:

- Investment in Innovative Marketing Initiatives
- Strategic partnerships
- Local Community Involvement

Investment in Innovative Marketing Initiatives

A key distinguishing feature of PBDF is that it does not rest on its past accomplishments despite having a distinguished record of growing its business significantly from the time it first began operations in 1986.

PBDF prides itself on being an **innovator** in the duty free business and an organization that evolves to meet industry and customer trends in order to maximize sales. Over the years, PBDF has developed and implemented many new innovative marketing initiatives.

PBDF has developed a comprehensive digital marketing strategy in order to promote the Store and to increase sales.

The PBDF domain www.dutyfree.ca is the #1 ranked site for all duty free searches according to

Google and has had over **one million visitors**. PBDF is in the process of developing a state of the art retail website that will further drive customer awareness and stimulate sales. This new website will be launched in the Fall of 2016 just in time for the holiday season. It will feature full product search, pre-order shopping cart features, travel reservation services, PBDF created videos and product information.

The new website will support all social media channels and will attempt to engage consumers of all age demographics. PBDF will have a full digital strategy to leverage these platforms that will include the development of the PBDF YouTube channel. With over 2 billion views a day, YouTube is the second most visited site in the world and an important platform to share short videos with people and an extremely powerful tool to help educate the duty free consumer. PBDF will utilize YouTube by inserting videos into product descriptions which will help grow the PBDF channel and increase awareness about the brands and exclusive products offered at PBDF.

PBDF is also exploring the use of the fastest growing social application Snapchat. Snapchat is an app where you can share a photo or video and allows PBDF to send exclusive content to its followers. Snapchat is an effective way to generate a buzz around a new product launch and highlight duty free exclusive offers. Similar to a response on Facebook or Twitter, PBDF will use Snapchat to send personalized messages and videos to thank customers for their loyalty.

PBDF is also exploring the use of mobile messaging applications to increase capture to the store. Ping Perks is a mobile push messaging service that leverages beacon technology to offer consumers relevant SMS promotions based on shopping behaviors.

Strategic Partnerships

In order to create awareness and to increase sales at the Store, PBDF has entered in many strategic partnerships over the years and will continue to look for new opportunities in this area in the future.

An important strategic initiative in this regard was to enter into an agreement to have high profile brands **Tim Horton's** and **McDonald's** establish operations within the Store. This initiative is important because it has proven to increase Store customer capture rates and ultimately generate increased duty free sales.

PBDF is currently seeking to enter into a key partnership with DFASS Distribution, LLC, a **DFASS Group** affiliated company ("DFASS"). DFASS, headquartered in Miami, Florida, is an award winning, global leader in duty free and specialty retail operations. DFASS generates \$600 million in annual revenue and has operations on five continents. DFASS is the world's largest in-flight duty free enterprise and also has many land border and international airport duty free operations. Some of the prominent international airports where DFASS has duty free operations include Chicago O'Hare, Dallas/Fort Worth, Fort Lauderdale/Hollywood and Orlando.

DFASS and PBDF intend to enter into a supply/services agreement which will include DFASS supplying PBDF specific product categories and assistance with merchandise planning related services. This relationship is important to PBDF because it provides PBDF access to the DFASS global supply network and economies of scale. It will also allow PBDF to leverage the DFASS global customer database to enhance customer buying preference understanding and this will translate into better targeted product offerings and increased sales.

The key benefit to the Authority of this partnership will be more revenue through increased sales.

PBDF continues to team up with many other strategic partners including key Brand Partners such as Diageo, the largest liquor brand owner in the world, in order to promote important duty free products; Destination Partners such as the Buffalo Bisons, Buffalo Sabres, Buffalo Bills and key Tour Bus Operators in order to drive additional customer traffic into the Store.

Most recently, PBDF entered into an agreement with a significant Asian Tour Bus Operator. This is very important because the Asian customer is by far the highest spending nationality in the duty free industry and a customer that buys very high end duty free brands.

This partnership is expected to result in significant incremental sales growth.

Local Community Involvement

PBDF is committed to supporting the local community. It has done so by providing approximately 90 local employment opportunities and by investing significantly in local community programs.

PBDF offers local community staff highly competitive wages and it is considered a major employer in Fort Erie. In addition to competitive wages, PBDF offers comprehensive benefit packages including a health program and a pension plan. Additionally, it provides incentive programs to its employees that recognize and rewards exceptional performance. PBDF strongly believes that this is a key part of its overall compensation program so that its employees are fully aligned with senior management in maximizing sales at the Store.

In recognition of its employment program efforts, PBDF was awarded "2011 Employer of the Year" by the Fort Erie Chamber of Commerce.

PBDF is also an integral part of the community because it employs local contractors, trades, cleaning staff, etc. in the maintenance and operation of its Store.

PBDF is proud to be a major donator and sponsor of many worthwhile programs both in the Niagara Region and Western New York. Some of the local initiatives that PBDF has supported or continues to support local schools and local athletic programs (e.g. Fort Erie Minor Hockey and Baseball), Walker Cancer Foundation, Champ Foundation of Buffalo, Douglas Memorial Hospital, Visitor Convention bureaus, Buffalo/Niagara Partnership, Cystic Fibrosis Fundraiser, Association of Childhood Diabetes and many more worthwhile community programs.



Identification of Anticipated Potential Problems

As the incumbent duty free operator, PBDF knows best the ongoing challenges and potential problems of operating the land border duty free store at Peace Bridge Plaza in Fort Erie. Some the the current challenges that it deals with includes:

- Fluctuating currency exchange rate related issues
- Enhanced retail competition
- Vehicle traffic issues including a steady decline in volumes
- Customer awareness and traffic perceptions and delays

PBDF knows best how to address these ongoing challenges and prides itself on successfully mitigating these issues by being innovative in its business and by being able to grow sales per vehicle despite these challenges. Examples of how PBDF addresses each of these challenges are contained in the section below.

i) Currency Exchange Rate Issues

Recently, when the exchange rate dramatically swung in favor of American tourism, PBDF promoted Canada, Toronto and Niagara to US markets through aggressive radio, TV and online campaigns. PBDF used best exchange rate guarantees ("better than the bank") to give the American consumer the confidence that they would receive the maximum benefit for the US dollar at the Store.

In the past, when the Canadian dollar strengthened versus the US dollar, Canadians intensified their cross-border shopping and visits to US destinations. To take advantage of this trend, PBDF partnered with many US based organizations such as Grove City, Kissing Bridge, Darien Lake, Buffalo Bisons, Erie County Fair, Fantasy Island and Buffalo Niagara International Airport, etc. in cross promotions designed to make the Store a stop for Canadians on their way to these locations.

ii) Retail Competition

PBDF has implemented a very successful sales campaign targeted to Canadian shoppers called "start your cross-border shopping at PBDF". PBDF sourced both different and competitive products from the US, including non-traditional duty free products, adjusted prices to be competitive with the large US retailers, and added the PBDF level of customer service not found at many of the competitive retail stores.

iii) Vehicle Traffic Issues Including a Steady Decline in Volumes

Since a peak of 3.3 million in Peace Bridge passenger vehicles from Canada to the United States in 2000, there has been a steady decline in this amount. In 2015, traffic declined to 2.1 million. This represents a 38% decline in passenger vehicles utilizing the Peace Bridge since 2000.

PBDF is proud of the fact that despite the significant reduction in passenger vehicles, during the same time period, duty free sales related to to passenger vehicles declined by only 12%, from \$21.0 million of sales in 2000 to \$18.5 million of sales in 2015. This achievement by PBDF was a result of it's many efforts to increase sales per vehicle through many initiatives including promotions, pricing and enhanced customer service. PBDF was able to increase sales per vehicle from \$50.33 in 2000 to \$64.27 in 2015. **This represents an average sales increase of 28% per vehicle.**

PBDF is proud that despite this significant challenge, sales at the Store have consistently outperformed traffic volume levels as measured by sales per outbound vehicle.

iv) Customer Awareness and Traffic Perceptions and Delays

In addition to numerous awareness generating marketing programs discussed earlier in this section, PBDF was successful, due to the great cooperation with the Authority, in creating Duty Free Way. This successful initiative involved the implementation of overhead signage on the QEW which directed travelers onto a dedicated roadway leading into the Store.

In addition, PBDF launched an advertising campaign called Fastest Border Crossing Guarantee. If customers experienced a longer wait time at the Peace Bridge versus any other Regional bridge they received 10% off their purchase.

In 2009, when changes to the US immigration documentation requirements was set to dramatically affect cross-border traffic, PBDF was successful and thrilled to have Erie County Clerk Kathy Hochul visit PBDF to hold a news conference with all media from Canadian and US to help educate people on the new requirements needed to cross the border. With PBDF's assistance, it worked with customers to help them obtain the proper identification. In conjunction with the Authority, PBDF issued toll handouts and organized clinics to sign new NEXUS applicants.



As evidence by the initiatives above, PBDF has consistently and effectively addressed the many challenges impacting the Store and continues to be proactive in this regard.

**Response to Request for Proposal
Operation of a Duty Free Shop at the Peace Bridge
Issued by the Buffalo and Fort Erie Public Bridge Authority**

**The Financial Terms Proposal
May 9, 2016**

Submitted to: Buffalo and Fort Erie Public Bridge Authority
Attn: Kimberlee Kaiser, Executive Assistant
100 Queen Street
Fort Erie, Ontario
L2A 3S6

Proponent: Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Contact: Gregory G. O'Hara
President and Chief Executive Officer
905-871-5400 ext. 107
gohara@dutyfree.ca

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

Tab	Submission Elements	Page
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Tab A – Sales Initiatives

Peace Bridge Duty Free Inc. ("PBDF" or "Proponent"), incumbent operator of the Peace Bridge Plaza Land Border Duty Free Store ("Store"), has demonstrated its ability over the years to increase efficiency, customer traffic and sales while maintaining high quality services. This achievement is evidenced by the numerous industry awards that PBDF has received including the "Platinum Award" bestowed by the Frontier Duty Free Association. This award was given in recognition for being "Best Canadian Land Border Duty Free Store."



PBDF has been able to **increase efficiency** by studying customer traffic volumes and patterns and ensuring that it has adequate staffing during peak periods in order to reduce transaction processing wait times. PBDF understands that efficient transaction processing is an important part of the sales process and places a key emphasis in this area. Product placement in the Store is important in order to direct customers to key areas and to increase add on sales as customer approach the point of sale ("POS") counters.

PBDF has been and continues to be proactive in increasing customer capture rates into the store and stimulating sales. Initiatives implemented to increase store traffic and sales include:

Loyalty Club Program



This is a **proprietary** and **exclusive** program developed and managed by PBDF. This program is designed to stimulate repeat business by offering the Store loyalty club members exclusive offers and targeted communications. Members are given the opportunity to pre-order products, access exclusive limited editions and receive special introductory prices. E-blasts are sent to members on a weekly basis, at a minimum.

PBDF has built the largest Canadian land border duty free loyalty program and has in excess of 60,000 loyalty club members and has a Facebook following of approximately 30,000. PBDF's proprietary data indicates that this program is effective at generating loyalty and program members spend 15% more, on average, than the rest of its customers.

Brand Partner Promotions

PBDF has created a path-to-purchase route for its brand partners to invest in. This starts with e-blasts and external media advertising, followed by billboard and on-site signage and finishes in-store with promotional areas and offers.

Another example of a brand partner promotion is utilizing a tasting bar that will be set up in the liquor area for customers who wish to try new whisky brands. PBDF will also organize special tasting events with guest speakers and whisky makers for members of the PBDF Whisky Club. These members will get advanced notifications of all new and exclusive products and invitations to special gala events.

Strategic Alliances with Motor Coach Operators

PBDF has been an active member of the Ontario Motor Coach Association and the American Motor Coach Association for the past 25 years. As a result of these partnerships, PBDF has built very successful relationships to include the Store as a destination on their route crossing the border to the USA.

In the Summer of 2016, PBDF will implement a strategic alliance with an Asian Tour Company which will bring visitors from China to Canada. PBDF will be a dedicated stop on these tours when they return to the United States. This new business is projected to increase stores sales by over \$1 million.

PBDF has invested in creating the most generous bus incentive program on the border. The loyalty that these tour groups show with their partners is very strong and encouraging for PBDF to expand to other Asian tour groups.



In a separate motorcoach initiative, PBDF has partnered with a Southern US based travel company who bring almost 300 buses to Toronto/Niagara every year. PBDF is projecting that it will secure 80% of those buses. PBDF's investment will be in training and compensating staff to act as tour guides that travel with these motor coaches on the Canadian portion of their tour. PBDF staff will assist the tours throughout Niagara and Toronto and direct the buses back through PBDF as they return home. This partnership is projected to add \$600,000 in sales annually. It will also give valuable exposure to other US based tour agencies.

Another partnership has been established with Elite Sports Tours, Ontario's #1 Sport Travel Company, with over 50 bus tours dedicated to PBDF. PBDF introduced Budweiser/Labatt to Elite Sports and combined have created the largest Sports partnership in the duty free industry.

Other Strategic Alliances

In order to create awareness and to increase sales at the Store, PBDF has entered in many strategic partnerships over the years and will continue to look for new opportunities in this area in the future.

An important strategic initiative in this regard was to enter into an agreement to have high profile brands **Tim Horton's** and **McDonald's** establish operations within the Store. This initiative is important because it has proven to increase Store customer capture rates and ultimately generate increased duty free sales.

PBDF is currently seeking to enter into a key partnership with DFASS Distribution, LLC, a **DFASS Group** affiliated company ("DFASS"). DFASS, headquartered in Miami, Florida, is an award winning, global leader in duty free and specialty retail operations. DFASS generates \$600 million in annual revenue and has operations on five continents. DFASS is the world's largest in-flight duty free enterprise and also has many land border and international airport duty free operations. Some of the prominent international airports where DFASS has duty free operations include Chicago O'Hare, Dallas/Fort Worth, Fort Lauderdale/Hollywood and Orlando.

DFASS and PBDF intend to enter into a supply/services agreement which will include DFASS supplying PBDF specific product categories and assistance with merchandise planning related services. This relationship is important to PBDF because it provides PBDF access to the DFASS global supply network and economies of scale. It will also allow PBDF to leverage the DFASS global customer database to enhance customer buying preference understanding and this will translate into better targeted product offerings and increased sales.

PBDF continues to team up with many other strategic partners including key Brand Partners such as Diageo, the largest liquor brand owner in the world, in order to promote important duty free products: Destination Partners such as the Buffalo Bisons, Buffalo Sabres, Buffalo Bills and key Tour Bus Operators in order to drive additional customer traffic into the Store.

The key benefit to the Authority of these partnerships will be more revenue through increased sales.

Digital Awareness

PBDF is working on several programs that will increase customer awareness through digital technology. For example, if PBDF is the selected Proponent for the Peace Bridge Duty Free concession, as part of the proposed capital program, PBDF will implement exterior digital signage visible from the QEW in order to increase customer traffic into the Store.

New sales generating initiatives in progress include:

Website Enhancements

PBDF's proprietary domain www.dutyfree.ca has the distinction of receiving the number 1 ranking from Google for being the most visited duty free website. PBDF's website is being enhanced in order to evolve it into an ecommerce tool. Features of the website will include a product search engine that will highlight the full product portfolio. Additionally, the new website will include a pre-order option for customers to add all their items to a virtual basket and have them ready and waiting when they arrive. This newly enhanced website will be launched in the Fall of 2016.

Social Media

PBDF is constantly investigating the use of modern digital technologies that can assist in increasing awareness, growing sales and reward customer loyalty. A new, state of the art retail website will support all social media channels and attempt to engage new and old consumers of all age demographics. PBDF will have a full digital strategy to leverage social platforms that will include the development of the PBDF YouTube channel. YouTube's platform will give PBDF the ability to share videos with consumers which will not only educate but grow a loyal database. Videos will be produced by PBDF with support from suppliers and will be integrated into the new website increasing brand awareness.

PBDF will be experimenting with new advertising opportunities by utilizing some of the fastest growing social applications including Snapchat and Instagram. Snapchat is the trendiest social app with the 24-35 demographic which PBDF continues to target. Snapchat offers a personalized experience which PBDF can leverage to build brand awareness.

PBDF is also exploring the use of mobile messaging applications to increase capture to the store. Ping Perks is a mobile push messaging service that leverages beacon technology to offer consumers relevant SMS promotions based on shopping behaviors.



Maintaining High Quality Services

PBDF is dedicated to maintaining high quality services. As an industry leader, we take pride in our ability to provide a positive lasting impression to our Duty Free customers. PBDF strives to maintain its high standards with a proactive approach to measuring and maintaining customer satisfaction. This is accomplished by the following means:

- Mystery shopper inspections
- Customer surveys for satisfaction and areas for improvement
- Quality Assurance Checklist - A management checklist of exterior and interior operational standards, staff communication to customers, merchandising and customer sales service

- Continual staff training from customer service to product knowledge seminars
- Customer feedback from email and in person is immediately addressed by the Store Manager and reported to Executive Management
- Annual staff reviews with bonuses based on achieving specific customer service criteria
- Frequent interaction between supervisors and staff on new ways to improve the customer experience

The overall goal of PBDF is to ensure that the customer has a great experience when shopping in the Store and leave a lasting, favourable impression of PBDF.

Design - Renovations Plan for the Store

PBDF is excited about the opportunity to invest in a new store as part of a long-term concession contract, and is pleased to be working with SmartDesign Group to see its vision come to fruition.

SmartDesign Group, an award-winning full-service firm, focuses on the creation and development of commercial success through design. Their unique understanding of consumer behaviour and global trends, coupled with creative talent and solid strategic thinking, has helped operators around the world reach and exceed their business goals. SmartDesign Group's extensive experience provides a true understanding of passenger behaviour, and their innovative and creative solutions surprise and delight their customers.

In the proposed new vision for the Peace Bridge store, customer experience is at the forefront, with an improved exterior presence, increased visibility within the interior space, and an improved intergration of the latest technology, plus unique features such as a tasting bar in the liquor section and a makeover station in fragrance and cosmetics. Specifically, technology will be utilized to promote products and provide product knowledge. (i.e. iPads, digital display screens, etc)

The customer experience begins upon approach to the store, with an expanded wood and metal canopy and a landscaped area that greets travellers, offering a new covered area for unloading tour bus passengers in addition to creating a natural congregation point for visitors. Inside the store, an open space provides a natural place for an evolving promotion display. The layout has also been redesigned to enhance flow and to reorganize merchandise categories.

The design allows clear sightlines to the major product categories, with fragrance and cosmetics prominent on the left, liquor on the right, and confection and promotion in the centre. The customer flow is enhanced with differing materials that lead shoppers easily throughout the space, looping back around the liquor section before leading to the POS stations, with tobacco as a nearby final purchase option.

The new layout exposes the entire store, encouraging a strong sense of discovery. High-volume products have been located to drive traffic, and fixtures and displays provide opportunities for browsing and impulse purchases. Previously underutilized warehouse space has been opened up to allow for an additional 1,810 sq.ft. of shopping area and new merchandise opportunities. New ceiling structures bring refinement and warmth to the store and allow for the introduction of accent lighting.

Overall, the store now has a more contemporary look, with a neutral palette that enhances merchandise display. Sustainable options for all proposed materials and finishes have been considered, to convey respect for the environment and to display the relationship with the region and its natural beauty.

Demonstration bars in the fragrance area, a makeover station in cosmetics, a tasting bar in liquor and special promotion areas throughout the store provide both educational and enhanced service opportunities. Dedicated 'shop-in-shop' installations for premium liquor, regional wine and craft beer will offer additional memorable experiences, helping to ensure that this store is must for cross-border shoppers!

At the end of Tab H, you will find a mood board, floor plan, interior rendering, and exterior rendering. These will provide visuals of PBDF's proposed design intentions for the store.

All these design enhancements mentioned above will create an exciting new retail environment in the Store. These enhancements will improve customer flow and product displays, and will result in significantly increased sales.

Transition

PBDF as the incumbent operator does not require a start up plan, as it will have continuous operations. PBDF plans a complete major renovation of the Store starting in January 2017 and construction is expected to continue for 4 consecutive months.

PBDF is confident in its ability to implement a phased approach to the proposed renovation and upgrade of the current facility. PBDF will rely on the expertise of SmartDesign Group, a leading retail design consultant, with global experience executing duty free construction projects under very tight timelines and constraints.

PBDF can guarantee that there will be continuous service and sales throughout the renovation and with increased signage and awareness combined with knowledgeable staff, customers will not be affected by a phased construction schedule.

PBDF will deliver continuous operations/sales throughout the renovation of the Store.

Proposed Minimum Base Rent, Percentage Rent, Proposed Section 4.03 and Form of Lease

PBDF is pleased to offer the following financial terms (all in Canadian dollars) to the Authority in accordance with the guidelines provided in the RFP (including Appendix G).

Minimum Base Rent:

PBDF proposes a Minimum Base Rent of \$4,000,000.

Percentage Rent:

The Annual Percentage Rent proposed is based on the Tenant's Annual Gross Sales, as follows:

Annual Sales			Rent % Applicable to Range of Sales
\$0	up to	\$20,000,000	20
>\$20,000,000	up to	\$25,000,000	22
>\$25,000,000			24

To facilitate monthly payments of the Percentage Rent pursuant to section 4.03 of the Lease, PBDF proposes that Percentage Rent payable in a given month will be calculated on the basis of the Applicable Percentage Rent Rate based on Aggregate Year-to-Date Gross Sales x Tenant's Gross Sales during the month for which Percentage Rent is being calculated.

At the end of each year, there will be a reconciliation to ensure that the Percentage Rent paid on a monthly basis equals the Percentage Rent payable on the basis of the Tenant's Annual Gross Sales.

The tenant's annual gross sales will include sales related to products from the Store, currency exchange revenue and sales of its sub tenants and any other elements defined in the lease.

For clarity, based on \$25,000,000 in Tenant's Annual Gross Sales the Annual Percentage Rent would be \$5,100,000.

Proposed Section 4.03 (Percentage Rent)

PBDF is pleased to provide a completed section 4.03 (Percentage Rent) in the Form of Lease on the basis of PBDF's financial proposal. Please note that PBDF proposes that the Percentage Rent will be the same for the initial term of the lease and the extension term of the lease. This is reflected in section 4.03 proposed below.

4.03 Percentage Rent

The Tenant covenants and agrees with the Landlord to pay Annual Percentage Rent, as follows:

- The Tenant will pay to the Landlord 20% of the Tenant's Annual Gross Sales that are \$0 up to \$20,000,000
- The Tenant will pay to the Landlord 22% of the Tenant's Annual Gross that are in excess of \$20,000,000 but less than \$25,000,000
- The Tenant will pay to the Landlord 24% of the Tenant's Annual Gross Sales that are equal to or greater than \$25,000,00

To facilitate monthly payments of the Percentage Rent, the Tenant covenants and agrees with the

Landlord that if, during any month (including any broken calendar month) of the Term of the Lease or any Extension Term of the Lease, the Calculated Percentage Rent (which is based on the Tenant's Gross Sales during such monthly period) exceeds the monthly Base Rent for the same monthly period, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference between the calculated Percentage Rent and the Base Rent together with all applicable taxes, to the Landlord as Percentage Rent.

The Calculated Percentage Rent is to be calculated as follows: Applicable Percentage Rent Rate x Tenant's Gross Sales during the month for which Percentage Rent is being calculated. The Applicable Percentage Rent Rate is based on the Tenant's Year-to-Date Annual Gross Sales.

At the end of each year, there will be a reconciliation based on the Tenant's audited Annual Gross Sales to ensure that the Tenant pays the higher of the Annual Percentage Rent or Minimum Base Rent.

Form of Lease:

PBDF confirms that it does not propose any changes to the Form of Lease.

Sub Tenancy Arrangements

PBDF currently has a sub tenancy agreement with the Tim Horton's restaurant and McDonald's restaurant which will expire on October 31, 2016.

PBDF proposes to continue with these sub tenancy agreements and has included the projected sales from the Tim Horton's and McDonald's restaurants located within the Store into its Pro forma.

PBDF is currently discussing with Tim Horton's and McDonald's the continuation of these sub tenancy agreements if PBDF becomes the Successful Proponent.



These sub tenants will increase Store awareness, customer volumes and sales.

Forecasted Sales

PBDF's financial projections for this opportunity were developed based on its extensive experience in land border duty free operations and consideration of many factors including reference to its proprietary database to determine what products appeal to key customer demographics, its analysis of the retail environment (i.e. traffic flows, customer volume, store flow and sight lines, etc.) and by soliciting input from key brand partners and duty free industry consultants.

PBDF began its analysis by examining the actual performance metrics of the current Store and the passenger demographics/volumes and associated spending behaviors. In addition to understanding the current situation, PBDF also looked at many new opportunities that would allow for a significantly improved business.

These opportunities include:

- New Merchandise Categories/Brands and optimization and expansion of the retail space.
- Improved proposed retail store design that will make the Store more inviting and increase customer penetration.
- New innovative technology applications, online activities and marketing initiatives.
- Consideration of how future traffic flows, customer volumes and changing demographics would impact store performance.

PBDF used projected proprietary passenger demographic/volume information and coupled it with its understanding of spending by customer segment. This information, in addition to many brand considerations, guided it on its proposed merchandise mix for the Store.

The Store will have appropriate foreign language speaking staff in order to converse with significant customer segments in their language of preference to stimulate sales.

PBDF's estimated spend per customer segment (car, bus and truck customer) is a function of many factors including customer demographics, customer volume, store design, increased retail space, product offerings, marketing initiatives, price, brand/product appeal, operational programs, and dwell time. Annual customer volume growth and associated average transaction value was projected by customer segment.

In Year 1, store downtime due to construction has been factored into the sales estimate. Store downtime due to construction was mitigated by taking a more expensive phased approach to the store development. This additional cost was partially offset by the benefit of continuous sales.

Based on the above, the forecasted sales at the Store including currency exchange revenue and its sub tenants sales during the term of the lease are as follows:

Forecasted Sales (\$ million)

Year	1	2	3	4	5	6	7	8	9	10
Sales	26.3	29.8	30.5	31.3	32.1	32.9	33.7	34.5	35.4	36.3

Year	11	12	13	14	15	16	17	18	19	20
Sales	37.2	38.1	39.1	40.0	41.0	42.1	43.1	44.2	45.3	46.4

Tab G - Operating and Capital Cost**Operating Costs:**

Forecasted operating costs were projected based on a combination of PBDF's actual operating cost experience for the land border duty free operation, using 2015 financial results as a baseline, and by adjusting future costs by taking into consideration many key items including projected customer volumes by segment, new capital investment, property tax adjustments due to the new store development, etc.

PBDF projects to spend \$1 million annually on marketing and sales initiatives.

PBDF examined its fixed versus variable cost structure and considered this as it projected its expenses in relation to projected customer volumes and associate sales.

The inflation rate used for expense growth was 3%.

Capital Investment:

PBDF's capital projection included several items including new store development, new computer systems, equipment, etc. Details of our capital cost related to the facility/property only are described in more detail in Tab H of this submission.

Below are PBDF's forecasted operating and capital costs during the term of the lease.

Forecasted Operating and Capital Costs (\$000)

Year	1	2	3	4	5	6	7	8	9	10
Rent to Authority	5,405	6,246	6,425	6,608	6,796	6,988	7,185	7,388	7,595	7,807
Rent from Subtenant	-178	-201	-206	-211	-217	-222	-228	-233	-239	-245
Rent Cost to PBDF	5,227	6,045	6,219	6,397	6,579	6,766	6,958	7,154	7,355	7,562
Compensation	2,648	2,727	2,809	2,893	2,980	3,069	3,161	3,256	3,354	3,454
Marketing	1,021	1,052	1,083	1,116	1,149	1,184	1,219	1,256	1,293	1,332
Other	1,314	1,444	1,487	1,532	1,578	1,625	1,674	1,724	1,776	1,829
Total Operating Costs	10,210	11,268	11,598	11,938	12,286	12,644	13,012	13,390	13,778	14,177
Capital	7,000					1,250				

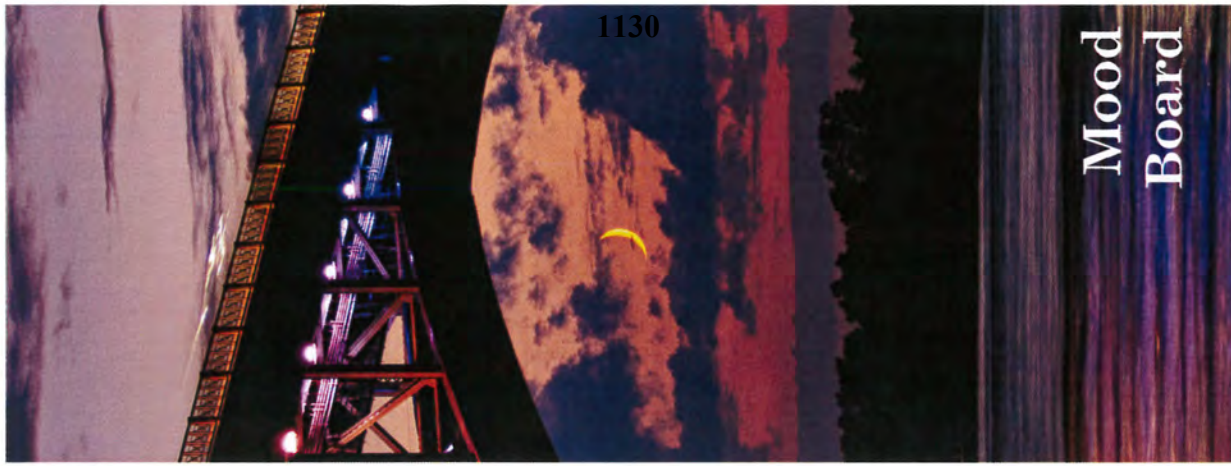
Year	11	12	13	14	15	16	17	18	19	20
Rent to Authority	8,025	8,248	8,477	8,711	8,951	9,198	9,450	9,709	9,974	10,246
Rent from Subtenant	-251	-258	-264	-271	-278	-284	-292	-299	-306	-314
Rent Cost to PBDF	7,773	7,990	8,212	8,440	8,674	8,913	9,158	9,410	9,668	9,932
Compensation	3,558	3,665	3,775	3,888	4,005	4,125	4,248	4,376	4,507	4,642
Marketing	1,372	1,413	1,456	1,499	1,544	1,591	1,638	1,688	1,738	1,790
Other	1,884	1,940	1,998	2,058	2,120	2,184	2,249	2,317	2,386	2,458
Total Operating Costs	14,587	15,008	15,441	15,885	16,343	16,813	17,293	17,791	18,299	18,822
Capital	1,250					1,250				

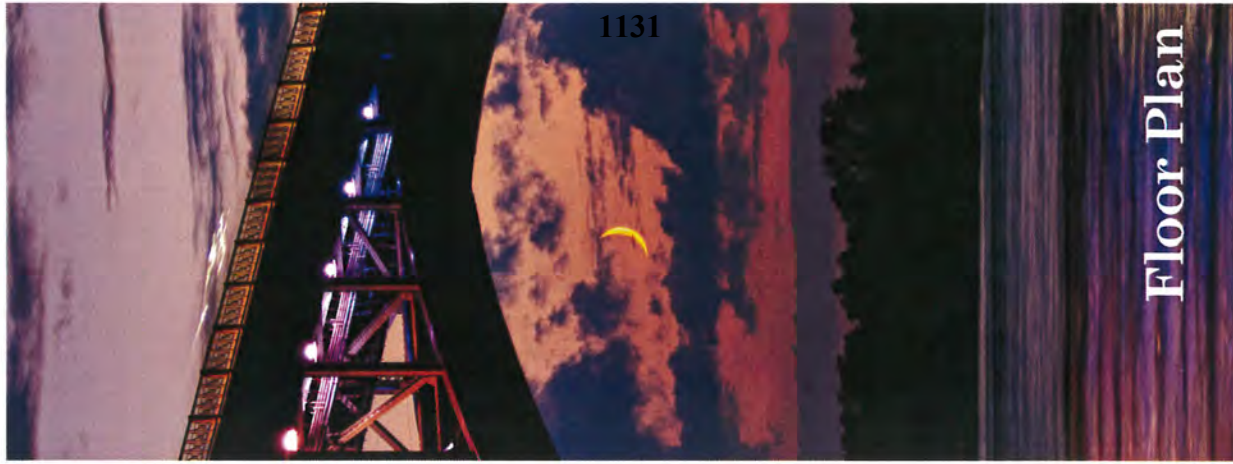
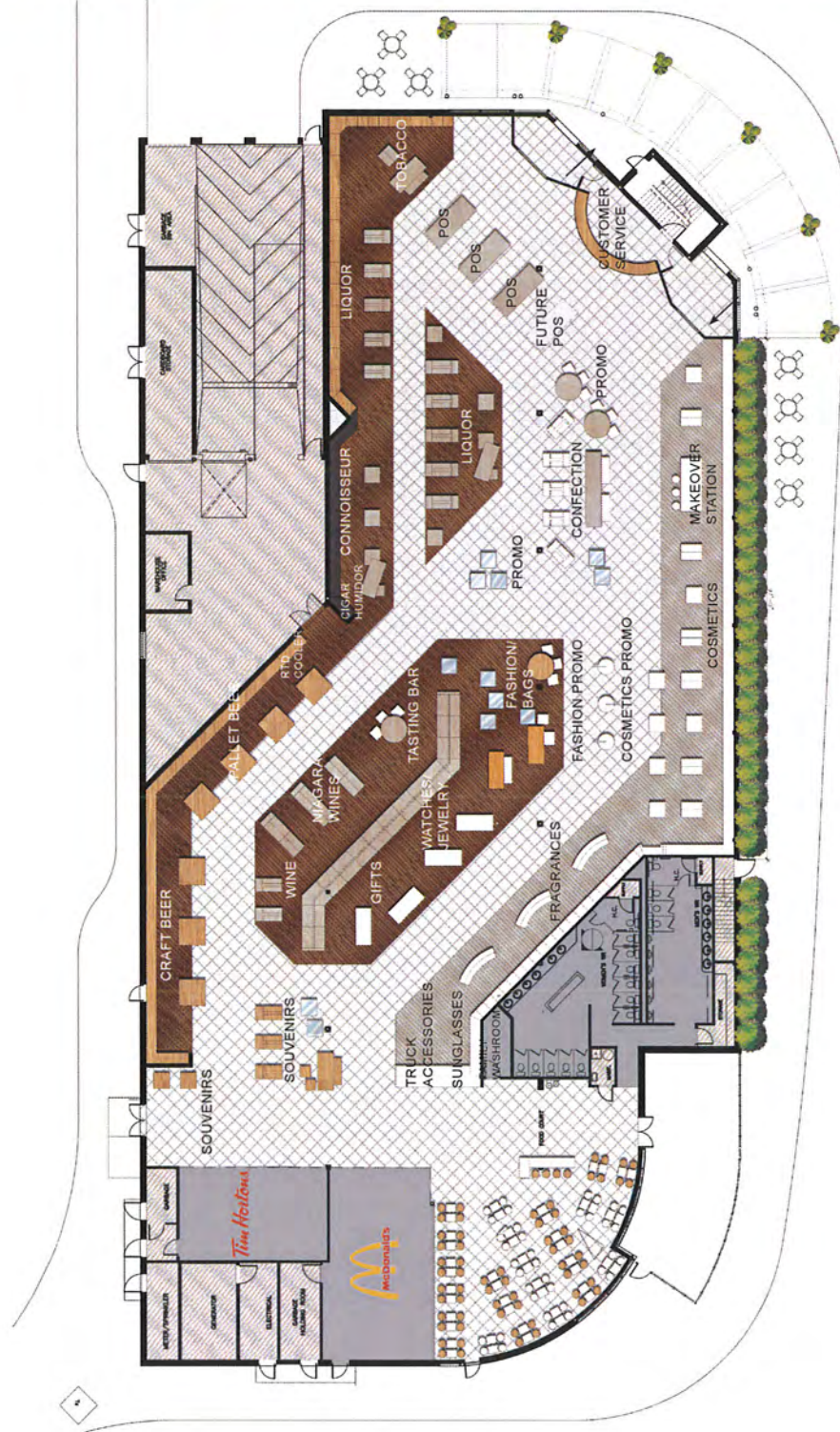
Capital Investment

Our initial Store Capital Investment is estimated to be \$6,000,000. Below is a breakdown of the key components.

General Construction including millwork/POS	\$ 4,975,000
FF&E (Food Court/Exterior Seating)	125,000
Lighting & Media	300,000
	<hr/>
Subtotal Before Consultant Fees	\$ 5,400,000
	<hr/>
Consultant Fees	600,000
	<hr/>
Total Initial Store Capital Investment	<u><u>\$ 6,000,000</u></u>

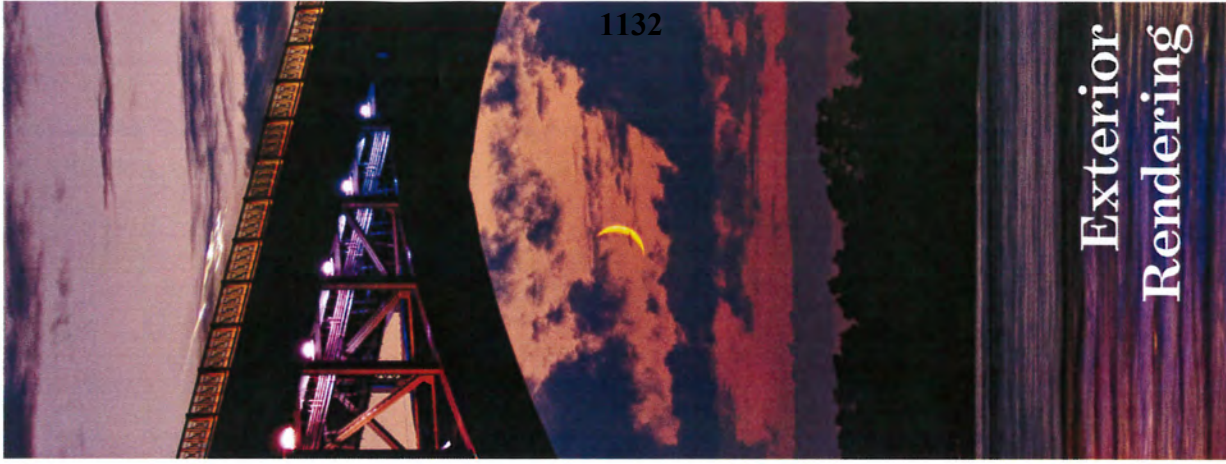
In addition to the initial capital described above, Peace Bridge Duty Free has provided for Refurbishment Capital in years 6, 11, and 16 of this lease. The amount allocated in each refurbishment year is \$1.25 million. The total amount of Store capital investment that PBDF will commit to over the course of the lease is \$9.75 million.







Peace Bridge Duty Free



1132

Exterior
Rendering



This is Exhibit “B” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 27th day of April, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "**Premises**") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 **Expressions in Lease:** Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 **Definitions and Interpretation:** The Lease is amended by adding the following definitions thereto:

"**Amortization Period**" means the one year period commencing on the Restart Date.

"**Suspension Date**" means April 1, 2020.

"**Deferred Rent**" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"**Rent Deferral Period**" means the period commencing on the Rent Suspension Date to and including the earlier of:

- i. July 31, 2020; or

- ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

- i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant's Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. **ACKNOWLEDGEMENT**

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. **NO AGREEMENT**

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and
 - ii. the Landlord has received payment of the sum of \$3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. **AGREEMENT PART OF LEASE**

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per: 

Name: ■ Ron Rienas

Title: ■ General Manager

c/s

Per: _____

Name: ■

Title: ■

I/~~We~~ have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: 

Name: ■ G.G. O'HARA

Title: ■ PRESIDENT

c/s

Per: _____

Name: ■

Title: ■

I/We have authority to bind the corporation

This is Exhibit "C" referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read "Alexandra Teodorescu", written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 20th day of November, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "**Premises**") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 **Expressions in Lease:** Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 **Definitions and Interpretation:** The Lease is amended by adding the following definitions thereto:

"**Amortization Period**" means the two year period commencing on the Restart Date.

"**Suspension Date**" means April 1, 2020.

"**Deferred Rent**" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"**Rent Deferral Period**" means the period commencing on the Rent Suspension Date to and including the earlier of:

- i. March 31, 2021; or

- ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

“Required Conditions” means:

- i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

“Restart Date” means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant’s Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant’s efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant’s obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant’s right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. **ACKNOWLEDGEMENT**

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. **NO AGREEMENT**

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. **AGREEMENT PART OF LEASE**

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**


Per: _____
Name: ■
Title: ■

c/s

Per: _____
Name: ■
Title: ■

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: 
Name: ■ GREGORY G. O'HARA
Title: ■ PRESIDENT

c/s

Per: _____
Name: ■
Title: ■

I/We have authority to bind the corporation

This is Exhibit “D” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

Period 1 Oct 24/20		Date paid to PBA		1145
Submitted to CRA	Nov 30/20			
Rec'd from CRA	Dec 4/20	Dec 23/20	CERS - Per 1-Oct 24	43,441.54
Paid PBA	Dec 23/20	Feb 2 /21	PBA-CERS-Period2-Nov 21	40,583.14
Confirmation sent to PBA	Dec 31/20	Mar 10/21	PBA-CERS-Lockdown Per 2	18,750.00
		Apr 20/21	PBA-CERS-Period3-Dec20	58,053.31
Period 2 Nov 21/20		Sep 8/21	PBA-CERS-Per 4/11 Jan2021	59,333.14
Submitted to CRA	Jan 12/21	Sep 21/21	Period 5/12 Feb 13/21	58,449.84
Rec'd from CRA	Jan 15/21	Sep 21/21	Period 6/13 Mar 13/21	39,699.84
Paid PBA	Feb 2/21	Sep 23/21	Period 7/14 Apr 10/21	39,699.84
Confirmation sent to PBA	Feb 9/21	Sep 23/21	Period 8/15 May 8/21	37,937.67
		Sep 23/21	Period 9/16 Jun 5/21	37,937.67
Period 3 Dec 19/20		Sep 23/21	Period 10/17 July 3/21	37,937.67
Submitted to CRA	Feb 16/21	Sep 30/21	Period 11/18 July 31/21	34,187.67
Rec'd from CRA	Feb 24/21	Sep 30/21	Period 12/19 Aug 28/21	19,187.67
Paid PBA	Apr 20/21	Oct 18/21	Period 13/20 Sep 25/21	19,187.67
Confirmation sent to PBA	Apr 23/21	Nov 11/21	Period 14/21 Oct 23/21	4,187.67
Period 4/11 Jan 16/21				548,574.34
Submitted to CRA	July 7/21			
Rec'd from CRA	July 12/21			
Paid PBA	Sep 8/21			
Confirmation sent to PBA	Sep 16/21			
Period 5/12 Feb 13/21				
Submitted	Aug 9/21			
Rec'd from CRA	Aug 12/21			
Paid PBA	Sep 21/21			
Confirmation for Period 12 thru 17 sent to Gowling				
Period 6/13 Mar 13/21				
Submitted	Sep 7/21			
Rec'd from CRA	Sep 13/21			
Paid PBA	Sep 21/21			
Period 14 Apr 10/21				
Submitted	Sep 20/21			
Rec'd from CRA	Sep 23/21			
Paid PBA	Sep 23/21			
Period 15 May 8/21				
Submitted	Sep 20/21			
Rec'd from CRA	Sep 23/21			
Paid PBA	Sep 23/21			
Period 16 Jun 5/21				
Submitted	Sep 20/21			
Rec'd from CRA	Sep 23/21			
Paid PBA	Sep 23/21			
Period 17 July 3/21				
Submitted	Sep 20/21			
Rec'd from CRA	Sep 23/21			
Paid PBA	Sep 23/21			
Period 18 July 31/21				
Submitted	Sep 23/21			
Rec'd from CRA	Sep 28/21			
Paid PBA	Sep 30/21			
Confirmation sent to PBA	Sep 30/21			
Period 19 Aug 28/21				
Submitted	Sep 23/21			
Rec'd from CRA	Sep 28/21			
Paid PBA	Sep 30/21			
Confirmation sent to PBA	Sep 30/21			
Period 20 Sep 25/21				
Submitted	Oct 12/21			
Rec'd from CRA	Oct 15/21			
Paid PBA	Oct 18/21			
Confirmation sent to PBA	Oct 18/21			
Period 21 Oct 23/21				
Submitted	Nov 3/21			
Rec'd from CRA	Nov 8/21			
Paid PBA	Nov 11/21			
Confirmation sent to PBA	Nov 12/21			

This is Exhibit “E” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu



September 16, 2021

Ron Reinas

General Manager

Buffalo & Fort Erie Public Bridge Authority

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

Ron,

We are in receipt of a letter from Christopher M. Stanek dated September 8, 2021. This letter was sent by registered mail, and we only received it on September 14, 2021.

We acknowledge that base rent has not been paid in accordance with the 2016 lease.

However, we deny all other allegations made in the Notice of Default, which we believe are being advanced in bad faith. We have been fully transparent with the Buffalo and Fort Erie Public Bridge Authority (PBA) since the commencement of the pandemic and have sought an opportunity to discuss the circumstances associated with the pandemic on countless occasions. The various correspondences that we have sent to the PBA speak for themselves.

Please note that any act in furtherance of the Notice of Default will be seen as being taken in bad faith and in contravention of the commercial tenancy eviction moratorium.

Also, to be clear, the duty-free shop has been open throughout the pandemic with respect to those services that were essential and supported the continued flow of traffic across the bridge (e.g., ATM, washrooms and customs paperwork for truckers). We acknowledge that the retail aspect of the duty-free shop has been closed due to public health restrictions and due to border restrictions, which have affected the ability of customers to purchase duty free goods.

Despite our efforts to co-ordinate with the PBA to work towards re-opening the retail operation, the PBA has made it clear that it does not want to discuss the particulars of such re-opening.

While we deny that the closing of the retail operations was a default under the lease in light of the public health and border restrictions, we nonetheless will be re-opening the retail aspect of the duty-free shop on September 19, 2021. Please note that such re-opening will be done in a manner that is consistent with our best efforts to provide a COVID safe environment for both our employees and customers and in compliance with public health guidance.

As set-out in our proposal of August 20, 2021, we will pay rent to the PBA on a percentage rent basis. Due to the continued border restrictions and associated reduction in traffic, the revenues from the retail operation will not be enough to pay the base rent as set out in the lease.

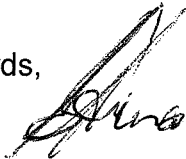
Furthermore, it appears that the PBA has not credited the \$50,000 it took from security deposit against the outstanding rent. As such, it remains unclear what that amount was applied to. Nonetheless, if the PBA were to confirm that the amount has been applied to the outstanding rent, we are prepared to make arrangements for the further \$50,000 demanded as a security deposit. We look forward to your guidance as to whether such security deposit will be maintained as a security deposit or will the PBA liquidate the deposit only to make another demand. Your guidance in that regard would be much appreciated as we could otherwise arrange for the security deposit to be held by a third party, in trust.

The suggestion that we are not in compliance with the CERS program is false. No particulars of our apparent non-compliance have been provided and we view this as an extraordinarily serious and damaging allegation. We request that this allegation be withdrawn immediately.

Finally, as you know, we have not abandoned the lease and the leased premises have not been left vacant. With the exception of the base rent payments, we have met all obligations under the lease.

Again, we look forward to discussing this matter with you so to develop a going forward plan.

Regards,



Gregory G. O'Hara

President and CEO

Peace Bridge Duty Free Inc.



September 17, 2021

Via Registered Mail & Email - gohara@dutyfree.ca

Gregory G. O'Hara

President, CEO
Peace Bridge Duty Free Inc.
1 Peace Bridge
PO BOX 339 STN Main
Fort Erie, Ontario
L2A 5N1

Christopher M. Stanek
Direct +1 416 862 4369
christopher.stanek@gowlingwlg.com
File no. K0565679

Dear Mr O'Hara:

Re: Buffalo and Fort Erie Public Bridge Authority and Peace Bridge Duty Free Inc.

I am writing in response to your letter dated September 16, 2021 addressed to my client, Buffalo and Fort Erie Public Bridge Authority. Please direct all future correspondence to me. Particularly where such correspondence is in response to a letter from me. I am retained to deal with the default of your obligations under the Lease.

With respect to the Notice of Default dated September 8, 2021, served upon you concerning the arrears of rent, please note that the "commercial tenancies eviction moratorium", that you reference in your letter is a regulation passed by the Ontario Government and is effective **only** if the following requirements have been met:

1. The tenant has been approved to receive CERS;
2. The tenant has **provided proof** of its CERS approval to the landlord for each claim period;
3. Not more than 12 weeks have passed since the tenant was approved for CERS for each claim period.

If these conditions are not met, there is no moratorium. Please provide the documentary evidence that Peace Bridge Duty Free is in compliance with the above conditions on or before **Friday, September 17, 2021**. Absent such documentary evidence, our clients' position will be that the default with respect to unpaid rent is unrectified, and the moratorium on eviction is not effective.

Please also note that, with respect to the Notice of Default dated September 8, 2021 concerning your failure to open the duty-free store, our client disputes your assertion that "the duty-free shop has been open throughout the pandemic". Indeed, what you describe as the "retail aspect" that you intend to open on September 19, 2021, is, in fact, what was required to remain open under the Lease. The duty-free store could have been (and should have been) opened months ago without any involvement or participation from our client.

Please also note that even if you do open the duty-free store as promised, our client does not agree that partial payments of rent are acceptable to satisfy your rental obligations under the Lease. The full



amount of rent set out in the Lease remains due and owing irrespective of how your operations are conducted.

Finally, we confirm that the \$50,000 security deposit has been applied to outstanding rent. You continue to have an obligation to replenish it.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Chris Stanek", with a long horizontal flourish extending to the right.

Christopher M. Stanek

CMS:cc

Bcc: Client



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

September 20, 2021

Christopher Stanek

Gowling WLG

Mr. Stanek,

We are in receipt of your letter of September 17, 2021.

The purpose of this letter is to respond to the inquiry made in your letter of September 17, 2021 regarding the Canada Emergency Rent Subsidy and Ontario's moratorium on commercial tenancies evictions.

We disagree with the statement that PBDF is not in compliance with the requirements associated with the moratorium. PBDF has applied for, been approved to receive and has received CERS payments, which have been paid over to the PBA as rent. In total, PBDF has paid \$220,161.00 in CERS over to PBA. Furthermore, we will be sending an additional \$98,150.00 that we have received but have not yet paid to the PBA. Also, so long as PBDF continues to qualify for the program, PBDF will continue to make such payments.

Attached is the most recent approval for payment received from the CRA, which is dated August 12, 2021. This amount was received by PBDF on August 12, 2021 and is in the process of being paid over to the PBA. Furthermore, PBDF made a payment of amounts received from the CERS to PBA on September 8, 2021. In addition, PBDF submitted a further application which was approved September 13, 2021. These approvals to receive CERS are within the 12 weeks as require by Ontario's moratorium and as described in your letter and are in compliance with the CERS program. Attached for your information are copies of all approval documents provided to us by CRA with respect to the CERS. PBDF is in the process of making additional application for CERS for subsequent periods that are presently open.

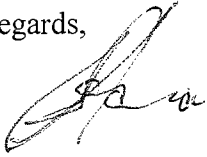
PBDF has responded to any request by the PBA re: proof of CERS approval. In any event, PBA has always known that we have been approved under the CERS program and has accepted payment of rent on the basis of the CERS subsidy.

Also, we are in the process of making arrangements for the replenishment of the \$50,000.00 security deposit. We now understand that the amount previously held by the PBA has been applied to outstanding rent. As noted in our previous correspondence to the PBA, we do not believe that it is appropriate in the circumstances for the PBA to apply the security deposit towards rent during Ontario's moratorium. We trust that the amounts that we will be paying to replenish the security deposit will not be applied toward rent in the same manner.



Finally, we confirm that the duty free shop re-opened its retail operations on September 19, 2021.

Regards,

A handwritten signature in black ink, appearing to read 'G. O'Hara', with a large, stylized initial 'G'.

Gregory G. O'Hara

President and CEO

Peace Bridge Duty Free Inc.



Canada Revenue
Agency

1153
Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: **756686**

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: **101851210 ZA0001**

Business name: **PEACE BRIDGE DUTY FREE INC**

Period covered: **2021-06-06 to 2021-07-03**

Filing date: **2021-09-20**

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$354,473.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$354,473.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$82,324.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$82,324.00
Line 200	Revenue drop for the current period	98.20%
Line 210	Revenue drop for the previous period	99.30%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$53,510.60
Line 310	Lockdown support (subsidy top-up)	\$0.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$53,510.60



Canada Revenue
Agency

1154
Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: 189476

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2021-05-09 to 2021-06-05

Filing date: 2021-09-20

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$354,431.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$354,431.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$82,275.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$82,275.00
Line 200	Revenue drop for the current period	99.30%
Line 210	Revenue drop for the previous period	99.20%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$53,478.75
Line 310	Lockdown support (subsidy top-up)	\$0.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$53,478.75



Canada Revenue
Agency

1155
Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: 439919

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2021-04-11 to 2021-05-08

Filing date: 2021-09-20

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$354,443.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$354,443.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$82,249.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$82,249.00
Line 200	Revenue drop for the current period	99.20%
Line 210	Revenue drop for the previous period	99.50%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$53,461.85
Line 310	Lockdown support (subsidy top-up)	\$0.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$53,461.85

1156



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: 989419

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2021-03-14 to 2021-04-10

Filing date: 2021-09-20

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$351,561.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$351,561.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$81,026.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$81,026.00
Line 200	Revenue drop for the current period	99.50%
Line 210	Revenue drop for the previous period	99.60%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$52,666.90
Line 310	Lockdown support (subsidy top-up)	\$0.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$52,666.90



Canada Revenue
Agency

1157
Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: 903311

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2021-02-14 to 2021-03-13

Filing date: 2021-09-07

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$349,834.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$349,834.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$79,287.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$79,287.00
Line 200	Revenue drop for the current period	99.60%
Line 210	Revenue drop for the previous period	99.70%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$51,536.55
Line 310	Lockdown support (subsidy top-up)	\$0.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$51,536.55



Summerside PE C1N 5Z7

0008599

Date Issued Aug 12, 2021
Business number 10185 1210 ZA0001

PEACE BRIDGE DUTY FREE INC
C/O KAREN SHAUBEL
P.O. BOX 339 STN MAIN
FORT ERIE ON L2A 5N1

Subject: Canada Emergency Rent Subsidy (CERS) - Notice of (re)determination (period covered: **January 17, 2021 to February 13, 2021**)

We determined that PEACE BRIDGE DUTY FREE INC is eligible for the rent subsidy for this qualifying period.

Your entitlement is **\$70,137.70** (under subsection 152(3.4) of the Income Tax Act).

If the amount showing on this notice is different from what you claimed, we will send you an explanation of the change separately.

For more information on the CERS program, go to **canada.ca/rent-subsidy**.

If you disagree and want to file an objection, you have 90 days from the date of this notice. To learn more about your objection rights, go to **canada.ca/cra-complaints-disputes**.

If you are late with filing any of your returns, we encourage you to file them as soon as possible. We use your tax information to determine your eligibility for benefit and credit payments.

We may also hold any refunds or credits you are entitled to until you file all your outstanding returns.

You must keep your books and records in case we ask to see them later. For more information on how to keep adequate books and records, go to **canada.ca/taxes-records**.

If you need more information about this notice, call us at **1-800-959-5525**.

Thank you,

Bob Hamilton
Commissioner of Revenue



Canada Revenue
Agency

1159
Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: 510972

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2021-01-17 to 2021-02-13

Filing date: 2021-08-09

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$349,737.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$349,737.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$79,058.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$79,058.00
Line 200	Revenue drop for the current period	99.70%
Line 210	Revenue drop for the previous period	99.60%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$51,387.70
Line 310	Lockdown support (subsidy top-up)	\$18,750.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$70,137.70



Summerside PE C1N 5Z7

0000698

Date Issued Jul 12, 2021
Business number 10185 1210 ZA0001

PEACE BRIDGE DUTY FREE INC
C/O KAREN SHAUBEL
P.O. BOX 339 STN MAIN
FORT ERIE ON L2A 5N1

Subject: Canada Emergency Rent Subsidy (CERS) - Notice of (re)determination (period covered: **December 20, 2020 to January 16, 2021**)

We determined that PEACE BRIDGE DUTY FREE INC is eligible for the rent subsidy for this qualifying period.

Your entitlement is **\$72,345.75** (under subsection 152(3.4) of the Income Tax Act).

If the amount showing on this notice is different from what you claimed, we will send you an explanation of the change separately.

For more information on the CERS program, go to **canada.ca/rent-subsidy**.

If you disagree and want to file an objection, you have 90 days from the date of this notice. To learn more about your objection rights, go to **canada.ca/cra-complaints-disputes**.

If you are late with filing any of your returns, we encourage you to file them as soon as possible. We use your tax information to determine your eligibility for benefit and credit payments.

We may also hold any refunds or credits you are entitled to until you file all your outstanding returns.

You must keep your books and records in case we ask to see them later. For more information on how to keep adequate books and records, go to **canada.ca/taxes-records**.

If you need more information about this notice, call us at **1-800-959-5525**.

Thank you,

Bob Hamilton
Commissioner of Revenue



Canada Revenue
Agency

1161
Agence du revenu
du Canada

Canada

COVID-19: Canada Emergency Rent Subsidy (CERS) - confirmation

Your application has been received. Your confirmation number is: 673086

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2020-12-20 to 2021-01-16

Filing date: 2021-07-07

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$352,501.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$352,501.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$82,455.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$82,455.00
Line 200	Revenue drop for the current period	99.60%
Line 210	Revenue drop for the previous period	99.40%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$53,595.75
Line 310	Lockdown support (subsidy top-up)	\$18,750.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$72,345.75



Summerside PE C1N 5Z7

0004734

Date Issued Feb 24, 2021
Business number 10185 1210 ZA0001

PEACE BRIDGE DUTY FREE INC
C/O KAREN SHAUBEL
P.O. BOX 339 STN MAIN
FORT ERIE ON L2A 5N1

Subject: Canada Emergency Rent Subsidy (CERS) - Notice of (re)determination (period covered:
November 22, 2020 to December 19, 2020)

We determined that PEACE BRIDGE DUTY FREE INC is eligible for the rent subsidy for this qualifying period.

Your entitlement is **\$69,876.40** (under subsection 152(3.4) of the Income Tax Act).

If the amount showing on this notice is different from what you claimed, we will send you an explanation of the change separately.

For more information on the CERS program, go to **canada.ca/rent-subsidy**.

If you disagree and want to file an objection, you have 90 days from the date of this notice. To learn more about your objection rights, go to **canada.ca/cra-complaints-disputes**.

If you are late with filing any of your returns, we encourage you to file them as soon as possible. We use your tax information to determine your eligibility for benefit and credit payments.

We may also hold any refunds or credits you are entitled to until you file all your outstanding returns.

You must keep your books and records in case we ask to see them later. For more information on how to keep adequate books and records, go to **canada.ca/taxes-records**.

If you need more information about this notice, call us at **1-800-959-5525**.

Thank you,

Bob Hamilton
Commissioner of Revenue



Your application has been received. Your confirmation number is: **417530**

Your claim will be reviewed within 10 to 15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: **101851210 ZA0001**

Business name: **PEACE BRIDGE DUTY FREE INC**

Period covered: **2020-11-22 to 2020-12-19**

Filing date: **2021-02-19**

Claim summary

Line	Description	Amount
Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$345,156.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$345,156.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$78,656.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$78,656.00
Line 200	Revenue drop for the current period	99.40%
Line 210	Revenue drop for the previous period	99.60%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$51,126.40
Line 310	Lockdown support (subsidy top-up)	\$18,750.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$69,876.40



Your application has been received. Your confirmation number is: 972802

Your claim will be reviewed within 10-15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: **101851210 ZA0001**

Business name: **PEACE BRIDGE DUTY FREE INC**

Period covered: **2020-10-25 to 2020-11-21**

Filing date: **2021-01-12**

Claim summary

Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$343,954.00
Line 130	Total eligible property taxes for the claim period	\$0.00
Line 140	Total eligible property insurance for the claim period	\$0.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$343,954.00
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$75,953.00
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$75,953.00
Line 200	Revenue drop for the current period	99.60%
Line 210	Revenue drop for the previous period	99.10%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$49,369.45
Line 310	Lockdown support (subsidy top-up)	\$18,750.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$68,119.45



Your application has been received. Your confirmation number is: 147705

Your claim will be reviewed within 10-15 business days. Any payment resulting from this application will be made using the direct deposit or mailing address information we have on file for your account.

Business number: 101851210 ZA0001

Business name: PEACE BRIDGE DUTY FREE INC

Period covered: 2020-09-27 to 2020-10-24

Filing date: 2020-11-30

Claim summary

Line 110	Number of properties eligible for the rent subsidy	2
Line 120	Total eligible rent for the claim period	\$304,663.16
Line 130	Total eligible property taxes for the claim period	\$4,636.00
Line 140	Total eligible property insurance for the claim period	\$3,530.00
Line 150	Total eligible interest on commercial mortgages for the claim period	\$0.00
Line 155	Total eligible expenses for the claim period (Line 120 + Line 130 + Line 140 + Line 150)	\$312,829.16
Line 160	Total qualifying rent expenses for the claim period (maximum \$75,000 per property)	\$76,547.44
Line 170	Maximum rent expenses that can be claimed for the claim period (lesser of: Line 160; \$300,000; and, if applicable, \$300,000 multiplied by the percentage assigned per the agreement among affiliated entities claiming the rent subsidy)	\$76,547.44
Line 200	Revenue drop for the current period	99.11%
Line 210	Revenue drop for the previous period	99.06%
Line 220	Subsidy rate (maximum 65%)	65.00%
Line 300	Base Canada Emergency Rent Subsidy (Line 170 * Line 220)	\$49,755.84
Line 310	Lockdown support (subsidy top-up)	\$0.00
Line 320	Total Canada Emergency Rent Subsidy (Line 300 + Line 310)	\$49,755.84



September 22, 2021

Via Registered Mail & Email - gohara@dutyfree.ca

Gregory G. O'Hara
 President, CEO
 Peace Bridge Duty Free Inc.
 1 Peace Bridge
 PO BOX 339 STN Main
 Fort Erie, Ontario
 L2A 5N1

Christopher M. Stanek
 Direct +1 416 862 4369
 christopher.stanek@gowlingwlg.com
 File no. K0565679

Dear Mr O'Hara:

Re: Buffalo and Fort Erie Public Bridge Authority and Peace Bridge Duty Free Inc.

I am writing in response to your September 20, 2021 letter and the attachments thereto.

We note that the information you provided was repeatedly requested by our client but you failed to do so until after receiving a Notice of Default. Indeed, our client's letter to you dated July 15, 2021 stated: "Multiple times we have requested that you provide dates of application and approval for each claim period under the CERS program and you continue to ignore these requests".

My client is frustrated that not only did you ignore these requests you have also chosen to delay applications and payments under the CERS program demonstrating little regard for your landlord's financial circumstances. For example:

- You have only remitted CERS payments for claim periods that ended on January 16, 2021,
- For claim periods 4-6 you waited until almost the last day to file your applications, effectively delaying CERS payments to my client by up to six months
- Two days ago you filed four applications for claim periods 7-10 when they could have been filed months ago
- You provided no evidence that you have filed for claim periods 11-12 even though you are eligible to do so
- You received a CERS payment on August 12, 2021 but have yet to remit it to my client. Likewise, your July 12, 2021 payment was not remitted until September 8, 2021.

Please note that the full amount of rent set out in the Lease remains due and owing. Notwithstanding the eviction moratorium, the default concerning the rent due and owing has not been cured.



We acknowledge the Duty Free store did re-open on September 19, 2021. Our client expects replenishment of the security deposit within the next seven days.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Christopher M. Stanek", written over a horizontal line.

Christopher M. Stanek

CMS:cc

Bcc: Client

This is Exhibit “F” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu



Summerside PE C1N 5Z7

0004591

Date Issued

Nov 8, 2021

Business number

10185 1210 ZA0001

PEACE BRIDGE DUTY FREE INC
C/O KAREN SHAUBEL
P.O. BOX 339 STN MAIN
FORT ERIE ON L2A 5N1

Subject: Canada Emergency Rent Subsidy (CERS) - Notice of (re)determination (period covered: **September 26, 2021 to October 23, 2021**)

We determined that PEACE BRIDGE DUTY FREE INC is eligible for the rent subsidy for this qualifying period.

Your entitlement is **\$15,507.10** (under subsection 152(3.4) of the Income Tax Act).

If the amount showing on this notice is different from what you claimed, we will send you an explanation of the change separately.

For more information on the CERS program, go to **canada.ca/rent-subsidy**.

If you disagree and want to file an objection, you have 90 days from the date of this notice. To learn more about your objection rights, go to **canada.ca/cra-complaints-disputes**.

If you are late with filing any of your returns, we encourage you to file them as soon as possible. We use your tax information to determine your eligibility for benefit and credit payments.

We may also hold any refunds or credits you are entitled to until you file all your outstanding returns.

You must keep your books and records in case we ask to see them later. For more information on how to keep adequate books and records, go to **canada.ca/taxes-records**.

If you need more information about this notice, call us at **1-800-959-5525**.

Thank you,

Bob Hamilton
Commissioner of Revenue

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This is Exhibit “G” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

From: Jim Pearce
Sent: Friday, November 12, 2021 8:30 AM
To: nct@peacebridge.com
Subject: Payment

Hi - information for CERS Oct 23rd Period is attached - payment went out yesterday.
Regards,
Jim

PBA Remittance - Nov 11/21

Period 14/21
Sep26-Oct23

PBDF store max	75,000.00
CERS rate	<u>20%</u>
	15,000.00

Previously paid Add'l Rent Insurance&Taxes	<u>(10,812.33)</u>
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Remitted to PBA	<u>4,187.67</u>
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Summerside PE C1N 5Z7

0004591

Date Issued

Nov 8, 2021

Business number

10185 1210 ZA0001

PEACE BRIDGE DUTY FREE INC
C/O KAREN SHAUBEL
P.O. BOX 339 STN MAIN
FORT ERIE ON L2A 5N1

Subject: Canada Emergency Rent Subsidy (CERS) - Notice of (re)determination (period covered: **September 26, 2021 to October 23, 2021**)

We determined that PEACE BRIDGE DUTY FREE INC is eligible for the rent subsidy for this qualifying period.

Your entitlement is **\$15,507.10** (under subsection 152(3.4) of the Income Tax Act).

If the amount showing on this notice is different from what you claimed, we will send you an explanation of the change separately.

For more information on the CERS program, go to **canada.ca/rent-subsidy**.

If you disagree and want to file an objection, you have 90 days from the date of this notice. To learn more about your objection rights, go to **canada.ca/cra-complaints-disputes**.

If you are late with filing any of your returns, we encourage you to file them as soon as possible. We use your tax information to determine your eligibility for benefit and credit payments.

We may also hold any refunds or credits you are entitled to until you file all your outstanding returns.

You must keep your books and records in case we ask to see them later. For more information on how to keep adequate books and records, go to **canada.ca/taxes-records**.

If you need more information about this notice, call us at **1-800-959-5525**.

Thank you,

Bob Hamilton
Commissioner of Revenue

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This is Exhibit “H” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read "Alexandra Teodorescu". The signature is fluid and cursive, with the first name "Alexandra" written in a larger, more prominent script than the last name "Teodorescu".

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

LAND BORDER DUTY FREE SHOP AUTHORIZATION

Made in triplicate as of the 27th day of January, 2015

BY:

LIQUOR CONTROL BOARD OF ONTARIO
55 Lake Shore Blvd. East
Toronto, Ontario
M5E 1A4
(the "LCBO")

TO:

PEACE BRIDGE DUTY FREE INC.
P. O. Box 339
Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1
(the "Operator")

WHEREAS the LCBO, pursuant to the *Liquor Control Act*, R.S.O. 1990, c. L. 18, has the power to sell liquor and to control the sale, transportation and delivery of liquor in Ontario;

AND WHEREAS the Operator is licensed to operate a Duty Free Shop at or near the Border Crossing Point at **Fort Erie, Ontario** under a licence issued by Canada Border Services Agency pursuant to the *Customs Act*, R.S.C. (2nd Supp.) 1985, c.1, as amended and Regulations made thereto;

AND WHEREAS pursuant to the Regulations Respecting Duty Free Shops made under the *Customs Act*, the written approval of the LCBO is required to sell intoxicating liquor in Duty Free Shops in Ontario;

AND WHEREAS the LCBO has granted such approval with respect to the Shop described in this Authorization upon the terms and conditions of this Authorization;

NOW THEREFORE the Operator is authorized to purchase Intoxicating Liquor from the LCBO and to sell Intoxicating Liquor from the Shop solely in accordance with the terms and conditions of this Authorization, as follows:

1. DEFINITIONS AND INTERPRETATION

In this Authorization, unless the subject matter or context is inconsistent therewith, the following expressions shall have the following meanings respectively:

- 1.1 "Border Crossing Point"** means a place on the international border between Canada and the United States at which there is a Canada Customs Office.
- 1.2 "Duty Free Product Assortment List"** means the LCBO's list of the products for which the LCBO regularly maintains a separate inventory for filling duty free orders, as amended by the LCBO from time to time.
- 1.3 "Duty Free Shop"** means "duty free shop" within the meaning of the *Customs Act*, R.S.C. (2nd Supp.) 1985, c.1, as amended.

- 1.4 "Eligible Ontario Wine" means Ontario wine made by an Eligible Winery that is not a product included by the LCBO on the Duty Free Product Assortment List.
- 1.5 "Eligible Winery" means a person holding a manufacturer's licence issued under the *Liquor Licence Act* who has been authorized by the LCBO to sell Eligible Ontario Wine.
- 1.6 "Intoxicating Liquor" means "intoxicating liquor" within the meaning of the *Importation of Intoxicating Liquors Act*, R.S.C. 1985 c. l-4, as amended, and includes all "beer", "liquor", "spirits" and "wine" within the meaning of the *Liquor Control Act* R.S.O. 1990, c. L. 18, as amended.
- 1.7 "Landed Cost" means the amount paid by the LCBO to purchase Intoxicating Liquor including all transportation and freight charges incurred F.O.B. the Warehouse designated by the LCBO, together with any tax, charge or levy which the LCBO is required by law from time to time to pay but shall exclude all charges, duties, levies and taxes not applicable to Intoxicating Liquor sold in a Duty Free Shop.
- 1.8 "Licence" means the licence issued to the Operator by Canada Border Services Agency under the *Customs Act*, R.S.C. (2nd Supp.) 1985, c.1, as amended and Regulations made thereunder to operate a Duty Free Shop in the premises at the **Border Crossing Point at Fort Erie, Ontario**.
- 1.9 "Mark-up" means the amount set from time to time by the LCBO in accordance with this Authorization to be added to the LCBO's Landed Cost for purposes of calculating the Operator's Purchase Price of Intoxicating Liquor.
- 1.10 "Purchase Price" means the amount to be paid from time to time by the Operator to the LCBO under this Authorization for the purchase of Intoxicating Liquor.
- 1.11 "Sale Price" means the amount at which the Operator may sell Intoxicating Liquor from time to time in accordance with this Authorization.
- 1.12 "'Shop" means the premises at the Border Crossing Point at **Fort Erie, Ontario**, from which the Operator is permitted by the Licence to operate a Duty Free Shop, and will include any office and storage area adjacent to or close to the said premises which are used in conjunction with the duty free business and any other premises permitted by the Licence and approved by the LCBO in writing.

2. TERM

This Authorization shall be for a **ten (10)** year term commencing on **January 27, 2015** and ending on **January 26, 2025**, unless terminated earlier in accordance with the provisions of this Authorization.

3. AUTHORIZATION TO PURCHASE AND SELL INTOXICATING LIQUOR AND PRICING

3.1 The LCBO hereby authorizes the Operator:

- (a) to purchase Intoxicating Liquor only from the LCBO or as otherwise directed herein or by written notice signed by the President or the General Counsel of the LCBO from time to time; and

- (b) to sell Intoxicating Liquor from the Shop only to persons who are about to leave Canada, and who are entitled to purchase Intoxicating Liquor pursuant to the laws of the Province of Ontario and Canada,

in accordance with the terms and conditions of this Authorization.

- 3.2** The LCBO shall determine and establish, by giving at least thirty (30) days written notice to the Operator, the Purchase Price at which the Operator may purchase Intoxicating Liquor from the LCBO and such price shall be calculated by adding the Mark-Up set by the LCBO in writing from time to time to the LCBO's Landed Cost for the Intoxicating Liquor.
- 3.3** The LCBO shall advise the Operator of the Mark-Up applicable to all types of Intoxicating Liquor as determined by the LCBO from time to time. The LCBO may at any time change the Mark-Up applicable to any type of Intoxicating Liquor by giving at least ten (10) days written notice thereof to the Operator and the changed Purchase Price resulting therefrom, which will be effective and binding on the Operator on the effective date specified in the notice. Subject to Section 3.6, the maximum Mark-Up that will be set by the LCBO is thirty percent (30%) of the LCBO's Landed Cost.
- 3.4** The maximum Sale Price at which the Operator may sell Intoxicating Liquor shall be 225% of the Purchase Price paid by the Operator to the LCBO to purchase the Intoxicating Liquor.
- 3.5** The Operator may request the LCBO in writing to increase the maximum Sale Price calculated under Section 3.4 for any specified Intoxicating Liquor product and, within twenty (20) Business Days after the receipt of such written request, the LCBO shall, by written notice, grant or deny such request or, with the consent of the Operator, vary the increase so requested.
- 3.6** Despite Section 3.3, where the LCBO grants or varies the increase to the maximum Sale Price requested under Section 3.5, the LCBO shall, by written notice, increase the Purchase Price for such product by an amount that is one-half of the increase granted under Section 3.5 to the maximum Sale Price for the product.
- 3.7** Where an increase to the maximum Sale Price has been granted under Section 3.5 for any Intoxicating Liquor product, the Operator may request the LCBO in writing to reduce such increased maximum Sale Price to an amount that is not lower than the maximum Sale Price permitted under Section 3.4 for the product and, within twenty (20) Business Days after the receipt of such written request, the LCBO shall, by written notice, grant such request or, with the consent of the Operator vary the decrease so requested.
- 3.8** When the LCBO grants or varies the decrease to the maximum Sale Price requested under Section 3.7, it shall also reduce the Purchase Price for the product as increased under Section 3.6, by deducting therefrom an amount equal to one-half of the decrease granted under Section 3.7.
- 3.9** Any notice given by the LCBO pursuant to this section shall state the date upon which any increase or decrease or other change shall become effective and such notice must be signed by any one of the President, the Senior Vice President of Finance and Administration or the General Counsel of the LCBO.

- 3.10** The Operator shall purchase Intoxicating Liquor to be sold in the Shop only from the LCBO, or as otherwise directed herein or by written notice signed by the Chair, the President or the General Counsel of the LCBO from time to time, at the Purchase Price set by the LCBO from time to time. However, the Operator may, in accordance with procedures for ordering, purchasing, and delivering issued to the Operator by the LCBO from time to time: (a) purchase beer made in Ontario from either Brewers Retail Inc. or from a manufacturer authorized by the Alcohol and Gaming Commission of Ontario to sell such beer to the LCBO; and (b) purchase Eligible Ontario Wine from an Eligible Winery, acting on behalf of the LCBO. The Operator will purchase such beer or Eligible Ontario Wine at the applicable price approved by the LCBO from time to time and not at the Purchase Price described in Section 3.2. The Operator shall pay the Purchase Price for Eligible Ontario Wine to the applicable Eligible Winery that is acting on behalf of the LCBO, and not to the LCBO, as would otherwise be required pursuant to Section 4.5.
- 3.11** The Operator shall not transfer Intoxicating Liquor from the Shop without the written approval of the LCBO. This provision shall survive any expiration or revocation of this Authorization.
- 3.12** The LCBO agrees that, except for increases in the Purchase Price for an Intoxicating Liquor product resulting from the application of Section 3.6, the Purchase Price for any Intoxicating Liquor product at any time shall not be greater than the price payable to the LCBO at such time for such product by any operator of a Duty Free Shop located at a Border Crossing Point.

4. PROCEDURES FOR PURCHASE AND SALE

- 4.1** The LCBO shall sell to the Operator those brands of Intoxicating Liquor listed for sale by the LCBO in LCBO operated liquor stores in Ontario and/or in Ontario Duty Free Shops located at Border Crossing Points. In addition, the LCBO may, from time to time, sell to the Operator other types of Intoxicating Liquor upon such terms as the LCBO considers reasonable and for a Purchase Price determined in accordance with Section 3. At all times, the LCBO reserves the right to limit the number and size of brands it will sell to the Operator in order to ensure that the Operator maintains a reasonable inventory of and sells a representative selection of Intoxicating Liquor products furnished by various suppliers. The Operator will include within its purchases of Intoxicating Liquor products, some of the wines that a manufacturer of Ontario wine licensed under the *Liquor Licence Act*, is permitted to sell in Ontario and by doing so, the Operator shall be deemed to have satisfied its obligation under Section 10.2 with respect to Ontario wines.
- 4.2** The Operator shall purchase Intoxicating Liquor in case-lots from the LCBO according to the procedures for ordering set from time to time by the LCBO.
- 4.3** The LCBO will endeavour to fill all orders of Intoxicating Liquor received from the Operator as quickly as possible, but where it cannot fill an order for any reason or where there will be a delay, the LCBO will notify the Operator promptly and the Operator will not be entitled to any claim, demand or legal remedy of any kind against the LCBO for damages resulting from any such delay or failure to supply Intoxicating Liquor to the Operator for any reason.

- 4.4 The Operator may contract, at its own expense, carriers to transport Intoxicating Liquor to the Operator. Otherwise, the Operator will be responsible for directly paying the LCBO's contracted carrier for the full costs of transporting Intoxicating Liquor to the Operator at the rate paid by the LCBO from time to time for transporting its goods. Such amount will be invoiced by the LCBO's contracted carrier directly to the Operator. The LCBO's general practice is to choose its carriers as a result of an independent bidding process.
- 4.5 The Operator shall pay the LCBO the Purchase Price for all Intoxicating Liquor within twenty (20) days of delivery of the Intoxicating Liquor to the Operator. Payment must be made by cash, cheque, money order or electronic wire transfer of funds to the LCBO's bank account as designated from time to time by the LCBO in writing. If the Operator does not pay such amount to the LCBO on or before the 20th day following such delivery (the "Due Date"), then such overdue amounts shall bear interest, accruing daily from the Due Date until the date such amount is received by the LCBO, at a rate equal to 18% per annum. The Operator shall pay such interest to the LCBO within seven (7) days of the LCBO's written demand therefor. Where payment is repetitively late and the LCBO has not revoked the Authorization, the Operator shall, as and when required by the LCBO and without limitation of the LCBO's right to collect interest on such late payments hereunder, prepay the LCBO in full for all future orders.
- 4.6 Title to the Intoxicating Liquor shall pass to the Operator at the time it is paid for by the Operator. However Intoxicating Liquor shall be at the risk of the Operator from the time it is delivered to the Operator. Where any Intoxicating Liquor that is delivered to the Operator is not paid for by the Operator within the required time, the LCBO may at any time while such payment is overdue, and in addition to any other remedies it may have at law, enter the Shop and seize the liquor and may refuse to sell any more Intoxicating Liquor to the Operator until the amount owing is paid in full.
- 4.7 All Intoxicating Liquor purchased by the Operator shall be sold only from the Shop pursuant to the terms of this Authorization and the Operator shall, at all times, comply with the *Liquor Control Act*, the *Liquor Licence Act*, the *Customs Act*, the Regulations passed thereunder, and all amendments thereto.
- 4.8 The Operator shall, when ordered by the LCBO, cease selling any specified brand of Intoxicating Liquor where the LCBO has determined, in its sole discretion, that continued sale may put the health or safety of the public at risk. In such circumstances the Operator shall, if requested by the LCBO, return to the LCBO at the LCBO's cost the Operator's supply of the brand of Intoxicating Liquor specified. The LCBO shall reimburse the Operator in an amount equal to the Purchase Price paid by the Operator for the Intoxicating Liquor.
- 4.9 The LCBO hereby authorizes the Operator to store Intoxicating Liquor at the Warehouse, provided that the LCBO may, in its absolute discretion, terminate or suspend such authorization upon any termination or suspension of the Canada Border Security Agency's approval of such Warehouse premises as an off-site storage facility for the Operator's Duty Free Shop. The Operator may only receive and store Intoxicating Liquor at the Warehouse. The Operator shall not sell nor offer to sell Intoxicating Liquor at the Warehouse.

5. RESTRICTIONS ON TRANSFER OF RIGHTS

- 5.1 This Authorization and the rights and obligations hereunder may not be assigned, subcontracted, transferred or ceded by operation of law or otherwise. The rights of the Operator under this Authorization constitute a privilege and do not constitute personal property.
- 5.2 The LCBO may revoke this Authorization where there is a change of control or ownership of the Operator.
- 5.3 The Operator shall notify the LCBO immediately upon any change in its Articles of Incorporation or other incorporating documents or in the names of its directors or officers.
- 5.4 The Operator shall not permit the transfer, without the prior written consent of the LCBO, of any of its shares of a class that carries a voting right. The LCBO shall not unreasonably withhold such consent in the case of a transfer to a person, who, at the date of commencement of this Authorization owns one or more of the Operator's shares that carries a voting right or to a person to whom any such share has been subsequently transferred in accordance with the provisions of this subsection, but, in either event, only where such transfer does not constitute a change of effective control of the Operator.

6. BOOKS, RECORDS, AUDIT

- 6.1 The Operator shall maintain and to furnish to the LCBO upon request, a report in a form approved by the LCBO, showing the gross sales of all Intoxicating Liquor sold from the Shop, the Operator's inventory of Intoxicating Liquor, and any other similar information which the LCBO may from time to time require.
- 6.2 The Operator shall maintain invoices and books of account and records at the Shop showing the dates, Purchase Prices, and Sale Prices of all Intoxicating Liquor purchased and sold by the Operator together with any other information directed to be kept by the LCBO. In addition, the Operator will keep records of all amounts charged for placing advertising or promotional materials in the Shop together with invoices and agreements and other documentation relating thereto.
- 6.3 The Operator shall furnish to the LCBO upon written request therefor its financial statements relating to Intoxicating Liquor sales for its last fiscal year, duly prepared and certified by a chartered accountant together with:
 - (a) an income statement indicating separately all revenues and direct expenses related to Intoxicating Liquor purchased and sold by the Operator;
 - (b) statements of net sales, product cost and direct margins for sales of Intoxicating Liquor; and
 - (c) a statement showing the percentage that sales of Intoxicating Liquor are of total sales of all other merchandise made from the Shop.
- 6.4 Books and records relating to the sale of Intoxicating Liquor in the Shop and with respect to placing advertising and promotional materials in the Shop shall be open to the LCBO at the Shop or in any other premises or place under the Operator's control for the purposes of audit and inspection by the LCBO and for the taking of extracts therefrom at any time.

- 6.5 An inventory and inspection of all Intoxicating Liquor held by the Operator may be undertaken by the LCBO at any time and the LCBO may enter the Shop at any time for such purpose.
- 6.6 The Operator shall maintain and shall furnish to the LCBO, immediately upon the written request of the LCBO, in order to investigate compliance with Section 7.1(h), a list of the names, dates of birth and addresses of all employees or persons who work or have worked in the Shop at any time during this Authorization and shall also provide the time during which each such person worked or was employed in the Shop.
- 6.7 All books, records and reports required to be kept by the Operator pursuant to the terms of this Authorization shall be retained for at least two (2) years following the expiration or revocation of this Authorization.

7. STORE OPERATION

7.1 The Operator shall:

- (a) keep and maintain the Shop in a clean and sanitary condition and conform with all by-laws and regulations from time to time in force which may affect the Shop;
- (b) employ a sufficient number of capable staff to ensure that persons desiring to purchase Intoxicating Liquor receive courteous, prompt, attentive and informative service;
- (c) employ only such personnel as will ensure a high standard of service to the public and who will conduct themselves politely and with inoffensive conduct at all times;
- (d) comply with all statutes, laws, by-laws, licences, regulations, permits, orders, ordinances and requirements of any federal, provincial or municipal authority;
- (e) abide by all applicable rules, directives, guidelines and policy statements of which the LCBO gives notice to the Operator from time to time;
- (f) ensure that Intoxicating Liquor products are displayed in the Shop in a dominant merchandising position, to the satisfaction of the LCBO;
- (g) ensure that the lay-out and setting of the Shop enhance the sale of Intoxicating Liquor;
- (h) ensure that no person under the age of eighteen (18) years is permitted to sell Intoxicating Liquor from the Shop; and
- (i) use its best efforts at all times to actively sell Intoxicating Liquor products in the Shop.

8. INDEMNITY

The Operator shall, at all times, protect, indemnify and save harmless the LCBO and its directors, officers, employees and agents against and from any and all losses, damages, costs, liabilities, expenses (including legal fees), claims, actions, demands and proceedings including, without limitation, claims for personal injury or property damage, which are caused by or arise out of, either directly or indirectly, any act or omission of the Operator or of any agent, contractor, employee, customer, invitee, officer, shareholder, director, volunteer or representative of the Operator in connection with this Authorization.

9. INSURANCE

9.1 The Operator shall, at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term of this Authorization insurance satisfactory to the LCBO, including without limitation, Comprehensive General Liability insurance insuring the Operator, its servants, agents, contractors and persons for whom the Operator is in law responsible, for all amounts it may become obliged to pay as damages by reason of bodily injury to any person (including death), or damage to or destruction of any property, with coverage for any one occurrence or claim of not less than Five Million Canadian Dollars (C\$5,000,000.00). The Comprehensive General Liability insurance shall include coverage for products and completed operations, liquor law liability, blanket contractual liability, employers or contingent employers' liability and non-owned automobile liability.

9.2 The insurance required pursuant to Section 9.1 must:

- (a) include the LCBO as an additional named insured but only in respect of and during service performed by the Operator under this Authorization;
- (b) contain a cross-liability and severability of interest clause;
- (c) include a provision requiring the insurer to give at least thirty (30) days prior written notice to the LCBO in the event that the policy of insurance is to be adversely changed or cancelled; and
- (d) provide that the LCBO shall be insured notwithstanding any act, omission, negligence or misrepresentation of the Operator which might otherwise result in the avoidance of a claim made by the LCBO under the policies, and that the policies will not be affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the Operator and the LCBO or either of them.

9.3 The Operator shall arrange for the completion and submission to the LCBO of certificates of such insurance within thirty (30) days of the date of this Authorization, and thereafter immediately following every amendment, renewal or endorsement of such insurance policies. The Operator shall furnish the LCBO with a copy of the policies of such insurance upon request by the LCBO.

9.4 If the Operator does not at any time comply with the provisions of Sections 9.1, 9.2 or 9.3, then in addition to any other remedy which may be available to the LCBO, the LCBO may, at its option:

- (a) suspend or revoke this Authorization immediately upon written notice, without incurring any liability, penalty or charge;
- (b) obtain and pay for the insurance to be maintained by the Operator, on the Operator's behalf, and the Operator shall reimburse the LCBO immediately upon demand for all costs incurred by the LCBO in doing so;
- (c) withhold payment of any amounts due by the LCBO to the Operator; or
- (d) any or all of the above.

9.5 The Operator shall at all times operate the Shop under such bonds as are required by Canada Border Services Agency.

10. SALES PROMOTIONS AND ADVERTISING

- 10.1 Except for advertising or promotional agreements that are entered into and carried out in accordance with the requirements of this section, the Operator shall not directly or indirectly enter into any agreement, arrangement, concession or understanding, either oral or written with any manufacturer, brewer, distiller, producer, bottler or distributor of Intoxicating Liquor, their servants, agents, employees or anyone acting under their authority or direction or with any other person or group of persons whereby the Operator covenants or agrees, directly or indirectly to purchase, sell, promote the sale of, or otherwise give any preference to (including, without limitation, a preference as to the routine shelf position or space occupied by) any particular brand of Intoxicating Liquor produced, bottled, distributed or represented by any of such persons.
- 10.2 At all times a representative number of brands and types of Intoxicating Liquor, in reasonable quantities, shall be kept available for sale in the Shop to the satisfaction of the LCBO.
- 10.3 Neither the Operator nor any employee or agent of the Operator shall act as the agent or representative of any manufacturer, brewer, distiller, producer, bottler, distributor, or representative of any Intoxicating Liquor or of anyone acting under their authority or direction.
- 10.4 Neither the Operator nor any employee or agent of the Operator shall, except in accordance with the requirements of this section, accept from or give, either directly or indirectly, any gift, loan, or thing of value or material benefit from or to as the case may be, any manufacturer, brewer, distiller, producer, bottler, or distributor of Intoxicating Liquor, their servants, agents, employees or anyone acting under their authority or direction or any other person or group of persons.
- 10.5 The Operator shall comply with all advertising requirements imposed under the *Liquor Licence Act*, as amended and the Regulations made thereto irrespective of the person on whom such requirement is actually imposed.
- 10.6 The Operator may charge for placing advertising or promotional materials in the Shop provided that the rates charged for placing such advertising or promotional materials do not exceed the normal rates charged for similar type, quality and size advertising or promotional materials in the vicinity or in similar stores in which Intoxicating Liquor is

permitted for sale, and the Operator shall have available a printed schedule of the rates and all related charges for the placement of advertising or any promotion in the Shop, which schedule shall be provided without charge to any person requesting such rates and shall be provided to the LCBO upon the LCBO's written request therefor.

- 10.7 The sale of advertising space in the Shop by the Operator shall not, in any way, be conditional upon the quantity of a particular brand or type of Intoxicating Liquor selected for purchase by the Operator from the LCBO or conditional upon the establishment of the Sale Price charged by the Operator for a particular brand or type of Intoxicating Liquor.
- 10.8 Any advertising of products by the Operator shall be carried out in such a manner as to ensure that all manufacturers of all liquor products sold in the Shop are at all times given a reasonable opportunity to advertise and promote their products in the Shop.
- 10.9 All Intoxicating Liquor products will be displayed in the Shop by the Operator in a manner that is at all times satisfactory to the LCBO.
- 10.10 Neither the Operator nor any employee, agent or representative of the Operator shall directly or indirectly give any gift, loan, thing of value or material benefit to any member, employee, agent or representative of the LCBO or the Alcohol and Gaming Commission of Ontario.

11. SUSPENSION OR REVOCATION

- 11.1 The LCBO may revoke or suspend this Authorization immediately, in whole or in part, without liability, by written notice to the Operator where the Operator winds up, liquidates, ceases to carry on business or to exist or where:
 - (a) a trustee, (including a trustee in bankruptcy) receiver or receiver and manager is appointed in respect of the Operator or the property of the Operator and is not discharged within thirty (30) days thereafter; or
 - (b) any proceeding is commenced by the Operator for any relief under any bankruptcy or insolvency laws or laws relating to any reorganization, arrangement, compromise or winding up of the Operator and such proceeding remains undismissed or unstayed for thirty (30) days thereafter.
- 11.2 Notwithstanding anything to the contrary herein, the LCBO may, by written notice, immediately revoke this Authorization at any time in order to comply with any legislation, judgment, order or ruling of any kind affecting the LCBO, and such revocation will be effective upon giving thirty (30) days written notice thereof to the Operator.
- 11.3 This Authorization may be suspended, in whole or in part, immediately by the LCBO without liability, upon written notice and/or subject to Section 11.4, may be revoked, in whole or in part, by the LCBO immediately, without liability, upon written notice:
 - (a) upon any termination or during any suspension of either the Licence or of the Operator's lease or right to occupy the Shop;
 - (b) where there is a breach of any provision of this Authorization;

- (c) where the Operator or any of its employees, agents, directors, officers or voting shareholders exhibit conduct, which, in the opinion of the LCBO, acting reasonably, is cause for suspension or revocation;
- (d) where the volume of Intoxicating Liquor purchased by the Operator from the LCBO for sale in the Shop is no longer sufficient in the opinion of the LCBO, to warrant the continued sale of Intoxicating Liquor in the Shop;
- (e) where the Operator or any of its employees, agents, directors, officers or voting shareholders exhibit conduct, which in the opinion of the LCBO, acting reasonably, is unsatisfactory; or
- (f) where the Operator or any of its employees, agents, directors, officers or voting shareholders is charged with an offence against any statute or regulation, which, in the opinion of the LCBO, acting reasonably, is cause for suspension or revocation.

11.4 The LCBO shall, before revoking this Authorization under Section 11.3, give to the Operator:

- (a) thirty (30) days written notice of the proposed revocation;
- (b) a description of the grounds upon which the LCBO proposes to revoke the Authorization; and
- (c) ten (10) days from the date of such notice within which to respond and make written representations as to why this Authorization should not be revoked.

11.5 Where the LCBO suspends this Authorization, in whole or in part, it may impose such conditions as it deems necessary and the Operator will abide by such conditions. The exercise of any right of suspension under this Authorization does not prevent the LCBO from also exercising its right of revocation of this Authorization.

11.6 The LCBO may, by written notice, reinstate the rights or obligations under this Authorization at any time when it is satisfied that the cause for suspension no longer exists and may impose such further conditions as it deems necessary.

11.7 If this Authorization is revoked, suspended or it expires, then the Operator shall not sell or transfer from the Shop any Intoxicating Liquor remaining in its possession without the written consent of the LCBO, and shall comply with the LCBO's instructions regarding any Intoxicating Liquor remaining in its possession. In such circumstances, the LCBO may enter the Shop or any other place where the Operator has Intoxicating Liquor and may take possession of the Intoxicating Liquor if it deems necessary. If consent to transfer the Intoxicating Liquor from the Shop is not given, then the LCBO shall purchase the Intoxicating Liquor at an amount equal to the Purchase Price originally paid by the Operator for it.

11.8 The LCBO will not be responsible for any losses, costs, damages or any other type of compensation arising by virtue of the operation, suspension or revocation of this Authorization or of any right or obligation contained herein. The LCBO shall not, by reason of the suspension, revocation or expiration of the Authorization, be responsible to the

Operator for any loss, compensation, reimbursement, or damages (i) on account of loss of prospective profits on anticipated sales nor on account of expenditures, investments, leases or commitments made in connection with the business or goodwill of the Operator; or (ii) arising by virtue of the operation or cessation of operation of this Authorization, any right or obligation contained herein, or any decision not to renew or extend the term of this Authorization upon its expiry.

12. CONFLICT OF INTEREST

- 12.1** If a member of the Legislative Assembly of Ontario or any Ontario or Federal Government officer or employee, or any member of the LCBO or employee of the LCBO or of the Alcohol and Gaming Commission of Ontario has or proposes to have any connection to the Operator or any direct or indirect interest in, financial or otherwise, the Operator or in the management of the Shop, such person shall be deemed to have a potential conflict of interest.
- 12.2** If the Operator, or any officer, director, shareholder or employee of the Operator has or proposes to have any direct or indirect interest in, financial or otherwise, or connection to any particular manufacturer, distributor, or bottler of Intoxicating Liquor that he does not have with other manufacturers, distributors or bottlers of Intoxicating Liquor, then the Operator shall be deemed to have a potential conflict of interest.
- 12.3** The Operator must promptly inform the LCBO whenever a potential conflict of interest referred to in Section 12.1 or Section 12.2 occurs. The Operator shall provide to the LCBO the particulars of the nature and extent of such interest or connection, the name or names of the persons or entities involved and all other relevant details, and such further information as the LCBO may request.
- 12.4** Where, in the opinion of the LCBO:
- (a) any person with a potential conflict of interest described in Section 12.1 could be, or could be perceived to be, able to act in such capacity to further the Operator's private interest; or
 - (b) the interest, connection, or association described in Section 12.2, may result in the promotion in the Shop of the sale of one or more particular brands of Intoxicating Liquor in preference to another;

then the LCBO, in its absolute discretion, may revoke this Authorization or suspend it until such time as it is satisfied that such conflict of interest no longer exists.

13. GENERAL

13.1 Entire Understanding

This Authorization constitutes the entire understanding between the parties with respect to the subject contained herein and supersedes all prior agreements, negotiations, proposals and representations, whether oral, written or otherwise relating to such subject matter.

13.2 Successors

The rights granted to the Operator under this Authorization are intended to be personal in nature and shall not enure to the benefit of any successor, heir, executor or administrator of the Operator.

13.3 Waiver

No waiver of any breach of any provision of this Authorization shall be effective unless expressed in writing and signed by the LCBO. Unless otherwise expressly provided, the extent of any waiver granted shall be restricted to the specific breach waived and shall not extend to any further occurrence of such breach.

13.4 Parties Independent

The parties to this Authorization are mutually independent and this Authorization shall not be deemed to create or constitute a partnership, joint venture, agency or other form of joint enterprise between the parties. None of the parties shall have the right or authority or shall represent that they have the right or authority to undertake any obligations of any nature on behalf of the other party.

13.5 Survival

The provisions of Sections 3.11, 6, 8 and 11 of this Authorization shall survive any suspension, surrender, revocation or expiration of this Authorization.

13.6 Notices

Any notices to be given or required under this Authorization shall be in writing and shall be deemed to have been given when personally delivered, transmitted by telecopy or other electronic means of communication or mailed by registered or certified mail, postage fee paid to the following address:

To the **Operator**:
P. O. Box 339
Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Attention: *Mr. Gregory G. O'Hara*
~~Mr. George W. Slipp~~, Chief Executive Officer
Fax Number: (905) 871-6335



To the **LCBO**:
55 Lake Shore Boulevard East
Toronto, Ontario
M5E 1A4

Attention: Acting Director, Corporate Affairs
Fax Number: (416) 864-2431

Notice may be given by any of the methods prescribed as follows:

- (a) by delivery, effective at the time of actual delivery;
- (b) by telex, facsimile or other form of electronic communication, effective on the next business day; or
- (c) registered or certified mail, effective on the third (3rd) business day following the deposit of a properly addressed form of notice in the mail; provided however, in the event of a disruption of regular postal service notice shall not be given by mail.

13.7 Rights and Remedies.

The rights and remedies of the Operator and the LCBO under this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; and any single or partial exercise by the Operator or the LCBO of any right or remedy for default or breach of any term, covenant, condition or agreement herein contained shall not affect any other rights of the Operator or the LCBO and shall not be deemed to be a waiver of, or alter, affect or prejudice any other right or remedy to which either party may be lawfully entitled in respect of the same default or breach.

13.8 Set Off

Despite any other provisions of this Authorization, upon the failure of the Operator to pay to the LCBO, as and when due, any amount which becomes payable by the Operator to the LCBO pursuant to the provisions of this Authorization, the LCBO shall have the right, at its option, to deduct any and all such amounts then remaining unpaid from any amounts which are or become payable by the LCBO to the Operator.

LIQUOR CONTROL BOARD OF ONTARIO

Per: 

Name: Penny Wyger

Title: Senior Vice President, General Counsel & Corporate Secretary

The undersigned hereby acknowledges receipt of the foregoing terms and conditions.

PEACE BRIDGE DUTY FREE INC.

Per: 

Authorized Signing Officer

Name: Jones Pearce

Title: General Manager

Address:

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

Elizabeth Kruzel
Sr. Policy Advisor
Corporate Affairs

elizabeth.kruzel@lcbo.com
416-864-6820 tel
416-864-2431 fax

55 Lake Shore Blvd. East
Toronto, ON, M5E 1A4
lcbo.com



Date:

November 16, 2017

Attention:

Jim Pearce

Dear Mr. Pearce:

Following on our e-mail and telephone exchanges enclosed please find in triplicate replacement the LCBO Land Border Duty Free Shop Authorization issued to Peace Bridge Duty Free Inc.

Please arrange for execution under corporate seal; retain one copy for your records and return the other two copies to my attention.

Directly that we receive the fully executed Authorizations I will engage colleagues in LCBO Legal Services to prepare the Amending Agreement that formally removes the 225% maximum sale price ceiling.

Thank you in advance for promptly attending to execution and returning the documents to LCBO Corporate Affairs.

I am very glad to have been assigned once again to provide policy and administrative support to Duty Free Operators.

Sincerely,

Elizabeth Kruzel-D'Cunha
Sr. Policy Advisor, Corporate Affairs

Enclosure (3)

This is Exhibit "I" referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read "Alexandra Teodorescu", written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu



Canada Border
Services Agency

191 Laurier Avenue, West
12th floor
Ottawa, Ontario
K1A 0L8

¹¹⁹³
Agence des services
frontaliers du Canada

191, rue Laurier Ouest
12e étage
Ottawa, Ontario
K1A 0L8

April 27, 2017

Jim Pearce
Finance Manager
Peace Bridge Duty Free Inc.
Hamilton International Airport,
P. O. Box 339,
Peace Bridge Plaza
Fort Erie, ON L2A 5N1

Dear Mr. Pearce,

Officials of the Canada Border Services Agency have completed their review of the information your company submitted to support the renewal of the duty free shop licence for Peace Bridge Duty Free Inc. located at the Hamilton International Airport in Hamilton, Ontario.

I am pleased to inform you that your licence has been renewed for a period commencing May 1, 2017, and ending April 30, 2027, subject to your continuing compliance with the legislative and policy requirements of the Duty Free Shop Program.

I take this opportunity to wish your company continued success.

Yours sincerely,

Kathleen Warburton
Manager
Commercial Registration
Kathleen.Warburton@cbsa-asfc.gc.ca

Attachment: Licence

Canada



AGRÉMENT de BOUTIQUE HORS TAXES

Il est certifié que :

a obtenu un agrément, conformément à la *Loi sur les douanes*, pour exploiter une boutique hors taxes à :

this day of April/ in the year
ce 27th jour de avril de l'année 2017

2027.04.30



1195

Canada Border
Services AgencyAgence des services
frontaliers du CanadaPROTECTED
PROTÉGÉ **B** when completed
une fois rempliDUTY FREE SHOP
APPLICATION/AMENDMENTBOUTIQUE HORS TAXES
DEMANDE/MODIFICATION

The information provided on this form is collected under the authority of Section 24 of the Customs Act for the purpose of assessing new applications, renewals and amendments to existing duty free shop operations. The information is used by Canada Border Services Agency in order to approve and track requests for new applications and amendments and is used to conduct a risk assessment to insure the individual (s) have no criminal or customs infractions. The information may be disclosed internally for risk assessment purposes. Individuals have the right of access to and/or can make corrections of their personal information under the Privacy Act - Section 12. The information collected is described within Info Source under the Duty Free Shops Program - CBSA PPU 007 which is detailed at <http://www.cbsa-asfc.gc.ca/>.

Les renseignements fournis sur ce formulaire sont recueillis en vertu de l'article 24 de la Loi sur les douanes aux fins d'évaluation des nouvelles demandes, des modifications et des renouvellements relatifs aux boutiques hors taxes. L'Agence des services frontaliers du Canada utilise ses renseignements dans le but d'approuver et de surveiller les nouvelles demandes et les demandes de modification ainsi que pour mener une évaluation des risques afin de s'assurer que les personnes en question n'ont pas commis d'infractions criminelles ou d'infractions relatives aux douanes. Les renseignements peuvent être divulgués à l'interne à des fins d'évaluation des risques. Les personnes ont le droit d'accéder à leurs renseignements personnels ou d'y apporter des corrections en vertu de l'article 12 de la Loi sur la protection des renseignements personnels. Les renseignements recueillis sont clairement indiqués dans la section réservée au Programme des boutiques hors taxes - ASFC PPU 007 du bulletin Info Source offert à l'adresse suivante <http://www.cbsa-asfc.gc.ca/>.

- ☒ Licence to operate / Agrément d'exploitation ☐ Licence amendment / Modification de l'agrément ☐ Amendment (Site/Building/Bond) / Modification (Emplacement/Immeuble/Garantie) ☐ Change in ownership / Changement de propriétaire

Applicant information - Renseignements du demandeur		Are site and building plans included? - Les plans de l'emplacement et de l'immeuble sont-ils inclus?	Licence to operate (Site applied for) / Agrément d'exploitation (Emplacement visé)
Name of applicant - Nom du demandeur HAMILTON INTERNATIONAL DUTY FREE		<input type="checkbox"/> Yes / Oui <input checked="" type="checkbox"/> No / Non	<input checked="" type="checkbox"/> Airport / Aéroport <input type="checkbox"/> Land border / Frontière terrestre
Mailing address - Adresse postale Box 339 FORT ERIS ON		Site Address - Adresse de l'emplacement 9300 AIRPORT RD MOUNT HOPE ON	
Postal code - Code postal L2A 5N1	Telephone No. - N° de téléphone 705-871-5400	Business Number - Numéro d'entreprise 10185-1210	

Duty free shop legal name - Raison sociale de la boutique hors taxes

PEACE BRIDGE DUTY FREE INC

Legal status of applicant (Provide proof of Canadian citizenship) - Statut juridique du demandeur (Fournir une preuve de citoyenneté canadienne)

- ☒ Corporation ☐ Partnership / Société ☐ Sole proprietorship / Propriétaire unique ☐ Trust / Fiducie
- ☐ Canadian citizen - Citoyen canadien ☐ Landed immigrant - Immigrant reçu ☐ Canadian company - Compagnie canadienne

All shares must be owned by individuals who are Canadian citizens or landed immigrants. (Airports excluded)
Les actionnaires doivent tous être des citoyens canadiens ou des immigrants reçus. (Aéroports exclus)

Licence Amendment (Provide certified copy of the amendment) - Modification de l'agrément (Fournir copie certifiée de la modification)

- ☐ Change in name - Changement au nom ☐ Suspension ☐ Cancellation - Annulation

Reasons for amendment - Motifs de la modification

Amendment (Site/Building/Bond) - Modification (Emplacement/Immeuble/Garantie)

Changes requested - Changements demandés

CANADA BORDER SERVICES AGENCY (CBSA) USE ONLY - RÉSERVÉ À L'AGENCE DES SERVICES FRONTALIERS DU CANADA (ASFC)

- ☒ Approved - Approuvée ☐ Not approved - Rejetée

Comments - Commentaires

KH Manager CRU **27 April 2017**
Authorized signature and title - Signature autorisée et titre Date

Change in ownership structure (Provide certified copy of the amendment) - Modification à la structure de la propriété (Fournir copie certifiée de la modification)

All shares must be owned by individuals who are Canadian citizens or landed immigrants.
Provide proof of Canadian citizenship.
(Airports excluded)

Les actionnaires doivent tous être des citoyens canadiens ou des immigrants reçus.
Fournir une preuve de citoyenneté canadienne.
(Aéroports exclus)

CURRENT - ACTUELLE
REVISED - MODIFIÉE

Name of applicant - Nom du demandeur

SEE ATTACHED

Name of applicant - Nom du demandeur

Address of residence - Adresse résidentielle

Address of residence - Adresse résidentielle

Postal code - Code postal

Telephone No. - N° de téléphone

Postal code - Code postal

Telephone No. - N° de téléphone

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Name of applicant - Nom du demandeur

Name of applicant - Nom du demandeur

Address of residence - Adresse résidentielle

Address of residence - Adresse résidentielle

Postal code - Code postal

Telephone No. - N° de téléphone

Postal code - Code postal

Telephone No. - N° de téléphone

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Name of applicant - Nom du demandeur

Name of applicant - Nom du demandeur

Address of residence - Adresse résidentielle

Address of residence - Adresse résidentielle

Postal code - Code postal

Telephone No. - N° de téléphone

Postal code - Code postal

Telephone No. - N° de téléphone

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Name of applicant - Nom du demandeur

Name of applicant - Nom du demandeur

Address of residence - Adresse résidentielle

Address of residence - Adresse résidentielle

Postal code - Code postal

Telephone No. - N° de téléphone

Postal code - Code postal

Telephone No. - N° de téléphone

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Name of applicant - Nom du demandeur

Name of applicant - Nom du demandeur

Address of residence - Adresse résidentielle

Address of residence - Adresse résidentielle

Postal code - Code postal

Telephone No. - N° de téléphone

Postal code - Code postal

Telephone No. - N° de téléphone

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Name of applicant - Nom du demandeur

Name of applicant - Nom du demandeur

Address of residence - Adresse résidentielle

Address of residence - Adresse résidentielle

Postal code - Code postal

Telephone No. - N° de téléphone

Postal code - Code postal

Telephone No. - N° de téléphone

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Date of birth - Date de naissance

Beneficial ownership interest
Participation dans la propriété réelle _____ %

Authorized signature and title - Signature et titre de l'agent autorisé

I hereby certify that all information provided with this application is true and I will conform with all the provisions of the CBSA laws and regulations, requirements and procedures for the operation of the duty free shops.

Je certifie, par la présente, que les renseignements fournis sur cette demande sont vérifiées et que je respecterai toutes les lois et tous les règlements de l'ASFC et toutes les exigences et les procédures pour l'exploitation des boutiques hors taxes.

Applicant's signature and title - Signature et titre du demandeur

Licence no. - N° d'agrément

Date

John Pearce General Manager

April 12, 2017

This is Exhibit “J” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', is centered on the page.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

Canada

This is Exhibit “K” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

From: CBSA-ASFC_Duty_Free_Shops-Boutiques_Hors_Taxes <Duty_Free_Shops-Boutiques_Hors_Taxes@cbsa-asfc.gc.ca>

Sent: Thursday, December 9, 2021 3:08 PM

To: Jim Pearce

Cc: Karen Shaubel; CBSA-ASFC_Duty_Free_Shops-Boutiques_Hors_Taxes; Licensing Unit / Unité des agréments (CBSA/ASFC); Gabbatt, Brett; Schlosser, Carl

Subject: Status of Peace Bridge Duty Free Inc. - Fort Erie

Good Afternoon Jim,

It has come to our attention in the Commercial Registration Unit (CRU) that Peace Bridge Duty Free Inc., located at the Peace Bridge in Fort Erie, Ontario, has entered into receivership.

We would like to direct you to the following sections of [Memorandum D4-3-2](#) with respect to the receivership and/or bankruptcy of a Canada Border Services Agency (CBSA) licensed duty free shop:

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.

If it is your intention to have the receivers continue the day-to-day operations of the duty free shop, please note that you must submit a request in writing to the CRU, detailing the information for the proposed personnel that will assume operation of the shop. To assist, you may complete and submit form [BSF664](#) as page 2 of the application form contains sections to provide the relevant personal information necessary for the CBSA to complete our review. Please note that this is **not** a licence application process and the **receiver would not be issued a new duty free shop licence**. Rather, this is a process for the CBSA to approve the receiver to continue to operate under the existing licence.

Additionally, we note that Peace Bridge Duty Free Inc. also operates the duty free shop located at John C. Munro Hamilton International Airport in Hamilton, Ontario. Would you be able to confirm that it is solely the duty free shop located at the Peace Bridge that is the subject of the receivership?

Please feel free to direct any questions or concerns that you have regarding this process to the CRU at Duty_Free_Shops-Boutiques_Hors_Taxes@cbsa-asfc.gc.ca.

Thank you,

1201

Michael Jollymore

Commercial Registration / Commercial and Trade Branch

Canada Border Services Agency / Government of Canada

Duty_Free_Shops-Boutiques_Hors_Taxes@cbsa-asfc.gc.ca

Agrément commercial / La direction générale du secteur commercial et échanges commerciaux

Agence des services frontaliers du Canada / Gouvernement du Canada

Duty_Free_Shops-Boutiques_Hors_Taxes@cbsa-asfc.gc.ca

Government
of CanadaGouvernement
du Canada

Canada

This is Exhibit “L” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu



RBC Royal Bank

July 2, 2021

Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie ON
L2A 5N1

Dear Sirs/Mesdames:

Your Credit Facilities with Royal Bank of Canada

The events surrounding COVID-19 are truly unprecedented and we appreciate the hardships and financial uncertainty that many of our clients are facing. RBC wants to help provide you with the support you need, and that includes immediate and long term relief for clients facing challenging circumstances due to the COVID-19 crisis. It is important that you contact us to discuss your options tailored to your specific circumstances.

We are writing with reference to your credit facilities as set out in the Credit Agreement dated JULY 20, 2018 ('the Agreement'), and all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. Our recent review reveals that you are in default of the following covenant(s) under the terms of the Agreement for the fiscal period ended December 31, 2020:

"FINANCIAL COVENANTS"

In the event that the Borrower changes accounting standards, accounting principles and/or the application of accounting principles during the term of this Agreement, all financial covenants shall be calculated using the accounting standards and principles applicable at the time this Agreement was entered into.

Without affecting or limiting the right of the Bank to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of any demand or other discretionary facility the Borrower covenants and agrees with the Bank that the Borrower will:

- a) maintain to be measured as at the end of each fiscal year:
 - i. Debt Service Coverage, of not less than 1.25:1."

According to our calculation(s), you had a ratio Debt Service Coverage of -8.27.

We acknowledge the default stated above and your plan to remedy such default, on or before December 31, 2021.

*Registered trademark of Royal Bank of Canada. RBC and Royal Bank are registered trademarks of Royal Bank of Canada.

We reserve all rights arising out of the default and reserve the right to demand payment of borrowings outstanding under the credit facilities, if you do not remedy the default within the time period indicated above or in the event of other breaches of the Agreement.

If you have any questions about your credit facilities or would like clarification on any of the above matters, please contact us immediately at the contact number provided below.

Yours truly,



Chris Miotto
Senior Commercial Account Manager
Tel: 905-934-4415

This is Exhibit “M” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', is centered on the page.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

1206

AIRD BERLIS

Sanjeev P. R. Mitra
Direct: 416.865.3085
E-mail: smitra@airdberlis.com

November 23, 2021

VIA EMAIL (bmills@conlinbedard.com)

Peace Bridge Duty Free Inc.
c/o Conlin Bedard LLP
220 Laurier Avenue, Suite 700
Ottawa, ON K1P 5Z9

Attention: **Ben Mills**

Dear Mr. Mills:

**Re: Credit Amending and Forbearance Agreement made as of October 8, 2021
 (the "Agreement") between Royal Bank of Canada (the "Lender") and
 Peace Bridge Duty Free Inc. (the "Borrower")**

As you know, we are counsel for the Lender in respect of the above-referenced Agreement. Unless otherwise defined, all capitalized terms in this letter are defined as they are under the Agreement.

One or more Intervening Event has occurred under the Agreement, including, without limitation, the failure by the Borrower under section 6.4(b) of the Agreement (and, therefore, under section 7.1(c) of the Agreement) to deliver to the Lender, by no later than November 15, 2021, *"evidence that an arrangement satisfactory to the Lender, in its sole discretion, has been entered into between the Borrower and the Landlord in respect of the Lease and the defaults thereunder to ensure that the Landlord will not terminate the Lease before the end of its current term."*


In light of the foregoing, this letter serves as notice pursuant to section 8.8 of the Agreement that the Forbearance Period be and is hereby terminated pursuant to section 4.1 of the Agreement.

Please govern yourself accordingly.

Yours very truly,

AIRD & BERLIS LLP

per


Sanjeev P. R. Mitra
SPRM/jn

This is CONFIDENTIAL Exhibit “N” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

CONFIDENTIAL EXHIBIT "N" TO
THE MOTION RECORD OF
PEACE BRIDGE DUTY FREE
DATED DECEMBER 13, 2021

SEALED AND FILED
SEPARATELY WITH THE
COMMERCIAL LIST COURT
PURSUANT TO THE
ENDORSEMENT OF JUSTICE
PATTILLO DATED
DECEMBER 14, 2021

This is Exhibit "O" referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read "Alexandra Teodorescu".

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

1210

From: Stanek, Chris <Christopher.Stanek@gowlingwlg.com>
Sent: December 10, 2021 11:07 AM
To: Shea, Patrick; David T. Ullmann
Cc: John C. Wolf; Alexandra Teodorescu; Brendan Jones
Subject: RE: Peace Bridge Duty Free

David:

We can do a call at 8:30 Monday morning.

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



From: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>
Sent: Friday, December 10, 2021 10:22 AM
To: David T. Ullmann <DUllmann@blaney.com>; Stanek, Chris <Christopher.Stanek@ca.gowlingwlg.com>
Cc: John C. Wolf <jwolf@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; Brendan Jones <BJones@blaney.com>
Subject: Re: Peace Bridge Duty Free

Good morning. Chris and I are working together on this. Chris has been dealing with the matter for longer so any meeting and the timing would be up to him.

Sent from my iPhone

On Dec 10, 2021, at 09:45, David T. Ullmann <DUllmann@blaney.com> wrote:

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good Morning Pat,

I hope this email finds you well and that the pandemic has been okay for you and yours.

We have very recently been retained on the Peace Bridge Duty Free file as counsel to the debtor. We understand that you have recently taken over carriage of the matter from Chris Stanek.

Based on our review of the file, it seems to me that it would be worthwhile for us to have a meeting, as soon as possible, to discuss the apparent gap between our clients views of the situation.

1211

We are available to meet with you at 4pm today or first thing Monday morning. As I think a large part of this matter will be impacted by issues related to the lease terms, I would be bringing with me my partner John Wolf, who specializes in that area. We would recommend you bring whomever is providing the leasing law input from your side. We are prepared to meet at your office or ours. We do suggest the meeting be in person.

While I realize it is likely ambitious for us to reach a resolution of all issues prior to the court attendance scheduled for Tuesday, I am sure the Court will want to know that we have spoken prior to attending on Tuesday.

I look forward to meeting with you. Let me know if we can meet today.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

🌐 Blaney.com



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References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.

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
(Motion Seeking to Adjourn the Application of Royal Bank of
Canada)**BLANEY MCMURTRY LLP**Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5**David T. Ullmann** (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com**John Wolf** (LSO #30165B)Email: jwolf@blaney.com**Brendan Jones** (LSO #56821F)Email: bjones@blaney.com**Alexandra Teodorescu** (LSO #63889D)Email: ateodorescu@blaney.com

Lawyers for the Respondent

TAB 13

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

BETWEEN:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C.
1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O. 1990, c. C.43, AS AMENDED

**AFFIDAVIT OF RON RIENAS
(Sworn 7 September 2022)**

I, RON RIENAS of the City of Port Colborne, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the General Manager of the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") and, as such, have personal knowledge of the matters herein deposed save and except where I rely on information and belief, in which cases I identify the source of that information and verily believe it to be true.
2. I am swearing this affidavit in support of a motion being brought by the Authority seeking an Order :
 - (a) declaring that the Authority is no longer bound by the restriction imposed by paragraph 11 of the Order dated 14 December 2021 as amended (the "**Appointment Order**") for the reason that Peace Bridge Duty Free Inc. ("**PBDF**") has not, since 14 December 2021, paid rent as required by the Building Lease between the Authority and PDBF dated 28 July 2016 (the "**Lease**"); or, in the alternative,

- (b) an Order lifting the stay imposed by paragraph 9 of the Appointment Order so that the Authority may exercise its remedies under the Lease, including terminating the Lease and evicting PBDF; or, in the further alternative,
 - (c) an Order that PBDF pay, within 10 business days, all rent payable in accordance with the Lease since 14 December 2021 and account for all subsidies received by PBDF since 14 December 2021, without prejudice to the Authority's rights in connection with rent owing by PBDF for the period prior to 14 December 2021.
3. Now produced and shown to me is a bound document titled Brief of Exhibits to Affidavit of Ron Rienas sworn 7 September 2022 (the '**Brief of Exhibits**').
4. The Authority is an international compact entity—a statutory corporation--created pursuant to a compact entered into—and legislation passed--by the State of New York, with the consent of the United States Congress, and by the Government of Canada. It owns and operates the Peace Bridge, an international toll crossing spanning the Niagara River between Fort Erie, Ontario, and Buffalo, New York.
5. The Authority receives its revenues from tolls as well as rental and fee income from the United States Bureau of Customs and Border Protection, Public Works and Government Services Canada, the 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.
6. Pursuant to the Lease, the Authority has leased certain premises to PBDF for the purpose of permitting PBDF to operate a duty free store at the Peace Bridge. A true copy of the Lease is at Tab **[1]** of the Brief of Exhibits.
7. As a result of the impact of the COVID Pandemic, the Lease was amended by a Rent Deferral Agreement dated 27 April 2020 (the "**First Rent Deferral**"). A true copy of the First Rent Deferral is at Tab **[2]** of the Brief of Exhibits.
8. While there is, as set forth below a dispute as to whether there was a further deferral agreed to by the Authority, there is no dispute between the Authority and PBDF that the First Rent Deferral expired on 31 July 2020 and the First Rent Deferral required that the PBDF begin to pay back to the Authority the deferred rent.

9. The Lease requires that PBDF pay Rent, which is comprised of Base Rent, Percentage Rent and any applicable sales taxes, as well property taxes, operating costs and utilities. The minimum annual Rent payable by PBDF is \$4 million per annum—\$333,333 per month. The rent payable by PBDF under the Lease was proposed by PBDF as part of a Request for Proposal process undertaken by the Authority in 2016.

10. The Authority has brought this Motion because PBDF has not paid rent to the Authority as required by the Lease since the Appointment Order was made on 14 December 2021.

11. The Authority is not a Crown corporation and received no COVID-related assistance from the Government of Canada or the United States Government. As a result of the quantum of the rent that is payable by PBDF under the Lease, the Authority was not eligible for the Canada Emergency Commercial Rent Assistance Program.

12. Although there may be a dispute as to how much is owing by PBDF¹, there is no dispute that PBDF owes a substantial amount of rent to the Authority for the period prior to 14 December 2021. Based on the failure of PBDF to pay rent and other breaches of the Lease, on 8 September 2021, the Authority delivered notice to PBDF that it intended to exercise remedies under the Lease. A true copy of this notice is at Tab [3] of the Brief of Exhibits.

13. The Royal Bank of Canada ("RBC") is a secured creditor of PBDF and has security over, among other assets of PBDF, the Lease.

14. On or about 21 November 2021, the Authority, through counsel, advised RBC that it intended to exercise remedies under the Lease as a result of those defaults.

15. On or about 3 December 2021, RBC served an Application to appoint a receiver over the assets and property of PBDF.

16. PBDF opposed RBC's Application and took the position that, among other things: (a) it was not, as at December of 2021, in default of its obligations under the Lease; and, even if it was, (b) the Authority did

¹ I understand that PBDF has indicated that it disputes the amount of rent that the Authority claims is owing, but PBDF has never provided the Authority with the specifics of that dispute or identified how much rent it believes that it owes to the Authority.

not have the right to exercise its remedies under the Lease based on Provincial legislation that imposed a moratorium on the exercise of remedies by commercial landlords.

17. On 14 December 2021, the Court made the Appointment Order appointing msi Sperel inc. (the "**Monitor**") as "monitor" of PBDF to protect RBC's interests as a secured creditor pending the return of RBC's Application and adjourned RBC's Application to 17 January 2022.

18. On 17 January 2022, RBC's Applications was adjourned until 23 March 2022. On 23 March 2022, RBC's Application was adjourned to date on or after 23 June 2022. To the best of my knowledge, the hearing of RBC's Application has not yet been scheduled

19. PBDF has not paid rent in accordance with the Lease since the Appointment Order was made on 14 December 2021. PBDF has, instead, being unilaterally paying rent equal to 20% of its reported sales. A rent ledger showing the rent owing and the amounts paid by PBDF since 14 December 2021 is at Tab [4] of the Brief of Exhibits.

20. On or about 7 January 2022, the Monitor was, through counsel, advised that PBDF was unilaterally paying rent equal to 20% of its reported sales. A true copy of the e-mail from 7 January 2022 is at Tab [5] of the Brief of Exhibits.

21. While there may be communications between PBDF and the Monitor of which I am not aware, there has been no explanation from PBDF of which the Authority is aware as to why PBDF has not been paying rent in accordance with the Lease since the Appointment Order was made.

22. I am aware that, in opposition to RBC's Application, PBDF made certain assertions as to why, prior to 14 December 2021, it was not paying rent in accordance with the Lease. Those assertions are contained in the Affidavit of Jim Pearce sworn 12 December 2021 (the "**Pearce Affidavit**"). None of the assertions made in the Pearce Affidavit explain why PBDF has not paid rent as required by the Lease subsequent to 14 December 2021.

23. I understand, based on the Pearce Affidavit, that PBDF asserts that the Lease was further amended—and the rent deferral extended—by a Rent Deferral Agreement dated 20 November 2020 (the "**Second Rent Deferral**"). The Second Rent Deferral was not signed by the Authority. A true copy of the unsigned Second Rent Deferral is at Tab [6] of the Brief of Exhibits.

24. I do not understand the basis upon which PBDF could possibly assert that the Lease was amended by the unsigned Second Rent Deferral or on what basis the Authority is bound by the unsigned Second Rent Deferral.

25. The Second Rent Deferral expressly provides that it is not binding on the Authority until it is signed by the Authority. In addition, Article 2.17 of the Lease provides:

No supplement, modification, amendment, waiver, discharge or termination of this Lease is binding unless it is executed in writing by the party to be bound. No waiver or, failure to exercise or delay in exercising, any provision of this Lease constitutes a waiver of any other provision (whether or not similar) not does any waiver constitute a continuing waiver unless otherwise expressly provided.

26. The Authority did not sign the Second Rent Deferral. PBDF was advised in writing on or about 20 November 2020, 2 December 2020 and 9 December 2020 that the Authority was not going to sign the Second Rent Deferral and/or further defer rent unless certain conditions were satisfied by PBDF. Those conditions were not satisfied by PBDF. True copies of these communications are at Tab [7] of the Brief of Exhibits.

27. It was my believe, based on the e-mails attached At Tab 7 of the Exhibit Brief, that PBDF understood that the Authority would not sign the Second Rent Deferral and was not agreeing to defer rent after 31 July 2020. I further believe that PBDF understood that any further deferral of rent on the part of the Authority was an indulgence provided by the Authority to try to assist PBDF. That indulgence was provided by the Authority in the context of certain restrictions imposed by the Province of Ontario on the right of commercial landlords to evict tenants based on the failure of the tenants to pay rent.

28. I also note that the Second Rent Deferral cannot possibly be the basis for PBDF to not have paid rent in accordance with the Lease subsequent o 14 December 2021. The Second Rent Deferral, assuming it was signed by the Authority, provided for the deferral of rent payable under the Lease up to the earlier of: (a) 31 March 2021; and (b) the last day of the month following the date the PBDF fully reopened the duty free store at the Peace Bridge.

29. I believe, based on the Pearce Affidavit, that PBDF may assert that the Authority acquiesced to PBDF not paying rent as required by the Lease. In granting any indulgences to PBDF in terms of not pursuing payment of rent strictly in accordance with the Lease, the Authority relied on Article 2.17 of the Lease. At no time did the Authority agree in writing to waive any of its right under the Lease or to provide PBDF with a

permanent rent deferral or waiver. As noted below, subsequent to 14 December 2021, the Authority made it clear to PBDF that it was not accepting PBDF's unilateral decision to pay rent equal to 20% of its reported sales.

30. I believe, based on the Pearce Affidavit, that PBDF may assert that it somehow understood that the Authority had agreed to defer rent until the Canada-US border reopened. Even if this was the agreement between the Authority and PBDF, which it was not, the Canada-US border reopened on November 8, 2021.

31. I believe, based on the Pearce Affidavit, that PBDF may assert that the "principal" of the First Rent Deferral and the Second Rent Deferral was that PBDF would not have to pay base rent under the Lease "until traffic across the Canada-US bordered returned to normal levels and [PBDF] was able to reopen its store to the public". That is not correct. There is nothing in either the First Rent Deferral or, assuming that it is a binding agreement, the Second Rent Deferral to support this assertion.

32. The Authority advised PBDF in writing on or about 24 February 2022, 11 April 2022 and 6 July 2022, that the Authority did not accept, and did not agree to, PBDF paying rent equal to 20% of reported sales as opposed to in accordance with the Lease. True copies of these communications are at Tab [8] of the Brief of Exhibits.

33. Prior to 22 April 2022, there was no practical reason for the Authority to request permission or seek an Order permitting it to exercise its remedies under the Lease based on the failure of PBDF to pay rent in accordance with the Lease. The Provincial moratorium that PBDF asserted, in December of 2021, prevented the Authority from evicting PBDF based on the failure of PBDF to pay rent remained in force until 22 April 2022. Notwithstanding whether the Monitor consented to the exercise of the Authority of its remedies or the Court lifted the stay to permit the Authority to exercise its remedies, the Authority would have had to engage in litigation with PBDF over the scope of the Provincial moratorium and whether it applied to prevent the Authority from exercising its remedies under the Lease.

34. Subsequent to the Provincial moratorium on the eviction of commercial tenants coming to an end on 22 April 2022, the Authority waited a reasonable period to see if PBDF would comply with the Appointment Order and pay back- and going-forward rent as required by the Lease and the Appointment Order. PBDF did, however, not pay rent as required by the Lease in May, June or July of 2022 and made no attempt to pay the back rent owing in accordance with the Lease from 14 December 2021.

35. On or about 26 July 2022, the Authority, through counsel, inquired as to whether the Monitor would consent to the Authority exercising its rights and remedies under the Lease based on PBDF's failure to pay rent in accordance with the Lease and the Appointment Order. This correspondence was also addressed to PBDF. A true copy of the letter from 26 July 2022 is at Tab [9] of the Brief of Exhibits.

36. It is my understanding that the Monitor has declined to consent to the Authority exercising its remedies under the Lease and has required that the Authority bring a Motion seeking an Order allowing it to exercise its remedies under the Lease.

37. On about 2 August 2022, the Authority, through counsel, demanded from PBDF payment of the rent payable in accordance with the Lease from 14 December 2021 and required that PBDF pay rent in accordance with the Lease. PBDF did not pay the rent owing under the Lease from the period subsequent to 14 December 2021 or pay rent in accordance with the Lease for August of 2022. A true copy of the letter from 2 August 2022 is at Tab [10] of the Brief of Exhibits.

38. Aside from the failure to pay rent as required by the lease, there have been other breaches by PBDF of the Lease subsequent to 14 December 2021, including the failure of PBDF to provide the Authority with financial information as required by Article V of the Lease and late payments of rent.

39. I understand from information provided to me by PBDF, including the Pearce Affidavit, that PBDF applied for and received certain rent assistance from the Government of Canada. On or about 2 August 2022, the Authority asked that PBDF account for all COVID-related rent assistance that it has received. PBDF has not provided that information to the Authority.

SWORN BEFORE ME remotely at the City of
Fort Erie and the City of Toronto, in the Province of
Ontario, this 7th day of September 2022.

A COMMISSIONER FOR TAKING AFFIDAVITS

PSHEA

RON RIENAS

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

BETWEEN:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C.
1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O. 1990, c. C.43, AS AMENDED

**BRIEF OF EXHIBITS TO AFFIDAVIT OF RON RIENAS
SWORN 7 SEPTEMBER 2022**

Date: 7 September 2022

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Lawyers for Buffalo and Fort Erie Public Bridge
Authority

TO: THE SERVICE LIST

[THE SERVICE LIST]

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SCHEDULES:

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THIS LEASE is dated as of the 28th day of July, 2016.

B E T W E E N:

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

(the "Landlord")

AND:

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

(the "Tenant")

**ARTICLE I
BASIC LEASE TERMS**

1.01 Basic Lease Terms

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

Address of Landlord:

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

Address of Tenant:

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

**ARTICLE II
DEFINITIONS AND INTERPRETATION**

2.01 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.02 Net Lease

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

2.03 Extended Meanings

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

2.04 Entire Agreement

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

2.05 Governing Law

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

2.06 Time of the Essence

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

2.07 No Limitation

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

2.08 Headings and Captions

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

2.09 Severability

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

2.10 Successors and Assigns

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

2.11 No Partnership or Agency

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

2.12 Joint and Several Liability

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

2.13 Landlord as Agent

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

2.14 Interpretation

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

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

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

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

2.15 Reasonableness

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

2.16 Conflict with Schedules

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

2.17 Amendment and Waiver

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

ARTICLE III GRANT AND TERM

3.01 Demise

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

3.02 Commencement and Termination Date of Term

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

3.03 "As Is" Condition of Leased Premises

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

3.04 Delay in Possession

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

3.05 Restrictive Covenant

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

3.06 Right to Extend the Term

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

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

ARTICLE IV RENT

4.01 Covenant to Pay

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

4.02 Base Rent

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

4.03 Percentage Rent

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

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

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

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

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

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

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

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

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

4.04 Accrual of Rent

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

4.05 Rent and Payments Generally

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

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

4.06 Letter of Credit

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

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

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

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

ARTICLE V FINANCIAL INFORMATION

5.01 Monthly Statements

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

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

5.02 Annual Statements

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

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

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

5.03 Traffic Reports

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

5.04 Books and Records

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

5.05 Right to Examine

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

5.06 Audit

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

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

5.07 Confidentiality

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

5.08 Tenant's Failure

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

ARTICLE VI
PROPERTY TAXES AND OPERATING COSTS

6.01 Property Taxes Payable by the Tenant

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

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

6.02 Contesting Property Taxes

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

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

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

6.03 Business Taxes

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

6.04 Operating Costs

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

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

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

6.05 Payment of Operating Costs

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

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

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

ARTICLE VII UTILITIES

7.01 Charges for Utilities

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

7.02 Tenant Not to Overload Facilities

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

7.03 No Liability

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

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

ARTICLE VIII HVAC

8.01 HVAC System

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

8.02 Landlord's Right to Maintain / Repair HVAC System

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

8.03 Tenant's Responsibility

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

ARTICLE IX USE OF THE LEASED PREMISES

9.01 Use of the Leased Premises

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

9.02 Conduct and Operation of Business

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

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

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

9.03 Nuisance and Waste

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

9.04 Observance of Law

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

9.05 Additional Services of the Landlord

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

9.06 Traffic Direction

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

ARTICLE X
TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY

10.01 Compliance with Environmental Laws and Environmental Approvals

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

10.02 Release of a Contaminant

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

10.03 Environmental Site Assessment

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

10.04 Tenant's Environmental Indemnity

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

10.05 Governmental Authority Requirements

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

10.06 Pre Existing Contaminants

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

10.07 Responsibility for Environmental Contaminants

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

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

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

ARTICLE XI INSURANCE AND INDEMNITY

11.01 Tenant's Insurance

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

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

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

11.02 Requirements of Insurance

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

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

11.03 Sign Insurance

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

11.04 Increase in Insurance Premiums

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

11.05 Cancellation of Insurance

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

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

11.06 Landlord's Insurance

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

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

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

11.07 Loss or Damage

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

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

11.08 Indemnification of the Landlord

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

ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS

12.01 Maintenance and Repairs and Replacement by the Tenant

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

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

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

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

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

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

12.02 Landlord's Approval of Alterations

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

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

12.03 Landlord's Inspection

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

12.04 Surrender of the Leased Premises

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

12.05 Repair where Tenant at Fault

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

12.06 Tenant Not to Overload Floors

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

12.07 Removal and Restoration by the Tenant

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

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

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

12.08 Tenant Capital Expenditures and Improvements

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

12.09 Notice of Defects

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

12.10 Liens

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

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

12.11 Signs and Advertising

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

ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION

13.01 Damage or Destruction to the Leased Premises

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

13.02 Rights to Termination

Notwithstanding Section 13.01:

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

13.03 Certificate Conclusive

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

13.04 Insurance Proceeds

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

13.05 Landlord's Rights of Rebuilding

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

13.06 Negligence of the Tenant

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

13.07 Expropriation

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

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

ARTICLE XIV

ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL

14.01 Transfers

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

14.02 Landlord’s Option to Terminate

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

14.03 Consent Required

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

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

14.04 No Advertising of the Leased Premises

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

14.05 Corporate Ownership

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

14.06 Assignment or Transfer by the Landlord

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

ARTICLE XV ACCESS

15.01 Right to Show the Leased Premises

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

15.02 Emergencies

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

15.03 Access Not Re-entry

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

15.04 Roof Rights

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

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

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

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

15.05 Right to Install Solar Panels

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

ARTICLE XVI
STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

16.01 Status Statement

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

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

16.02 Subordination and Attornment

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

16.03 Financial Information

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

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

ARTICLE XVII DEFAULT

17.01 Event of Default

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

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

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

17.02 Rights of the Landlord

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

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

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

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

17.03 Expenses

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

17.04 Waiver of Exemption from Distress

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

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

17.05 Remedies Generally

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

ARTICLE XVIII MISCELLANEOUS

18.01 Rules and Regulations

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

18.02 Overholding

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

18.03 Notices

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

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

18.04 Registration

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

18.05 Quiet Enjoyment

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

18.06 Landlord's Co-Operation and Access

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

18.07 Regulatory Changes

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

18.08 Unavoidable Delay

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

[END OF PAGE]

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

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per 

Name: *Ron Ruelas*

Title: *general manager 7/28/16*

Per _____

Name:

Title:

I/We have authority to bind the Compact

PEACE BRIDGE DUTY FREE INC.

Per 

Name: *GREGORY G. O'HARA*

Title: *PRESIDENT*

I have the authority to bind the Corporation

SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS

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

Being all of PIN 64220-0290 (LT)

SCHEDULE "B"
LEASED PREMISES PLAN



SCHEDULE "C"
RULES AND REGULATIONS

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

SCHEDULE "D"
TENANT'S PROPOSAL

Please see attached as labeled Schedule D

SCHEDULE D

**Response to Request for Proposal
Operation of a Duty Free Shop at the Peace Bridge
Issued by the Buffalo and Fort Erie Public Bridge Authority**

**The Technical Proposal
May 9, 2016**

Submitted to: Buffalo and Fort Erie Public Bridge Authority
Attn: Kimberlee Kaiser, Executive Assistant
100 Queen Street
Fort Erie, Ontario
L2A 3S6

Proponent: Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Contact: Gregory G. O'Hara
President and Chief Executive Officer
905-871-5400 ext. 107
gohara@dutyfree.ca

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

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	• Conflict of Interest Declaration	
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	• Consent to Surety	
	• Independence statement	
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4	Qualifications & Experience	
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	• Experience in Similar Retail Operations	9
	• Distinguishing Features	9
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P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

May 9, 2016

Kimberlee Kaiser
Executive Assistant
Buffalo & Fort Erie Public Bridge Authority
100 Queen Street
Fort Erie, ON L2A 3S6

Dear Ms. Kaiser:

Peace Bridge Duty Free Inc. ("PBDF") is pleased to submit a proposal in response to the Request for Proposal (the "RFP") issued by the Buffalo & Fort Erie Public Bridge Authority (the "Authority") to develop and operate a duty free Store on the Canadian side of the Peace Bridge.

PBDF has reviewed the lease included in Appendix A of the RFP and confirms that PBDF understands the principal terms of the lease. If successful in this RFP process, PBDF is committed to entering into the lease in a form to be agreed upon by PBDF and the Authority, including those provisions identified as mandatory provisions in Part V, Section B of the RFP.

Peace Bridge Duty Free Inc. is the incumbent operator at the Peace Bridge Plaza and firmly believes that it is the best qualified to operate the duty free Store. The reasons for PBDF's belief in this regard are set out in full detail our proposal, which PBDF confirms is a firm and irrevocable offer.

PBDF believes that it is the best qualified to develop and operate the duty free Store at the Peace Bridge for many key reasons including:

- PBDF has a senior management group and staff that have extensive duty free industry business experience and its ownership is stable and has a strong financial capability.
- PBDF is an award winning duty free operator that has received numerous duty free industry distinctions over the years including the "Platinum Award" from the Frontier Duty Free Association in recognition for being the "Best Canadian Land Border Duty Free Store."
- PBDF has demonstrated a track record of generating incremental sales and mitigating significant business challenges including dealing with declining Peace Bridge vehicle traffic from Canada to the United States for more than a decade.





P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-5335

- PBDF has engaged a renowned design team SmartDesign Group, that has a tremendous amount of experience with respect to specialized retail environments, to assist PBDF in creating an unparalleled luxury land border duty free shopping experience.
- PBDF has entered into many strategic relationships. These relationships will significantly enhance the business at the Store.

PBDF owners, staff and partners look forward to the exciting opportunity to develop and operate a land border duty free store at the Peace Bridge Plaza in Fort Erie, Ontario.

I, Gregory G. O'Hara, am an official with PBDF and will be the primary contact person with the Authority.

Yours truly,

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario

Email: gohara@dutyfree.ca
Phone: 905-871-5400 ext. 107



Non-collusive Proposal Certification



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-5335

In accordance with Item (iv) of Part IV.A.1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify that:

- This proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person or corporation;
- Peace Bridge Duty Free Inc. has not directly or indirectly induced or solicited any other Proponent to submit a false or sham Proposal, or decline to submit a Proposal;
- Peace Bridge Duty Free Inc. has not sought, by collusion, to obtain any advantage over any other Proponent or over the Authority; and
- I, Gregory G. O'Hara, am entitled to represent Peace Bridge Duty Free Inc., empowered to submit the bid, and authorized to sign a lease with the Authority.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Conflict of Interest Declaration



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item (v) of Part IV.A1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify, on behalf of Peace Bridge Duty Free Inc., that there is no actual or potential Conflict of Interest relating to the preparation of this proposal, and/or Peace Bridge Duty Free Inc. does not foresee an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

I also confirm that I have the power to bind Peace Bridge Duty Free Inc. and, therefore, I am entitled to make this certification and declaration on behalf of Peace Bridge Duty Free Inc.

In the interests of full disclosure, the only individual involved in the preparation of the proposal that has had any employment relationship with the Bridge Authority is an individual who worked as a summer student at the Buffalo and Fort Erie Public Bridge Authority ("Authority") over 35 years ago. The full details of his employment are:

Name: John Menchella

Last date of employment with the Authority: John Menchella was employed by the Authority for the summer terms of 1978 and 1979.

Name of last supervisor with the Authority: unknown

Description of individual's job functions at last position with the Authority: John Menchella was employed as a summer student with the Authority for a short period in 1978 and 1979. John Menchella was assigned tasks related to traffic direction.

Description of the nature of individual's participation in preparation of proposal: John Menchella acted as a consultant and provided advice regarding the preparation of the proposal.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.

Duty Free

Statement of Insurability



McAvoy, Belan & Campbell
Insurance and Financial Services Ltd.

April 26, 2016

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

Attention: Jim Pearce

Dear Sir:

I have examined the lease requirements and confirm that we are currently providing and/or exceeding the required types and levels of insurance as outlined in the leasing conditions. We will have no problem maintaining these requirements in the future.

In addition to the lease requirements, we have added the following enhancements:

- 1) Business interruption on the main location has been extended to cover the bridge itself. This will allow the Duty Free income stream to continue if one of the same perils befalls the structure
- 2) Terrorism insurance, which is a standard exclusion in Canada, has been purchased through the international markets to cover the main location for property and loss of income. It has also been extended to cover the bridge structure as described above
- 3) Other coverage added to the main location include:
 - a. Privacy Breach Liability
 - b. Pollution Liability
 - c. Flood & Earthquake Coverage

If you require further information, please do not hesitate to contact me.

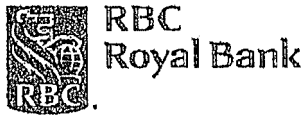
Sincerely yours,

Tim McAvoy, BA, RIB
McAvoy, Belan & Campbell

351 CANBRO ROAD
RIDGEVIEW ON
L0S 1M0
905.892.9590

350 KING STREET
PORT COLBORNE ON
L3K 4H3
905.834.3666

mbefinancial.ca

Consent to Surety

Chris Miotto
Senior Account Manager

Commercial Financial Services
Graham Shopping Plaza Branch
380 Scott Street
St. Catharines, ON L2M 3W4
Transit 04242

Tel: (905) 934-4416
Fax: (905) 934-4676
E-mail: chris.miotto@rbc.com

April 6, 2016

Jim Pearce
Manager Finance
Peace Bridge Duty Free Inc.
P.O. Box 339, Peace Bridge Plaza
Fort Erie, Ontario, L2A 5N1

Dear Jim:

Further to our discussions, we congratulate Peace Bridge Duty Free Inc. for their outstanding historical financial performance. This letter will confirm that RBC Royal Bank and Peace Bridge Duty Free Inc. have an outstanding business relationship spanning several years. RBC Royal Bank currently supports and will continue to support the company's vision and future plans.

We at RBC Royal Bank acknowledge the strong relationship that Peace Bridge Duty Free Inc. has with the Buffalo & Fort Erie Public Bridge Authority and such, offer the following surety statement. Based on the company's strong historical financial results, Peace Bridge Duty Free Inc. would qualify and be eligible for a Letter of Credit to be issued to the benefit of the Landlord, the Buffalo & Fort Erie Public Bridge Authority in the amount of \$500,000.

Peace Bridge Duty Free Inc. has made notable contributions to Fort Erie's community & economic development, and such, the outstanding financial results could not have been reached without the company's strong leadership and commitment to quality customer service.

Congratulations again, we trust the foregoing meets your requirements; however, should you require further information, please feel free to give me a call.

Yours truly,

A handwritten signature in black ink, appearing to read 'Chris Miotto', written over a horizontal line.

Chris Miotto
Senior Account Manager

Independence Statement



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item 2 of Part IV.B of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify and declare, on behalf of Peace Bridge Duty Free Inc., that Peace Bridge Duty Free Inc. is independent of the Authority and that Peace Bridge Duty Free Inc. and its personnel will avoid any actual, apparent or perceived conflict of interest.

I, Gregory G. O'Hara, also confirm that I have the power to bind Peace Bridge Duty Free Inc. and, therefore, I am entitled to make this certification and declaration on behalf of Peace Bridge Duty Free Inc.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Representations by the Proponent



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item e of Part IV.B3. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify and represent, on behalf of Peace Bridge Duty Free Inc., that:

- i. All financial statements provided as part of Peace Bridge Duty Free Inc.'s proposal have been prepared in accordance with GAAP and present fairly the financial condition of Peace Bridge Duty Free Inc. at the dates of such statements;
- ii. No material adverse change in the business or financial condition of Peace Bridge Duty Free Inc. has occurred since the date of the most recent financial statements provided as part of the Proposal;
- iii. Peace Bridge Duty Free Inc. has filed all tax returns required to be filed at the date of the Proposal and has paid all taxes owing as at the date of the Proposal;
- iv. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not been a party to or otherwise subject to any material litigation or judicial proceeding nor is any such litigation or proceeding threatened at the date of the Proposal;
- v. Peace Bridge Duty Free Inc. is in compliance, in all material respects, with all laws applicable to Peace Bridge Duty Free Inc. and its business;
- vi. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not received any notice from any government or governmental body or agency of, or otherwise been involved in, any investigation, inquiry, charge or proceeding involving or affecting Peace Bridge Duty Free Inc.; other than issuance of a ticket for \$365 from the Niagara Region under the Smoke Free Ontario Act (which is being contested) which is automatically issued after one of our long-term staff erroneously sold cigarettes to someone under age. PBDF has re-educated all staff and is making additional system improvements to lessen any chance of reoccurrence.
- vii. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not made an assignment in bankruptcy, being petitioned into bankruptcy or been the subject of a receivership or other insolvency proceeding;





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In accordance with Item (IV) of Part IV.A.1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify that:

- This proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person or corporation;
- Peace Bridge Duty Free Inc. has not directly or indirectly induced or solicited any other Proponent to submit a false or sham Proposal, or decline to submit a Proposal;
- Peace Bridge Duty Free Inc. has not sought, by collusion, to obtain any advantage over any other Proponent or over the Authority; and
- I, Gregory G. O'Hara, am entitled to represent Peace Bridge Duty Free Inc., empowered to submit the bid, and authorized to sign a lease with the Authority.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Qualifications and Experience

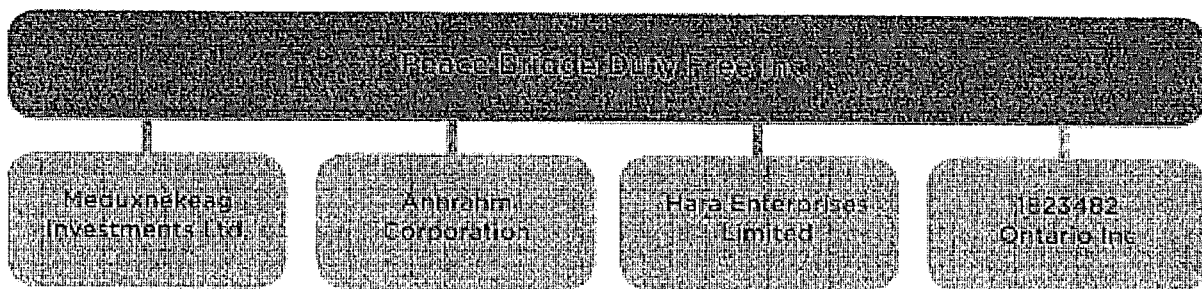
a. Proponent Name and Location of Proponent Headquarters

Peace Bridge Duty Free Inc. ("Proponent" or "PBDF") headquarters are located at 1 Peace Bridge Plaza, Fort Erie, Ontario, Canada where it operates the Peace Bridge duty free land border store ("Store").

All of the functions related to the duty free store will be based at 1 Peace Bridge Plaza in Fort Erie, Ontario. In addition, PBDF will have an off-site warehouse located at 1178 Concession Road, Fort Erie, Ontario to store fixtures not currently in use.

b. Description of Proponent

The ownership structure for Peace Bridge Duty Free Inc. is as follows:



Each shareholder has a 25% ownership in Peace Bridge Duty Free Inc.

The Directors and Officers of the Proponent are:

i) Directors

Barbara Slipp
Israel Harvey Rossman
John Michael Marsh
Gregory G. O'Hara

ii) Officers

Gregory G. O'Hara
Chairman
President
Chief Executive Officer

James Pearce
General Manager
Secretary-Treasurer

Brief Description of the Proponent's Business

PBDF is a business primarily focused on the operation of a land border duty free store. PBDF has operated a land border duty store on the Canadian side of the Peace Bridge crossing since November, 1986. PBDF is a major employer in the local community as it currently employs approximately 90 staff in its retail operations.

c. Proponent's Experience as an Operator of a Duty Free Store or Other Retail Operations for the Last Five Years.

Over the last five years PBDF has operated a land border duty free store and a duty free store at an international airport. Each will be described separately in response to the RFP information requested.

Land Border Duty Free Operations

i) Location:

Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario, Canada

ii) Years in Business:

PBDF has successfully operated a large scale land border duty free store for 30 years since November, 1986.

It was managed by a true industry leader and innovator, George W. Slipp, from 1986 until his death in 2012. PBDF continues to follow Mr. Slipp's innovative business approach.

iii) Brief Description of Services Provided

PBDF is a multi-award winning land border duty free shop operator which currently manages approximately 28,000 square feet of duty free retail space. Peace Bridge duty free has won many prestigious awards over the years including the 'Platinum Award' for being the 'Best Canadian Land Border Duty Free Store' from the Frontier Duty Free Association.

PBDF is a full-line, full-service land border duty free store operator dedicated to providing its customers with quality merchandise and exceptional service at the Canada/USA border crossing in Fort Erie, Ontario. The land border duty free operation is open 24 hours a day, 365 days a year, and has a Tim Horton's and McDonald's, as well as a large food court on-site. In addition to its retail offering, PBDF also provides a FINTRAC authorized currency exchange service at competitive rates (with the guarantee 'better than the bank'), ample motor coach parking, and other travel services tied to selected marketing programs.

PBDF is a well established, highly successful, locally owned Canadian company that has been in operation since November 1986. PBDF has been a duty free leader in marketing as evidenced by its numerous industry awards and is devoted to promoting the border crossing and the local area as a destination and as a travel stop. As the last stop travelers will encounter prior to exiting Canada, PBDF takes its ambassadorial responsibilities very seriously and strives to provide each visitor leaving the Country with a very favourable lasting impression of Canada thereby ensuring their return visit.

PBDF is noted for offering luxury name brand products such as Ray Ban, Coach, Michael Kors, Tory Burch, Kate Spade, Tom Ford and more all which are sold at tax and duty free prices. PBDF is famous for its offering of quality luxury brand names and excellent customer service and holds the esteemed distinction of selling more Crown Royal than any other retailer in the world.

iv) Average Sales

The Store operation has generated average annual sales of \$22.4 million (approximately \$1.9 million per month or \$60,000 per day) over the last five years at the Peace Bridge Plaza location.

Airport Retail Operations

i) Location:

Hamilton International Duty Free and Departures ("HIDF")
Hamilton International Airport
9300 Airport Rd W
Mount Hope, Ontario

ii) Years in Business:

Peace Bridge Duty Free Inc, doing business as Hamilton International Duty Free and Departures, has operated the duty free and duty paid retail operations since 2007.

iii) Brief Description of Services Provided

PBDF offers passengers traveling internationally through Hamilton International Airport a duty free shopping experience. The HIDF retail outlet is located post-security in the Departures Lounge and also provides passengers traveling domestically with duty-paid 'convenience' item purchase options.

iv) Average Sales

PBDF has generated average annual sales of \$.5 million (approximately \$40,000 per month or \$1,400 per day) over the past five years at Hamilton International Airport.

d) Financial Statements

PBDF has audited financial statements for 2013 and 2014.

Audited financial statements for 2015 are not yet available and therefore the 2015 financial statements included in this RFP response are indicated as "Notice to Reader" at the time of this submission.

2016 Interim Financial Statements have also been provided in accordance with RFP requirements.

All the financial statements are found at the end of Tab 4.

As evidenced by the financial statements provided, PBDF has consistently demonstrated a strong financial position and is fully capable of financing the proposed Store development and operational plan.

e) Representations by the Proponent

Please see Tab 3 for Representations by the Proponent.

f. Canadian Border Services Agency ("CBSA") License

PBDF currently has a license to operate the land border duty free shop at Fort Erie, Ontario, Canada. The CBSA license is effective until January 25, 2025.

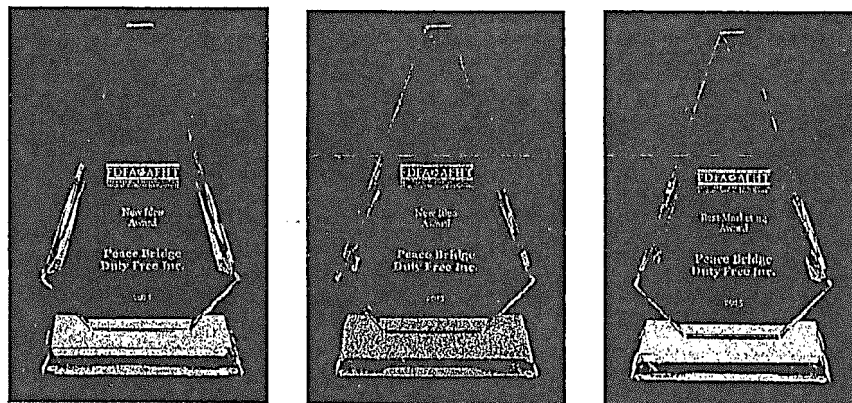
PBDF does not have an impediment that would prevent it from obtaining a license from CBSA. Its current license extends beyond the proposed lease commencement date indicated in the RFP.

g. Description of Past Marketing and Sales Program

PBDF's ownership believes that it is very important to continually invest in marketing and sales programs in order to stimulate sales. PBDF has directly invested approximately \$800,000 per year and in partnership with its brand partners invests well over \$1 million per year in marketing and sales programs.

PBDF has conducted a multitude of highly successful marketing and sales programs over the years in order to maximize sales at its land border duty free store located at Peace Bridge Plaza in Fort Erie, Ontario.

As an acknowledgment of PBDF's effective and successful marketing and sales programs, PBDF has won many duty free industry awards in recognition of its efforts including the 2015 "Best Marketing" and "Best New Idea Awards" from the Frontier Duty Free Association.



Some examples of the effective marketing and sales programs that PBDF has developed and executed are as follow.

Loyalty Club Program

This is a **proprietary** and **exclusive** program developed and managed by PBDF. This program is designed to stimulate repeat business by offering the Store loyalty club members exclusive offers and targeted communications. Members are given the opportunity to pre-order products, access exclusive limited editions and receive special introductory prices. E-blasts are sent to members on a weekly basis, at a minimum.



PBDF has built the largest Canadian land border duty free loyalty program and has in excess of 60,000 loyalty club members and has a Facebook following of approximately 30,000. PBDF's proprietary data indicates that this program is effective at generating loyalty and program members spend 15% more, on average, than the rest of its customers.

Partnerships

PBDF has entered into numerous partnerships in order to generate store awareness and stimulate sales.

A key partnership that PBDF has developed over the years is with Diageo, the largest liquor company in the world. Diageo has asked PBDF to participate in an exclusive global travel retail program. PBDF is the only Canadian land border duty free operator to be chosen by Diageo to participate in this initiative. This ongoing program involves special promotional displays, new branded fixtures, specialized training, targeted pricing promotions, external media and online campaigns, etc.

PBDF has established promotional based partnerships linked to Darien Lake Amusement Park, Kissing Bridge Ski Resort, Buffalo Bisons Baseball, Erie County Fair, Live Nation, Fantasy Island Amusement Park, etc. PBDF's partnership with these popular points of interest provides discounted tickets and coupon offers to the Store. These partnerships have led to many new customers visiting the Store.

PBDF has an exclusive partnership with the Buffalo Niagara International Airport ("BNIA"). As part of this exclusive agreement, PBDF is officially known as the duty free store of BNIA. Approximately 600,000 Canadians fly out of BNIA annually. PBDF created this partnership to increase the capture and sales of those travelers crossing the border on their way to BNIA. PBDF, as part of its travel services offering, coordinates Stay n Fly packages with hotels near the airport as well as discount parking and provides other Store discounts. PBDF is prominently marketed on the BNIA website and BNIA is featured on PBDF's website.

As the largest seller of beer on the Canada/USA border, PBDF has coordinated a tri-partnership with Budweiser/Labatt and Elite Sports, the number one bus company for sports trips. The purpose of this tri-promotion is to provide added value to the bus customer, generate more beer sales for Budweiser/Labatt and increase total sales for PBDF.

PBDF has a travel service which provides exclusive travel offers to key destinations in the states of New York and Pennsylvania. For example, PBDF offers Canadian customers the opportunity to utilize PBDF's travel service whereby PBDF will make hotel reservations to destinations such as Erie and Grove City, Pennsylvania Shopping Centers, Splash Lagoon Family Getaways, Peak n Peak Ski and Golf packages, Ellicottville promotional packages, etc. Customers not only get free travel services from PBDF but they also get discount coupons for products in the Store and offerings related to the outlet malls. Customers pick up their reservation materials at the Store and this results in increased customer traffic.

Media and Publications

For 30 years, PBDF has invested significant funds in traditional media venues. These include radio, newsprint, flyers, magazines, publications and television. Depending on the particular day of the week, month or season or the current economic, border or currency situations, PBDF would alternate target markets to Western New York, the Greater Toronto Area, the QEW corridor from Mississauga to Fort Erie as well as the Hamilton and Niagara regions.

PBDF has developed an excellent relationship with the LCBO and is one of their largest land border duty free customers. PBDF promotes its offering in the LCBO Food and Drink magazine, which has a distribution of over 500,000. The purpose of this promotional initiative is to create awareness for the Store, to highlight the savings to customers by shopping duty free and to promote exclusive products available only in the Store.





PBDF has launched a **proprietary** and **exclusive** "Freeway" magazine specifically developed to target potential duty free customers. Distribution of this magazine is done through LCBO stores and is a result of the unique relationship that PBDF has developed with the LCBO over the years. In addition, 50,000 copies of this magazine are distributed through Buffalo News and 10,000 copies are distributed through the Grimsby Travel Centre. This magazine promotes key products and is designed to stimulate sales into the Store.

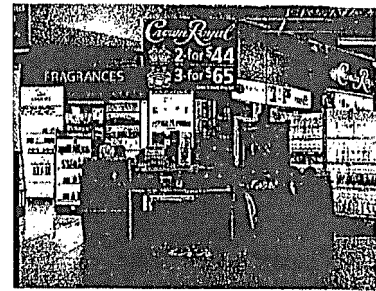


PBDF has entered into key contracts for strategic billboard placements. PBDF strategically uses billboard signage located along major highways to direct vehicular traffic to the Peace Bridge Plaza. This signage has proven to be effective at creating awareness, to showcase specific product offers and to highlight that Tim Horton's and McDonald's are located in the Store. The Tim Horton's and McDonald's brands have proven to be high traffic generators.

In-store Promotional Areas

In-store promotional areas are important because they are utilized to showcase new product launches and to stimulate sales. Many of the in-store promotions are done in partnership with PBDF's key Brand partners.

PBDF has developed a seasonal marketing calendar that highlights promotions based on the month, holidays and the events on both sides of the border. Promotions are strategically planned with billboards, signage and displays in store based on the time of year. For example during May, promotions are run on both sides of the border for the start of summer for the Canadian and American long weekends. Special events such as Buffalo Bills, Buffalo Sabres and Buffalo Bison games are promoted with discount ticket, merchandise and product offers during their specific seasons. During the holidays, PBDF runs a very unique marketing campaign to encourage Americans to do their holiday shopping at PBDF during their lunch hours with a Let US Pay Your Toll reward for coming to shop during this time.



An example of a successful in-store promotion was one which involved celebrity **Dan Ackroyd**, who is brand owner of Crystal Head vodka. He drew over 1000 customers and as a result of his appearance, PBDF set a duty free industry record for one day sales of Crystal Head vodka.

Digital Marketing

PBDF has developed a **proprietary** and **exclusive** website which has the domain of www.dutyfree.ca. This site is used to create awareness for the Store and to highlight key promotions in order to generate sales. The domain www.dutyfree.ca is ranked #1 in the duty free industry by Google and has surpassed 1 million visitors to the site, over 4 million page views and achieved a 28% return rate.

PBDF has purchased strategic digital ad placements on many high traffic websites including The Toronto Star, buffalonews.com, Buffalo Niagara International Airport, The Globe and Mail, The Weather Network, Yelp, TripAdvisor, Google, Facebook, Chinese Professional Association and crossbordershopping.ca



#Found@PBDF is an example of a digital campaign that leveraged Twitter, Facebook, and YouTube to generate social conversation around the brand. The campaign encouraged customers to share the great deals, interesting finds and favourite brands purchases at the Store, on their social networks, using #Found@PBDF. This initiative helped to create positive buzz and consumer advocacy and worked to brand the Store in terms of selection, uniqueness and exclusivity of products.

Another recent example of a digital marketing initiative is one that was conducted in March, 2016. PBDF enacted a heavily targeted online strategy with the Buffalo News and Western New York radio stations' email lists to encourage US audiences to travel to the Store as a destination stop. PBDF offered a "Pay Your Toll" reimbursement and gift cards as incentive offers and created a visual online campaign "This is What 30% more looks like" with a large money pile that visually enforced the additional savings our US customers would receive. The campaign was very successful and achieved 792,000 impressions with approximately 12,000 clicks.

Ethnic Marketing

PBDF has developed an Ethnic marketing program. PBDF utilizes this type of marketing to target specific groups with more focused and appropriately presented messages with the ultimate goals of generating increased store awareness and to stimulate sales. For example, PBDF utilized this type of marketing to target the almost one million East Indians that live in the Toronto area. Flyers were developed in their native language and distributed to neighborhoods populated by this customer segment. The flyers identified popular products and promoted special offers and pricing. This campaign was extremely successful and generated a noticeable increase in business.



Experience of Manager and Key Personnel

In 2010, PBDF made changes to its senior management team. Since these changes were implemented, PBDF sales have outperformed traffic by 10%. The current management team has been successful in creating a positive team focused culture to the complete satisfaction of staff.

All of PBDF's management, buying, accounting, marketing, sales and support staff live in the community where the Store is located. The key personnel that will be involved in the development and operation of the Store are indicated below. Their respective resumes are provided at the end of Tab 4.

Gregory G. O'Hara

President and CEO

Greg has been President and CEO of PBDF since 2012 and has been a Director of PBDF since 1993. He has over 30 years of retail experience much of which has been in the duty free industry. In addition to PBDF, Greg is an owner in Hara Enterprises, a venture capital firm. Greg has a Master of Business Administration degree from Miami University, Ohio.

Greg will be the executive liaison with the Authority and will be responsible for leading the PBDF organization.

James Pearce
General Manager

Jim has been an employee of PBDF for 24 years and has experience in all aspects of the land border duty free business. He has held several key management positions throughout his career including at the PBDF Currency Exchange and Tourist Information Centre, PBDF retail at the Fort Erie Truck Plaza and duty free operations at Hamilton International Airport. Jim is a Chartered Professional Accountant and a Certified Management Accountant.

Jim will have oversight responsibilities for all aspects of the proposed operation including managing a team of 12 buyers for the various product categories sold at the PB store.

Bonnie Gates
Marketing Manager

Bonnie began her career at PBDF in 1997 as a retail floor supervisor. Since 2009, she has been the Marketing Manager at PBDF. She is responsible for the development and implementation of the PBDF marketing program and her efforts have resulted in PBDF receiving numerous marketing awards in recent years. Bonnie has a bachelor degree from the University of New Brunswick.

Bonnie will be responsible for developing and implementing the proposed marketing program and in-store merchandising.

Sandy Rienzo
Store and Operations Manager

Sandy has served in various management roles at PBDF for 25 years. Prior to joining PBDF, he held management positions in retail and in the food and beverage industry across Canada and Spain. Sandy attended the Western University - Engineering, Mohawk College - Electronic Technology and Niagara College - Operations Management.

Sandy will be responsible for providing oversight to PBDF full complement of ten supervisors and for effective sales and support of the operations.

Other PBDF Support

PBDF has entered into a consulting agreement with John Menchella, President of Menchella Consulting Group, Inc. John has over 30 years of business experience and has held various senior management positions at many large retail corporations in Canada during his career.

He has an extensive background in business development, marketing, general management and finance. John also has over 15 years of experience in the duty free industry. Prior to founding his own consulting company In 2014, John was Senior Vice President of Business Development and a member of the Executive Management team for one of the world's largest, global duty free organizations, The Nuance Group.

John attained a Bachelor of Business Administration from Wilfrid Laurier University and is a Chartered Professional Accountant and a Certified Management Accountant.

John has provided assistance to PBDF in their RFP response and if PBDF is the Successful Proponent, he will assist in the proposed store development. John will be part of an Advisory Board that will be established by PBDF to oversee the Store operations, be responsible for long range planning and business development initiatives.

Experience in Similar Retail Operations

Please see section c above for a description of other similar retail operations. In addition to its land border duty free operation at the Peace Bridge, PBDF has developed and operates a duty free operation at Hamilton International Airport. This operation serves customers traveling to international destinations and has been in existence since 2007.

The landlord contacts that can confirm PBDF's operational experience at these retail operations are:

<p>Ron Rienas <i>General Manager</i> Buffalo and Fort Erie Public Bridge Authority rr@peacebridge.com 905-871-1608</p>	<p>Lauren Yaksich <i>Director, Marketing and Communications</i> John C. Munro Hamilton International Airport lyaksich@flyhamilton.ca 905-679-1999</p>
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Distinguishing Features

PBDF is an award winning leader in the land border duty free industry since 1986 and has operated one of the largest land border duty free stores in the Americas since 1998. Over that time, it has gained unsurpassed knowledge of the challenges and opportunities of the Peace Bridge Plaza retail environment in which it operates. In recognition of its outstanding performance during the last several years, PBDF has received numerous awards including the prestigious "Platinum Award" bestowed by the Frontier Duty Free Association. This award has been received multiple times by PBDF and is for the distinction of being recognized as the "Best Canadian Land Border Duty Free Store."

PBDF has also been recognized in the duty free industry for its many outstanding marketing and sales programs. It is a multiple winner of industry awards in recognition of its exceptional marketing program including the 2015 "Best Marketing" award. Please see section g of this submission for examples of some of the many marketing and sales programs conducted by PBDF.

PBDF has major key distinguishing features when compared to other similar business. The key distinguishing features are commitment to:

- Investment in Innovative Marketing Initiatives
- Strategic partnerships
- Local Community Involvement

Investment in Innovative Marketing Initiatives

A key distinguishing feature of PBDF is that it does not rest on its past accomplishments despite having a distinguished record of growing its business significantly from the time it first began operations in 1986.

PBDF prides itself on being an **innovator** in the duty free business and an organization that evolves to meet industry and customer trends in order to maximize sales. Over the years, PBDF has developed and implemented many new innovative marketing initiatives.

PBDF has developed a comprehensive digital marketing strategy in order to promote the Store and to increase sales.

The PBDF domain www.dutyfree.ca is the #1 ranked site for all duty free searches according to

Google and has had over **one million visitors**. PBDF is in the process of developing a state of the art retail website that will further drive customer awareness and stimulate sales. This new website will be launched in the Fall of 2016 just in time for the holiday season. It will feature full product search, pre-order shopping cart features, travel reservation services, PBDF created videos and product information.

The new website will support all social media channels and will attempt to engage consumers of all age demographics. PBDF will have a full digital strategy to leverage these platforms that will include the development of the PBDF YouTube channel. With over 2 billion views a day, YouTube is the second most visited site in the world and an important platform to share short videos with people and an extremely powerful tool to help educate the duty free consumer. PBDF will utilize YouTube by inserting videos into product descriptions which will help grow the PBDF channel and increase awareness about the brands and exclusive products offered at PBDF.

PBDF is also exploring the use of the fastest growing social application Snapchat. Snapchat is an app where you can share a photo or video and allows PBDF to send exclusive content to its followers. Snapchat is an effective way to generate a buzz around a new product launch and highlight duty free exclusive offers. Similar to a response on Facebook or Twitter, PBDF will use Snapchat to send personalized messages and videos to thank customers for their loyalty.

PBDF is also exploring the use of mobile messaging applications to increase capture to the store. Ping Perks is a mobile push messaging service that leverages beacon technology to offer consumers relevant SMS promotions based on shopping behaviors.

Strategic Partnerships

In order to create awareness and to increase sales at the Store, PBDF has entered in many strategic partnerships over the years and will continue to look for new opportunities in this area in the future.

An important strategic initiative in this regard was to enter into an agreement to have high profile brands **Tim Horton's** and **McDonald's** establish operations within the Store. This initiative is important because it has proven to increase Store customer capture rates and ultimately generate increased duty free sales.

PBDF is currently seeking to enter into a key partnership with DFASS Distribution, LLC, a **DFASS Group** affiliated company ("DFASS"). DFASS, headquartered in Miami, Florida, is an award winning, global leader in duty free and specialty retail operations. DFASS generates \$600 million in annual revenue and has operations on five continents. DFASS is the world's largest in-flight duty free enterprise and also has many land border and international airport duty free operations. Some of the prominent international airports where DFASS has duty free operations include Chicago O'Hare, Dallas/Fort Worth, Fort Lauderdale/Hollywood and Orlando.

DFASS and PBDF intend to enter into a supply/services agreement which will include DFASS supplying PBDF specific product categories and assistance with merchandise planning related services. This relationship is important to PBDF because it provides PBDF access to the DFASS global supply network and economies of scale. It will also allow PBDF to leverage the DFASS global customer database to enhance customer buying preference understanding and this will translate into better targeted product offerings and increased sales.

The key benefit to the Authority of this partnership will be more revenue through increased sales.

PBDF continues to team up with many other strategic partners including key Brand Partners such as Diageo, the largest liquor brand owner in the world, in order to promote important duty free products; Destination Partners such as the Buffalo Bisons, Buffalo Sabres, Buffalo Bills and key Tour Bus Operators in order to drive additional customer traffic into the Store.

Most recently, PBDF entered into an agreement with a significant Asian Tour Bus Operator. This is very important because the Asian customer is by far the highest spending nationality in the duty free industry and a customer that buys very high end duty free brands.

This partnership is expected to result in significant incremental sales growth.

Local Community Involvement

PBDF is committed to supporting the local community. It has done so by providing approximately 90 local employment opportunities and by investing significantly in local community programs.

PBDF offers local community staff highly competitive wages and it is considered a major employer in Fort Erie. In addition to competitive wages, PBDF offers comprehensive benefit packages including a health program and a pension plan. Additionally, it provides incentive programs to its employees that recognize and rewards exceptional performance. PBDF strongly believes that this is a key part of its overall compensation program so that its employees are fully aligned with senior management in maximizing sales at the Store.

In recognition of its employment program efforts, PBDF was awarded "2011 Employer of the Year" by the Fort Erie Chamber of Commerce.

PBDF is also an integral part of the community because it employs local contractors, trades, cleaning staff, etc. in the maintenance and operation of its Store.

PBDF is proud to be a major donator and sponsor of many worthwhile programs both in the Niagara Region and Western New York. Some of the local initiatives that PBDF has supported or continues to support local schools and local athletic programs (e.g. Fort Erie Minor Hockey and Baseball), Walker Cancer Foundation, Champ Foundation of Buffalo, Douglas Memorial Hospital, Visitor Convention bureaus, Buffalo/Niagara Partnership, Cystic Fibrosis Fundraiser, Association of Childhood Diabetes and many more worthwhile community programs.



Identification of Anticipated Potential Problems

As the incumbent duty free operator, PBDF knows best the ongoing challenges and potential problems of operating the land border duty free store at Peace Bridge Plaza in Fort Erie. Some of the current challenges that it deals with includes:

- Fluctuating currency exchange rate related issues
- Enhanced retail competition
- Vehicle traffic issues including a steady decline in volumes
- Customer awareness and traffic perceptions and delays

PBDF knows best how to address these ongoing challenges and prides itself on successfully mitigating these issues by being innovative in its business and by being able to grow sales per vehicle despite these challenges. Examples of how PBDF addresses each of these challenges are contained in the section below.

i) Currency Exchange Rate Issues

Recently, when the exchange rate dramatically swung in favor of American tourism, PBDF promoted Canada, Toronto and Niagara to US markets through aggressive radio, TV and online campaigns. PBDF used best exchange rate guarantees ("better than the bank") to give the American consumer the confidence that they would receive the maximum benefit for the US dollar at the Store.

In the past, when the Canadian dollar strengthened versus the US dollar, Canadians intensified their cross-border shopping and visits to US destinations. To take advantage of this trend, PBDF partnered with many US based organizations such as Grove City, Kissing Bridge, Darien Lake, Buffalo Bisons, Erie County Fair, Fantasy Island and Buffalo Niagara International Airport, etc. in cross promotions designed to make the Store a stop for Canadians on their way to these locations.

ii) Retail Competition

PBDF has implemented a very successful sales campaign targeted to Canadian shoppers called "start your cross-border shopping at PBDF". PBDF sourced both different and competitive products from the US, including non-traditional duty free products, adjusted prices to be competitive with the large US retailers, and added the PBDF level of customer service not found at many of the competitive retail stores.

iii) Vehicle Traffic Issues Including a Steady Decline in Volumes

Since a peak of 3.3 million in Peace Bridge passenger vehicles from Canada to the United States in 2000, there has been a steady decline in this amount. In 2015, traffic declined to 2.1 million. This represents a 38% decline in passenger vehicles utilizing the Peace Bridge since 2000.

PBDF is proud of the fact that despite the significant reduction in passenger vehicles, during the same time period, duty free sales related to to passenger vehicles declined by only 12%, from \$21.0 million of sales in 2000 to \$18.5 million of sales in 2015. This achievement by PBDF was a result of it's many efforts to increase sales per vehicle through many initiatives including promotions, pricing and enhanced customer service. PBDF was able to increase sales per vehicle from \$50.33 in 2000 to \$64.27 in 2015. **This represents an average sales increase of 28% per vehicle.**

PBDF is proud that despite this significant challenge, sales at the Store have consistently outperformed traffic volume levels as measured by sales per outbound vehicle.

iv) Customer Awareness and Traffic Perceptions and Delays

In addition to numerous awareness generating marketing programs discussed earlier in this section, PBDF was successful, due to the great cooperation with the Authority, in creating Duty Free Way. This successful initiative involved the implementation of overhead signage on the QEW which directed travelers onto a dedicated roadway leading into the Store.

In addition, PBDF launched an advertising campaign called Fastest Border Crossing Guarantee. If customers experienced a longer wait time at the Peace Bridge versus any other Regional bridge they received 10% off their purchase.

In 2009, when changes to the US Immigration documentation requirements was set to dramatically affect cross-border traffic, PBDF was successful and thrilled to have Erie County Clerk Kathy Hochul visit PBDF to hold a news conference with all media from Canadian and US to help educate people on the new requirements needed to cross the border. With PBDF's assistance, it worked with customers to help them obtain the proper identification. In conjunction with the Authority, PBDF issued toll handouts and organized clinics to sign new NEXUS applicants.



As evidence by the initiatives above, PBDF has consistently and effectively addressed the many challenges impacting the Store and continues to be proactive in this regard.

**Response to Request for Proposal
Operation of a Duty Free Shop at the Peace Bridge
Issued by the Buffalo and Fort Erie Public Bridge Authority**

**The Financial Terms Proposal
May 9, 2016**

Submitted to: Buffalo and Fort Erie Public Bridge Authority
Attn: Kimberlee Kaiser, Executive Assistant
100 Queen Street
Fort Erie, Ontario
L2A 3S6

Proponent: Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

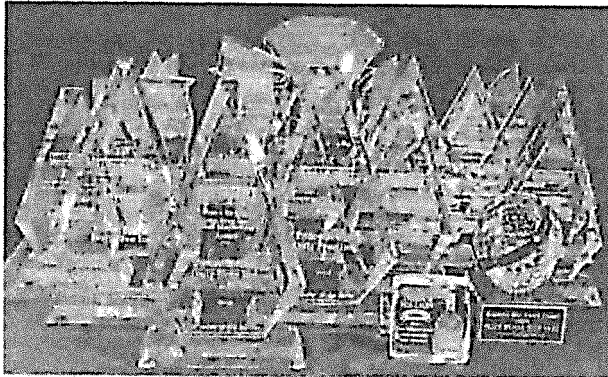
Contact: Gregory G. O'Hara
President and Chief Executive Officer
905-871-5400 ext. 107
gohara@dutyfree.ca

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

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G	Operating & Capital Costs	11
H	Capital Investment	12
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Tab A - Sales Initiatives

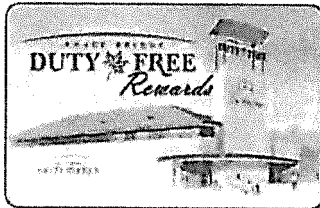
Peace Bridge Duty Free Inc. ("PBDF" or "Proponent"), incumbent operator of the Peace Bridge Plaza Land Border Duty Free Store ("Store"), has demonstrated its ability over the years to increase efficiency, customer traffic and sales while maintaining high quality services. This achievement is evidenced by the numerous industry awards that PBDF has received including the "Platinum Award" bestowed by the Frontier Duty Free Association. This award was given in recognition for being "Best Canadian Land Border Duty Free Store."



PBDF has been able to **increase efficiency** by studying customer traffic volumes and patterns and ensuring that it has adequate staffing during peak periods in order to reduce transaction processing wait times. PBDF understands that efficient transaction processing is an important part of the sales process and places a key emphasis in this area. Product placement in the Store is important in order to direct customers to key areas and to increase add on sales as customer approach the point of sale ("POS") counters.

PBDF has been and continues to be proactive in increasing customer capture rates into the store and stimulating sales. Initiatives implemented to increase store traffic and sales include:

Loyalty Club Program



This is a **proprietary** and **exclusive** program developed and managed by PBDF. This program is designed to stimulate repeat business by offering the Store loyalty club members exclusive offers and targeted communications. Members are given the opportunity to pre-order products, access exclusive limited editions and receive special introductory prices. E-blasts are sent to members on a weekly basis, at a minimum.

PBDF has built the largest Canadian land border duty free loyalty program and has in excess of 60,000 loyalty club members and has a Facebook following of approximately 30,000. PBDF's proprietary data indicates that this program is effective at generating loyalty and program members spend 15% more, on average, than the rest of its customers.

Brand Partner Promotions

PBDF has created a path-to-purchase route for its brand partners to invest in. This starts with e-blasts and external media advertising, followed by billboard and on-site signage and finishes in-store with promotional areas and offers.

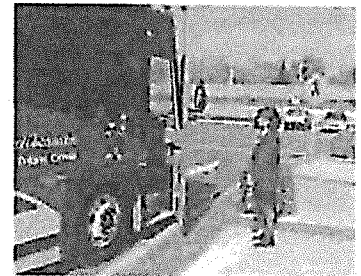
Another example of a brand partner promotion is utilizing a tasting bar that will be set up in the liquor area for customers who wish to try new whisky brands. PBDF will also organize special tasting events with guest speakers and whisky makers for members of the PBDF Whisky Club. These members will get advanced notifications of all new and exclusive products and invitations to special gala events.

Strategic Alliances with Motor Coach Operators

PBDF has been an active member of the Ontario Motor Coach Association and the American Motor Coach Association for the past 25 years. As a result of these partnerships, PBDF has built very successful relationships to include the Store as a destination on their route crossing the border to the USA.

In the Summer of 2016, PBDF will implement a strategic alliance with an Asian Tour Company which will bring visitors from China to Canada. PBDF will be a dedicated stop on these tours when they return to the United States. This new business is projected to increase stores sales by over \$1 million.

PBDF has invested in creating the most generous bus incentive program on the border. The loyalty that these tour groups show with their partners is very strong and encouraging for PBDF to expand to other Asian tour groups.



In a separate motorcoach initiative, PBDF has partnered with a Southern US based travel company who bring almost 300 buses to Toronto/Niagara every year. PBDF is projecting that it will secure 80% of those buses. PBDF's investment will be in training and compensating staff to act as tour guides that travel with these motor coaches on the Canadian portion of their tour. PBDF staff will assist the tours throughout Niagara and Toronto and direct the buses back through PBDF as they return home. This partnership is projected to add \$600,000 in sales annually. It will also give valuable exposure to other US based tour agencies.

Another partnership has been established with Elite Sports Tours, Ontario's #1 Sport Travel Company, with over 50 bus tours dedicated to PBDF. PBDF introduced Budweiser/Labatt to Elite Sports and combined have created the largest Sports partnership in the duty free industry.

Other Strategic Alliances

In order to create awareness and to increase sales at the Store, PBDF has entered in many strategic partnerships over the years and will continue to look for new opportunities in this area in the future.

An important strategic initiative in this regard was to enter into an agreement to have high profile brands **Tim Horton's** and **McDonald's** establish operations within the Store. This initiative is important because it has proven to increase Store customer capture rates and ultimately generate increased duty free sales.

PBDF is currently seeking to enter into a key partnership with DFASS Distribution, LLC, a **DFASS Group** affiliated company ("DFASS"). DFASS, headquartered in Miami, Florida, is an award winning, global leader in duty free and specialty retail operations. DFASS generates \$600 million in annual revenue and has operations on five continents. DFASS is the world's largest in-flight duty free enterprise and also has many land border and international airport duty free operations. Some of the prominent international airports where DFASS has duty free operations include Chicago O'Hare, Dallas/Fort Worth, Fort Lauderdale/Hollywood and Orlando.

DFASS and PBDF intend to enter into a supply/services agreement which will include DFASS supplying PBDF specific product categories and assistance with merchandise planning related services. This relationship is important to PBDF because it provides PBDF access to the DFASS global supply network and economies of scale. It will also allow PBDF to leverage the DFASS global customer database to enhance customer buying preference understanding and this will translate into better targeted product offerings and increased sales.

PBDF continues to team up with many other strategic partners including key Brand Partners such as Diageo, the largest liquor brand owner in the world, in order to promote important duty free products: Destination Partners such as the Buffalo Bisons, Buffalo Sabres, Buffalo Bills and key Tour Bus Operators in order to drive additional customer traffic into the Store.

The key benefit to the Authority of these partnerships will be more revenue through increased sales.

Digital Awareness

PBDF is working on several programs that will increase customer awareness through digital technology. For example, if PBDF is the selected Proponent for the Peace Bridge Duty Free concession, as part of the proposed capital program, PBDF will implement exterior digital signage visible from the QEW in order to increase customer traffic into the Store.

New sales generating initiatives in progress include:

Website Enhancements

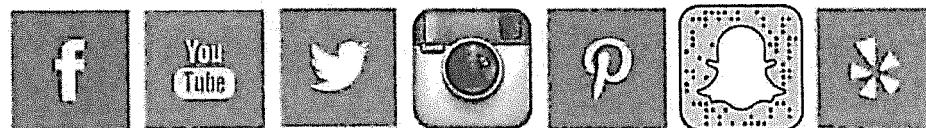
PBDF's proprietary domain www.dutyfree.ca has the distinction of receiving the number 1 ranking from Google for being the most visited duty free website. PBDF's website is being enhanced in order to evolve it into an ecommerce tool. Features of the website will include a product search engine that will highlight the full product portfolio. Additionally, the new website will include a pre-order option for customers to add all their items to a virtual basket and have them ready and waiting when they arrive. This newly enhanced website will be launched in the Fall of 2016.

Social Media

PBDF is constantly investigating the use of modern digital technologies that can assist in increasing awareness, growing sales and reward customer loyalty. A new, state of the art retail website will support all social media channels and attempt to engage new and old consumers of all age demographics. PBDF will have a full digital strategy to leverage social platforms that will include the development of the PBDF YouTube channel. YouTube's platform will give PBDF the ability to share videos with consumers which will not only educate but grow a loyal database. Videos will be produced by PBDF with support from suppliers and will be integrated into the new website increasing brand awareness.

PBDF will be experimenting with new advertising opportunities by utilizing some of the fastest growing social applications including Snapchat and Instagram. Snapchat is the trendiest social app with the 24-35 demographic which PBDF continues to target. Snapchat offers a personalized experience which PBDF can leverage to build brand awareness.

PBDF is also exploring the use of mobile messaging applications to increase capture to the store. Ping Perks is a mobile push messaging service that leverages beacon technology to offer consumers relevant SMS promotions based on shopping behaviors.



Maintaining High Quality Services

PBDF is dedicated to maintaining high quality services. As an industry leader, we take pride in our ability to provide a positive lasting impression to our Duty Free customers. PBDF strives to maintain its high standards with a proactive approach to measuring and maintaining customer satisfaction. This is accomplished by the following means:

- Mystery shopper inspections
- Customer surveys for satisfaction and areas for improvement
- Quality Assurance Checklist - A management checklist of exterior and interior operational standards, staff communication to customers, merchandising and customer sales service

- Continual staff training from customer service to product knowledge seminars
- Customer feedback from email and in person is immediately addressed by the Store Manager and reported to Executive Management
- Annual staff reviews with bonuses based on achieving specific customer service criteria
- Frequent interaction between supervisors and staff on new ways to improve the customer experience

The overall goal of PBDF is to ensure that the customer has a great experience when shopping in the Store and leave a lasting, favourable impression of PBDF.

Design - Renovations Plan for the Store

PBDF is excited about the opportunity to invest in a new store as part of a long-term concession contract, and is pleased to be working with SmartDesign Group to see its vision come to fruition.

SmartDesign Group, an award-winning full-service firm, focuses on the creation and development of commercial success through design. Their unique understanding of consumer behaviour and global trends, coupled with creative talent and solid strategic thinking, has helped operators around the world reach and exceed their business goals. SmartDesign Group's extensive experience provides a true understanding of passenger behaviour, and their innovative and creative solutions surprise and delight their customers.

In the proposed new vision for the Peace Bridge store, customer experience is at the forefront, with an improved exterior presence, increased visibility within the interior space, and an improved intergration of the latest technology, plus unique features such as a tasting bar in the liquor section and a makeover station in fragrance and cosmetics. Specifically, technology will be utilized to promote products and provide product knowledge. (i.e. iPads, digital display screens, etc)

The customer experience begins upon approach to the store, with an expanded wood and metal canopy and a landscaped area that greets travellers, offering a new covered area for unloading tour bus passengers in addition to creating a natural congregation point for visitors. Inside the store, an open space provides a natural place for an evolving promotion display. The layout has also been redesigned to enhance flow and to reorganize merchandise categories.

The design allows clear sightlines to the major product categories, with fragrance and cosmetics prominent on the left, liquor on the right, and confection and promotion in the centre. The customer flow is enhanced with differing materials that lead shoppers easily throughout the space, looping back around the liquor section before leading to the POS stations, with tobacco as a nearby final purchase option.

The new layout exposes the entire store, encouraging a strong sense of discovery. High-volume products have been located to drive traffic, and fixtures and displays provide opportunities for browsing and impulse purchases. Previously underutilized warehouse space has been opened up to allow for an additional 1,810 sq.ft. of shopping area and new merchandise opportunities. New ceiling structures bring refinement and warmth to the store and allow for the introduction of accent lighting.

Overall, the store now has a more contemporary look, with a neutral palette that enhances merchandise display. Sustainable options for all proposed materials and finishes have been considered, to convey respect for the environment and to display the relationship with the region and its natural beauty.

Demonstration bars in the fragrance area, a makeover station in cosmetics, a tasting bar in liquor and special promotion areas throughout the store provide both educational and enhanced service opportunities. Dedicated 'shop-in-shop' installations for premium liquor, regional wine and craft beer will offer additional memorable experiences, helping to ensure that this store is must for cross-border shoppers!

At the end of Tab H, you will find a mood board, floor plan, interior rendering, and exterior rendering. These will provide visuals of PBDF's proposed design intentions for the store.

All these design enhancements mentioned above will create an exciting new retail environment in the Store. These enhancements will improve customer flow and product displays, and will result in significantly increased sales.

Transition

PBDF as the incumbent operator does not require a start up plan, as it will have continuous operations. PBDF plans a complete major renovation of the Store starting in January 2017 and construction is expected to continue for 4 consecutive months.

PBDF is confident in its ability to implement a phased approach to the proposed renovation and upgrade of the current facility. PBDF will rely on the expertise of SmartDesign Group, a leading retail design consultant, with global experience executing duty free construction projects under very tight timelines and constraints.

PBDF can guarantee that there will be continuous service and sales throughout the renovation and with increased signage and awareness combined with knowledgeable staff, customers will not be affected by a phased construction schedule.

PBDF will deliver continuous operations/sales throughout the renovation of the Store.

Proposed Minimum Base Rent, Percentage Rent, Proposed Section 4.03 and Form of Lease

PBDF is pleased to offer the following financial terms (all in Canadian dollars) to the Authority in accordance with the guidelines provided in the RFP (including Appendix G).

Minimum Base Rent:

PBDF proposes a Minimum Base Rent of \$4,000,000.

Percentage Rent:

The Annual Percentage Rent proposed is based on the Tenant's Annual Gross Sales, as follows:

Annual Sales			Rent % Applicable to Range of Sales
\$0	up to	\$20,000,000	20
>\$20,000,000	up to	\$25,000,000	22
>\$25,000,000			24

To facilitate monthly payments of the Percentage Rent pursuant to section 4.03 of the Lease, PBDF proposes that Percentage Rent payable in a given month will be calculated on the basis of the Applicable Percentage Rent Rate based on Aggregate Year-to-Date Gross Sales x Tenant's Gross Sales during the month for which Percentage Rent is being calculated.

At the end of each year, there will be a reconciliation to ensure that the Percentage Rent paid on a monthly basis equals the Percentage Rent payable on the basis of the Tenant's Annual Gross Sales.

The tenant's annual gross sales will include sales related to products from the Store, currency exchange revenue and sales of its sub tenants and any other elements defined in the lease.

For clarity, based on \$25,000,000 in Tenant's Annual Gross Sales the Annual Percentage Rent would be \$5,100,000.

Proposed Section 4.03 (Percentage Rent)

PBDF is pleased to provide a completed section 4.03 (Percentage Rent) in the Form of Lease on the basis of PBDF's financial proposal. Please note that PBDF proposes that the Percentage Rent will be the same for the initial term of the lease and the extension term of the lease. This is reflected in section 4.03 proposed below.

4.03 Percentage Rent

The Tenant covenants and agrees with the Landlord to pay Annual Percentage Rent, as follows:

- The Tenant will pay to the Landlord 20% of the Tenant's Annual Gross Sales that are \$0 up to \$20,000,000
- The Tenant will pay to the Landlord 22% of the Tenant's Annual Gross that are in excess of \$20,000,000 but less than \$25,000,000
- The Tenant will pay to the Landlord 24% of the Tenant's Annual Gross Sales that are equal to or greater than \$25,000,00

To facilitate monthly payments of the Percentage Rent, the Tenant covenants and agrees with the

Landlord that if, during any month (including any broken calendar month) of the Term of the Lease or any Extension Term of the Lease, the Calculated Percentage Rent (which is based on the Tenant's Gross Sales during such monthly period) exceeds the monthly Base Rent for the same monthly period, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference between the calculated Percentage Rent and the Base Rent together with all applicable taxes, to the Landlord as Percentage Rent.

The Calculated Percentage Rent is to be calculated as follows: Applicable Percentage Rent Rate x Tenant's Gross Sales during the month for which Percentage Rent is being calculated. The Applicable Percentage Rent Rate is based on the Tenant's Year-to-Date Annual Gross Sales.

At the end of each year, there will be a reconciliation based on the Tenant's audited Annual Gross Sales to ensure that the Tenant pays the higher of the Annual Percentage Rent or Minimum Base Rent.

Form of Lease;

PBDF confirms that it does not propose any changes to the Form of Lease,

Sub Tenancy Arrangements

PBDF currently has a sub tenancy agreement with the Tim Horton's restaurant and McDonald's restaurant which will expire on October 31, 2016.

PBDF proposes to continue with these sub tenancy agreements and has included the projected sales from the Tim Horton's and McDonald's restaurants located within the Store into its Pro forma.

PBDF is currently discussing with Tim Horton's and McDonald's the continuation of these sub tenancy agreements if PBDF becomes the Successful Proponent.



Tim Hortons®

These sub tenants will increase Store awareness, customer volumes and sales.

Forecasted Sales

PBDF's financial projections for this opportunity were developed based on its extensive experience in land border duty free operations and consideration of many factors including reference to its proprietary database to determine what products appeal to key customer demographics, its analysis of the retail environment (i.e. traffic flows, customer volume, store flow and sight lines, etc.) and by soliciting input from key brand partners and duty free industry consultants.

PBDF began its analysis by examining the actual performance metrics of the current Store and the passenger demographics/volumes and associated spending behaviors. In addition to understanding the current situation, PBDF also looked at many new opportunities that would allow for a significantly improved business.

These opportunities include:

- New Merchandise Categories/Brands and optimization and expansion of the retail space,
- Improved proposed retail store design that will make the Store more inviting and increase customer penetration.
- New innovative technology applications, online activities and marketing initiatives.
- Consideration of how future traffic flows, customer volumes and changing demographics would impact store performance.

PBDF used projected proprietary passenger demographic/volume information and coupled it with its understanding of spending by customer segment. This information, in addition to many brand considerations, guided it on its proposed merchandise mix for the Store.

The Store will have appropriate foreign language speaking staff in order to converse with significant customer segments in their language of preference to stimulate sales.

PBDF's estimated spend per customer segment (car, bus and truck customer) is a function of many factors including customer demographics, customer volume, store design, increased retail space, product offerings, marketing initiatives, price, brand/product appeal, operational programs, and dwell time. Annual customer volume growth and associated average transaction value was projected by customer segment.

In Year 1, store downtime due to construction has been factored into the sales estimate. Store downtime due to construction was mitigated by taking a more expensive phased approach to the store development. This additional cost was partially offset by the benefit of continuous sales.

Based on the above, the forecasted sales at the Store including currency exchange revenue and its sub tenants sales during the term of the lease are as follows:

Forecasted Sales (\$ million)

Year	1	2	3	4	5	6	7	8	9	10
Sales	26.3	29.8	30.5	31.3	32.1	32.9	33.7	34.5	35.4	36.3

Year	11	12	13	14	15	16	17	18	19	20
Sales	37.2	38.1	39.1	40.0	41.0	42.1	43.1	44.2	45.3	46.4

Tab G - Operating and Capital Cost**Operating Costs:**

Forecasted operating costs were projected based on a combination of PBDF's actual operating cost experience for the land border duty free operation, using 2015 financial results as a baseline, and by adjusting future costs by taking into consideration many key items including projected customer volumes by segment, new capital investment, property tax adjustments due to the new store development, etc.

PBDF projects to spend \$1 million annually on marketing and sales initiatives.

PBDF examined its fixed versus variable cost structure and considered this as it projected its expenses in relation to projected customer volumes and associate sales.

The inflation rate used for expense growth was 3%.

Capital Investment:

PBDF's capital projection included several items including new store development, new computer systems, equipment, etc. Details of our capital cost related to the facility/property only are described in more detail in Tab H of this submission.

Below are PBDF's forecasted operating and capital costs during the term of the lease.

Forecasted Operating and Capital Costs (\$000)

Year	1	2	3	4	5	6	7	8	9	10
Rent to Authority	5,405	6,246	6,425	6,608	6,796	6,988	7,185	7,388	7,595	7,807
Rent from Subtenant	-178	-201	-206	-211	-217	-222	-228	-233	-239	-245
Rent Cost to PBDF	5,227	6,045	6,219	6,397	6,579	6,766	6,958	7,154	7,355	7,562
Compensation	2,648	2,727	2,809	2,893	2,980	3,069	3,161	3,256	3,354	3,454
Marketing	1,021	1,052	1,083	1,116	1,149	1,184	1,219	1,256	1,293	1,332
Other	1,314	1,444	1,487	1,532	1,578	1,625	1,674	1,724	1,776	1,829
Total Operating Costs	10,210	11,268	11,598	11,938	12,286	12,644	13,012	13,390	13,778	14,177
Capital	7,000					1,250				

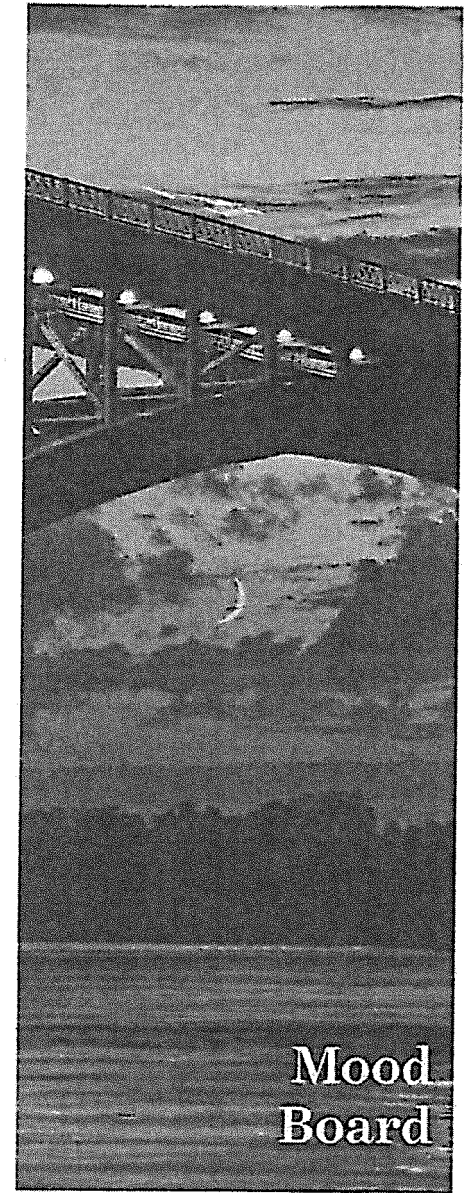
Year	11	12	13	14	15	16	17	18	19	20
Rent to Authority	8,025	8,248	8,477	8,711	8,951	9,198	9,450	9,709	9,974	10,246
Rent from Subtenant	-251	-258	-264	-271	-278	-284	-292	-299	-306	-314
Rent Cost to PBDF	7,773	7,990	8,212	8,440	8,674	8,913	9,158	9,410	9,668	9,932
Compensation	3,558	3,665	3,775	3,888	4,005	4,125	4,248	4,376	4,507	4,642
Marketing	1,372	1,413	1,456	1,499	1,544	1,591	1,638	1,688	1,738	1,790
Other	1,884	1,940	1,998	2,058	2,120	2,184	2,249	2,317	2,386	2,458
Total Operating Costs	14,587	15,008	15,441	15,885	16,343	16,813	17,293	17,791	18,299	18,822
Capital	1,250					1,250				

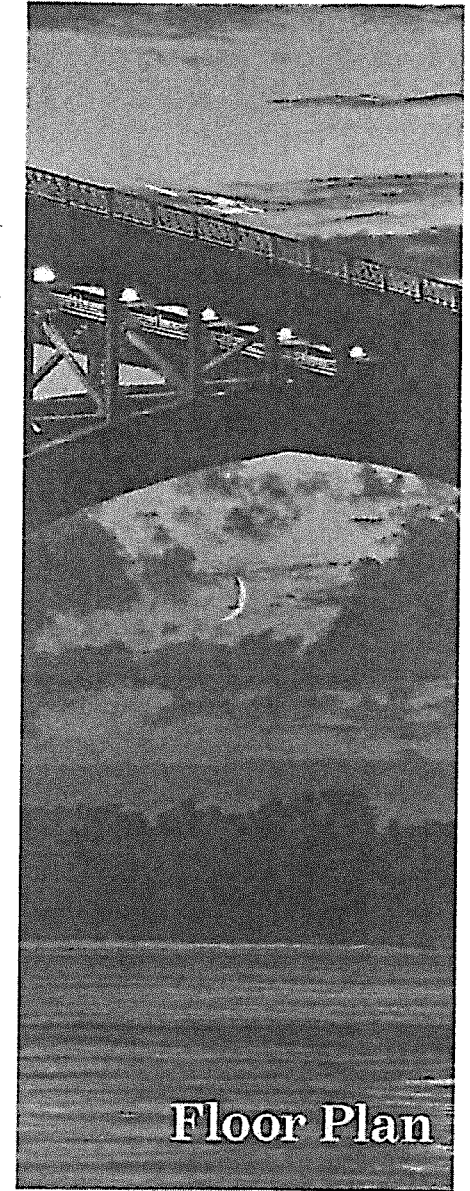
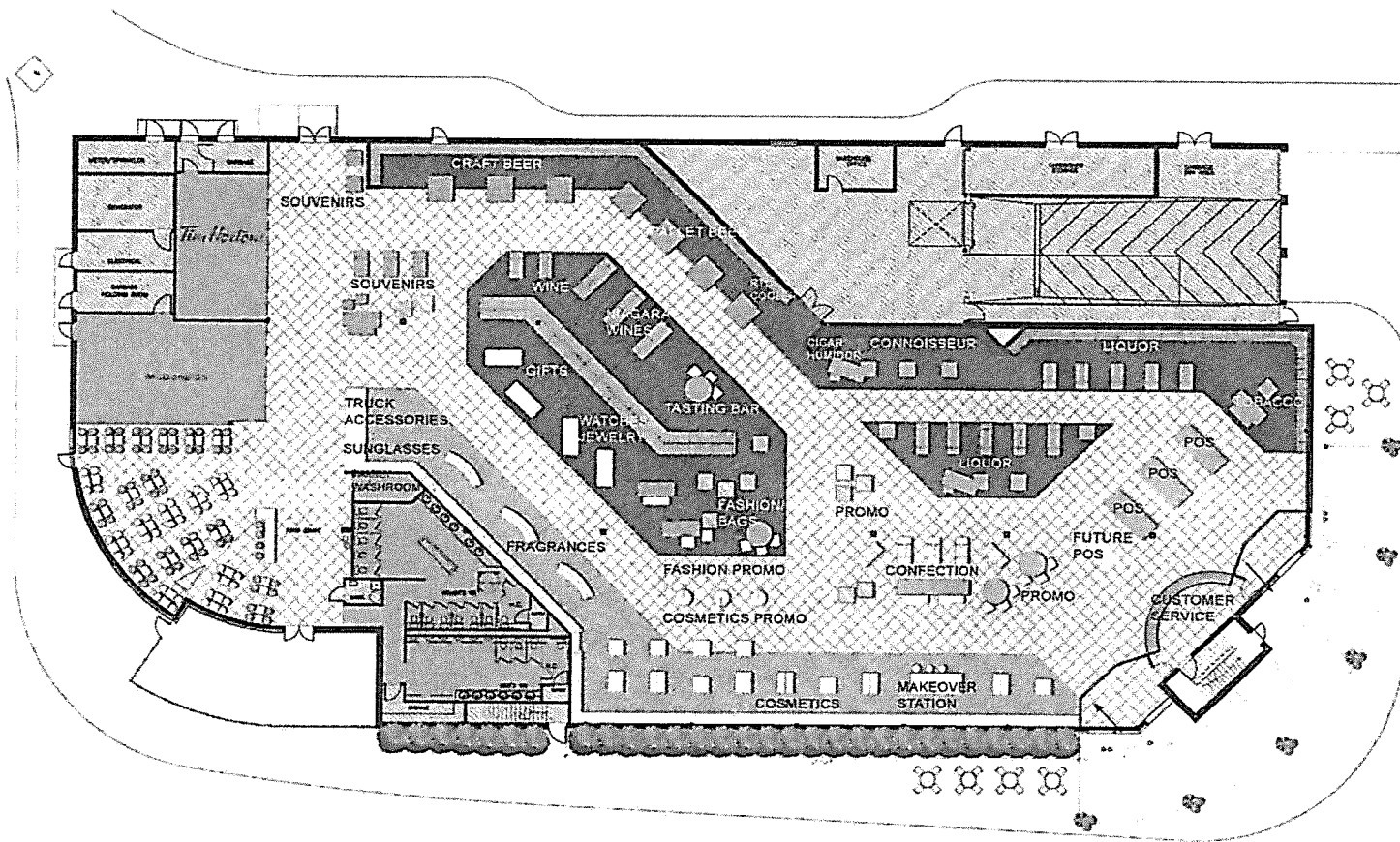
Capital Investment

Our initial Store Capital Investment is estimated to be \$6,000,000. Below is a breakdown of the key components.

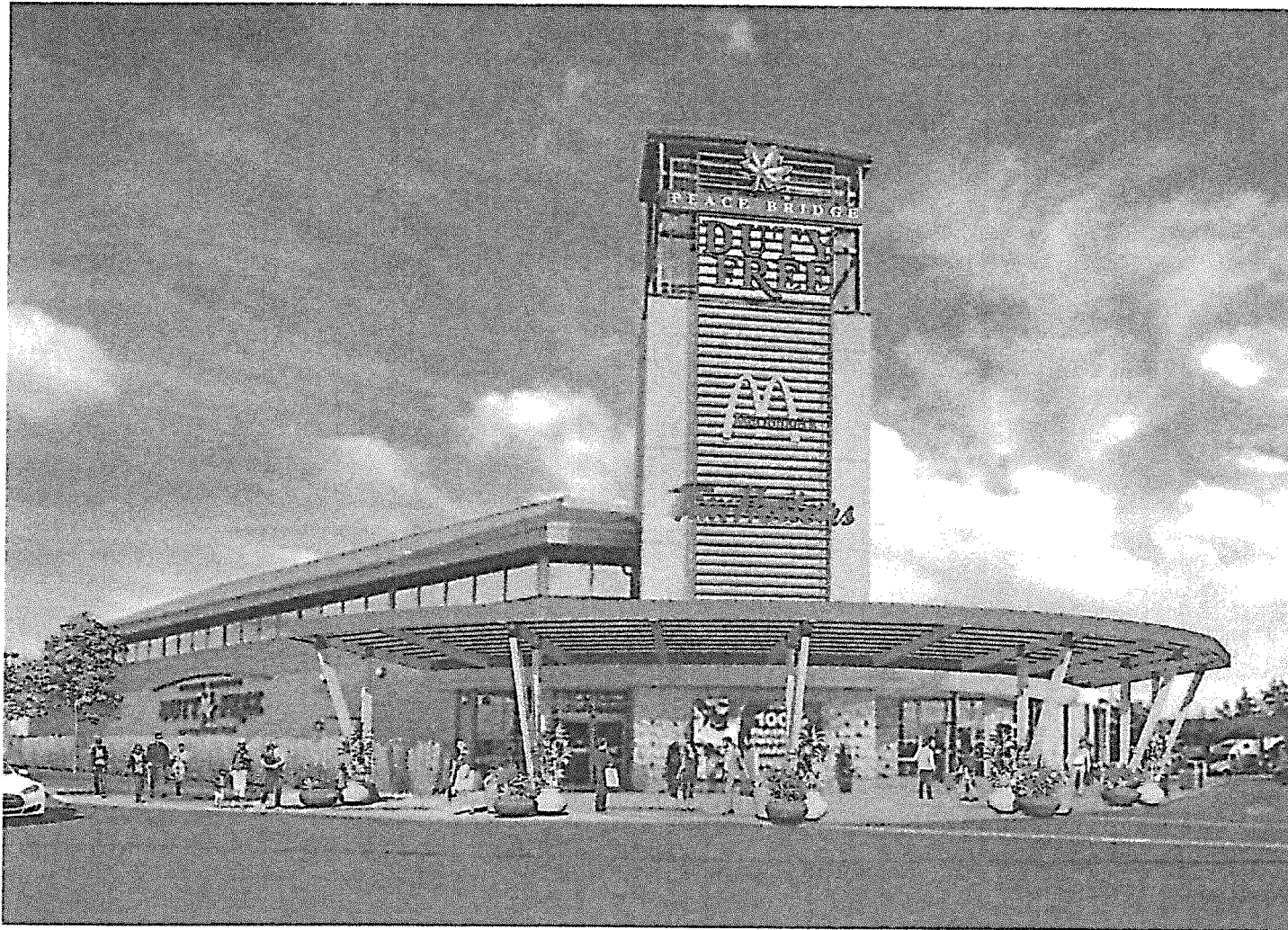
General Construction including millwork/POS	\$ 4,975,000
FF&E (Food Court/Exterior Seating)	125,000
Lighting & Media	300,000
	<hr/>
Subtotal Before Consultant Fees	\$ 5,400,000
	<hr/>
Consultant Fees	600,000
	<hr/>
Total Initial Store Capital Investment	<u><u>\$ 6,000,000</u></u>

In addition to the initial capital described above, Peace Bridge Duty Free has provided for Refurbishment Capital in years 6, 11, and 16 of this lease. The amount allocated in each refurbishment year is \$1.25 million. The total amount of Store capital investment that PBDF will commit to over the course of the lease is \$9.75 million.

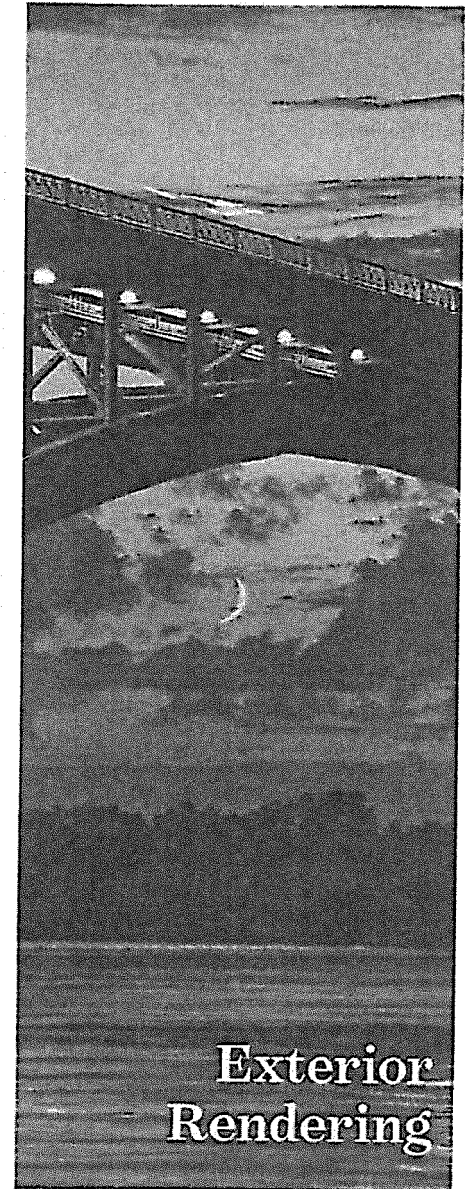


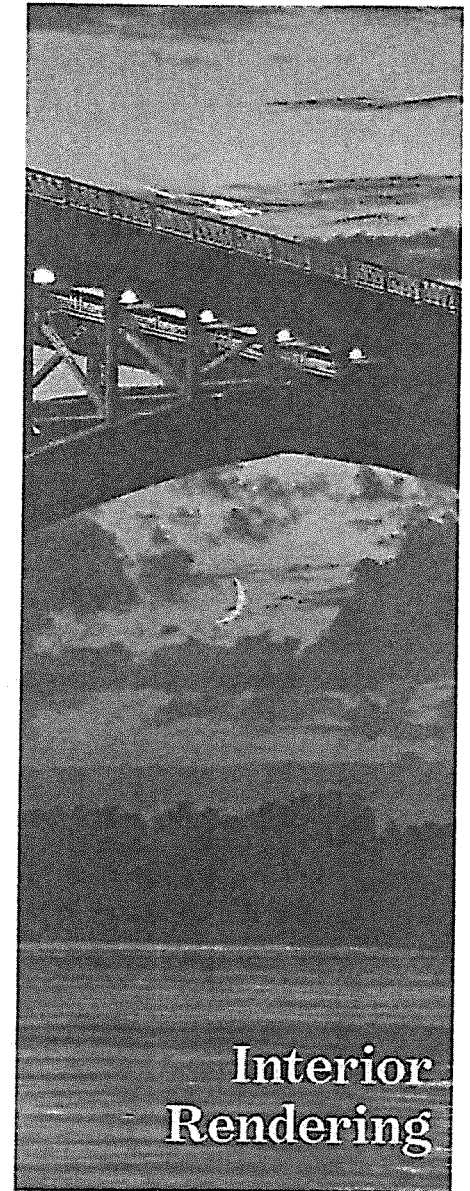


Floor Plan



Peace Bridge Duty Free





This is Exhibit "B" referred to in the Affidavit of Jim Pearce sworn
remotely this 12th day of December 2021.

A handwritten signature in black ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

TAB 2

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 27th day of April, 2020:

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "Premises") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"Amortization Period" means the one year period commencing on the Restart Date.

"Suspension Date" means April 1, 2020.

"Deferred Rent" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"Rent Deferral Period" means the period commencing on the Rent Suspension Date to and including the earlier of:

- 1. July 31, 2020; or

- II. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

- I. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- II. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- III. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- IV. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- V. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant's Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

are not done

24/

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and
 - ii. the Landlord has received payment of the sum of \$3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per: [Signature]
Name: ☒ Ron Kienas
Title: ☒ General Manager

c/s

Per: _____
Name: ☐ _____
Title: ☐ _____

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: [Signature]
Name: ☒ G.B. O'HARA
Title: ☒ PRESIDENT

c/s

Per: _____
Name: ☐ _____
Title: ☐ _____

I/We have authority to bind the corporation

TAB 3



September 8, 2021

Via Registered Mail

Christopher M. Stanek
Direct +1 416 862 4369
christopher.stanek@gowlingwlg.com
File no. K0555679

Peace Bridge Duty Free Inc.
PO BOX 339 STN Main
Fort Erie, Ontario
L2A 5N1

1 Peace Bridge
Fort Erie, Ontario
L2A 5N1

Attention : Greg O'Hara and Jim Pearce

Dear Mr O'Hara and Mr. Pearce:

Re: Buffalo and Fort Erie Public Bridge Authority and Peace Bridge Duty Free Inc.

Please find enclosed a Notice of Default, dated September 8, 2021 and Notice of Default pursuant to Subsection (19)2 of the *Commercial Tenancies Act*, dated September 8, 2021.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Chris Stanek", with a long horizontal flourish extending to the right.

Christopher M. Stanek

CMS:cc
Encls.

Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5 Canada

T +1 416 862 7525
F +1 416 862 7661
gowlingwlg.com

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ACTIVE_CA\47417783\1

NOTICE OF DEFAULT

TO: PEACE BRIDGE DUTY FREE INC. (hereinafter called the "Tenant")
PO Box 339 STN Main
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

and to:

1 Peace Bridge
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

RE: A lease dated as of July 28, 2016 between Buffalo and Fort Erie Public Bridge Authority (the "Landlord") and the Tenant for premises (the "**Leased Premises**") comprising certain lands and the building located thereon all as more particularly described therein (the "**Lease**")

You have failed to pay Rent (as defined in the Lease) as and when due in accordance with the Lease. Further, you have failed to pay Rent as and when due in accordance with the *Canada Emergency Rent Subsidy* program administered by the *Canada Revenue Agency*.

As of today's date, your arrears of Rent amount to \$5,931,389 (the "**Arrears**"), the details of which are set out in the attached Appendix 1. This is not acceptable and must be remedied immediately.

The Landlord requires payment of the Arrears (\$5,931,389) in full, by certified funds, by 4:00 p.m. EST on September 17, 2021 delivered to the Landlord at 100 Queen Street, Fort Erie, Ontario L2A 3S6 to the attention of Karen Costa, Chief Financial Officer, failing which, the Landlord will have no choice but to resort to its remedies, both under the Lease and at law, without further notice to you, including without limitation, distraining (seizing and selling) your goods and applying the proceeds on account of the payment of the Arrears, or alternatively, re-entering the Leased Premises and terminating the Lease.

Finally, please be advised that no assets may be removed from the Leased Premises if the purpose of such removal is to defeat the Landlord's right to seize and sell those assets to satisfy the Arrears. If you do so, both you and any person who knowingly assists in this removal will be subject a penalty to be paid to the Landlord equal to double the value of the removed assets. We refer you to section 50 of the *Commercial Tenancies Act* in this regard.

The date of delivery of this notice shall be the date of its delivery to the Leased Premises, notwithstanding that a copy may be sent by registered mail, courier, facsimile or email to any other person or to the Tenant at any other address for the purposes of confirmation or courtesy only.

...2

We regret being compelled to send you this notice but you have left us with no alternative.

Govern yourself accordingly.

Dated at Toronto, Ontario, this 8th day of September 2021.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
by its solicitors,
GOWLING WLG (CANADA) LLP

Per: 

Christopher Stanek
Partner

ACTIVE_CAI4741621311

Peace Bridge Duty Free
Details of Arrears
As of 9/7/2021

	Calculated Rent						CDN			
	Base	Base rent HST	CAM		CAM HST		Paid			Outstanding
			(Operating)		(Operating)					September 7, 2021
1/20	\$ -	\$ -	\$ -		\$ -					
2/20	\$ -	\$ -	\$ -		\$ -					
3/20	\$ -	\$ -	\$ -		\$ -					
4/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333	\$ 210,829	\$ 122,504	
5/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
6/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
7/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
8/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
9/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
10/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
11/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
12/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
1/21	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
2/21	\$ 333,333	\$ 43,333	\$ 9,050	\$ 1,177	\$ 386,893	\$ 10,287	\$ 43,333		\$ 333,273	
3/21	\$ 333,333	\$ 43,333	\$ 9,050	\$ 1,177	\$ 386,893	\$ 10,167	\$ 43,333		\$ 333,393	
4/21	\$ 333,333	\$ 43,333	\$ 9,050	\$ 1,177	\$ 386,893	\$ 10,227	\$ 43,333		\$ 333,333	
5/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218	\$ 43,333		\$ 333,333	
6/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218	\$ 43,333		\$ 333,333	
7/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218			\$ 376,667	
8/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218			\$ 376,667	
9/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885				\$ 388,885	
Totals	\$ 6,000,000	\$ 780,000	\$ 162,880	\$ 21,174	\$ 6,964,055	\$ 171,837	\$ 650,000	\$ 210,829	\$ 5,931,389	

DETAILS OF ARREARS

APPENDIX 1

NOTICE OF DEFAULT PURSUANT TO SUBSECTION 19(2)
OF THE *COMMERCIAL TENANCIES ACT*

TO PEACE BRIDGE DUTY FREE INC. (hereinafter called the "Tenant")
PO Box 339 STN Main
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

and to:

1 Peace Bridge
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

RE: A lease dated as of July 28, 2016 between Buffalo and Fort Erie Public Bridge Authority (the "Landlord") and the Tenant for premises (the "Leased Premises") comprising certain lands and the building located thereon all as more particularly described therein (the "Lease")

TAKE NOTICE that the Tenant is in breach of the following sections of the Lease:

"4.06 Letter of Credit

The Tenant covenants that, on or before the Commencement Date, the Tenant shall deliver to the Landlord an irrevocable and unconditional letter of credit or other form of cash collateral security satisfactory to the Landlord (the "Letter of Credit") in favour of Landlord issued by a Schedule 1 Canadian chartered bank in the amount of \$50,000.00, which shall be held by the Landlord during the Term and any Extension Term. The Letter of Credit shall be in such form as is approved in advance by the Landlord. If at any time during the Term or any Extension Term, the Tenant defaults in the payment of any Rent or other amounts payable under this Lease or in the performance of any of its other obligations under this Lease or if this Lease is surrendered, terminated, disclaimed or repudiated whether by Landlord as a result of default of Tenant or in connection with any insolvency or bankruptcy of Tenant or otherwise, then Landlord at its option may, in addition to any and all other rights and remedies provided for in this Lease or at law, draw a portion of or all of the principal amount of the Letter of Credit, whereupon the proceeds thereof shall be applied to compensate Landlord for damages suffered by it as the result of Tenant's default, and the balance, if any, will be returned to the Tenant. If the Landlord draws all or part of the Letter of Credit, the Tenant shall provide the Landlord with a replacement Letter of Credit in the full amount of \$50,000 upon written demand from the Landlord to do so. ..."

"9.02 Conduct and Operation of Business

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

- (a) operate its business 24 hours a day, seven days a week, 365 days a year with due diligence and efficiency and maintain an adequate staff to properly serve all customers;..."

"17.01 Event of Default

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

- (g) the Tenant abandons or attempts to abandon the Leased Premises or the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord;"

The Tenant is in breach of the foregoing sections of the Lease in that:

- (i) it has failed to provide the Landlord with a replacement Letter of Credit in the full amount of \$50,000 upon written demand from the Landlord to do so;
- (ii) it has not continuously and actively carried on the Permitted Use in the whole of the Leased Premises and it has not operated its business 24 hours a day, seven days a week, 365 days a year;
- (iii) it abandoned the Leased Premises on or about March 24, 2020;
- (iv) it has let the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord; and
- (v) it has failed to re-open the Leased Premises notwithstanding that a proposal issued by the Tenant and received by the Landlord on August 20, 2021 states that the Tenant is ready to re-open, and despite the Landlord's repeated requests for the Tenant to re-open.

As such, the current month's instalment of Rent (as defined in the Lease) and the next three (3) months' instalments of Rent became immediately due and payable pursuant to subsection 17.02(d) of the Lease.

Pursuant to the provisions of the Lease and subsection 19(2) of the *Commercial Tenancies Act*, the Tenant is hereby required to remedy the above noted breaches on or before 4 p.m. (local time) September 22, 2021 and is required to make money compensation to the Landlord in respect of the full amount of the current month's instalment of Rent together with the next three (3) months' instalments of Rent, plus legal fees and disbursements in the amount of \$10,000, plus HST.

The Landlord hereby gives further notice that if the Tenant does not make such payments and remedy such defaults on or before 4 p.m. (local time) September 19, 2021, then, at any time thereafter and without further notice or demand to the Tenant, the Landlord intends to exercise its rights under the Lease or at law.

The date of delivery of this notice shall be the date of its delivery to the Leased Premises, notwithstanding that a copy may be sent by registered mail, courier, facsimile or email to any other person or to the Tenant at any other address for the purposes of confirmation or courtesy only.

Dated at Toronto, Ontario, this 8th day of September 2021.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
by its solicitors,
GOWLING WLG (CANADA) LLP

Per: 

Christopher Stanek
Partner

TAB 4

<u>2022</u>	<u>Gross Sales</u>	<u>Base Rent</u>	<u>Rent Paid</u>	<u>Date Paid</u>
Jan.	\$266,000	\$333,333.33	\$53,200	2/16/2022
Feb.	\$317,000	\$333,333.33	\$63,400	3/10/2022
Mar.	\$575,000	\$333,333.33	\$115,000	4/11/2022
April	\$802,000	\$333,333.33	\$160,400	5/19/2022
May	\$840,000	\$333,333.33	\$168,000	6/21/2022
June	\$942,000	\$333,333.33	\$188,400	7/8/2022
July	\$1,332,000	\$333,333.33	\$266,400	8/11/2022
August	\$1,295,000	\$333,333.33	\$0	Not received as of 9/7/2022

*** 4/20/2022 - Rec'd \$18,545.66 (CERS - Jan. 16 thru Feb. 12, 2022)**

TAB 5

Shea, Patrick

From: Stanek, Chris
Sent: January-07-22 1:52 PM
To: Leanne Williams; Shea, Patrick
Subject: RE: Peace Bridge [IMAN-CLIENT.FID148589]
Attachments: Summary of amounts due 1.31.22.xlsx

Leanne:

Please see attached a breakdown of the outstanding rent payable including arrears and interest under the Lease. The Tenant's current monthly obligations (base rent + CAM) are as contained in the attached Excel spreadsheet. As for monthly payments, since they re-opened, the Tenants have been unilaterally paying only 20% of reported sales. The rate of interest under the Lease is 24% per annum compounded monthly – which is a per diem rate of .0675%.

If you have any other questions, please let us know.

Christopher Stanek

Partner

T +1 416 862 4369

christopher.stanek@gowlingwlg.com



GOWLING WLG

Gowling WLG (Canada) LLP
 Suite 1600, 1 First Canadian Place
 100 King Street West
 Toronto ON M5X 1G5
 Canada



gowlingwlg.com

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From: Leanne Williams <LWilliams@tgf.ca>
Sent: Thursday, January 06, 2022 2:28 PM
To: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>; Stanek, Chris <Christopher.Stanek@ca.gowlingwlg.com>
Subject: Peace Bridge [IMAN-CLIENT.FID148589]

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Patrick/Chris,

Happy new year! I hope that you had a good holiday.

On behalf of the Monitor, we are requesting that you please provide a breakdown of the outstanding rent. We would like to confirm the amount of the arrears (together with any interest and penalties), the current obligations and what is being paid monthly by the tenants. If possible, could you please also provide the rate of interest that is accruing and a per diem rate. Thanks!!

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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TAB 6

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 20th day of November, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "Premises") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"Amortization Period" means the two year period commencing on the Restart Date.

"Suspension Date" means April 1, 2020.

"Deferred Rent" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"Rent Deferral Period" means the period commencing on the Rent Suspension Date to and including the earlier of:

- i. March 31, 2021; or

- ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

- i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant's Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

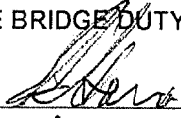
Per: _____
Name: ■
Title: ■

c/s

Per: _____
Name: ■
Title: ■

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: 
Name: ■ GREGORY G. O'HARA
Title: ■ PRESIDENT

c/s

Per: _____
Name: ■
Title: ■

I/We have authority to bind the corporation

TAB 7

From: Ron Rienas

1351

Sent: Friday, November 20, 2020 1:49 PM

To: Greg O'Hara <gohara@dutyfree.ca>

Cc: Jim Pearce <JimP@dutyfree.ca>

Subject: RE: Attached Image -Rent Deferral Agreement

Greg,

The Board has tentatively approved the rent deferral agreement conditional on getting greater assurances as to receiving unpaid rent. As you know, zero rent has been paid since April 1, 2020.

To that end the PBA is requesting the financial information requested in Articles 16.03 a) b) and c) of the lease. Please provide by no later than Tuesday November 25.

I would note that the financial statements required in Article 16.03 b) to be provided for 2019 were not provided by the end of March 2020.

I would also note that we have not yet received the HST reimbursement as promised in our discussion earlier this week.

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: Ron Rienas
Sent: Wednesday, December 2, 2020 5:27 PM
To: Greg O'Hara <gohara@dutyfree.ca>
Cc: Jim Pearce <JimP@dutyfree.ca>
Subject: RE: Peace Bridge - Rent Deferral Agreement

1352

Greg,

Please provide the PBA with the following by no later than Monday December 7, 2020

- A copy of PBDF's 2020/21 winter control contract with Stevensville Lawn Service
- A certificate from a recognized and reputable HVAC contractor certifying that the HVAC system is in good working order.

You have not responded to my notice letter of November 27, 2020 requiring the PBDF to clean the washrooms as required by the lease. If you do not advise me by Monday December 7 that PBDF will be fulfilling this obligation the PBA will continue to provide this service at PBDF's expense. On a related issue there have been some mechanical issues with the washroom plumbing that the PBA plumbing tradesman and maintenance supervisor have had to be involved with. PBDF will be required to pay for their time.

Please be advised that the PBA has not executed the latest Rent Deferral Agreement. We are awaiting additional financial information and given other lease conformity issues we are not comfortable that the outstanding rent obligations will be met.

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: Ron Rienas

1353

Sent: Wednesday, December 9, 2020 4:17 PM

To: Jim Pearce <JimP@dutyfree.ca>

Subject: PBA Information request

Jim,

We do not believe that PBDF is being at all forthcoming in providing requested information and is delaying and obfuscating at every opportunity. As I have indicated previously, the PBA needed to have a degree of comfort before extending the rent deferral to March 31, 2021.

I want to make it clear that the PBA is not prepared to be PBDF's bank and are not prepared to defer *all* of the rent payments till March 31, 2021. Accordingly, the PBA is demanding payment of 1/3 of the outstanding 2020 rent, amounting to \$1 million, by December 31, 2020 with the balance of the 2020 unpaid rent and anticipated 2021 unpaid rent to be deferred to March 31, 2021.

Please see my comments in red below to your e-mail of yesterday

TAB 8

Ron Rienas

From: Ron Rienas
Sent: Thursday, February 24, 2022 3:34 PM
To: Jim Pearce
Cc: Greg O'Hara; Stanek, Chris; Karen L. Costa
Subject: PBA - PBDF lease
Attachments: Balance due 2.28.22.xlsx; THRP-CRA Notice-Rent-Per23 Dec18.pdf; THRP-CRA Notice-Rent-Per24 Jan15.pdf

Jim,

As per your e-mails below, we acknowledge receipt of the HST payment for Q4 of 2021.

However, your rent payment comment "*...thus no additional payments are due at this time.*" is incorrect. As you know, there are many additional rent payments due and as per the attached they amount to \$6,789,845.04. PBDF has arbitrarily determined to pay rent on the basis of 20% of sales. This amount has never been agreed to by PBA and is in violation of the lease.

As PBDF did for some amounts of CERS, PBDF is now choosing to use all of the government's THRP funding for other non-rent expenses with no regard for the amount of rent owed to PBDF's landlord.

As per Article 16.03 of the lease please provide us by no later than March 4, 2022, a draft of PBDF's 2021 financial statements.

Thank you.

Ron

From: Jim Pearce <JimP@dutyfree.ca>
Sent: Tuesday, February 22, 2022 11:00 AM
To: Nancy C. Teal <nct@peacebridge.com>
Subject: PBA - THRP

Hi - attached are the CRA Notices for THRP for Period 23-Dec18th & Period 24-Jan15th (waiting on Period 22-Nov21st confirmation)

The rent previously paid exceeded the THRP subsidy thus no additional payments are due at this time.

Jim

Peace Bridge Authority
 Analysis of Revenue - Canadian Duty Free
 2/28/2022

	Calculated Rent					Paid			CDN Outstanding Feb. 28, 2022
	Base	Base rent	CAM (Operating)	CAM HST (Operating)		CAM (Operating)	HST	Base	
1/20	-	-	-	-	-				
2/20	-	-	-	-	-				
3/20	-	-	-	-	-				
4/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.36	333,333.31	0.00
5/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	0.00
6/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	296,820.90	36,512.43
7/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
8/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
9/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34		333,333.32
11/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
12/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
1/21	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34		333,333.32
2/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,286.68	43,333.33		333,273.33
3/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,166.68	43,333.33		333,393.33
4/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,226.68	43,333.34		333,333.32
5/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
6/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
7/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
8/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
9/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
10/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
11/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
12/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
1/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
2/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
Totals	7,666,666.59	996,666.66	216,941.78	28,202.43	8,908,477.46	245,144.84	910,000.01	963,487.54	6,789,845.04

From: Ron Rienas

Sent: Monday, April 11, 2022 5:33 PM

To: Greg O'Hara <gohara@dutyfree.ca>; Jim Pearce <JimP@dutyfree.ca>

Cc: Stanek, Chris <Christopher.Stanek@gowlingwlg.com>; Karen L. Costa <klc@peacebridge.com>; Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Subject: RE: PBA - PBDF lease

Greg,

We acknowledge receipt of a partial rent payment on April 11, 2022. It has been applied to the amount of base rent owed. As you know, rent is due *"on the first day of each month"* as stipulated by Article 4.02 of the lease.

Attached is the statement showing the total amount of rent owing as of today.

As indicated previously, PBDF has arbitrarily decided to pay 20% of gross sales as rent with no concurrence from PBA. PBDF has also determined not to remit any of the THRP funds received from the federal government to the PBA to reduce the amount of rent owing,

Lastly, I was not requesting the final 2021 audited statements back on February 24, 2022. I was asking for draft financial statements, information we are entitled to ask for and which was previously provided.

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

Peace Bridge Authority
Analysis of Revenue - Canadian Duty Free

4/11/2022

	Calculated Rent					Paid			CDN
	Base	Base rent HST	CAM (Operating)	CAM HST (Operating)		CAM (Operating)	HST	Base	Outstanding April 11, 2022
1/20	-	-	-	-	-				
2/20	-	-	-	-	-				
3/20	-	-	-	-	-				
4/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.35	333,333.31	0.00
5/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	-
6/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	-
7/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	141,887.55	191,445.78
8/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
9/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34		333,333.32
11/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
12/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
1/21	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34		333,333.32
2/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,286.68	43,333.33		333,273.33
3/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,166.68	43,333.33		333,393.33
4/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,226.68	43,333.34		333,333.32
5/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
6/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
7/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
8/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
9/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
10/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
11/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
12/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
1/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	23,192.00		353,474.60
2/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
3/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
4/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
Totals	8,333,333.25	1,083,333.32	238,566.32	31,013.62	9,686,246.51	269,580.70	933,192.03	1,141,887.52	7,341,566.24

Ron Rienas

From: Ron Rienas
Sent: Wednesday, July 6, 2022 4:10 PM
To: Greg O'Hara
Cc: Jim Pearce; Karen L. Costa
Subject: PBA - PBDF lease
Attachments: Balance due 7.6.22.xlsx

Greg,

We acknowledge receipt of a partial rent payment on July 6, 2022. It has been applied to the amount of base rent owed. As you know, rent is due *"on the first day of each month"* as stipulated by Article 4.02 of the lease.

Attached is the statement showing the balance of rent owing as of July 1, 2022

As indicated previously, PBDF has arbitrarily decided to pay 20% of gross sales as rent with no concurrence from the PBA. PBDF has also determined not to remit any of the THRP funds received from the federal government to the PBA to reduce the amount of rent owing,

Also, we are required by the federal government to remit HST on the basis of the rent stipulated in the lease, not on what PBDF arbitrarily decides to pay. Accordingly, we have paid the full amount of the HST to the government as required by law. Please remit immediately the full amount of HST due for the first and second quarters of 2022 as PBDF has previously done.

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@pcacbridge.com T 905-994-3676 | T 716-884-8636 | F 905-871-9940 | F 716-884-2089 | C 905-651-2206

Peace Bridge Authority
Analysis of Revenue - Canadian Duty Free
7/6/2022

	Calculated Rent					Paid			CDN Outstanding July 6, 2022
	Base	Base rent HST	CAM (Operating)	CAM HST (Operating)		CAM (Operating)	HST	Base	
1/20	-	-	-	-	-				
2/20	-	-	-	-	-				
3/20	-	-	-	-	-				
4/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.35	333,333.31	0.00
5/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	-
6/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	-
7/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	-
8/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33	-
9/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	1,517.00	331,816.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34		333,333.32
11/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
12/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33		333,333.33
1/21	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34		333,333.32
2/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,286.68	43,333.33		333,273.33
3/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,166.68	43,333.33		333,393.33
4/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,226.68	43,333.34		333,333.32
5/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
6/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
7/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
8/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
9/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
10/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
11/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.33		333,333.27
12/21	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	43,333.34		333,333.26
1/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	32,241.57		344,425.03
2/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
3/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93			376,666.60
4/22	333,333.33	43,333.33	10,812.27	1,405.60	388,884.53	12,217.93	67,184.00		309,482.60
5/22	333,333.33	43,333.33	10,774.92	1,400.74	388,842.32	12,175.66			376,666.66
6/22	333,333.33	43,333.33	10,774.92	1,400.74	388,842.32	12,175.66			376,666.66
7/22	333,333.33	43,333.33	10,774.92	1,400.74	388,842.32	12,175.66			376,666.66
Totals	9,333,333.24	1,213,333.32	270,891.08	35,215.84	10,852,773.48	306,107.68	1,009,425.58	1,668,183.63	7,869,056.56

TAB 9



26 July 2022

Sent by E-Mail (dullmann@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

David T. Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Sent by E-Mail (lwilliams@tgf.ca)

Leanne M. Williams
Thornton Grout Finnigan LLP
Suite 3200, 100 Wellington Street West
P. O. Box 329, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Dear Mr. Ullmann and Ms. Williams:

Re: Peace Bridge Duty Free Inc. ("PBDF")—Non-payment of Rent

Our client has advised that PBDF not paying rent as required by the lease between the parties and has made no proposal as to how it plans to pay the outstanding rent owing to our client. As at 6 July 2022, PBDF owes almost \$8 million in rent.

There is no arrangement in place as between our clients that permit PBDF to pay rent otherwise than as required by the applicable lease. Our client has offered to forgive 50% of the outstanding rent that accrued during the COVID-related shut-down, provided that: (a) there is a plan in place that acceptable to our client for the payment of the other 50%; and (b) the post-COVID shut-down rent is paid in full as required by the applicable lease. PBDF has not proposed a plan to pay the rent that is owing and has apparently arbitrarily determined that it will pay on-going rent in an amount equal to only 20% of its monthly gross sales notwithstanding the terms of the applicable lease.

Paragraph 11 of the Order dated 14 December 2021 prohibits the termination of agreements, including the lease between PBDF and our client, so long as rent subsequent to 14 December 2021 is paid in accordance with the applicable lease or as may be agreed by our client. It is our client's intention to terminate the lease based on the failure of PBDF to pay rent subsequent to 14 December 2021 as required by the lease.

We are asking that the Monitor provide its position as to whether, in light of the failure of PBDF to pay rent as required by the applicable lease and paragraph 11 of the 14 December 2021 Order,



consent of the Monitor or leave of the Court is required for our client to terminate the lease. If the Monitor believes that consent or leave is required, we ask that the Monitor please consent to the termination of the lease. If the Monitor requires that our client obtain an Order permitting it to terminate the lease, we ask that the Monitor co-operate in scheduling an expedited hearing of our client's Motion. The ongoing failure of PBDF to pay rent is causing serious harm to our client, which has been extremely patient in waiting for PBDF to propose a plan to deal with the outstanding rent.

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "E. Patrick Shea".

E. Patrick Shea, MStJ, LSM, CS

EPS:jm

cc. Sanjeev Mitra, Aird & Berlis LLP (smitra@airdberlis.com)

52504549\1

TAB 10



2 August 2022

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

Sent by E-Mail (dullmann@blaney.com)

David T. Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Ullmann:

Re: Peace Bridge Duty Free Inc. ("PBDF")—Proposal to Pay Outstanding Rent and Payment of Going-forward Rent

Our client has yet to see a detailed proposal with respect to the payment of the rent arrears that accumulated during the period PBDF chose to be closed during the COVID pandemic.

We wish to ensure that PBDF is aware that our client's offer to provide an abatement equal to 50% of the unpaid rent that accumulated during PBDF's COVID-related shutdown remains on the table, conditional on there being an arrangement in place acceptable to our client concerning payment of the remaining 50%. We wish to be clear that our client is not prepared to grant an abatement of more than 50% and is not required to justify that business decision to PBDF.

Should your client wish to present a proposal for the payment of the remaining 50% of the unpaid rent that accumulated during PBDF's COVID-related shutdown, we require that it do so within 15 business days. Any such proposal must provide for regular monthly payments against the arrears over a maximum of 24 months and must include either a third-party guarantee from a solvent guarantor or security. Detailed going-forward financial modelling for the business and specifics with respect to any security or guarantee, including proof of the guarantor's solvency, must be included with any proposal. We wish to make it clear that our client is not interested in mediation or other ADR unless there is first a complete and workable proposal on the table from PBDF and is not required to justify that business decision to PBDF.

In terms of on-going rent, we wish to be clear that there is no arrangement in place to permit PBDF to pay rent other than as provided for by the applicable lease and our client has not agreed to PBDF paying any amount (or at any time) other than what is provided for in the applicable lease. Rent owing for the period subsequent to the mandatory COVID-related shutdown must be paid in full within 10 business days of this letter and all future rent must be paid, in full, on the first day of the month as required by the applicable lease.



Finally, we require that PBDF provide evidence that it has paid over to our client any government rent subsidies or other rent-related benefits that it received during the COVID pandemic.

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "Shea", written over a circular stamp or seal.

E. Patrick Shea, LSM, CS

EPS:jm

cc. Client (rr@peacebridge.com)

ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

BRIEF OF EXHIBITS

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Christopher Stanek (LSUC# 45127K)

Tel: 416-862-4369

Fax: 416-862-7661

E. Patrick Shea (LSUC# 39655K)

Tel: 416-369-7399

Fax: 416-862-7661

Lawyers for Buffalo and Fort Erie Public Bridge Authority

ROYAL BANK OF CANADA

Applicant

-and-

PEACE BRIDGE DUTY FREE INC.

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**PROCEEDING COMMENCED AT
TORONTO**AFFIDAVIT OF RON RIENAS**
(SWORN 7 SEPTEMBER 2022)**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Christopher Stanek (LSUC# 45127K)

Tel: 416-862-4369

Fax: 416-862-7661

E. Patrick Shea (LSUC# 39655K)

Tel: 416-369-7399

Fax: 416-862-7661

Lawyers for Buffalo and Fort Erie Public Bridge Authority

TAB 14

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, 2020¹**;
- 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

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 its 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 paragraphs 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 its 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 only 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 \$4,494,000 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.** [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 deferral 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

ROYAL BANK OF CANADA

and

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

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

BLANEY MCMURTRY LLP

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

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com**John Wolf** (LSO #30165B)Email: jwolf@blaney.com**Brendan Jones** (LSO #56821F)Email: bjones@blaney.com**Alexandra Teodorescu** (LSO #63889D)Email: ateodorescu@blaney.com

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.

John C. Wolf
Partner
D: 416-593-2994 E: jwolf@blaney.com

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 upon 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 Omicron 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 payment.
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 government 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% forgiven during the CECRA period or most of it, and a material rent reduction in respect of the period thereafter and going forward.
5. A public example of this is the Sault St. Marie Bridge Authority which agreed:

for the Canadian operator to:

- (a) Reduce minimum rent for 2020/2021 and 2021/2022 by 35%;
- (b) In addition to waive 75% of rent from April – June 2020 (**at the express request of the Federal Ministry of Transportation**);

for the American operator to:

- (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 eligible for the next rent relief 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
JCW/gf
Encl.

cc: David Ullmann and Alexandra Teodorescu



SAULT STE. MARIE BRIDGE AUTHORITY

SAULT STE. MARIE, ONTARIO

NATALIE KINLOCH, CHAIR
WARREN ASKEW, MEMBER
THYE LEE, MEMBER

SAULT STE. MARIE, MICHIGAN

LINDA HOATH, VICE CHAIR
THOMAS BUCKINGHAM SR., MEMBER
SCOTT SHACKLETON, MEMBER
NICHOLAS WHITE, MEMBER

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.

REPLY TO: PETER M. PETAINEN, BRIDGE DIRECTOR

934 BRIDGE PLAZA
SAULT STE. MARIE, MICHIGAN 49783
PHONE: (906) 635-5255 FAX: (906) 635-0540
TDD/TTY – MICHIGAN RELAY CENTER (800) 649-3777

121 HURON STREET
SAULT STE. MARIE, ON P6A 1R3
PHONE: (705) 942-4345
www.michigan.gov/iba

II. General Manager Comments

A. Toll Software Replacement Project

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 17th 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

📞 416-593-2994 | 📠 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

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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



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THE PEACE BRIDGE

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

ABOUT US

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conduit for trade and tourism.

COMMUNITY
PROGRAMS

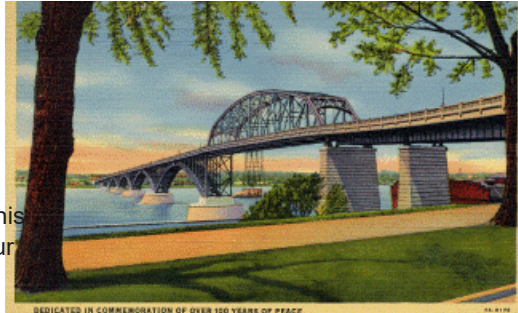
HISTORICAL
TRAFFIC
STATISTICS

MEDIA
ROOM

CONTACT
US

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

Like

Share

135 people like this
Be the first of your

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

1421
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.

You are here: [Home](#) / [About Us](#) / Authority Information

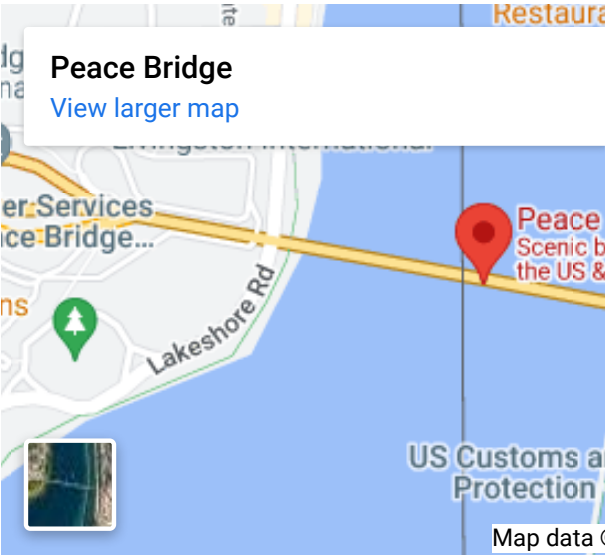
A A A

OUR LOCATION

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



THE PEACE BRIDGE



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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

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"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](#)

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- [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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Press Secretary

Deputy Prime Minister's Office

Katherine.Cuplinskas@dpmo-cvpm.gc.ca

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Date modified:

2020-10-21

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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
	14,227						
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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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



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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



The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

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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



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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.

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 this Peace's affidavit sworn December 12, 2021 and at Confidential Appendix 1 of the Monitor's report shall be sealed under further order of the court. In my view as noted in Sierra

Nov 17/22

Date

L. Williams, J.

Judge's Signature

☒ Additional Pages 1

Court File Number: CV-21-00623 084-00CLSuperior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Club of Canada v. Canada (Ministry of Finance), [2002] 2 S.C.R. 533, 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.

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

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

THE HONOURABLE
JUSTICE PATTILLO

)
)
)

MONDAY, THE 17TH
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:

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.

Phillips, J.

- and -
PEACE BRIDGE DUTY FREE INC.

Respondent

Court File No. CV-21-00673084-000

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
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Jeremy Nemers (LSO # 66410Q)
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Email: inemers@airdberlis.com

Lawyers for Royal Bank of Canada

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.



Peng 3.

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
 Barristers and Solicitors
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 Toronto, ON M5J 2T9

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 Fax: (416) 863-1515
 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'; 'jнемers@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>; 'jнемers@airdberlis.com' <jнемers@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.

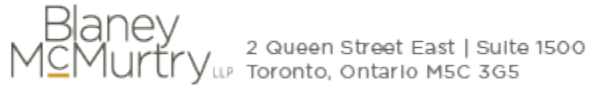
Mr. Justice Michael A. Penny

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,



Ariyana Botejue
Legal Assistant to Stephen Gaudreau & David Ullmann

abotejue@blaney.com

📞 416-593-1221 ext. 4777

🌐 Blaney.com



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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.