

Gail Fairhart

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

Greetings Leanne & Mukal,

Further to our recent telephone call we:

1. Confirm the information in our earlier report (reproduced below) remains accurate, except for highlighted areas where we provide updates below.
2. The Federal budget did not address the duty free industry or this tenancy.
3. Covid supports through out the economy were terminated in or about May 2022.
4. Sales at the PBDF have risen to more or less 50% of pre-pandemic sales, continuing a favorable trend of recovery.
5. Tour bus sales have unfortunately decreased from about 10% to close to nil because of border restriction issues .
6. Government restrictions including:
 - a. ArriveCan obligations for Canadian citizens which program has proven very difficult for persons who are not computer savvy, and an inconvenience to all;
 - b. Prohibition on unvaccinated tourists crossing into Canada at land borders(which excludes about 40% plus of travelers from the USA from being able to enter Canada;
 - c. Omicron uncertainty;
 - d. Conflicting advisories by various levels of governments in both countries, have all contributed to a reduction in the growth of sales.
7. Inflation , especially gas but also general inflation, is a real deterrent to cross border discretionary travel as ordinary families wealth disposal income is destroyed .
8. FDFA lobbying efforts continue visa vis federal and provincial governments culminating in a :Hill Day” series of meetings in Ottawa with MPs on June 6th- 7th to highlight duty free industry issues and needs. Specifically, the MPs were requested by the FDFA to support a \$20 million industry rescue package.
9. PBDF was in attendance and spoke with CBSA (Canada Border Services Agency) who advised that no new licences would be available until into 2023 meaning that PBA’s threats to terminate the licence may be over-reaching. .
10. MP Battaway(associated with the Transportation Ministry) suggested a three way meeting with the PBA, PBDF(& FDFA) and the government; and floated the idea of the government guaranteeing a long term low interest loan. The PMO had a representative in attendance and supported the initiative. This is the first real “crack” vis a vis a verbal commitment to do a specific thing- even if that things is presently unstructured, and we are facilitating a proposed structured process which we hope will result in exchanges of proposals between stakeholders with concessions to set a framework for a resolution ; and once achieved, also a facilitated meeting of stake holders to attempt to reach a consensus
11. As you may recall FDFA has requested and been invited to provide presentations to the PBA. FDFA provided statistical information not in the public sphere about the industry’s performance. These stats emphasized the PBDF is in the top half of duty free shop performers. FDFA reiterated its suggestion of offering to jointly lobby MPs with the PBA. Attached are the presentations/notes for the May 27th attendance at the PBA Board meetings. The meeting with MP Battaway(

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

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

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

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

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

Regards,

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

John C. Wolf

jwolf@blaney.com

T 416-593-2994 | F 416-596-2044

Blaney.com



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From: John C. Wolf

Sent: March 10, 2022 4:02 PM

To: 'Leanne Williams' <LWilliams@tgf.ca>; Mukul Manchanda (mmanchanda@spergel.ca) <mmanchanda@spergel.ca>

Cc: David T. Ullmann <DUllmann@blaney.com>

Subject: FW: Peace Bridge Duty Free Inc (PBDF) and Peace Bridge Authority (PBA)- status report March 10th, 2022

Greetings Leanne & Mukal,

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

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

We also confirm our information as follows:

- Gowling has not communicated with me since my letter in mid January 2022
- Gowlings has not threatened the tenant with lease enforcement since that letter
- PBDF advises:
 - that no monies have been paid to any shareholder of the PBDF since the pandemic began
 - Greg O'Hara has deferred receipt of any employment income from the PBDF since the pandemic began
 - 100% of all rent related government assistance received has been paid to the PBA
 - In addition, those sums have been topped up so that 20% of gross sales have been paid to PBA
 - All forbearance commitments to RBC have been honoured
 - Sales are about 35% of pre -covid sales
 - Sales are less than that as compared to assumptions underlying minimum rent of 20% of gross sales when the lease was negotiated
 - 2022 and 2023 rent will need to be at 20% of percentage gross sales
- FDFA advises:
 - It has had several meetings and discussions with various elected and senior ministerial employees and the Ministry of Transportation has assigned a staffer to brief the minister
 - Treasury Board has been similarly engaged
 - The PMO has also been similarly engaged and a staffer has been assigned to investigate. In addition, the PMO has directed the senior staffer responsible for Cdn-USA border issues to meet with the FDFA and to communicate with the government of the State of New York
 - It has contacted the Premier's office and a staffer is being assigned to co-ordinate with the FDFA
 - It has met with at least 10 individual MP's who are associated with the MOT or local to the region or otherwise connected to frontier issues
 - Its goal is to influence the New York and Cdn government/PMO/MOT to direct the PBA board of directors to conclude a lease amending agreement (LAA) with the PBDF that is capable of being honoured
 - Its meetings with elected politicians and senior bureaucrats have been well received and there is considerable sympathy for the PBDF
 - Specifically, both PBA and FDFA are asking the government to allocate funds to the PBA in respect of PBDF rent
 - The FDFA is asking for a broad relief package for FDFA members and a specific payment in addition to PBDF for rent support
 - It hopes that it's lobbying will result in direction to the PBA board (5 Cdn and 5 USA) appointed directors to negotiate a lease amending agreement
 - Once the Federal budget is finalized and announced (and the PBA knows what funds if any it will receive) a mediation should take place to fix a LAA
- The FDFA/PBDF "Value Proposition " has three components:
 - In the event of lease termination 100% of rent arrears will be forfeited- PBDF has conceptually offered to pay some fixed amount of arrears over the balance of the term of the lease, although this tied to gross revenue and future rent obligations

- Any termination and RFP for a replacement operator will likely take a minimum of 6 months- meaning a loss of rent at 20% of gross sales and probably longer
 - The duty-free amenity to travellers will be interrupted
 - Alternate arrangements will be needed to process trucker's immigration needs and toilet needs
 - Employment for all PBDF employees will be lost
 - Any prudent replacement tenant will not agree to the same lease terms as the business can not be profitable with a fixed minimum rent for the foreseeable future; and most new leases provide for free rent periods and tenant allowances- the PBDF is not seeking any rent-free period/allowance and will likely pay greater rent than any replacement tenant
 - PBDF a 30-year business will not be destroyed by the federal government who ordered the travel ban which destroyed business opportunities, created a rent relief program inadequate to pay rent; and therefore, is the architect of the business failure
- The Commercial Tenancy Act currently has an eviction moratorium in place through April- which may be extended
 - The Lease obligated the PBA to communicate with the PBDF if business is interrupted. PBDF is of the view that the PBA has not fulfilled its contractual obligations in this regard
 - The PBA's options are quite limited- either negotiate a LAA or attempt to obtain judicial authorization to terminate the lease when all stays expire

Please contact Blaney should you wish additional information.

Regards,

John

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

**Blaney
McMurtry LLP** 2 Queen Street East | Suite 1500
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THIS IS **EXHIBIT "L"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the
Town of Fort Erie, in the Province of Ontario, before me
at the City of Toronto, in the Province of Ontario, on
November 13, 2022, in accordance with O.Reg 431/20,
administering Oath or Declaration Remotely



Commissioner, etc.

Gail Fairhart

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

Follow Up Flag: Follow up
Flag Status: Completed

Leanne,

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

Have a nice weekend.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

📞 416-596-4289 | 📠 416-594-2437

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

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

Best,

Jim

Cashflow Report

	Oct 16-29			(000's)			
	Projected	Actual	Variance	w/e Nov5	w/e Nov12	w/e Nov19	w/e Nov26
Bank balance-opening	1,995	1,995		1,961	1,693	1,803	1,742
Receipts (Sales)	525	540	15	250	275	250	225
Total receipts	525	540		250	275	250	225
Cash requirements							
Trade payables	475	394	81	200	100	225	100
Rent-Percentage	-	-	-	243	-	-	-
Rent-CAM costs	10	10	-	-	-	-	10
Rent-HIA	-	-	-	-	-	10	-
Wages&Benefits	40	40	1	40	25	25	25
Payroll remittances	-	-	-	-	-	25	-
RBC Lease payment	77	77	-	-	-	-	-
HASCAP payment	4	4	0	-	-	-	11
Professional fees	25	31	(6)	-	25	-	25
Insurance	-	-	-	-	-	11	-
Misc payments/expenses	30	20	10	35	15	15	15
Total payments	661	575		518	165	311	186
Bank balance-ending	1,859	1,961	102	1,693	1,803	1,742	1,781

Notes:

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

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

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

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

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

Inventory Report

	Oct 16-29			(000's)			
	Projected	Actual	Variance	w/e Nov5	w/e Nov12	w/e Nov19	w/e Nov26
Inventory-opening	1,209	1,209		1,258	1,316	1,286	1,269
Cost of Goods Sold	(247)	(254)		(118)	(129)	(118)	(106)
Purchases	275	303		175	100	100	125
Inventory-ending	1,237	1,258	21	1,316	1,286	1,269	1,288

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

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

1476
Peace Bridge Duty Free Inc.
Balance Sheet
As at October 31, 2022

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

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ECONOMIC REPORT

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

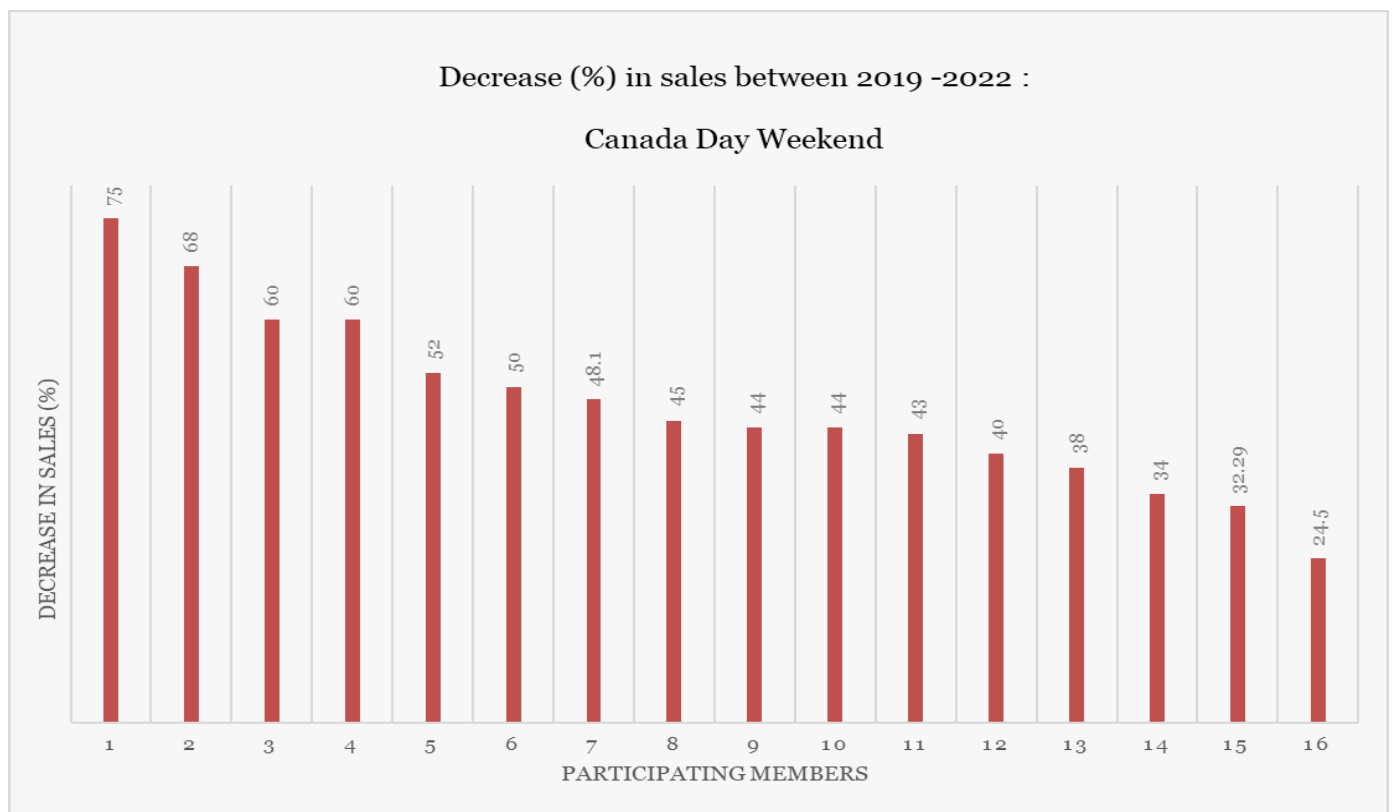
Data visualization of sales losses 2019-2022

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

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

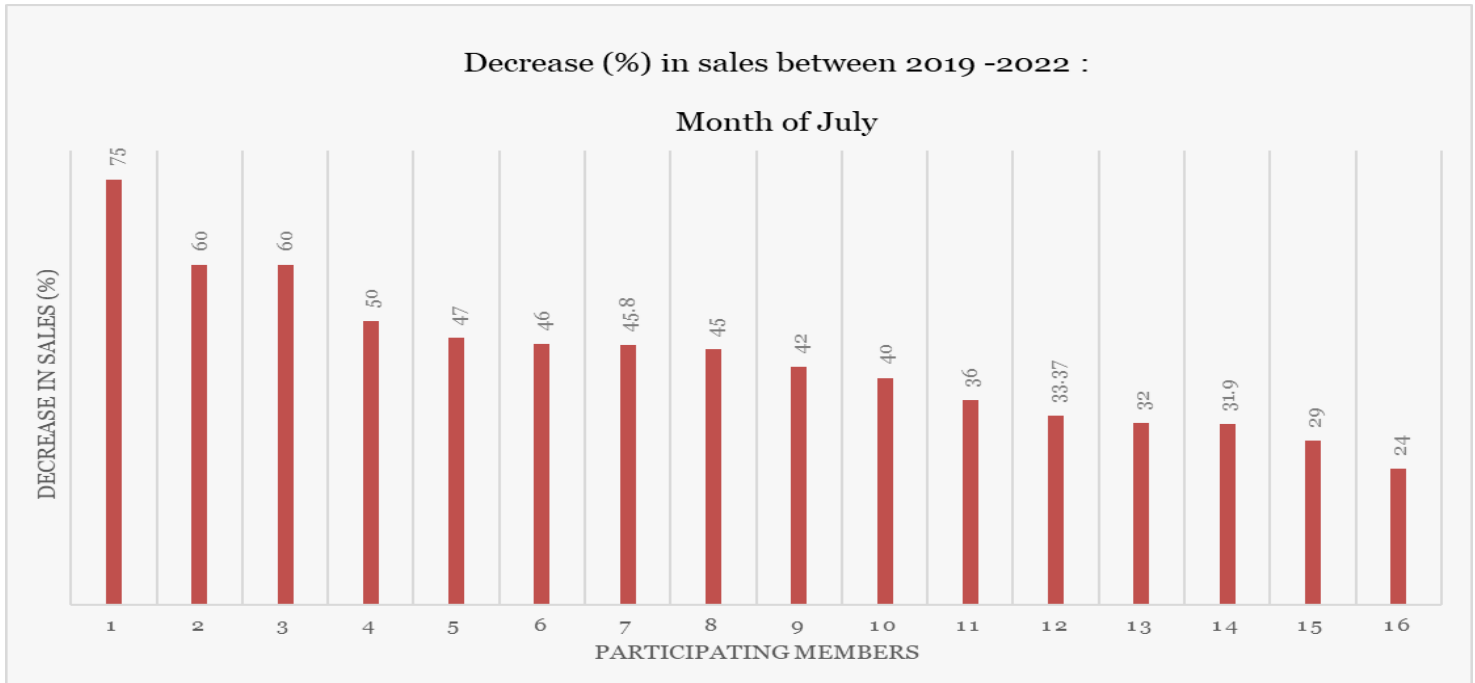
1. Canada Day

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

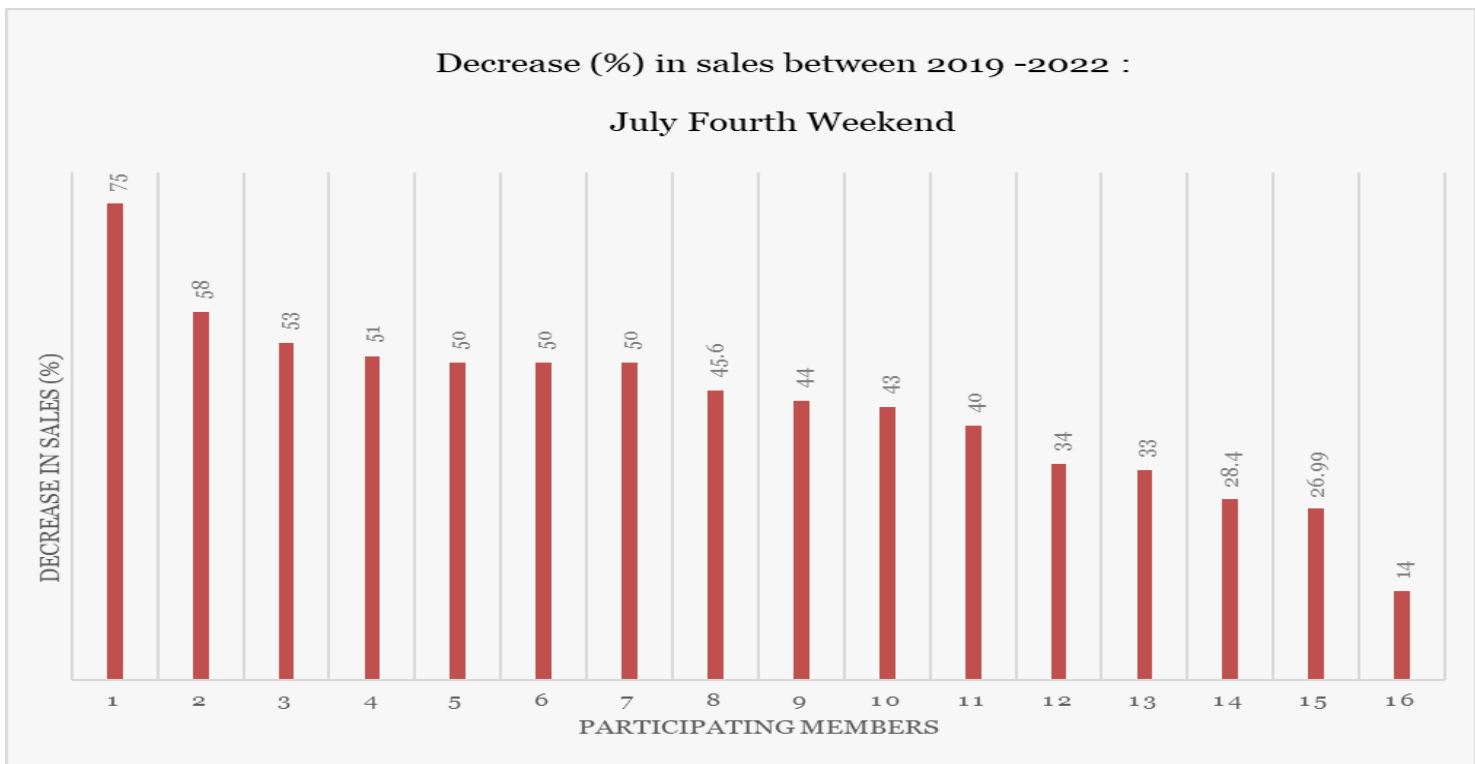


2. July

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



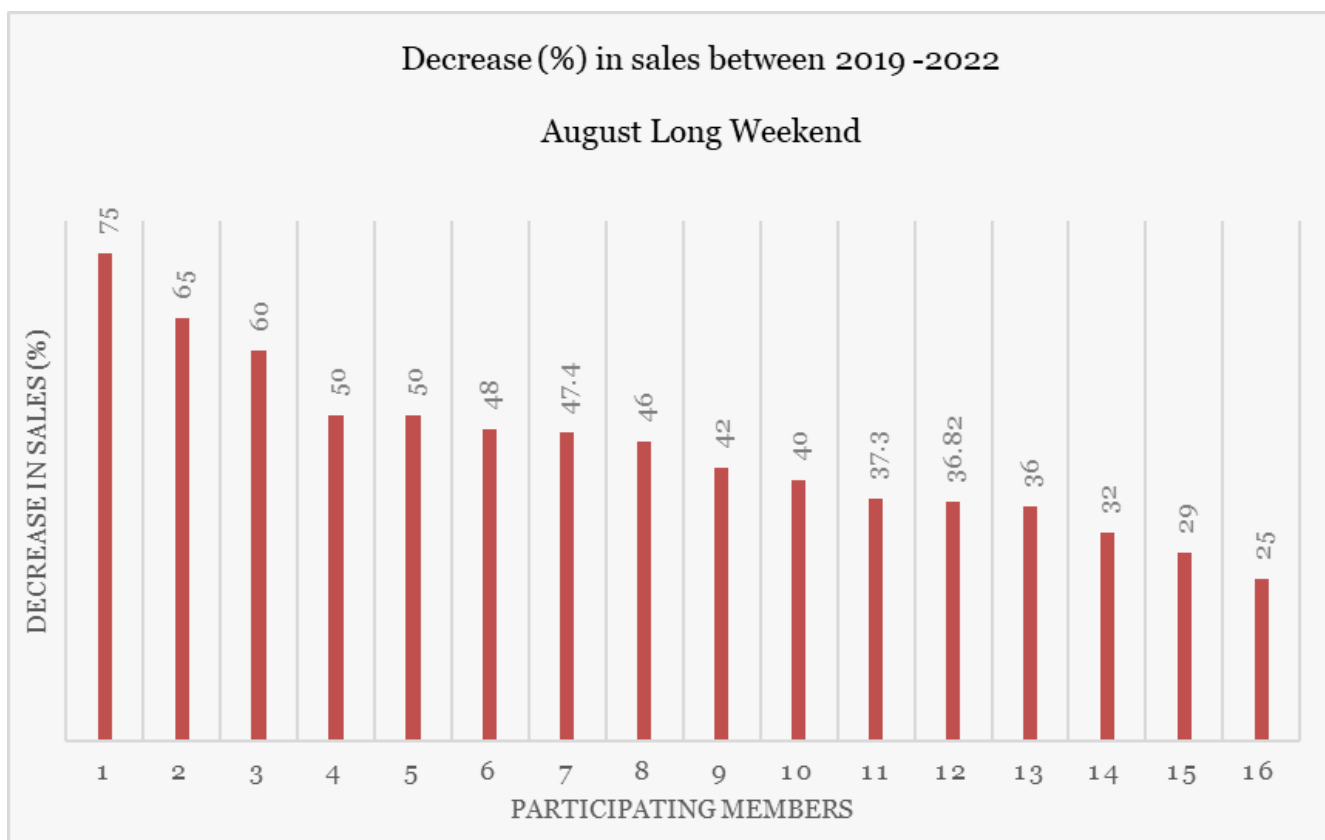
3. July Fourth



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

4. August Long Weekend

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



5. Final comments

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

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

For more information, please contact:

Barbara Barrett

FDFA Executive Director

bbarrett@fdfa.ca 343-998-8906

THIS IS **EXHIBIT "N"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the
Town of Fort Erie, in the Province of Ontario, before me
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Commissioner, etc.

Gail Fairhart

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

Follow Up Flag: Follow up
Flag Status: Completed

Jim and John

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

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

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

The relevant part is (highlighting added):

"Commercial operations

Support for commercial tenants affected by COVID-19

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

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

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

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

Relevant section:

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

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

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

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

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

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

FDFA Members,

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

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

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

For reference the guidance states:

Federal Landlords align with core CECRA program criteria

The Government of Canada is responding to the hardships faced by small businesses that are tenants in or on federal buildings or lands due to COVID-19. As these businesses are not eligible for the Canada Emergency Commercial Rent Assistance (CECRA) program, the government has aligned its approach to commercial tenants with the core CECRA program criteria. An aligned approach will ensure small businesses are also supported through rent assistance.

Federal landlords will be reaching out to their small business tenants to begin the application process. Small businesses who are tenants in federal space should contact their landlords for more details.

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

Other potential links of interest

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

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

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

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

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

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

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

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

others

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

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

Thank you and we are mining for more. Also I have reached out politically despite a chaotic couple of weeks in Ottawa.

Feel free to call me anytime.

Regards,
Barbara Barrett
Executive Director

#UntilWeMeetAgain 

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

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

February 10, 2022

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

Dear Mr. Clutterbuck,

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

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

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

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

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

Examples of which are:

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

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

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

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

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

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

Sincerely,



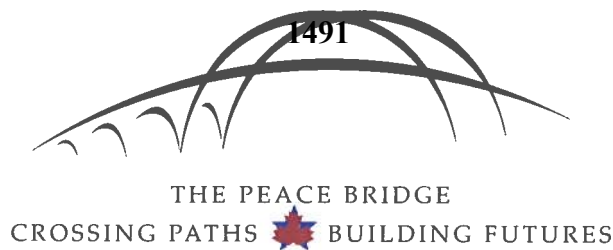
Barbara Barrett
Executive Director
Frontier Duty Free Association
bbarrett@fdfa.ca
343-998-8906

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

THIS IS **EXHIBIT "P"** TO
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SWORN REMOTELY by Jim Pearce being located in the
Town of Fort Erie, in the Province of Ontario, before me
at the City of Toronto, in the Province of Ontario, on
November 13, 2022, in accordance with O.Reg 431/20,
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Commissioner, etc.



February 17, 2022

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

Dear Ms. Barrett:

Thank you for your February 10, 2022 letter.

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

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

1. The border was restricted, it was not closed.
2. Unlike other Duty Free stores, PBDF chose to remain closed despite repeated requests by PBA to reopen. It was only after receiving formal notice of lease default that PBDF reopened.
3. PBDF refused to provide trucker personal needs so they were provided by the PBA at its expense for eight months. Only after threatened use of PBDF's security deposit, did PBDF begin providing that service, as required by the lease.
4. PBA and PBDF are not eligible for the CECRA program as the rent exceeds \$50,000/month.
5. PBA has offered a generous rent relief package to PBDF.

Yours truly,

Tim Clutterbuck,
Chair

/ld

c.c. PBA Board
Chris Stanek, Gowlings



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February 24, 2022

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

Attention: Tim Clutterbuck, Chairman

Dear Board Members,

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

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

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

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

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

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

FDFA would like the opportunity to meet with you to layout our global case for rent relief and the context of how all other government agencies, and in this case, federal governments have resolved

this with their store tenants. We would also be pleased to find a mediated solution under the auspices of our association.

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

Sincerely,



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

CC: Greg O'Hara, Peace Bridge Duty Free, President and CEO
Jim Pearce, Peace Bridge Duty Free, General Manager
Kenneth A. Manning, Authority Vice Chairman
Marie Therese Dominguez, Authority Board Member
Llewellyn Holloway, Authority Board Member
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Debbie Zimmerman, Authority Board Member

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February 25, 2022

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

Dear Ms. Barrett:

RE: PEACE BRIDGE DUTY FREE (PBDF)

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

Yours truly,

Kenneth A. Manning,
Chair

/ld

c.c. PBA Board
Chris Stanek, Gowlings



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Commissioner, etc.

March 7, 2022

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

Attention: Kenneth A. Manning, Chair

Dear Mr. Manning,

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

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

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

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

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

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

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

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

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

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

Regards,

Sincerely,



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

CC: Greg O'Hara, Peace Bridge Duty Free, President and CEO
Jim Pearce, Peace Bridge Duty Free, General Manager
Tim Clutterbuck, Authority Board Member
Marie Therese Dominguez, Authority Board Member
Llewellyn Holloway, Authority Board Member
Margaret Neubauer, Authority Board Member
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From: Barbara Barrett
Sent: May 10, 2022 4:08 PM
To: 'Ron Rienas' <rr@peacebridge.com>
Cc: Lynda Dubuc <lld@peacebridge.com>
Subject: RE: PBDF

Thank you Ron. I would be happy to attend via teleconference.
 Many thanks for the opportunity.

Cheers,

Barbara Barrett
 Executive Director

#UntilWeMeetAgain



O -- 613-688-9788

M -- 343-998-8906

bbarrett@fdfa.ca

www.fdfa.ca

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

Good afternoon Barbara,

Our next Board meeting is Thursday, May 26 at 8:15am.

The Chairman is amenable to you again presenting to the Board. Please note that we are now back to in-person Board meetings and our Board room does not have Zoom capabilities. You can call in and present over our teleconference system or you can attend in person.

Ron Rienas

General Manager

Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213

rr@peacebridge.com T 905-994-3676 | T 716-884-8636 | F 905-871-9940 | F 716-884-2089 | C 905-651-2206

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

Ron,

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

Please let me know your thoughts.

Cheers,

Barbara Barrett
 Executive Director



#UntilWeMeetAgain

O -- 613-688-9788

M -- 343-998-8906

bbarrett@fdfa.ca

www.fdfa.ca

From: Barbara Barrett

Sent: March 23, 2022 11:47 AM

To: Ron Rienas <rr@peacebridge.com>; Lynda Dubuc <lld@peacebridge.com>

Subject: RE: PBDF


Ron/Lynda,

Sorry if I have missed it but looking to get timing and details for the meeting on Friday so that I am able to plan.

Many thanks and very much look forward to it.

Barbara Barrett

Executive Director



#UntilWeMeetAgain

O -- 613-688-9788

M -- 343-998-8906

bbarrett@fdfa.ca

www.fdfa.ca

From: Barbara Barrett

Sent: March 22, 2022 7:37 PM

To: Ron Rienas <rr@peacebridge.com>

Cc: Lynda Dubuc <lld@peacebridge.com>

Subject: Re: PBDF

Hoping I can get the time and coordinates for the meeting on Friday so that I am sure I am planning around it.

Many thanks,

Barbara Barrett

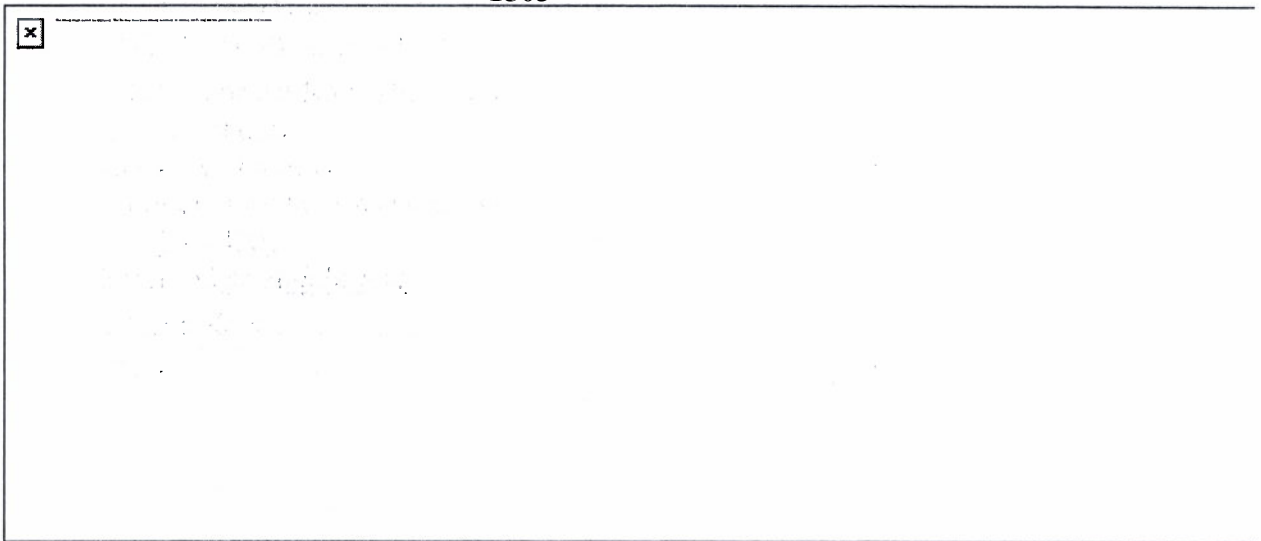
Executive Director

Frontier Duty Free Association

343-998-8906

Email: bbarrett@fdfa.ca

www.fdfa.ca



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

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



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

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

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

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

Lynda,

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

Below is an agenda of what I will be covering:

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

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

Regards,

Barbara Barrett
 Executive Director
 Frontier Duty Free Association
 343-998-8906

Email: bbarrett@fdfa.ca

www.fdfa.ca



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

Please see attached.

Thank you.

Lynda L. Dubuc

Executive Assistant

Buffalo & Fort Erie Public Bridge
Authority

100 Queen Street, Fort Erie, ON

L2A 3S6 | 1 Peace Bridge Plaza,

Buffalo, NY 14213

lld@peacebridge.com | T 905-871-

1608 | T 716-884-6744 | F 905-871-

9940 | F 716-884-2089

For live traffic conditions, visit

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Commissioner, etc.

Land Border Duty Free Peace Bridge

March 25, 2022

Agenda

1. Pandemic context for the industry including government support measures
2. National Bridge Authority and the land border Duty Free landscape
3. Ongoing advocacy efforts to obtain support for stores and bridge authorities.

Land Border Duty Free Context

- The pandemic led to an **almost two-year complete land border closure** with only the most essential business travel allowed
- Our national research of store sales demonstrated that our 33 land border duty free stores, over the last two years, saw an over **90% revenue drop**.
- Many stores closed completely for most of the border shut down



Land Border Duty Free Context

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

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



Land Border Duty Free Context

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

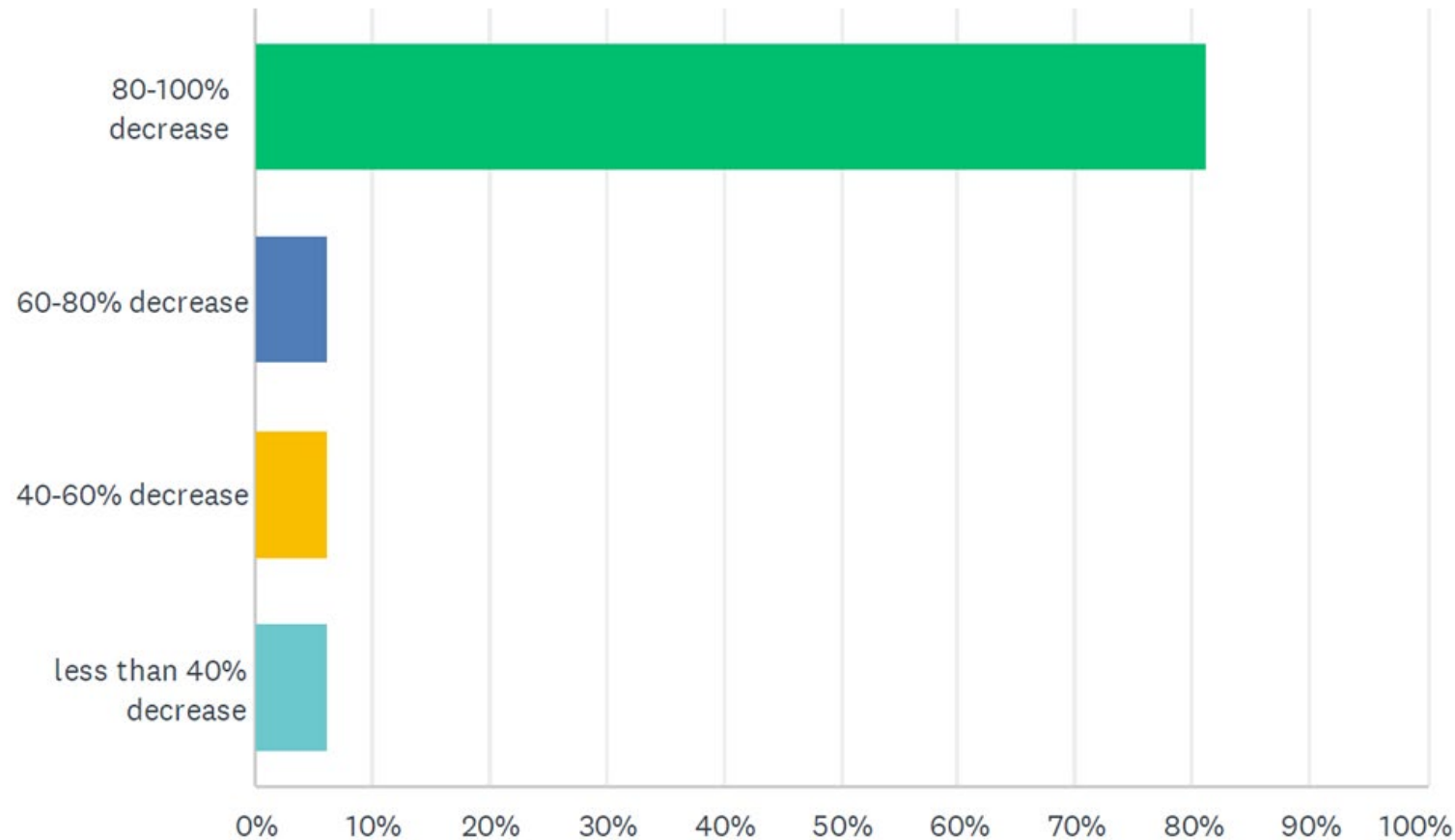
Our stores had no business model to pivot to and %95 of customers unable to come to our stores.



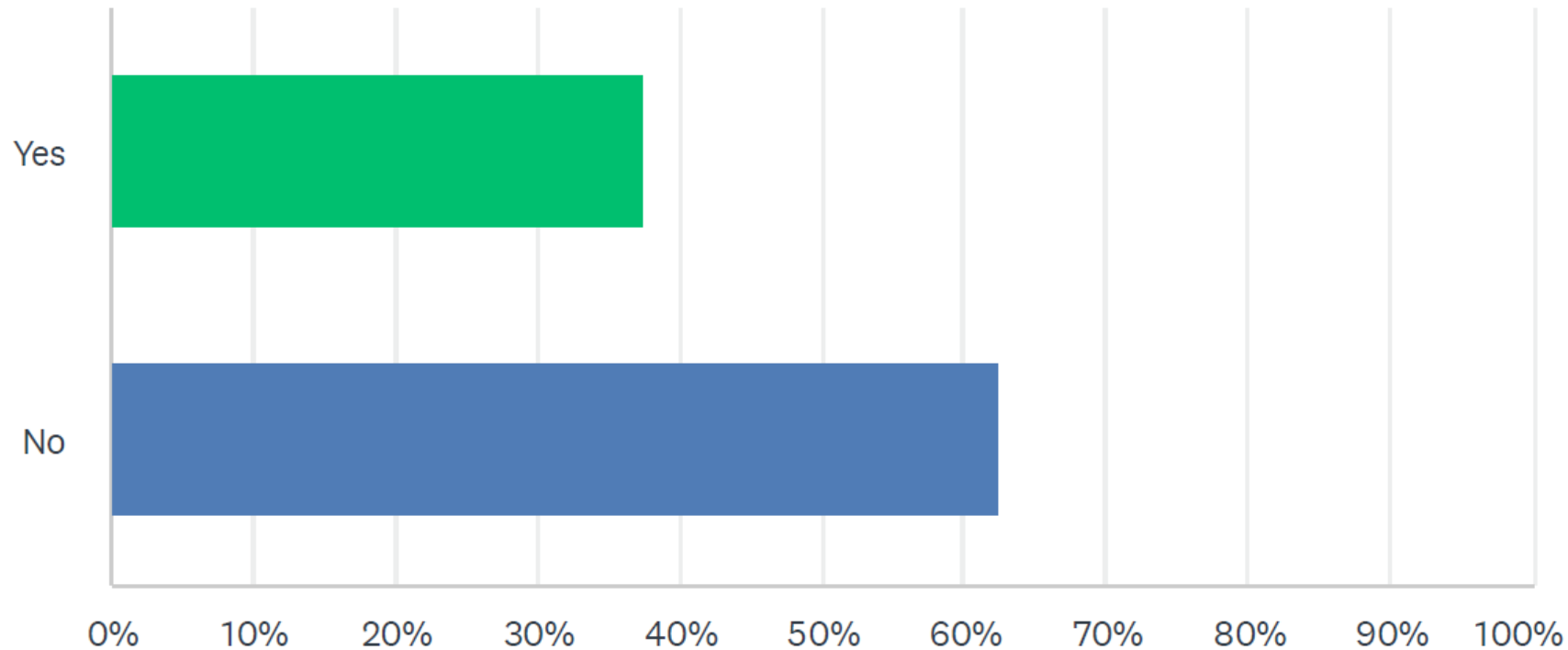
FDFA Survey Data

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

February 2022 Monthly Revenue Decline vs. Pre Pandemic 2020



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



National Open/Closed Throughout the pandemic

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

National Open/Closed Throughout the pandemic

- We have had different stages of the closure that we have been battling – some stores were able to open during different periods, but for many it was too costly with only one or two sales a day – some per week – to be able to even open.
- Testing requirements continued to complicate matters and it was a very difficult time and there was no clear answer as the pandemic progressed, rules changed, but I can assure you the one thing that stayed consistent is that our customers were not in our stores.

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

Government-wide approach – Treasury Board Directive

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

To implement this decision, the following direction is provided:

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



Government-wide approach – Treasury Board Directive

- The government introduced and rolled out plans quickly for rent relief that weren't fully thought out and had some rough edges that we worked with them to improve.
- One of the pillars of this approach was that the government agreed with us that government entities/landlords should provide the same rent relief as the private sector program – that being 75%
- That lead to this Treasury Board directive to ensure Federal landlords lined up with the 75% goal and to follow that directive.
- I can tell you that all the other bridge authorities have followed this directive and that this bridge authority is the **only** exception.



The Value of Peace Bridge Duty Free

1. 100% of rent arrears will be forfeited if lease is terminated
 - A replacement operator will likely take a minimum of 6 months
2. The duty free amenity to travellers will be interrupted
3. Employment for all PBDF employees will be lost
4. A replacement tenant will not have same lease
5. Total loss of rent during RFP and lease negotiation process

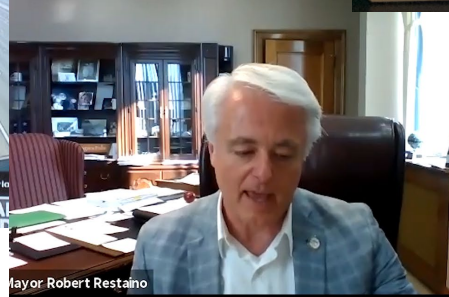
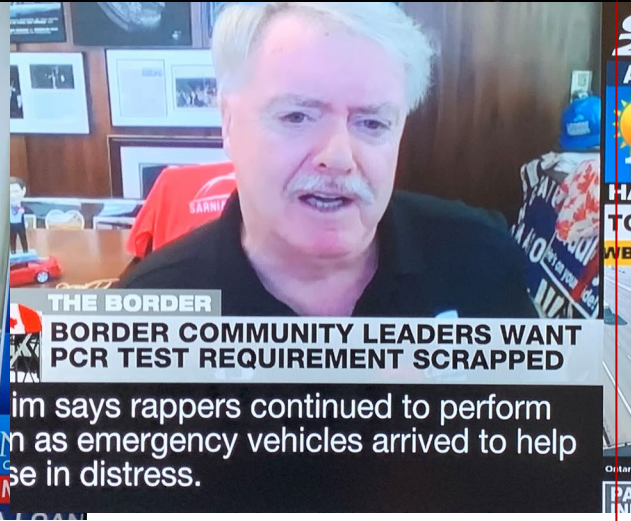
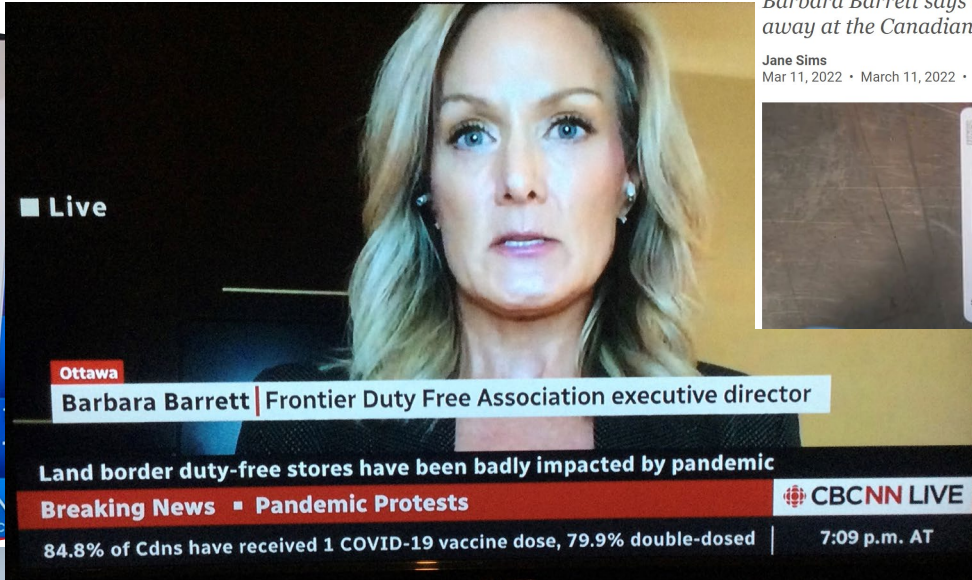


The Value of Peace Bridge Duty Free



1. In the event of lease termination 100% of rent arrears will be forfeited- PBDF has conceptually offered to pay some fixed amount of arrears over the balance of the term of the lease, although this tied to gross revenue and future rent obligations
 - Any termination and RFP for a replacement operator will likely take a minimum of 6 months- meaning a loss of rent at 20% of gross sales and probably longer
2. The duty-free amenity to travelers will be interrupted
 - Alternate arrangements will be needed to process trucker's customs' paperwork needs and washroom needs
3. Employment for all PBDF employees will be lost
4. Any prudent replacement tenant will not agree to the same lease terms as the business cannot be profitable with a fixed minimum rent for the foreseeable future; and most new leases provide for free rent periods and tenant allowances- the PBDF is not seeking any rent-free period/allowance going forward and will likely pay greater rent than any replacement tenant
 - Any new lease will include other losses related to landlord costs like free rent, fixturing periods, tenant allowances and lower rent based on updated traffic counts with carveouts for future pandemic impacts. Since the PBDF lease was negotiated annual traffic counts are lower (not including covid reductions) by 10%+. i.e the more recent historical traffic stats (excluding the covid period) do not support the traffic assumptions underlying rent in the PBDF store lease.
5. There will be a total loss of rent during RFP and lease negotiation process

Getting the Stores Back to Business



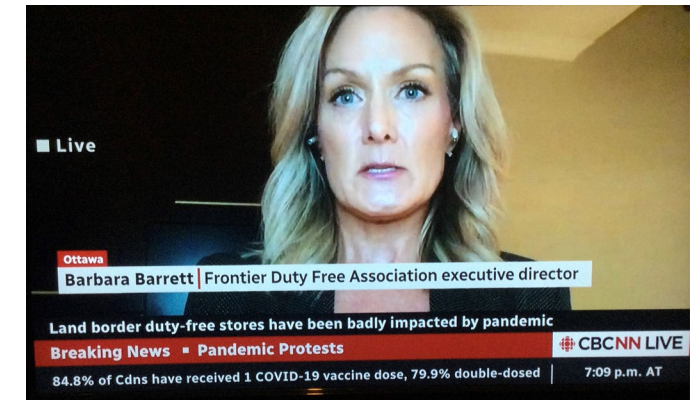
Columnists
Sims: COVID border tests continue the pain for duty-free shops
Barbara Barrett says duty-free store operators have told her they have seen car after car get turned away at the Canadian border because the travelers didn't have the proper pre-entry COVID-19 tests.
 Jane Sims
 Mar 11, 2022 • March 11, 2022 • 3 minute read



Getting the Stores Back to Business

- FDFA has worked extensively with the media through coalitions like the Hardest Hit Businesses and the border city mayors to get the government to get the border back to normal, drop testing and allow our stores to get back to business.
- We want to work with you to tell the story about working in the spirit of the PM's messaging of "we have your backs" and be able to tell the good news story of how we worked together to find a solution and not one that we were forced to shut our doors.

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





*“Our **Tourism and Hospitality Recovery Program** will provide support through the wage and rent subsidy programs to employers, such as hotels, restaurants, travel agencies, and tour operators.”*

Our work with government ensured that Bill C-2 was a PRIORORITY for this government and we continue to work for the extensions of these.

Bill C-2

Types of Business Eligible for the Tourism and Hospitality Recovery Program

Background

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

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

Ongoing Advocacy

Our Message:

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

Our Ask:

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

Federal:

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





Media Statement

Land Border Duty Free Stores Can Start on Road to Recovery

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

- 30-

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

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

Politics

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



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

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



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

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Introduction

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

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

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

Government Support

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

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

Recovery

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

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

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

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

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

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

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

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

Advocacy

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

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

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

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

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

What We Need Now

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

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

We also want to emphasize that FDFA is more than prepared to work with you and focus our advocacy efforts to achieve fairness for all Peace Bridge stakeholders, who have all been caught up in the

continuing whirlwind of unanticipated covid management/regulation side effects. Happy to take questions and suggestions now as to how we might achieve that together, or to schedule a time to have that conversation as the PBA synthesizes this new and updated industry information.

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



Commissioner, etc.

October 24, 2022

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

Attention: Kenneth A. Manning, Chair

Dear Mr. Manning,

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

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

We ask that the information be shared with your Board.

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

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

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

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

Canada Day

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

July

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

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

August Long Weekend

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

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

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

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

Peace Bridge Duty Free

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

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

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

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

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

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

Sincerely,



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

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

THIS IS **EXHIBIT "X"** TO
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Commissioner, etc.



Tony Baldinelli, MP

Member of Parliament
Niagara Falls

April 1, 2022

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

Dear Minister Freeland,

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

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

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

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

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

Ottawa

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Fax.: 613-992-7910

Niagara Falls Niagara-on-the-Lake

4056 Dorchester Street, Unit 107
Niagara Falls, Ontario
L2E 6M9
Tel.: 905-353-9590
Fax.: 905-353-9588

Tony.Baldinelli@parl.gc.ca

Fort Erie

48 Jarvis Street
Fort Erie, Ontario
L2A 2S4
Tell. : 905-871-9991
Fax. : 905-971-5046

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

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

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

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

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

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

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

Sincerely,



Tony Baldinelli, M.P.
Niagara Falls Riding

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

THIS IS **EXHIBIT "Y"** TO
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Commissioner, etc.

Gail Fairhart

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

Follow Up Flag: Follow up
Flag Status: Completed

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

Good morning,

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

Sincerely,

Billy Morrison

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

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



Dear Colleague:

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

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

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

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

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

Please accept my best wishes.

Sincerely,

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

The word "Canada" in a serif font, with a small Canadian flag (red maple leaf) positioned above the letter 'a'.

THIS IS **EXHIBIT "Z"** TO
THE AFFIDAVIT OF **JIM PEARCE**
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administering Oath or Declaration Remotely



Commissioner, etc.



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

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

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

August 9th, 2022

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

The Right Honourable Vance Badawey, Niagara Centre

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

And to:

VIA FAX (613-995-5245)

The Right Honourable Vance Badawey, Niagara Centre

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

Dear Sir:

Re: Commercial Lease ("Lease") between Peace Bridge Duty Free Store as tenant ("PBDF") and Peace Bridge Authority as landlord ("PBA")

And Re: Offer to convene meetings with a view to considering funding via a longterm low interest loan certain arrears of rent claimed by the PBA and arising by reason of border closure-related shutdowns, restrictions and the after effects

I wanted to write to you to follow up on our discussion in June regarding PBDF and our landlord, PBA that has unlawfully threatened Lease termination and continues to do so despite all efforts on our part to seek a mutually agreeable resolution to the matter.

Despite a trend line of continued gradual improvement in performance at the PBDF, the Lease dispute situation described to you by me, and also by the Frontier Duty Free Association (FDFA) has unfortunately recently and materially worsened. *This matter is now urgent.*

I have provided considerable detail below to jump start consideration and emphasize the need for your assistance and guidance. Back up documentation to substantiate is available on request. Having said that, this letter is not to be construed by any person that the PBDF directly or indirectly agrees with the PBA's assertion of its alleged contractual rights. PBDF has written PBA advising it of its legal position in respect of rights and obligations under the Lease which position remains unchanged. PBDF reserves all rights to oppose the actions of any party that threatens its continued existence. This position is detailed in the Renewed Notice of Intention To Terminate the Lease below.

By way of overview:

The Problem

- The Lease calculates base rent at 20% of gross sales, but at the time the Lease was negotiated traffic and sales were far greater than now. The Lease based rent on sales also included a minimum threshold of \$4 million dollars/annum based upon sales of not less than \$20 million.
- Sales in 2022 are estimated to be \$10 million. In 2021 (prorated from September when the store re-opened) gross sales were less.
- Nonetheless, PBA has generally demanded the threshold rent be maintained, and has demanded rent be paid in respect of when the store was closed by government policy. PBA has been voluntarily provided with financial information and is patently aware that PBDF sales can not support the rent it demands.
- PBA has refused offers to meet with PBDF and has also refused to participate in mediation.
- PBA has ignored the proposal of the FDFA to participate in a joint request for accommodation from governments who control the PBA.
- In fact, the letter of July 26th, 2022 referenced below is the first letter from counsel to our counsel since our counsel last wrote the Landlord's lawyers on January 14th, 2022.

Status Quo

- PBA wrote our lender RBC last fall threatening Lease termination- which resulted in an Application for a Receiver by RBC which was resolved on the basis of the appointment of a Monitor. This threatened termination has resulted in significant additional costs.
- That RBC Application process resulted in a court ordered Stay of Enforcement granted early winter at hearing at which PBA attended.
- A combination of Part IV of the Ontario *Commercial Tenancies Act* (which barred evictions) and the court ordered Stay has ensured the status quo continued until now.
- During the time from re-opening for business and to date PBDF has faithfully paid 20% of gross sales in base rent to PBA and has also paid all additional rent, and HST on the full rent allegedly still due under the Lease.
- PBDF has paid 100% of any funds received from governments to the PBA.
- PBDF has paid all commercial lenders as per the loan agreements.
- The president of PBDF has deferred his salary and the shareholders have not taken a penny from the company since the border closure.
- The shareholders have invested \$7 million in upgrades to the premises.
- PBDF provides employment for 30 employees.

Renewed Notice of Pending Lease Termination Delivered July 26th, 2022

- PBA has just last week unilaterally wrote our lender RBC and its court appointed Monitor without any notice, warning or discussion with the PBDF advising of its intention to enforce the Lease. The RBC, the Monitor, PBA and PBDF are through counsel discussing on August 10th, 2022 next steps to permit a judicial determination of these matters.
- PBA claims arrears of rent totalling in excess of \$8.4 million dollars (and has offered on a without prejudice basis to compromise this claim by 50% of Covid border closure-related rent (a sum which is not quantified but likely is about \$3.2 million).
- PBA has once again acted to create a situation of urgency.
- It should be noted PBDF disagrees that it is in arrears of rent: and if it is in any arrears, the quantum claimed is excessive and exaggerated.
- The Lease expressly requires the PBA to consult with PBDF with a view to adjusting rent upon the occurrence of Regulatory Changes or Applicable Laws causing an adverse effect on the business operations of the Tenant (see excerpt below).
- "Regulatory Changes
- In the event an unanticipated introduction of or a change in any Applicable Law causes a material adverse effect on the business operations of the Tenant at the Leased Premises, the Landlord agrees to consult with the Tenant to discuss the impact of such introduction or change in Applicable laws to the Lease." (emphasis added).

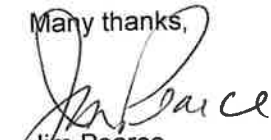
Factual Matrix

- FDFA stores are experiencing a slow return to 2019 levels and PBDF is experiencing a similar situation (please see attached).
- Car traffic on the Peace Bridge is about 50% less than in 2019.
- PBDF gross sales are about 50%+/- of sales in 2019.
- Factors such as new strains of Covid, the virtual destruction of the USA crossborder tour bus business, inflation, uncertainty and the fact that nearly 1/3rd of Americans are unvaccinated and not eligible to enter Canada, as well as the ArriveCan App use represent some of the continuing challenges – none of which were caused by or contributed to by the PBDF.
- PBDF is outperforming the majority of its Duty Free peers according to the FDFA.
- Currently it is estimated by the FDFA that sales will not return to pre-Covid levels until sometime after 2023. Attached are copies of notes from presentations by FDFA to PBA Board of directors' meetings.

Requested Action

We urgently request a meeting to discuss a framework for the possible provision of some level of government funding/program/loan to address the demands of PBA. Time is of the essence.

Many thanks,



Jim Pearce
General Manager

c.c. PBDF
Attention: Greg O'Hara
President

c.c. FDFA
Attention: Barbara Barrett
Executive Director

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			Conlin Bedard	Blaney	Monitor Spergel	Aird Berlis	TGF	Misc	1548
CONLIN BEDARD	Oct 19 2021	7,200.00	7,200.00						
CONLIN BEDARD	Nov 29 2021	3,800.00	3,800.00						
CONLIN BEDARD	Dec 7 2021	4,200.00	4,200.00						
CONLIN BEDARD	Jan 19 2022	600.00	600.00						
CANAM APPRAIZ	2021/11/18	3,500.00						3,500.00	
CROWE	Mar 3 2022	6,983.00						6,983.00	
SPERGEL	Dec 31 2021	11,689.00			11,689.00				
SPERGEL	Jan 312022	15,763.00			15,763.00				
SPERGEL	Mar 31 2022	6,486.50			6,486.50				
TGF	Feb 16 2022	15,414.71					15,414.71		
TGF	May 27 2022	7,910.00					7,910.00		
							-		
AIRD BERLIS	Oct 13 2021	9,524.65				9,524.65			
AIRD BERLIS	Nov 19 2021	1,234.00				1,234.00			
AIRD BERLIS	Dec 20 2021	3,154.00				3,154.00			
AIRD BERLIS	Jan 20 2022	15,330.42				15,330.42			
AIRD BERLIS	Feb 18 2022	15,067.50				15,067.50			
AIRD BERLIS	Mar 16 2022	580.00				580.00			
AIRD BERLIS	Apr 20 2022	5,280.00				5,280.00			
AIRD BERLIS	May 20 2022	487.50				487.50			
AIRD BERLIS	Aug 9 2022	1,465.00				1,465.00			
AIRD BERLIS	Aug 19 2022	1,697.50				1,697.50			
AIRD BERLIS	Sep 22 2022	1,617.50				1,617.50			
AIRD BERLIS	Oct 13 2022	1,592.50				1,592.50			
AIRD BERLIS	Nov 8 2022	2,602.50				2,602.50			
BLANEY	Dec 13 2021	40,990.00		40,990.00					
BLANEY	Jan 26 2022	51,457.40		51,457.40					
BLANEY	Feb 2022	11,597.58		11,597.58					
BLANEY	Mar 11 2022	33,483.90		33,483.90					
BLANEY	Mar 31 2022	21,730.50		21,730.50					
BLANEY	May 31 2022	11,585.06		11,585.06					
BLANEY	July 31 2022	13,969.26		13,969.26					
BLANEY	Sep 30 2022	30,256.50		30,256.50					
				-					
		358,249.48	15,800.00	215,070.20	33,938.50	59,633.07	23,324.71	10,483.00	

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



Commissioner, etc.

Memorandum D4-3-2

Ottawa, October 28, 2015

Duty Free Shop – Licensing

In Brief

1. This memorandum incorporates the information previously contained in Memorandum D4-3-3, *Duty-Free Shop – Security* dated May 5, 2009 and replaces Memorandum D4-3-2, *Duty-Free Shop – Licensing* dated May 1, 2009.
2. This memorandum has been revised to reflect organizational changes resulting from the restructuring of the Canada Border Services Agency (CBSA) on April 1, 2010, to include a service standard for processing new Duty Free Shop applications, and to provide general updates and updates as a result of the strategic review of the Duty Free Shop program.
3. In addition to the above, the Commercial Registration Unit (CRU) and Border Information Services contact information has been added.

This memorandum explains the policies and procedures related to the licensing requirements needed to operate a Duty Free Shop (DFS) in Canada.

Legislation

[Duty Free Shop Regulations](#).

Guidelines and General Information

1. Note that the [Customs Act](#), Subsection 24 (1), provides the Minister of Public Safety with discretion when considering whether to issue a DFS licence. The Minister has the discretion to consider matters that are relevant to the overall intent of the program and government policy in the choice of a suitable licensee.
2. The DFS licence issued by the CBSA is a licence to acquire goods free of certain duties and taxes (other taxes, such as excise taxes, may be applicable) for sale to travellers who will immediately export the goods from Canada. The licence holds no monetary value and it does not express an implied guarantee of income in its own right, nor does it grant the licensee privileges in other government programs or jurisdictions where other licences, permits or contracts are required.
3. The Commercial Registration Unit (CRU) will strive to process applications for a new DFS within 90 calendar days from the deadline for application submissions. Only complete applications that meet all of the program requirements, as set out in the [Duty Free Shop Regulations](#), and that include all required supporting documentation will be considered.

Application and Selection Process

4. The eligibility requirements for a licence to operate a DFS vary depending upon whether it is located at a land border crossing or at an airport. Refer to the [Duty Free Shop Regulations](#).
5. Anyone interested in establishing a DFS at a site where there is no existing DFS or where an adequate range of goods is not available at an existing DFS, shall submit a completed [Form BSF664, Duty Free Shop Application/Amendment](#) indicating their interest in operating a DFS to the [CRU by e-mail](#).

6. The CRU will review the initial request, and determine if the local CBSA office is able to provide service and monitor the proposed DFS operation and, for land border locations, that the establishment of a DFS will not impede the flow of traffic in the vicinity in which the proposed DFS is to be located.

Land Border Location

7. If the proposed land border crossing point is deemed acceptable, the CRU will inform the Frontier Duty Free Association (FDFA) and the Association of Canadian Airport Duty Free Operators (ACADFO) that applications will be invited by means of national advertisements undertaken by the CBSA. A call for applications may include more than one site; however, a separate application is required for each location. Interested parties must submit a completed land border DFS application package to the CRU.

Airport Location

8. For the establishment of a DFS at an airport, lease applications may be invited through a tendering process administered by Transport Canada or the individual airport authority. Once a successful candidate has been selected by the airport authority, the interested party must then submit a completed airport DFS application to the CRU.

Application Package

9. The application package is comprised of [Form BSF664, Duty Free Shop Application/Amendment](#) and schedules that must be completed in their entirety and supported by all the required documentation in order for the application to be recommended for further consideration. Application packages can be requested from the CRU.

10. For land-border DFSs, the successful applicant is determined by the Minister on the basis of an evaluation. If more than one application qualifies, preference is given to an applicant that qualifies as a small or medium-size business and an eligibility list is created, ranking the applications in order of their final scores. Proposals are evaluated against specific selection criteria in four main groupings: management capabilities and retail/allied experience, site and building proposal, business plan and proposed level of local employment.

11. The CRU will advise all applicants of the results of the selection process. Unsuccessful applicants may make a written request for feedback on the evaluation of their application within 90 days after the licence has been awarded.

12. Before the licence is issued, the successful applicant must ensure that all required documentation and financial security has been submitted to the CRU, otherwise, their application may be disqualified.

Security Requirements

13. A DFS licensee is liable for applicable taxes on its domestic goods and for all duties and taxes on imported goods unless the licensee can prove that the goods have been sold for export, are still in the DFS, have been destroyed or have been lawfully removed. To protect the interests of the Crown, DFS licensees must post financial security against their inventory in order to operate. In the event the DFS licensee fails to pay duties and taxes owed, action may be taken against the security in order to recover any outstanding amounts.

14. The amount of financial security will be based on 25 percent of the highest total projected value of the total inventory of the DFS and any off-site locations for the first year of operation. The amount of financial security for subsequent years will be based on 25 percent of the highest total value of inventory for the previous year.

15. The minimum amount of security is CAN\$10,000 for each DFS licence.

16. General policies and procedures for posting and filing financial security are outlined in [Memorandum D1-7-1, Posting Security for Transacting Bonded Operations](#). The original customs bond or other acceptable form of financial security is managed by the CRU.

Adjustments to Financial Security

17. The CRU will review the amount of financial security no less than once a year to ensure it is adequate for the value of the inventory on hand.

18. If it is determined that an increase in financial security is required, the licensee is to submit amended financial security to reflect the revised amount within 60 days of being advised to do so by the local CBSA office.
19. A licensee can voluntarily change the surety company or financial institution for its customs DFS bond or other form of financial security at any time by submitting a suitable replacement. At no time may a DFS operate without coverage. Whenever the financial security posted by a licensee is to be amended, [Form BSF664, Duty Free Shop Application/Amendment](#) is to be completed by the DFS licensee and submitted to the CRU for review.
20. The licensee may apply to have the amount of financial security decreased after the initial year of operation. [Form BSF664, Duty Free Shop Application/Amendment](#) requesting a reduction relative to the value of the inventory on hand must clearly state the reasons for the proposed adjustment.

Licence Renewal

21. The Minister, or authorized delegate has the sole discretion to determine whether to renew an existing licence. A DFS licence is issued for a maximum of 10 years. The DFS licensee must request renewal of its licence at least two months prior to the date of expiry of the existing licence, by submitting [Form BSF664, Duty Free Shop Application/Amendment](#) to the CRU.
22. The licensee must provide the names, titles, telephone numbers, residential addresses, dates of birth, share allocation by percentage and citizenship of the company's board of directors and owners.
23. The licensee must also include a copy of financial security for the DFS and, where applicable, the required provincial liquor authority to sell alcohol. When the permit cannot be acquired prior to the renewal of the DFS licence, the licensee is not to sell alcohol products until the permit is received and a copy forwarded to the CBSA.
24. When a request for a licence renewal has been submitted, the CRU will conduct a review of the entire licensing period for the DFS operation and will confirm that the licensee continues to meet all program requirements.
25. If the CBSA is satisfied with the outcome of the review, the licence will be renewed for a further 10 year period or for a shorter period at the Minister's discretion.
26. If a DFS licence runs its full term and is not renewed, it will be deemed to have expired and to be no longer valid.

Cancellation, Suspension or Expiration of Licences

27. Pursuant to the provisions of the [Duty Free Shop Regulations](#), the CBSA has the sole discretion to cancel or suspend an existing licence at any given location. If the CBSA cancels or suspends a licence, the CRU will advise the licensee by registered mail of the reasons this action is proposed and the effective date of suspension or cancellation. The DFS will be locked and secured by the local CBSA office.
28. In the case of cancellation, the DFS will remain locked and sealed until the inventory has been properly disposed of. In the case of suspension, the DFS will remain locked and sealed by the local CBSA office until a decision is made by the CBSA either to reinstate or cancel the licence.
29. In the case where the DFS operator has failed to apply for and obtain a renewal of their DFS licence before the expiry date of the licence, the DFS will be locked and sealed by the local CBSA office until a decision is made by the Minister either to reinstate or cancel the licence.
30. Regardless of whether a DFS licence has been cancelled, suspended or has expired, immediately after the effective date, the local CBSA office will conduct a complete audit of the DFS inventory to ensure that records are maintained and up to date.
31. When a licensee requests the Minister to cancel its licence to operate a DFS, the notice of cancellation should include an outline of the licensee's plans for disposing of the assets. A licence, once cancelled by the Minister will not be reinstated. Refer to the [Duty Free Shop Regulations](#), Sections 8 to 12.

Receivership or Bankruptcy

32. When it is expected that a DFS will be placed under the control of a receiver or may go bankrupt, the DFS licensee must notify the CBSA immediately in writing by sending an e-mail to the CRU.

33. The trustees and the licensee may be given limited access to the DFS but no sale or movement of goods is to take place without prior approval of the local CBSA office. In the case of a receivership, the licensee may request that the receivers be allowed to continue the day-to-day operations of the shop providing they meet the requirements of the DFS program. In the case of a bankruptcy, the DFS licence is automatically cancelled.

34. In both cases, the local CBSA office will conduct a complete audit of the DFS inventory and ensure that records are up to date.

Licence Amendment

35. A DFS licensee is responsible for informing the CRU immediately of any impending changes to the DFS:

- (a) Legal or operating name;
- (b) Ownership structure; or,
- (c) Operation of the DFS (i.e. off-site outlets, hours of operation, expansion of operation, change in location etc.)

36. Each submission should be made using [Form BSF664, Duty Free Shop Application/Amendment](#) outlining the reason(s) for the change. Supporting documentation may also be required. The CBSA must be allowed sufficient time to review the proposal before the impending change is due to take effect.

Change in Name or Ownership Structure

37. For clarification purposes, a change in ownership structure may involve:

- (a) contraction – where one or more of a group of shareholders decide to withdraw from the entity that holds the DFS licence;
- (b) expansion – where one or more new shareholders are added;
- (c) redistribution – where shares are transferred between existing shareholders; or,
- (d) shares up for sale – where all shareholders sell their shares to another legal entity.

38. Proposals for a change to the ownership structure are to include the existing ownership structure and the proposed ownership structure including the names, addresses, dates of birth and percentage of share ownership. For land border DFSs, new shareholders must provide proof of citizenship.

39. Proposals to change the name by which the DFS is known or to change the company name in which the licence was issued must outline the reasons for the change and be accompanied by a certified copy of the amendment to the article of corporation if applicable.

40. If it is determined that the licensee would no longer qualify under the [Duty Free Shop Regulations](#) as a result of the transfer of shares, the CRU will give notice that an amended licence could not be issued and that such a transfer could result in the cancellation of the existing licence.

Death of a Sole Proprietor

41. In the event of the death of a sole proprietor, the executor of the estate must inform the CRU immediately in writing. The DFS is to be locked and sealed by the local CBSA office.

42. The beneficiary or the executor will be granted 30 days from the date that the notification is received to submit a request to amend the ownership structure in accordance with the procedures outlined in paragraph 37.

43. In such an event, the local CBSA office will conduct a complete audit of the DFS upon receiving such notification and ensure all inventory records are up to date. The representative (estate) will be held responsible for

all deficiencies or other discrepancies noted in the inventory audit. The beneficiary or executor will be given limited access to the DFS but no sale or movement of goods is to take place without prior approval of the CBSA.

44. If the beneficiary does not wish to make an application for the continued operation of the DFS, or the application made by the beneficiary is rejected, goods in the DFS inventory are to be disposed of in accordance with the provisions of [Memorandum D4-3-5, *Duty-Free Shop – Inventory Control and Sales Requirements*](#) and the DFS licence will be cancelled.

Transfer of a Licence

45. A licence to operate a DFS is not transferable. If an existing DFS licensee wishes to terminate the licence by disposing of their interests through the sale of the shop, the licensee is to submit a notice of cancellation to the CRU, as outlined in paragraph 31. A prospective purchaser must meet the eligibility requirements of the program and submit an application for a licence to operate in accordance with the procedures set out in paragraphs 8 through 10. The DFS may become the subject of a public call for applications at the discretion of the Minister.

Additional Information

46. For additional information, contact the [CRU by e-mail](#), or by regular mail at:

Commercial Registration Unit
Canada Border Services Agency
191 Laurier Avenue West, 12th Floor
Ottawa, ON K1A 0L8

47. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	
Legislative References	Customs Act Duty Free Shop Regulations
Other References	D1-7-1 and D4-3-5 Form BSF664
Superseded Memorandum D	D4-3-2 dated May 1, 2009 D4-3-3 dated May 5, 2009

THIS IS **EXHIBIT "CC"** TO
THE AFFIDAVIT OF **JIM PEARCE**
SWORN REMOTELY by Jim Pearce being located in the
Town of Fort Erie, in the Province of Ontario, before me
at the City of Toronto, in the Province of Ontario, on
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Commissioner, etc.

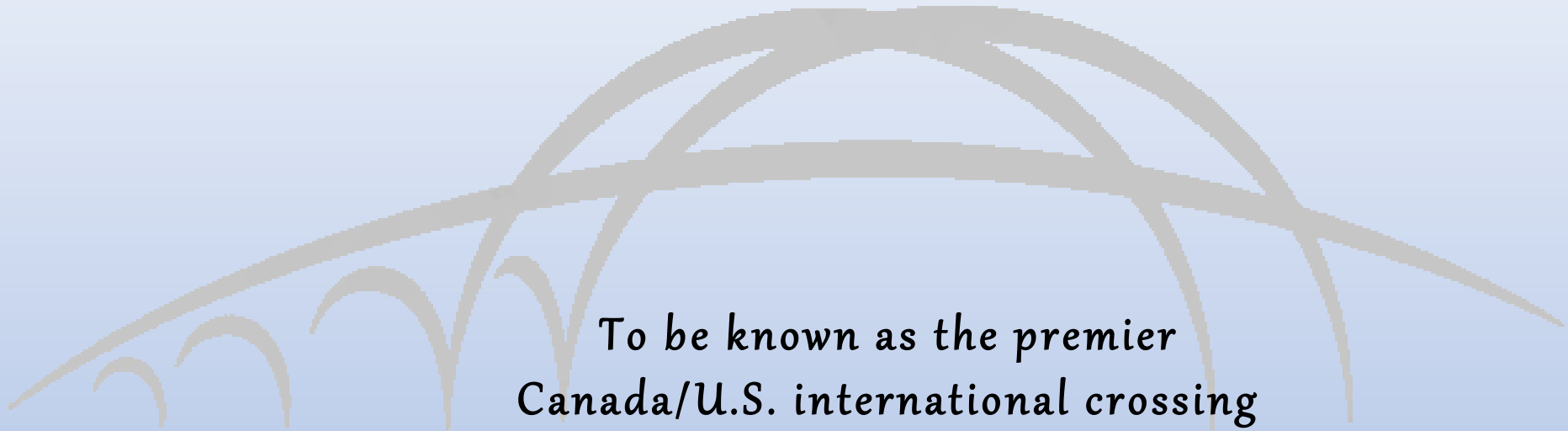
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

2020 Annual Report



OUR MISSION...

1557



To be known as the premier
Canada/U.S. international crossing
providing excellence in customer
service and an effective conduit for
trade and tourism.



BOARD OF DIRECTORS



Kenneth A.
Manning
CHAIRMAN



Timothy
Clutterbuck
VICE-CHAIRMAN



Marie-Therese
Dominguez



Llewellyn "Lew"
Holloway



Anthony M.
Masiello



Isabel Meharry



Jennifer C.
Persico



Patrick J. Robson



Michael J. Russo



Debbie
Zimmerman

CHAIRMAN'S REPORT

1559



2020 was unfortunately dominated by COVID-19.

Less than a month after being elected Chair, the border was closed on March 21, 2020, to all but essential travel by both federal governments and has remained closed.

Immediately, car traffic dropped by 95% ending the year down by almost 80% compared to 2019. Trucks initially dropped by 25% but recovered to end the year down by approximately 5%.

The Authority pivoted quickly to respond, recognizing the Peace Bridge is critical infrastructure integral to keeping essential supply chains functioning and providing support to the Customs functions on both sides of the border. COVID-19 protocols were immediately put in place to protect Authority employees and tenants in accordance with public health directives.

A mid-year revised budget in June 2020 was put forth and was approved to reduce expenditures by approximately \$10 million by deferring capital projects and cutting all but essential spending. The 2021 budget in October recognized the border restrictions would likely remain in place through at least the 1st quarter of 2021 and even when lifted (likely partially), car traffic would only return to 25% of pre-pandemic levels. Truck traffic is anticipated to be at 95% pre-pandemic levels.

Amidst all of this, the Authority continued to comply with all bond covenants including debt service coverage requirements and maintained an A+ credit rating.

Capital projects that were contractually committed to, continued, notably the bridge painting and bridge lighting projects. The 3-year bridge rehabilitation project was completed on time and under budget.

The toll structure was revamped in December to encourage touchless toll collection by promoting E-ZPass through higher cash tolls.

2021 will continue to bring uncertainty with no established border reopening plans resulting in ongoing revenue reductions related to car tolls and rental revenue, particularly from the Duty Free stores.

Kenneth A. Manning
Chairman

INDEPENDENT AUDITORS' REPORT

1560

The Board of Directors
Buffalo and Fort Erie Public Bridge Authority

We have audited the accompanying financial statements of Buffalo and Fort Erie Public Bridge Authority (the Authority), a business-type activity, as of and for the years ended December 31, 2020 and 2019, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Authority as of December 31, 2020 and 2019, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that management's discussion and analysis and other required supplementary information, as listed in the table of contents, be presented to supplement the financial statements. Such information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during our audit of the financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

MANAGEMENT'S DISCUSSION & ANALYSIS

For the Years Ended December 31, 2020, 2019 and 2018 (Unaudited)

The management of the Buffalo and Fort Erie Public Bridge Authority (hereinafter referred to as the Authority) offers the following overview and analysis of the Authority's financial activities as of and for the years ended December 31, 2020, 2019 and 2018 which should be read in conjunction with the Authority's financial statements and notes to the financial statements.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Authority's financial statements. It begins by presenting and explaining the financial statements. These statements have been prepared according to accounting principles generally accepted in the United States of America (GAAP). Revenues and expenses are recorded using the accrual basis of accounting, meaning that they are recorded and recognized by the Authority as earned/incurred, regardless of when cash is received or paid.

Effective January 1, 2018, the Authority adopted GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* (GASB 75). This statement requires the Authority to include in its statement of net position its net other postemployment benefits (OPEB) liability as well as deferred outflows and deferred inflows of resources related to OPEB. The cumulative effect of this change was a decrease in net position at January 1, 2018 totaling \$9,079,000.

The balance sheets present information on all the Authority's assets, deferred outflows of resources, liabilities, and deferred inflows of resources with the difference reported as net position. Increases or decreases in net position serve as a relative indicator as to whether the Authority's financial position is strengthening or weakening over time.

The statements of revenues, expenses, and changes in net position show the results of the Authority's operations during the year and reflect both operating and non-operating activities. Changes in net position reflect the operational impact of the current year's activities on the financial position of the Authority.

The statements of cash flows provide an analysis of the sources and uses of cash. The cash flow statements show net cash provided or used in operating, capital and related financing, and investing activities.

The notes to the financial statements include additional information which provides a further understanding of the financial statements.

MANAGEMENT'S DISCUSSION & ANALYSIS (...continued)

FINANCIAL STATEMENT ANALYSIS

Comparative Balance Sheets as of December 31:

<i>U.S. \$, in thousands</i>	2020	2019	2018
Assets			
Current assets	\$ 79,607	\$ 94,734	\$ 95,723
Restricted assets	19,374	19,678	36,026
Net pension asset	7,390	3,582	5,322
Capital assets, net	249,913	239,199	215,763
Total assets	356,284	357,193	352,834
Deferred outflows of resources	2,977	4,826	13,146
Total assets and deferred outflows of resources	\$ 359,261	\$ 362,019	\$ 365,980
Liabilities			
Current liabilities	\$ 10,453	\$ 12,536	\$ 16,713
Noncurrent liabilities	97,072	105,999	122,882
Total liabilities	107,525	118,535	139,595
Deferred inflows of resources	6,706	3,721	2,291
Net position			
Net investment in capital assets	147,659	131,766	120,067
Restricted	14,981	16,893	16,376
Unrestricted	82,390	91,104	87,651
Total net position	245,030	239,763	224,094
Total liabilities, deferred inflows of resources, and net position	\$ 359,261	\$ 362,019	\$ 365,980

MANAGEMENT'S DISCUSSION & ANALYSIS (...continued)

As noted earlier, net position serves as an indicator of the Authority's overall financial strength. The Authority's net position increased by \$5,267,000 in 2020, \$15,669,000 during 2019, and decreased by \$1,266,000 during 2018 resulting from the Authority's operating and non-operating activities each year. The decrease in 2018 is primarily attributed to the cumulative effect of the adoption of GASB 75 which resulted in a decrease in beginning net position of \$9,079,000. The effect of this and other variances between 2020 and 2019 are detailed on page iii.

In 2017, the Authority issued \$70,800,000 Toll System Revenue Bonds at a premium of \$12,915,000, the proceeds of which were required to be used for the bridge redecking and rehabilitation project, coatings project, and enhancements to the U.S. plaza regarding inspection capacity. All bond proceeds were spent by December 31, 2020. Unspent bond proceeds at December 31, 2019 and 2018 totaled \$188,000, and \$19,497,000 and are recorded as restricted assets. The net investment in capital assets at December 31, 2020, 2019, and 2018 reflects that activity as it consists of the Authority's net capital assets offset by any payables and debt outstanding used to finance the capital asset purchases. As required by the Authority's bond indenture, the restricted portion of net position is reserved for debt service, governmental payments, and operating reserves. Restricted amounts fluctuate based upon the amount of required debt service and operating reserve requirements. Substantially all unrestricted net position has been designated by the Board of Directors for acquisition or construction of capital projects and/or major repairs and replacements.

Deferred outflows and deferred inflows of resources primarily represent actuarially determined amounts related to the Authority's pension and OPEB plans that will be amortized through pension and OPEB expense over several years. Deferred items arise primarily from the differences between actual and expected investment earnings and changes in healthcare cost trends. Deferred outflows of resources related to OPEB also include the Authority's contributions subsequent to the measurement date of \$370,000, \$876,000, and \$10,718,000 at December 31, 2020, 2019 and 2018, respectively.

Statements of Revenues, Expenses, and Changes in Net Position for the years ended December 31:

<i>U.S. \$, in thousands</i>	2020	2019	2018
Operating revenues			
Toll revenues	\$ 16,910	\$ 22,118	\$ 22,213
Other revenues	7,662	8,813	8,859
Total operating revenues	24,572	30,931	31,072
Operating expenses			
Toll collection and traffic control	1,643	2,211	2,387
Maintenance of bridge, buildings, plazas & equipment	3,761	4,694	4,639
Administration	3,437	3,117	3,294
Pension	283	673	1,033
Other postemployment benefits	(3,650)	(1,162)	1,327
Other expenses	1,177	1,157	1,171
Bad debt	2,500	-	-
Loss on asset impairment	306	-	2,224
Depreciation	8,053	6,242	5,711
Total operating expenses	17,510	16,932	21,786
Operating income	7,062	13,999	9,286
Non-operating revenues (expenses)			
Interest income	1,534	3,325	2,269
Interest expense	(3,476)	(3,570)	(3,660)
Grant revenue	-	1,814	-
Currency remeasurement	147	101	(82)
Total non-operating revenue (expense)	(1,795)	1,670	(1,473)
Change in net position	5,267	15,669	7,813
Net position, beginning of year	239,763	224,094	225,360
Restatement - GASB 75	-	-	(9,079)
Net position, end of year	\$ 245,030	\$ 239,763	\$ 224,094

MANAGEMENT'S DISCUSSION & ANALYSIS (...continued)

1565

As a bi-national toll bridge operator, the Authority earns revenue and incurs expenses in both U.S. and Canadian dollars. Canadian revenues and expenses are converted to U.S. dollars at the average exchange rate for the month in which the transaction occurs. Fluctuations in the exchange rates result in an improvement or deterioration in the currency remeasurement to U.S. dollars.

Toll volumes decreased 63% in 2020 compared to 2019 due to the border restrictions on non-essential travel put in place by the governments of the U.S. and Canada on March 21, 2020 in response to the COVID 19 pandemic. The auto and bus categories of travel were impacted the most as trade and commerce was deemed essential travel by both governments. Overall, 2020 toll revenues decreased approximately 24% as a result of a 79% decrease in auto and bus revenues offset by an 8% increase in truck revenues. Commercial tolls also increased due to a scheduled toll increase on trucks effective January 1, 2020. Toll revenue decreased slightly in 2019 from 2018 (less than 1%) despite a 2.9% decrease in traffic volumes due to the elimination of the E-ZPass discount on commercial tolls.

Other revenues consist primarily of rental income, the largest portion of which is attributed to leases with duty-free businesses. The rent from the duty-free stores was negatively impacted by the border restrictions on non-essential travel that resulted in sharp declines in duty free sales. Both the U.S. and the Canadian duty-free stores are required to pay a minimum base rent; however, due to the COVID-19 border restrictions, the Authority entered into rent deferral agreements with both stores. These agreements permit the deferral of base rent for a period of time with repayment over 12 months at an interest rate of 4%. At December 31, 2020, the Canadian duty-free store was in default of their lease and the deferral agreement. The decrease of the duty-free rent was mitigated by an increase in the rents attributed to government agencies.

Operating expenses increased \$578,000 or 3.4% from 2019 to 2020. The increase is primarily due to recording \$2,500,000 in bad debt expense attributable to duty free rent discussed previously and asset impairment losses of \$306,000, offset by an increase in OPEB revenue of \$2,488,000 compared to 2019. OPEB revenue totaled \$1,162,000 for the year ended December 31, 2019 and increased to \$3,650,000 for the year ended December 31, 2020. This increase was primarily a result of the difference between actual and expected return on plan assets and a decrease in the healthcare cost trend rate used in the actuarial calculation. Toll traffic and maintenance operating expense categories decreased \$1,501,000 due to decreased activity and staffing as a result of the border restrictions. Depreciation increased \$1,811,000 from 2019 due mainly to the completion of the toll system replacement and bridge redecking projects.

Operating expenses decreased \$4,854,000 or 22% in 2019 compared to 2018. The primary driver in the decrease in operating expenses in 2019 was due to a one time impairment loss of \$2,224,000 recognized in 2018 and a decrease in OPEB expense of \$2,489,000 from 2018. OPEB expense amounted to \$1,327,000 for the year ended December 31, 2018 as compared to OPEB income of \$1,162,000 for the year ended December 31, 2019. This was primarily a result of a decrease in the healthcare cost trend rate used in the actuarial calculation.

Total non-operating net revenue (expense) decreased \$3,465,000 in 2020 and increased \$3,143,000 in 2019. Interest income declined approximately \$1,791,000 in 2020 as the Authority used its capital improvement reserve to fund capital projects that were already in progress. Additionally, the investment mix held in the capital improvement reserve was reallocated to more liquid investments which further reduced interest income. In 2019, the Authority received a one-time capital grant from Transport Canada in the amount of \$1,814,000, which was used to fund RFID readers at Canadian customs, a new toll system, and border analytics software. Additionally, interest income increased \$1,056,000 in 2019 compared to 2018.

MANAGEMENT'S DISCUSSION & ANALYSIS (...continued)

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CAPITAL ASSETS AND LONG-TERM DEBT

The Authority's total investment in capital assets as of December 31, 2020 approximated \$249,913,000 representing 70% of the Authority's total assets. Capital assets consist of land, the Peace Bridge, buildings and plaza improvements, equipment, and construction-in-progress. Capital asset additions totaled \$19,082,000 in 2020 and \$29,714,000 in 2019, as the Authority continued the Peace Bridge rehabilitation and bridge coatings projects, other capital projects, and equipment purchases.

In June 2014, the Authority issued \$28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of \$4,262,000, to currently refund \$33,500,000 of outstanding Series 2005 bonds, with interest rates ranging from 4% to 5%, and a true interest cost of 2.22%. The Series 2014 bond proceeds of \$33,102,000 plus \$3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under a mandatory tender and establish the Series 2014 debt reserves. The outstanding balance of the 2014 bonds at December 31, 2020 amounted to \$14,950,000.

Standard & Poor's Rating Services and Fitch Ratings have assigned ratings of "A+" and "A" respectively, to the Series 2014 Bonds.

In June 2017, the Authority issued \$70,800,000 in 30 year fixed rate Toll Bridge System Revenue Bonds at a premium of \$12,915,000, to finance the redecking and rehabilitation of the Peace Bridge, make a deposit to the debt service reserve account, and to pay certain costs of issuance of the Series 2017 bonds. The proceeds were also used to pay for costs of the Peace Bridge coatings and enhancements to the U.S. plaza devoted to inspection capacity. The Series 2017 bonds were issued on a parity with the Series 2014 bonds, with fixed interest rates of 5%, and a true interest cost of 3.71%. Principal repayments begin upon the repayment of the Series 2014 bonds (January 1, 2025) and continue until January 1, 2047.

Standard & Poor's Rating Services have assigned a rating of "A+" to the Series 2017 Bonds.

FACTS THAT WILL IMPACT FINANCIAL POSITION

The COVID-19 pandemic has had health, financial, and economic impacts across the world. Effective March 21, 2020, the United States and Canada enacted a joint initiative temporarily restricting all non-essential travel across the US/Canadian border. Supply chains, including trucking, were not impacted by these restrictions. Americans and Canadians also crossing the land border every day to do essential work or for other urgent or essential reasons were not impacted. These restrictions have been extended approximately every 30 days since March 2020 and remain in place through December 31, 2020 and are expected to continue into 2021. The Authority has been designated an essential business by both countries and all Authority staff are able to report to work and are not prevented from crossing the border to do so.

While the duration of the travel restrictions is currently unknown, the Authority has experienced traffic declines in 2020 as compared to the previous year in both passenger and commercial crossings since the non-essential travel restrictions were put in place. The Authority anticipates that traffic declines will continue to impact toll revenues and duty-free revenues in 2021.

MANAGEMENT'S DISCUSSION & ANALYSIS (...continued)

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both of the Authority's duty-free enterprise tenants entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum.

The U.S. duty-free store has remained open during the ongoing border restrictions (at reduced hours) and continues to pay a percentage of actual sales made each month as rent. The amount deferred is the difference between the minimum rent (based on 2019 sales levels) and the amounts paid to the Authority.

The Canadian duty-free store closed in March 2020 and has remained closed during the ongoing border restrictions. Its deferral agreement expired July 31, 2020 and the Canadian duty-free lease is currently in default. Due to the default status, the Authority has recognized a \$2,500,000 bad debt allowance related to the 2020 deferred rent due by the Canadian duty-free operator.

Despite the loss of toll revenue and the deferral of the duty-free rent payments, at December 31, 2020 the Authority has sufficient reserves to pay debt service and meet its operating expenses. Assets include approximately \$78,000,000 of unrestricted cash and cash equivalents, representing nearly 3,000 days cash on hand.

As the COVID-19 border restrictions continue, the Authority continues to closely monitor the impacts of these restrictions on its operations, revenues, and liquidity. The Authority's 2021 budget was developed to include the implementation of operating cost curtailment measures and the deferral of non-critical capital projects until a later date to reduce short-term operating and long-term capital expenses.

In 2018, the Authority established an independent trust for the purpose of providing benefits associated with the Authority's OPEB plans in the amount of \$10,000,000. The Authority intends to fund the Trust annually based on investment returns and actuarially determined calculations. Payments to the OPEB Trust totaled \$370,000 in 2020 and \$878,000 in 2019.

CONTACT FOR AUTHORITY'S FINANCIAL MANAGEMENT

This report is designed to provide a general overview of the finances of the Authority for interested parties. Questions concerning any information within this report or requests for additional information should be addressed to Karen L. Costa, Chief Financial Officer, 100 Queen Street, Fort Erie, ON L2A 3S6.

BALANCE SHEETS, *in thousands*

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December 31,	2020	2019
Assets		
Current assets:		
Cash	\$ 951	\$ 641
Accounts receivable, net	1,699	2,132
Prepaid expenses	297	194
Investments	76,660	91,767
	<u>79,607</u>	<u>94,734</u>
Noncurrent assets:		
Restricted assets:		
Cash	12,188	12,322
Investments	7,186	7,356
	<u>19,374</u>	<u>19,678</u>
Net pension asset	7,390	3,582
Capital assets, net (Note 5)	249,913	239,199
	<u>276,677</u>	<u>262,459</u>
Total assets	356,284	357,193
Deferred Outflows of Resources		
Defeasance loss	146	213
Deferred outflows of resources related to pensions	2,461	3,737
Deferred outflows of resources related to OPEB	370	876
Total deferred outflows of resources	2,977	4,826
Total assets and deferred outflows of resources	\$ 359,261	\$ 362,019
Liabilities		
Current liabilities:		
Current portion of bonds payable	\$ 2,690	\$ 2,550
Accounts payable and accrued liabilities	4,643	6,720
Accrued compensation and benefits	737	820
Other current liabilities	2,383	2,446
	<u>10,453</u>	<u>12,536</u>
Noncurrent liabilities:		
Bonds payable	95,203	98,771
Net OPEB liability	1,869	7,228
	<u>97,072</u>	<u>105,999</u>
Total liabilities	107,525	118,535
Deferred Inflows of Resources		
Deferred inflows of resources related to pensions	4,129	2,019
Deferred inflows of resources related to OPEB	2,577	1,702
Total deferred inflows of resources	6,706	3,721
Net Position		
Net investment in capital assets	147,659	131,766
Restricted	14,981	16,893
Unrestricted	82,390	91,104
Total net position	245,030	239,763
Total liabilities, deferred inflows of resources, and net position	\$ 359,261	\$ 362,019

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION, *in thousands*

For the years ended December 31,	2020	2019
Operating revenues:		
Commercial tolls	\$ 15,269	\$ 14,294
Passenger tolls	1,641	7,824
Rentals	7,448	8,585
Other	214	228
Total operating revenues	24,572	30,931
Operating expenses:		
Toll collection and traffic control	1,643	2,211
Maintenance of bridge, buildings, plazas, and equipment	3,761	4,694
Administration	3,437	3,117
Pension	283	673
Other postemployment benefits	(3,650)	(1,162)
Canadian property taxes and U.S. equalization payments	977	957
Payments to New York State	200	200
Bad debt	2,500	-
Loss on asset impairment	306	-
Depreciation	8,053	6,242
Total operating expenses	17,510	16,932
Operating income	7,062	13,999
Non-operating revenues (expenses):		
Interest income	1,534	3,325
Interest expense	(3,476)	(3,570)
Currency remeasurement	147	101
Grant revenue	-	1,814
Total non-operating revenues (expenses)	(1,795)	1,670
Change in net position	5,267	15,669
Net position - beginning of year	239,763	224,094
Net position - end of year	\$ 245,030	\$ 239,763

STATEMENTS OF CASH FLOWS, *in thousands* 1570

For the years ended December 31,	2020	2019
Operating activities:		
Toll revenue	\$ 17,085	\$ 21,813
Payments to suppliers	(8,676)	(6,096)
Payments for wages and employee benefits	(5,073)	(6,136)
Other revenues	6,716	8,815
Net operating activities	10,052	18,396
Capital and related financing activities:		
Property and equipment expenditures	(21,024)	(33,954)
Interest payments on debt	(4,351)	(4,463)
Principal payments on debt	(2,550)	(2,440)
Grant proceeds	1,100	714
Net capital and related financing activities	(26,825)	(40,143)
Investing activities:		
Sales of investments	15,277	18,759
Interest proceeds	1,534	3,325
Net investing activities	16,811	22,084
Effect of exchange rate changes	138	136
Change in cash	176	473
Cash - beginning	12,963	12,490
Cash - ending	\$ 13,139	\$ 12,963
Reconciliation of operating income to net cash provided from operating activities:		
Operating income	\$ 7,062	\$ 13,999
Adjustments to reconcile operating income to net cash provided from operating activities:		
Depreciation	8,053	6,242
Net pension and OPEB activity	(4,414)	(1,951)
Loss on disposal	315	-
Changes in assets and liabilities:		
Accounts receivable	(547)	(16)
Prepaid expenses	(101)	168
Accounts payable and accrued liabilities	(217)	(68)
Accrued compensation and benefits	(99)	22
	\$ 10,052	\$ 18,396

STATEMENTS OF FIDUCIARY NET POSITION, *in thousands*

December 31,	Pension and Other Employee Benefit Trust Funds	
	2020	2019
Assets		
Current assets:		
Cash and short-term investments	\$ 615	\$ 964
Noncurrent assets:		
Investments - equity and fixed income securities	53,961	47,416
Total assets	54,576	48,380
Net Position		
Net position held in trust for pension benefits	42,321	38,201
Net position held in trust for OPEB benefits	12,255	10,179
	\$ 54,576	\$ 48,380

NOTES TO FINANCIAL STATEMENTS

1. Summary of Significant Accounting Policies:

Reporting Entity

Buffalo and Fort Erie Public Bridge Authority (the Authority) was established through a legislative act as a public benefit corporation to own and operate an international toll bridge connecting the United States and Canada. The enabling Act, under which the Authority was created, provides that on July 1, 2020, or when all bonds issued by the Authority have been discharged (current final maturity date is January 1, 2047), whichever shall be later, the powers, jurisdiction, and duties of the Board shall cease and the property and assets acquired and held by the Authority within the State of New York and within Canada shall be under jurisdiction of the State of New York and Her Majesty The Queen in Right of Canada, respectively.

Basis of Presentation

The financial statements of the Authority are prepared in conformity with U.S. generally accepted accounting principles (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

Measurement Focus

The Authority reports as a special purpose government engaged in business-type activities, as defined by GASB Statement No. 34. Business-type activities are those that are financed in whole or in part by fees charged to external parties for goods or services. The Authority's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been satisfied.

The Authority's policy for defining operating activities in the statements of revenues, expenses, and changes in net position are those that generally result from exchange transactions such as payments received for services and payments made to purchase those goods or services. Certain other transactions are reported as non-operating activities and include investment income, interest paid on capital debt, and the net effect of currency remeasurement.

The Authority uses a fiduciary fund to report assets held in trust for pension and other postemployment benefits (OPEB). The Pension and Other Employee Benefit Trust Fund accounts for the assets held in trust for the U.S. and Canadian defined benefit plans (Note 7) and the U.S. and Canadian single-employer defined benefit postemployment healthcare plans (Note 8).

1. Summary of Significant Accounting Policies: cont’d

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash

At various times, cash in financial institutions may exceed insured limits and subject the Authority to concentrations of credit risk.

Investments

Investments consist of cash equivalents, money market funds, commercial paper, corporate bonds, and U.S. mortgage and government agency obligations and are stated at fair value on a recurring basis as determined by quoted prices in active markets.

Restricted Assets

The Authority established the following accounts in order to comply with bond resolution requirements:

- Bond** – trustee accounts established to receive amounts necessary to meet current principal and interest payments and to maintain a sufficient balance in a debt service reserve fund.
- Government payments** – holds amounts necessary to fund payments to the State of New York as required under current legislation.
- Operating expense reserve** – holds amounts necessary to pay current year operating expenses as defined, plus an operating reserve equal to one-sixth of the operating expenses of the Authority for the preceding year.

Capital Assets

Capital assets are reported at historical cost. For assets being depreciated, the expense is calculated over estimated useful lives using the straight-line method. Maintenance and repairs are expensed as incurred; significant improvements are capitalized.

Capitalization thresholds for determining which asset purchases are added to capital accounts and the estimated useful lives of capital assets are:

	Capitalization Policy	Estimated Useful Life
Bridge infrastructure	\$ 5,000	10-150 years
Buildings and plazas	\$ 5,000	10-40 years
Equipment - general	\$ 1,000	3-10 years
Equipment - toll system	\$ 1,000	7 years

NOTES TO FINANCIAL STATEMENTS (...continued)

1. Summary of Significant Accounting Policies: cont'd

Currency Translation

Due to its bi-national operations, the Authority accounts for transactions in either United States dollars (USD) or Canadian dollars (CAD). The Authority translates all Canadian asset and liability accounts at the year end exchange rate, except for property and equipment, which is translated at historical rates in effect in the year of acquisition. The statement of revenues, expenses, and changes in net position is converted at the average monthly exchange rate for the month in which the transaction occurs. Translation gains and losses are included as a component of non-operating revenues (expenses) as a currency remeasurement.

Compensated Absences

The Authority provides for vacation, sick, and compensatory time that is attributable to services already rendered and vested. The liabilities are recorded based on employees' rates of pay as of the end of the year, and include all payroll-related liabilities.

Pensions

The net pension asset, deferred outflows and deferred inflows of resources, pension expense, and information about and changes in the fiduciary net position of the Authority's defined benefit pension plans (Note 7) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms and investments are reported at fair value.

Other Postemployment Benefits (OPEB)

The net OPEB liability, deferred outflows and deferred inflows of resources, OPEB expense, and information about and changes in the fiduciary net position of the Authority's defined benefit healthcare plans (Note 8) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms and investments are reported at fair value.

Net Position

- *Net investment in capital assets* – consists of net capital assets reduced by outstanding balances of any related debt obligations attributable to the acquisition, construction, or improvement of the assets.
- *Restricted* – consists of restricted assets, reduced by liabilities and deferred inflows of resources related to those assets, subject to externally imposed restrictions by creditors (such as through debt covenants), federal or state laws, or enabling legislation.
- *Unrestricted* – the net amount of assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the definition of the above restrictions and are available for general use of the Authority.

The Authority has adopted a policy of using restricted funds, when available, prior to unrestricted funds.

NOTES TO FINANCIAL STATEMENTS (...continued)

2. Deposits and Investments:

The Authority's policy is to obtain collateral from U.S. financial institutions for its cash deposits. Cash deposits maintained in banks within the United States are covered by U.S. Federal Deposit Insurance and by collateral held by a custodial bank in the Authority's name based upon the average daily funds available as determined by the bank. Canada Deposit Insurance covers a portion of cash deposits maintained at banks within Canada.

Custodial credit risk is the risk that in the event of a bank failure, the Authority's deposits may not be returned to it. At December 31, 2020, \$5,757,000 of the Authority's bank deposits were uncollateralized and therefore exposed to custodial credit risk.

The Authority's exposure to foreign currency risk derives from its deposits denominated in Canadian currency totaling \$6,182,000 (USD) at December 31, 2020.

Interest rate risk is the risk that the value of investments will decrease as a result of a rise in interest rates. The Authority's investments had the following maturities at December 31, 2020:

	Less than	
	1 year	1-5 years
Money market funds	\$ 13,234	\$ -
Commercial paper	150	-
Corporate bonds	4,590	14,778
Federal notes	7,186	43,908
	<u>\$ 25,160</u>	<u>\$ 58,686</u>

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Authority's investments in corporate bonds are all within investment grade categories.

The Authority manages its investments pursuant to the bond resolution, which defines the nature and maturity of allowable investments.

NOTES TO FINANCIAL STATEMENTS (...continued)

3. Accounts Receivable, net:

(in thousands)	2020	2019
Accounts receivable for rental and tolls	\$ 4,200	\$ 2,133
Less allowance for doubtful accounts (Note 9)	2,501	1
	<u>\$ 1,699</u>	<u>\$ 2,132</u>

4. Investments:

(in thousands)	2020	2019
Unrestricted:		
U.S. Treasury notes	\$ -	\$ 2,737
Federal Home Loan Mortgage Corporation	18,800	7,946
Federal Home Loan Bank notes	1,016	-
Federal Farm Credit notes	11,552	7,565
Federal National Mortgage Association notes	12,540	2,503
Corporate bonds	19,368	21,303
Commercial paper	150	46,316
Cash equivalents	-	1,299
Money market fund	13,234	2,098
	<u>\$ 76,660</u>	<u>\$ 91,767</u>
Restricted:		
U.S. Treasury notes	\$ 7,186	\$ 7,168
Cash equivalents	-	188
	<u>\$ 7,186</u>	<u>\$ 7,356</u>

NOTES TO FINANCIAL STATEMENTS (...continued)

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5. Capital Assets:

(in thousands)	January 1, 2020	Additions	Reclassifications and Disposals	December 31, 2020
Non-depreciable capital assets:				
Land	\$ 25,243	\$ -	\$ -	\$ 25,243
Construction-in-progress	12,248	19,082	(6,199)	25,131
Total non-depreciable assets	37,491	19,082	(6,199)	50,374
Depreciable capital assets:				
Bridge	157,408	-	456	157,864
Buildings and plazas	124,765	-	3,432	128,197
Equipment - general	6,819	-	92	6,911
Equipment - toll system	3,440	-	813	4,253
Total depreciable assets	292,432	-	4,793	297,225
Less accumulated depreciation:				
Bridge	(35,842)	(3,641)	1,000	(38,483)
Buildings and plazas	(50,938)	(3,296)	-	(54,234)
Equipment - general	(3,799)	(658)	73	(4,384)
Equipment - toll system	(145)	(458)	18	(585)
Total accumulated depreciation	(90,724)	(8,053)	1,091	(97,686)
Total depreciable assets, net	201,708	(8,053)	5,884	199,539
	\$ 239,199	\$ 11,029	\$ (315)	\$ 249,913

(in thousands)	January 1, 2019	Additions	Reclassifications and Disposals	December 31, 2019
Non-depreciable capital assets:				
Land	\$ 25,243	\$ -	\$ -	\$ 25,243
Construction-in-progress	80,117	29,714	(97,583)	12,248
Total non-depreciable assets	105,360	29,714	(97,583)	37,491
Depreciable capital assets:				
Bridge	64,955	-	92,453	157,408
Buildings and plazas	123,991	-	774	124,765
Equipment - general	7,018	-	(199)	6,819
Equipment - toll system	4,499	-	(1,059)	3,440
Total depreciable assets	200,463	-	91,969	292,432
Less accumulated depreciation:				
Bridge	(33,607)	(2,235)	-	(35,842)
Buildings and plazas	(47,693)	(3,245)	-	(50,938)
Equipment - general	(4,361)	(623)	1,185	(3,799)
Equipment - toll system	(4,399)	(139)	4,393	(145)
Total accumulated depreciation	(90,060)	(6,242)	5,578	(90,724)
Total depreciable assets, net	110,403	(6,242)	97,547	201,708
	\$ 215,763	\$ 23,472	\$ (36)	\$ 239,199

NOTES TO FINANCIAL STATEMENTS (...continued)

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5. Capital Assets: cont'd

Net investment in capital assets as of December 31, 2020 and 2019 consists of the following (in thousands):

	2020	2019
Capital assets, net of accumulated depreciation	\$ 249,913	\$ 239,199
Bonds and related premiums, net of unspent proceeds	(97,893)	(101,133)
Capital asset purchases included in accounts payable	(2,363)	(4,305)
Accrued interest	(2,144)	(2,208)
Defeasance loss	146	213
	<u>\$ 147,659</u>	<u>\$ 131,766</u>

6. Bond Indebtedness:

(in thousands)	January 1, 2020	Increases	Decreases	December 31, 2020	Due Within One Year
Series 2014 bonds	\$ 17,500	\$ -	\$ (2,550)	\$ 14,950	\$ 2,690
Unamortized premium 2014 refunding	1,250	-	(396)	854	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	11,771	-	(482)	11,289	-
	<u>\$ 101,321</u>	<u>\$ -</u>	<u>\$ (3,428)</u>	<u>\$ 97,893</u>	<u>\$ 2,690</u>

(in thousands)	January 1, 2019	Increases	Decreases	December 31, 2019	Due Within One Year
Depreciable capital assets:					
Series 2014 bonds	\$19,940	\$-	\$(2,440)	\$17,500	\$ 2,550
Unamortized premium 2014 refunding	1,709	-	(459)	1,250	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	12,235	-	(464)	11,771	-
	<u>\$ 104,684</u>	<u>\$-</u>	<u>\$(3,363)</u>	<u>\$101,321</u>	<u>\$ 2,550</u>

NOTES TO FINANCIAL STATEMENTS (...continued)

6. Bond Indebtedness: cont'd

In June 2014, the Authority issued \$28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of \$4,262,000, with interest rates ranging from 4% to 5%, to currently refund \$33,500,000 of outstanding Series 2005 bonds. The Series 2014 bond proceeds of \$33,102,000 plus \$3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under mandatory tender and establish the Series 2014 debt reserves. The Series 2005 bonds refunded Series 1995 bonds which resulted in a difference between the reacquisition price and the net carrying amount of the old debt of \$2,242,000. This defeasance loss, reported in the accompanying balance sheets as a deferred outflow, is being charged to operations through the year 2024 using the effective interest method. The defeasance loss remaining is \$146,000 and \$213,000 at December 31, 2020 and 2019.

In June 2017, the Authority issued \$70,800,000 in fixed rate Toll Bridge System Revenue Bonds at a premium of \$12,915,000, with an interest rate of 5%. The Series 2017 bond proceeds totaling \$83,715,000 were used to partially fund a \$100,000,000 bridge redecking and rehabilitation project and to establish the Series 2017 debt reserves. Remaining funds, if any, may also be used for the coatings project and enhancements to the U.S. plaza regarding inspection capacity. The bonds were structured so that principal repayments will begin upon the payoff of the Series 2014 bonds (January 1, 2025) and will continue until January 1, 2047.

Debt service requirements are as follows (in thousands):

Years ending December 31,	Principal	Interest
2021	\$ 2,690	\$ 4,153
2022	2,830	4,012
2023	2,980	3,863
2024	3,140	3,706
2025	5,150	3,540
2026-2030	10,670	16,226
2031-2035	13,620	13,277
2036-2040	17,370	9,615
2041-2045	22,180	4,715
2046-2047	5,120	256
	<u>\$85,750</u>	<u>\$63,363</u>

7. Pension Plans:

Defined Benefit Plans

The Authority maintains two non-contributory, single-employer defined benefit pension plans: Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in the United States (U.S. Plan) and Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in Canada (Canadian Plan), collectively, the Defined Benefit Plans. The Defined Benefit Plans cover full and part-time employees hired before September 29, 2006 (union) and January 1, 2009 (non-union) in the United States, and before July 27, 2007 (union) and January 1, 2009 (non-union) in Canada. The Board of Directors has the responsibility to establish and amend benefit provisions. Audited financial statements of the Defined Benefit Plans are not required and have not been prepared.

Benefits: The Defined Benefit Plans provide retirement, death benefits, and if applicable, certain annual cost of living adjustments to members and beneficiaries. Cost of living adjustments are effective when the most recent actuarial valuation reports reveal a surplus which is greater than twice the annual service cost. The cost of living adjustment, on a percentage basis, is equal to 50% of the change in consumer price indices based on the average change over the 12 month period ending on September 30th of the calendar year prior to the effective date of the adjustment. The cost of living adjustments are included in the Authority's annual pension cost only in the applicable years.

Employees Covered by Benefit Terms: At December 31, 2020 and 2019, the following employees were covered by the Defined Benefit Plans:

	2020		2019	
	Canadian		Canadian	
	Plan	U.S. Plan	Plan	U.S. Plan
Inactive employees or beneficiaries currently receiving benefits	44	58	44	58
Inactive employees entitled to but not yet receiving benefits	-	1	-	1
Active employees	14	15	14	15
	<u>58</u>	<u>74</u>	<u>58</u>	<u>74</u>

Contributions: The Authority pays the full cost of all benefits provided under the Defined Benefit Plans. As a federally regulated pension plan, the Canadian plan is funded based upon an actuarial valuation and funding standards established by the *Pension Benefits Standards Act*. The Authority's policy with respect to the U.S. plan is to fund the greater of the annual required contribution or the current year service cost, as actuarially determined. Actuarial valuations are prepared no less frequently than every other year. For the years ended December 31, 2020 and 2019, the Authority's contribution rate to the Canadian Plan was 35% and 33%, respectively, of covered payroll and 10% and 9% of covered payroll for the U.S. Plan, respectively.

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

Net Pension Asset

The net pension asset was measured as of December 31, 2019 based on an actuarial valuation as of January 1, 2019, rolled forward to December 31, 2019. There have been no significant changes in benefits or other plan provisions from the beginning of the year to the end of the year.

Actuarial Assumptions: Based on the size of the plans, it was not deemed appropriate to perform an experience study. The total pension liability in the January 1, 2019 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

	Canadian Plan	U.S. Plan
Inflation	2.25%	2.75%
Salary increases	2.75%	2.75%
Investment rate of return	4.5%, compounded annually, net of all expenses	6.5%, compounded annually, net of all expenses
Mortality	CPM2014 Mortality Table with generational improvements projected using Scale B – no assumed preretirement deaths	RP-2014 Healthy Mortality Table rolled back to 2006, projected generationally with Scale BB improvements – no assumed preretirement deaths
Discount rate	4.5%	6.5%
COLA increases	0.93% COLA assumed (1.11% previously)	0.85% COLA assumed (1.14% previously)

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of pension plan investments and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Canadian Plan		
Canadian equities	6%	5.3%
International equities	14%	5.3%
Fixed income	70%	(0.1%)
Real estate	10%	6.0%
	<u>100%</u>	
U.S. Plan		
U.S. equities	32%	5.8%
International equities	6%	3.1%
Fixed income	35%	0.1%
Multi-asset	20%	3.5%
Real estate	5%	2.8%
Cash	2%	(0.1%)
	<u>100%</u>	

Discount rate: The projection of cash flows used to determine the respective discount rates assumed that the Authority's contributions will continue to follow the current funding policy. Based on this assumption, the Authority's fiduciary net position was projected to be sufficient to make all projected future benefit payments of the Defined Benefit Plans' current members. Therefore, the discount rate equals the long-term rate of return of 4.5% (Canadian Plan) and 6.5% (U.S. Plan).

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

Changes in the Net Pension Asset

Canadian Plan (in thousands)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Asset
Balances at 12/31/18	\$ (13,033)	\$ 15,405	\$2,372
Effect of currency exchange rate changes	(601)	714	113
Changes for the year:			
Service cost	(156)	-	(156)
Interest	(604)	-	(604)
Differences between expected and actual experience	217	-	217
Employer contributions	-	411	411
Net investment loss	-	(64)	(64)
Benefit payments	750	(750)	-
Administrative expenses	-	(101)	(101)
Net changes	207	(504)	(297)
Balances at 12/31/19	\$ (13,427)	\$15,615	\$2,188
Effect of currency exchange rate changes	(210)	244	34
Changes for the year:			
Service cost	(137)	-	(137)
Interest	(603)	-	(603)
Differences between expected and actual experience	(77)	-	(77)
Employer contributions	-	282	282
Net investment income	-	1,660	1,660
Benefit payments	744	(744)	-
Administrative expenses	-	(76)	(76)
Net changes	(73)	1,122	1,049
Balances at 12/31/20	\$ (13,710)	\$16,981	\$3,271

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

Changes in the Net Pension Asset

U.S. Plan (in thousands)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Asset
Balances at 12/31/18	\$(22,081)	\$25,031	\$2,950
Changes for the year:			
Service cost	(62)	-	(62)
Interest	(1,281)	-	(1,281)
Employer contributions	-	167	167
Differences between expected and actual experience	(485)	-	(485)
Changes of assumptions	1,094	-	1,094
Net investment loss	-	(856)	(856)
Benefit payments	1,623	(1,623)	-
Administrative expenses	-	(133)	(133)
Net changes	889	(2,445)	(1,556)
Balances at 12/31/19	\$(21,192)	\$22,586	\$ 1,394
Changes for the year:			
Service cost	(49)	-	(49)
Interest	(1,333)	-	(1,333)
Employer contributions	-	87	87
Differences between expected and actual experience	(131)	-	(131)
Net investment income	-	4,275	4,275
Benefit payments	1,484	(1,484)	-
Administrative expenses	-	(124)	(124)
Net changes	(29)	2,754	2,725
Balances at 12/31/20	\$(21,221)	\$25,340	\$4,119

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

The following presents the Authority's net pension asset for the Defined Benefit Plans calculated using the discount rate of 4.5% (Canadian Plan) and 6.5% (U.S. Plan) and the impact of using a discount rate that is 1.0% higher or lower than the current rate as of December 31, 2020.

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Canadian Plan	\$ 1,666	\$ 3,271	\$ 4,613
U.S. Plan	\$ 1,875	\$ 4,119	\$ 6,011

Pension Expense and Deferred Outflows and Deferred Inflows of Resources Related to Pensions

For the years ended December 31, 2020 and 2019, the Authority recognized pension income of \$37,000 and pension expense of \$99,000 for the Canadian Plan and pension expense of \$69,000 and \$207,000 for the U.S. Plan. At December 31, 2020 and 2019, the Authority reported deferred outflows and deferred inflows of resources as follows:

(in thousands)	2020			
	Canadian Plan		U.S. Plan	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ 475	\$ 1,129	\$ 1,489	\$ 3,000
Changes of assumptions	-	-	-	-
Changes in experience	22	-	37	-
Authority contributions subsequent to the measurement date	341	-	97	-
	<u>\$ 838</u>	<u>\$ 1,129</u>	<u>\$ 1,623</u>	<u>\$ 3,000</u>

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

(in thousands)	2020			
	Canadian Plan		U.S. Plan	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ 475	\$ 1,129	\$ 1,489	\$ 3,000
Changes of assumptions	-	-	-	-
Changes in experience	22	-	37	-
Authority contributions subsequent to the measurement date	341	-	97	-
	<u>\$ 838</u>	<u>\$ 1,129</u>	<u>\$ 1,623</u>	<u>\$ 3,000</u>

Authority contributions subsequent to the measurement date will be recognized as an addition to the net pension asset in the year ending December 31, 2021. Other amounts reported as deferred outflows and deferred inflows of resources related to pensions will be recognized in pension expense as follows (in thousands):

Years ending December 31,	
2021	\$ (547)
2022	(655)
2023	(142)
2024	(762)
	<u>\$ (2,106)</u>

NOTES TO FINANCIAL STATEMENTS (...continued)

7. Pension Plans: cont'd

Defined Contribution Plans

The Authority has also established two non-contributory defined contribution money purchase plans which separately cover U.S. and Canadian employees hired subsequent to the eligibility dates of the Defined Benefit Plans described above.

The defined contribution plans require the Authority to contribute 6.0% of each qualified employee's covered salary annually. Contributions to the defined contribution plans totaled \$112,000 and \$113,000 in 2020 and 2019, respectively. The Authority makes all required contributions when due.

8. OPEB:

The Authority maintains two single-employer defined benefit postemployment healthcare plans (the Plans), one covering certain Canadian employees and one covering certain U.S. employees. The Plans provide benefits in the form of insurance premium payments for coverage of eligible retirees and dependents. Plan provisions and Authority and member contribution rates are determined by the Authority. The Plans do not issue publicly available financial reports.

Eligibility is based on date of hire, attainment of retirement age, and years of service. The Authority pays 100% of the health, dental, and life insurance premiums for employees meeting the following criteria:

Canadian Plan

Full-time employees hired prior to September 19, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after September 19, 2003 but prior to July 27, 2007 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

U.S. Plan

Full-time employees hired prior to July 18, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after July 18, 2003 but prior to September 29, 2006 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

The Plans are closed to new entrants subsequent to December 31, 2008.

NOTES TO FINANCIAL STATEMENTS (...continued)

8. OPEB: cont'd

At December 31, 2020 and 2019, employees covered by the Plan include:

	2020		2019	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Active employees	14	14	14	14
Inactive employees or beneficiaries currently receiving	75	53	75	53
Inactive employees entitled to but not yet receiving	-	-	-	-
	<u>89</u>	<u>67</u>	<u>89</u>	<u>67</u>

Net OPEB Liability

The Authority's net OPEB liability of \$1,869,000 was measured as of December 31, 2019, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of January 1, 2019, rolled forward to December 31, 2019.

The Authority established a qualified trust as defined by GASB Statement Nos. 74 and No. 75 which was funded with an initial cash contribution of \$10,000,000 during the year ended December 31, 2018. The Plan has adopted a funding policy and began making contributions in 2019 that are projected to cover all future benefit payments. Therefore, the discount rate is equal to the long-term rate of return.

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of plan investments and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
U.S. equities	32%	5.8%
International equities	6%	3.1%
Fixed income	35%	0.1%
Multi-asset	20%	3.5%
Real estate	5%	2.8%
Cash	2%	(0.1%)
	<u>100%</u>	

NOTES TO FINANCIAL STATEMENTS (...continued)

8. OPEB: cont'd

The total OPEB liability in the December 31, 2019 valuation was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:

Healthcare cost trend:

Canadian Plan: 5.5% (5.75% previously) grading down by 0.25% each year to 4.5%

U.S. Plan: 6.0% (6.25% previously) grading down by 0.25% each year to 5.0%

Discount rate:

Discount rate at measurement date is 6.0% which is equal to the long-term rate of return on the trust assets

Mortality:

U.S. Plan: RPH-2014, using Projection Scale BB

Canadian Plan: CIA CPM-2014 Combined Mortality with CIA Scale CPM-B

Retirement:

Expected dates for each active employee based upon their unreduced pension eligibility

Salary:

Increases of 2.75%

Termination:

Rates calibrated to produce 3% aggregate turnover of the active data based on the Authority's historical experience

NOTES TO FINANCIAL STATEMENTS (...continued)

8. OPEB: cont'd

Changes in the Net OPEB Liability

(in thousands)	Total OPEB Liability	Plan Fiduciary Net Position	Net OPEB Liability
Balances at December 31, 2018	\$ (20,638)	\$ -	\$ (20,638)
Effect of foreign currency exchange rate changes	(228)	-	(228)
Changes for the year:			
Employer contributions	-	10,765	10,765
Net investment income	-	178	178
Service cost	(106)	-	(106)
Interest	(1,234)	-	(1,234)
Differences between expected and actual experience	1,657	-	1,657
Changes of assumptions	2,378		2,378
Benefit payments	764	(764)	-
Net changes	3,459	10,179	13,638
Balances at December 31, 2019	\$ (17,407)	\$ 10,179	\$ (7,228)
Effect of foreign currency exchange rate changes	(217)	-	(217)
Changes for the year:			
Employer contributions	-	878	878
Net investment income	-	1,957	1,957
Service cost	(69)	-	(69)
Interest	(1,031)	-	(1,031)
Differences between expected and actual experience	190	-	190
Change of assumptions	3,674	-	3,674
Benefit payments	736	(736)	-
Administrative expenses	-	(23)	(23)
Net changes	3,500	2,076	5,576
Balances at December 31, 2020	\$ (14,124)	\$ 12,255	\$ (1,869)

NOTES TO FINANCIAL STATEMENTS (...continued)

8. OPEB: cont'd

The following presents the sensitivity of the Authority's net OPEB liability to changes in the discount rate, including what the Authority's net OPEB liability would be if it were calculated using a discount rate that is 1% higher or lower than the current discount rate of 6.0%:

(in thousands)	At Current		
	1.0% Decrease	Discount Rate	1.0% Increase
Net OPEB Liability	\$ (4,419)	\$(1,869)	\$(978)

The following presents the sensitivity of the Authority's net OPEB liability to changes in the healthcare cost trend rates, including what the Authority's net OPEB liability would be if it were calculated using trend rates that are 1% higher or lower than the current healthcare cost trend rates of 6.0% to 4.5%:

(in thousands)	At Current		
	1.0% Decrease	Trend rate	1.0% Increase
Net OPEB Liability	\$ (918)	\$(1,869)	\$(4,485)

OPEB Expense and Deferred Outflows and Deferred Inflows of Resources Related to OPEB

For the years ended December 31, 2020 and 2019, the Authority recognized OPEB income of \$3,650,000 and \$1,162,000. At December 31, 2020 and 2019, the Authority reported deferred outflows and deferred inflows of resources as follows:

(in thousands)	2020		2019	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ -	\$ 1,102	\$ -	\$ 135
Changes of assumptions	-	1,403	-	912
Changes in experience	-	72	-	655
Authority contributions subsequent to the measurement date	370	-	876	-
	<u>\$ 370</u>	<u>\$ 2,577</u>	<u>\$ 876</u>	<u>\$ 1,702</u>

NOTES TO FINANCIAL STATEMENTS (...continued)

8. OPEB: cont'd

OPEB Expense and Deferred Outflows and Deferred Inflows of Resources Related to OPEB (cont'd)

Authority contributions subsequent to the measurement date will be recognized as a reduction of the net OPEB liability in the year ending December 31, 2021. Other amounts reported as deferred inflows of resources related to OPEB will be recognized in pension expense as follows (in thousands):

Years ending December 31,		
2021	\$	(1,759)
2022		(284)
2023		(284)
2024		(250)
	\$	<u>(2,577)</u>

9. Rentals:

The Authority, as lessor, has entered into non-cancelable operating leases with separate U.S. and Canadian duty-free enterprises through December 31, 2025 and October 31, 2031, respectively. The Authority recognized \$4,260,000 and \$5,483,000 in gross rental income in 2020 and 2019 from the duty-free enterprises. The leases provide for annual minimum and contingent lease payments to the Authority.

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both duty-free enterprises entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum. The Canadian duty-free rent deferral agreement expired July 31, 2020 and the duty-free lease is currently in default. The Authority has recognized a \$2,500,000 bad debt allowance relative to the default status of the lease.

The Authority also leases space to a governmental entity under a non-cancelable twenty year operating lease expiring June 30, 2039. Rental revenue received by the Authority under this lease totaled \$2,422,000 and \$2,267,000 in 2020 and 2019.

Minimum amounts, assuming all rentals are received under the leases, are as follows (in thousands):

Years ending December 31,		
2021	\$	6,612
2022		6,612
2023		6,612
2024		6,647
2025		6,683
Thereafter		53,167
	\$	<u>86,333</u>

The Authority also leases certain real property under cancelable operating leases to commercial enterprises and governmental agencies. These leases are generally maintained on a month-to-month basis.

NOTES TO FINANCIAL STATEMENTS (...continued)

10. Deferred Compensation Plan:

All employees of the Authority in the United States are offered participation in a deferred compensation plan (the Plan) created in accordance with Internal Revenue Code Section 457. The Plan permits eligible participants to defer a portion of their salaries until future years. Under the Plan, amounts deferred are not available to employees until separation, retirement, death, or unforeseen emergency. All amounts deferred under the Plan, all property, and rights purchased with those amounts, and all income attributable to those amounts, property, or rights, are held in trust until paid or made available to the employee or other beneficiary.

The Authority also has unfunded liabilities of \$1,627,000 and \$1,486,000 included in accrued liabilities as of December 31, 2020 and 2019 to current and former management employees due under separate deferred compensation agreements. Payments made under these agreements totaled \$4,800 in 2020 and 2019.

11. Commitments and Contingencies:

Risk Management

The Authority purchases commercial insurance for various risks of loss due to torts, theft, damage, errors and omissions, injuries to employees, and natural disasters. Settled claims resulting from these risks have not exceeded commercial coverage in any of the past three years. Losses resulting from acts of terrorism have been excluded from property and excess liability policies. The Terrorism Risk Insurance Act of 2002 of the United States governs coverage for acts of terrorism under the general liability policy.

Contractual Commitments

As of December 31, 2020, the Authority had contractual commitments of approximately \$4,390,000 primarily related to ongoing capital construction projects.

Litigation

The Authority is involved in various legal proceedings, the outcome of which is not expected to have significant impact on the financial position of the Authority.

NOTES TO FINANCIAL STATEMENTS (...continued)

12. Net Position:

Unrestricted - Designated

The Board of Directors has designated available unrestricted amounts for acquisition or construction of capital projects and maintenance.

Restricted

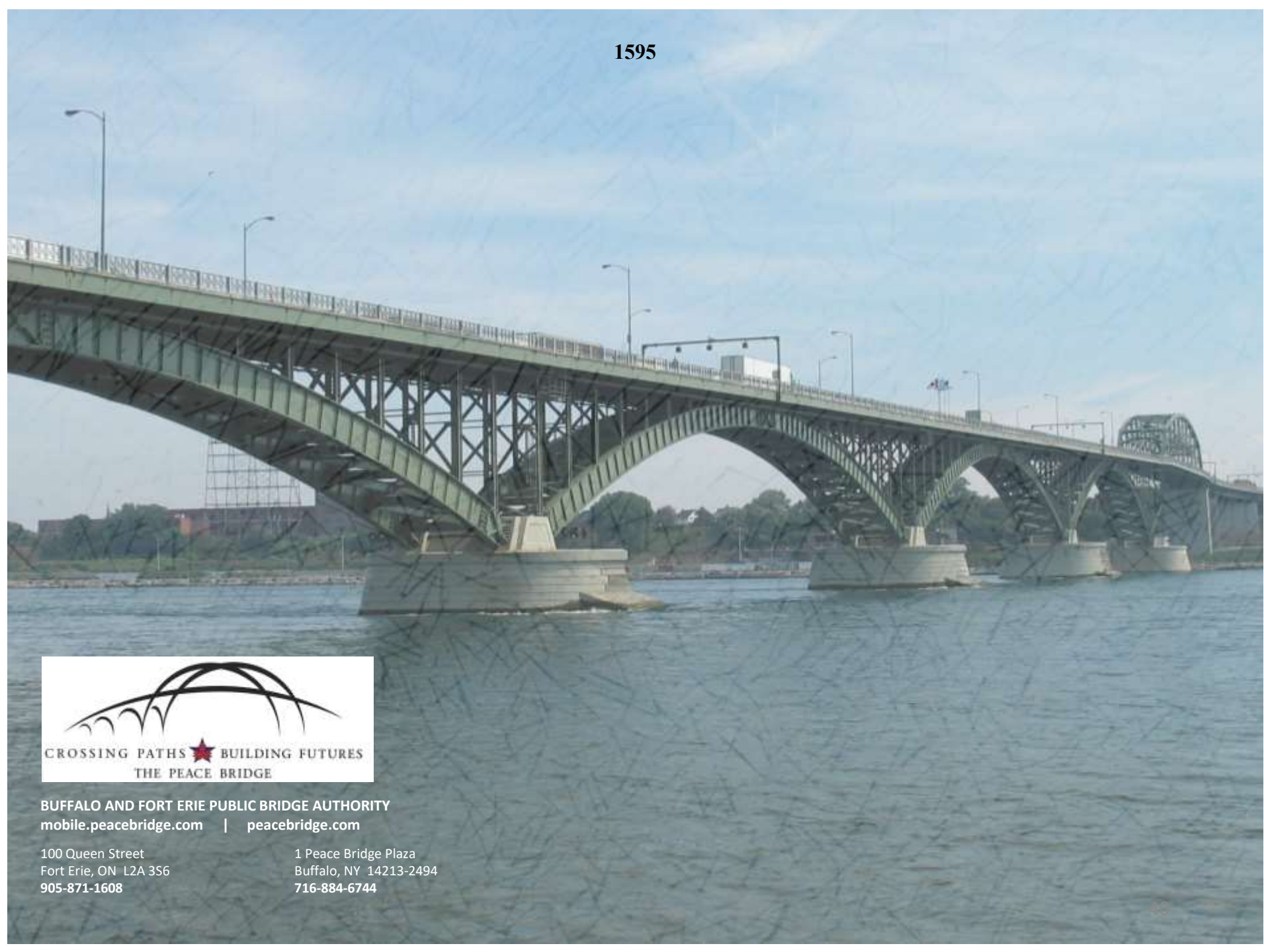
(in thousands)	2020	2019
Debt service funds:		
Debt service fund	\$ 4,927	\$ 4,801
Debt reserve fund	7,086	7,146
Operating expense reserve	2,968	4,946
	<u>\$ 14,981</u>	<u>\$ 16,893</u>

13. Risks and Uncertainties:

On January 31, 2020, the United States Secretary of Health and Human Services (HHS) declared a public health emergency related to the global spread of coronavirus COVID-19, and a pandemic was declared by the World Health Organization in February 2020. On March 7, 2020, the Governor of the State of New York declared a disaster emergency in the State of New York, ordered all non-essential businesses State-wide to be closed, and required other restrictive social distancing and related measures. On March 17, 2020, the premier of the province of Ontario declared a state of emergency in the province of Ontario and ordered all non-essential businesses to be closed along with other restrictive measures. Efforts to fight the widespread disease resulted in a severe disruption of operations. Financial markets also experienced significant fluctuations in value.

Beginning in March 2020 and continuing subsequent to December 31, 2020, the Authority experienced significant decline in toll volume; the governments of the U.S and Canada limited border crossings to essential travel only beginning March 21, 2020. The extent of the impact of COVID-19 on the Authority's operational and financial performance will depend on further developments, including the duration and spread of the outbreak and its impact on travelers, employees, and vendors, none of which can be predicted.

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BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
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Fort Erie, ON L2A 3S6
905-871-1608

1 Peace Bridge Plaza
Buffalo, NY 14213-2494
716-884-6744

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



Commissioner, etc.

**BUFFALO AND FORT ERIE
PUBLIC BRIDGE AUTHORITY**

FINANCIAL STATEMENTS

DECEMBER 31, 2021

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

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INDEPENDENT AUDITORS' REPORT

The Board of Directors
Buffalo and Fort Erie Public Bridge Authority

Opinion

We have audited the financial statements of Buffalo and Fort Erie Public Bridge Authority (the Authority), a business-type activity, as of and for the years ended December 31, 2021 and 2020, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Authority as of December 31, 2021 and 2020, and the changes in its financial position and its cash flows for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for one year after the date that the financial statements are issued.

Auditors' Responsibility for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

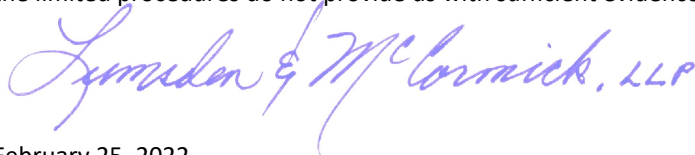
In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that management's discussion and analysis and other required supplementary information, as listed in the table of contents, be presented to supplement the financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with GAAS, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.



February 25, 2022

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Management's Discussion and Analysis (Unaudited)December 31, 2021

The management of the Buffalo and Fort Erie Public Bridge Authority (hereinafter referred to as the Authority) offers the following overview and analysis of the Authority's financial activities as of and for the years ended December 31, 2021, 2020 and 2019 which should be read in conjunction with the Authority's financial statements and notes to the financial statements.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Authority's financial statements. It begins by presenting and explaining the financial statements. These statements have been prepared according to accounting principles generally accepted in the United States of America (GAAP). Revenues and expenses are recorded using the accrual basis of accounting, meaning that they are recorded and recognized by the Authority as earned/incurred, regardless of when cash is received or paid.

The balance sheets present information on all the Authority's assets, deferred outflows of resources, liabilities, and deferred inflows of resources with the difference reported as net position. Increases or decreases in net position serve as a relative indicator as to whether the Authority's financial position is strengthening or weakening over time.

The statements of revenues, expenses, and changes in net position show the results of the Authority's operations during the year and reflect both operating and non-operating activities. Changes in net position reflect the operational impact of the current year's activities on the financial position of the Authority.

The statements of cash flows provide an analysis of the sources and uses of cash. The cash flow statements show net cash provided or used in operating, capital and related financing, and investing activities.

The notes to the financial statements include additional information which provides a further understanding of the financial statements.

FINANCIAL STATEMENT ANALYSIS

Balance Sheets as of December 31:

<i>U.S. \$, in thousands</i>	2021	2020	2019
Assets			
Current assets	\$ 79,437	\$ 79,607	\$ 94,734
Restricted assets	17,104	19,374	19,678
Net pension asset	9,405	7,390	3,582
Net OPEB asset	604	-	-
Capital assets, net	244,755	249,913	239,199
Total assets	351,305	356,284	357,193
Deferred outflows of resources	2,123	2,977	4,826
Total assets and deferred outflows of resources	\$ 353,428	\$ 359,261	\$ 362,019
Liabilities			
Current liabilities	\$ 8,988	\$ 10,453	\$ 12,536
Noncurrent liabilities	91,544	97,072	105,999
Total liabilities	100,532	107,525	118,535
Deferred inflows of resources	6,077	6,706	3,721
Net position			
Net investment in capital assets	148,000	147,659	131,766
Restricted	14,895	14,981	16,893
Unrestricted	83,924	82,390	91,104
Total net position	246,819	245,030	239,763
Total liabilities, deferred inflows of resources, and net position	\$ 353,428	\$ 359,261	\$ 362,019

As noted above, net position serves as an indicator of the Authority's overall financial strength. The Authority's net position increased by \$1,789,000 in 2021, \$5,267,000 during 2020, and \$15,669,000 during 2019 resulting from the Authority's operating and non-operating activities each year. The effects of the variances are detailed on page iii.

In 2017, the Authority issued \$70,800,000 Toll System Revenue Bonds at a premium of \$12,915,000, the proceeds of which were required to be used for the bridge redecking and rehabilitation project, coatings project, and enhancements to the U.S. plaza regarding inspection capacity. All bond proceeds were spent by December 31, 2020. Unspent bond proceeds at December 31, 2019 totaled \$188,000 and are recorded as restricted assets. The net investment in capital assets at December 31, 2021, 2020, and 2019, reflects that activity as it consists of the Authority's net capital assets offset by any payables and debt outstanding used to finance the capital asset purchases. As required by the Authority's bond indenture, the restricted portion of net position is reserved for debt service, governmental payments, and operating reserves. Restricted amounts fluctuate based upon the amount of required debt service and operating reserve requirements. Substantially all unrestricted net position has been designated by the Board of Directors for acquisition or construction of capital projects and/or major repairs and replacements.

Deferred outflows and deferred inflows of resources primarily represent actuarially determined amounts related to the Authority's pension and OPEB plans that will be amortized through pension and OPEB expense over several years. Deferred items arise primarily from the differences between actual and expected investment earnings and changes in healthcare cost trends and the Authority's contributions subsequent to the plans' measurement dates.

Statements of Revenues, Expenses, and Changes in Net Position for the years ended December 31:

<i>U.S. \$, in thousands</i>	2021	2020	2019
Operating revenues			
Toll revenues	\$ 18,165	\$ 16,910	\$ 22,118
Other revenues	8,123	7,662	8,813
Total operating revenues	26,288	24,572	30,931
Operating expenses			
Toll collection and traffic control	1,386	1,643	2,211
Maintenance of bridge, buildings, plazas and equipment	3,918	3,761	4,694
Administration	3,509	3,437	3,117
Pension	(408)	283	673
Other postemployment benefits	(2,855)	(3,650)	(1,162)
Other expenses	1,261	1,177	1,157
Bad debts	3,192	2,500	-
Loss on asset disposals/impairment	2,268	306	-
Depreciation	8,143	8,053	6,242
Total operating expenses	20,414	17,510	16,932
Operating income	5,874	7,062	13,999
Non-operating revenues (expenses)			
Net increase (decrease) in fair value of investments	(767)	1,450	3,216
Interest income	34	84	109
Interest expense	(3,381)	(3,476)	(3,570)
Grant revenue	-	-	1,814
Currency remeasurement	29	147	101
Total non-operating revenues (expenses)	(4,085)	(1,795)	1,670
Change in net position	1,789	5,267	15,669
Net position, beginning of year	245,030	239,763	224,094
Net position, end of year	\$ 246,819	\$ 245,030	\$ 239,763

As a bi-national toll bridge operator, the Authority earns revenues and incurs expenses in both U.S. and Canadian dollars. Canadian revenues and expenses are converted to U.S. dollars at the average exchange rate for the month in which the transaction occurs. Fluctuations in the exchange rates result in an improvement or deterioration in the currency remeasurement to U.S. dollars.

Toll volumes decreased 5% in 2021 compared to 2020 due to the continued border restrictions on non-essential travel put in place by the governments of the U.S. and Canada on March 21, 2020 in response to the COVID-19 pandemic. The auto and bus categories of travel were impacted the most as trade and commerce is deemed essential travel by both governments. Overall, toll revenues increased approximately 7.4% as a result of a 9.2% increase in truck revenues, offset by a 8.6% decrease in auto and bus revenues. Truck toll revenue accounts for 92% of the Authority's toll revenue. The increase in truck revenue was due to a toll increase effective January 1, 2020, as well as increased volume in 2021. Toll revenue decreased 24% in 2020 from 2019 due to the impact of the COVID-19 border restrictions put in place by the US and Canadian governments as previously described.

Other revenues consist primarily of rental income, the largest portion of which is attributed to leases with duty-free businesses. The rent from the duty-free stores was negatively impacted by the border restrictions on non-essential travel that resulted in sharp declines in duty free sales. Both the U.S. and the Canadian duty-free stores are required to pay a minimum base rent, however, due to COVID-19 border restrictions, the Authority entered into rent deferral agreements with both stores. These agreements permit the deferral of base rent for a period of time with repayment over 12 months at an interest rate of 4%. At December 31, 2021, the Canadian duty-free store was in default of their lease and the deferral agreement. The decrease of the duty-free rent was mitigated by an increase in the rents attributed to government agencies. Bad debt expense of \$3,192,000 and \$2,500,000 was recognized for 2021 and 2020 related to these duty-free lease agreements.

Operating expenses increased \$2,904,000 or 16.6% from 2020 to 2021. The increase is primarily due to the recognition of a one-time asset impairment loss of \$2,268,000 related to the previous bridge coatings project. The new bridge coatings project was completed in 2021. An increase in bad debt expense of \$692,000 is attributable to duty-free rent discussed previously. Fluctuations in pension and OPEB are primarily the result of changes in assumptions used in the actuarial calculations. As a result, the Authority recognized income of \$3,263,000, \$3,367,000, and \$489,000 related to its pension and OPEB plans for the years ended 2021, 2020, and 2019.

Operating expenses increased \$578,000 or 3.4% in 2020 compared to 2019. The primary driver in the increase in operating expenses in 2020 was due to recording \$2,500,000 in bad debt expense attributable to duty free rent which was mitigated by an increase in OPEB income of \$2,488,000 from 2019.

Total non-operating net expenses increased \$2,290,000 in 2021 and \$3,465,000 in 2020. The Authority utilized its capital improvement reserve to fund capital projects that were already in progress. As a result, the investments held in the capital improvement reserve were reallocated to more liquid investments and other short-term fixed income investments which reduced investment earnings. The fair value of investments declined approximately \$2,217,000 in 2021 and \$1,791,000 in 2020. Additionally, capital grant revenue of \$1,814,000 received in 2019 did not occur in 2020.

CAPITAL ASSETS AND LONG-TERM DEBT

The Authority's total investment in capital assets as of December 31, 2021 approximated \$244,755,000 representing 70% of the Authority's total assets. Capital assets consist of land, the Peace Bridge, buildings and plaza improvements, equipment, and construction-in-progress. Capital asset additions totaled \$6,319,000 in 2021 and \$19,082,000 in 2020, as the Authority continued the Peace Bridge rehabilitation and bridge coatings projects and other capital projects and equipment purchases.

In June 2014, the Authority issued \$28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of \$4,262,000, to currently refund \$33,500,000 of outstanding Series 2005 bonds, with interest rates ranging from 4% to 5%, and a true interest cost of 2.22%. The Series 2014 bond proceeds of \$33,102,000 plus \$3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under a mandatory tender and establish the Series 2014 debt reserves. The outstanding balance of the 2014 bonds at December 31, 2021 was \$12,260,000.

Fitch Ratings has assigned ratings of "A" respectively, to the Series 2014 Bonds.

In June 2017, the Authority issued \$70,800,000 in 30 year fixed rate Toll Bridge System Revenue Bonds at a premium of \$12,915,000, to finance the redecking and rehabilitation of the Peace Bridge, make a deposit to the debt service reserve account, and to pay certain costs of issuance of the Series 2017 bonds. The proceeds may also be used to pay the cost of the Peace Bridge coatings and enhancements to the U.S. plaza devoted to inspection capacity. The Series 2017 bonds were issued on a parity with the Series 2014 bonds, with fixed interest rates of 5%, and a true interest cost of 3.71%. Principal repayments begin upon the repayment of the Series 2014 bonds (January 1, 2025) and continue until January 1, 2047.

Standard & Poor's Rating Services have assigned a rating of "A+" to the Series 2017 Bonds.

FACTS THAT WILL IMPACT FINANCIAL POSITION

The COVID-19 pandemic has had health, financial, and economic impacts across the world. Effective March 21, 2020, the United States and Canada enacted a joint initiative temporarily restricting all non-essential travel across the U.S/Canadian border. Supply chains, including trucking, were not impacted by these restrictions. Americans and Canadians also crossing the land border every day to do essential work or for other urgent or essential reasons were not impacted. These restrictions were extended approximately every 30 days from March 2020 through August 8, 2021. On August 9, 2021, Canada began to allow non-essential travel provided the individual was fully vaccinated and received a negative COVID test within 72 hours of entry into Canada. On November 30, 2021, Canada removed the test requirement for Canadian citizens for trips to the U.S. that were 72 hours or less. On December 21, 2021, in response to the presence of the Omicron variant and increasing positive cases, Canada reinstituted its negative test requirement for all travel across land borders with the U.S. On November 8, 2021, the U.S began allowing fully vaccinated non-essential travelers to enter the US with no requirement of a negative COVID test. We expect some form of border restrictions to continue into 2022.

Beginning in January 2022, both governments are requiring all truck drivers (even though they are still designated essential) to be fully vaccinated to be able to cross into the United States and Canada. The duration of such requirements is uncertain given the potential economic and supply chain impacts. The Authority has been designated as an essential business by both countries and all Authority staff are able to report to work and are not prevented from crossing the border to do so.

While the duration and type of future travel restrictions are currently unknown, the Authority has experienced traffic declines in 2021 as compared to the previous year in passenger crossings since the non-essential travel restrictions were put in place. The Authority anticipates that traffic declines will continue to impact toll revenues and duty-free revenues in 2022.

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both of the Authority's duty-free enterprise tenants entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum.

The U.S. duty-free store has remained open during the ongoing border restrictions (at reduced hours) and continues to pay a percentage of actual sales made each month as rent. The amount deferred is the difference between the minimum rent (based on 2019 sales levels) and the amounts paid to the Authority.

The Canadian duty-free store closed in March 2020 and reopened in September 2021. Its deferral agreement expired July 31, 2020 and the Canadian duty-free lease is currently in default. Due to the default status, the Authority has recognized a \$5,692,000 bad debt allowance related to the 2020 and 2021 deferred rent due by the Canadian duty-free operator.

Despite the loss of toll revenue and the deferral of the duty-free rent payments, at December 31, 2021 the Authority has sufficient reserves to pay debt service and meet its operating expenses. Assets include approximately \$77,000,000 of unrestricted cash and cash equivalents, representing nearly 2,570 days cash on hand.

As the COVID-19 border restrictions continue, the Authority continues to closely monitor the impacts of these restrictions on its operations, revenues, and liquidity. The Authority's 2022 budget was developed to include the continued operating cost curtailment measures and the deferral of non-critical capital projects until a later date to reduce short-term operating and long-term capital expenses.

CONTACT FOR AUTHORITY'S FINANCIAL MANAGEMENT

This report is designed to provide a general overview of the finances of the Authority for interested parties. Questions concerning any information within this report or requests for additional information should be addressed to Karen L. Costa, Chief Financial Officer, 100 Queen Street, Fort Erie, ON L2A 3S6.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Balance Sheets (in thousands)

December 31,	2021	2020
Assets		
Current assets:		
Cash	\$ 3,753	\$ 951
Accounts receivable, net	1,913	1,699
Prepaid expenses	307	297
Investments	73,464	76,660
	<u>79,437</u>	<u>79,607</u>
Noncurrent assets:		
Restricted assets:		
Cash	10,011	12,188
Investments	7,093	7,186
	<u>17,104</u>	<u>19,374</u>
Net pension asset	9,405	7,390
Net OPEB asset	604	-
Capital assets, net (Note 5)	244,755	249,913
	<u>271,868</u>	<u>276,677</u>
Total assets	<u>351,305</u>	<u>356,284</u>
Deferred outflows of resources		
Defeasance loss	89	146
Deferred outflows of resources related to pensions	1,761	2,461
Deferred outflows of resources related to OPEB	273	370
Total deferred outflows of resources	<u>2,123</u>	<u>2,977</u>
Total assets and deferred outflows of resources	<u>\$ 353,428</u>	<u>\$ 359,261</u>
Liabilities		
Current liabilities:		
Current portion of bonds payable	\$ 2,830	\$ 2,690
Accounts payable and accrued liabilities	3,085	4,643
Accrued compensation and benefits	759	737
Other current liabilities	2,314	2,383
	<u>8,988</u>	<u>10,453</u>
Noncurrent liabilities:		
Bonds payable	91,544	95,203
Net OPEB liability	-	1,869
	<u>91,544</u>	<u>97,072</u>
Total liabilities	<u>100,532</u>	<u>107,525</u>
Deferred inflows of resources		
Deferred inflows of resources related to pensions	4,214	4,129
Deferred inflows of resources related to OPEB	1,863	2,577
Total deferred inflows of resources	<u>6,077</u>	<u>6,706</u>
Net position		
Net investment in capital assets	148,000	147,659
Restricted	14,895	14,981
Unrestricted	83,924	82,390
Total net position	<u>246,819</u>	<u>245,030</u>
Total liabilities, deferred inflows of resources, and net position	<u>\$ 353,428</u>	<u>\$ 359,261</u>

See accompanying notes.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Statements of Revenues, Expenses, and Changes in Net Position (in thousands)

For the years ended December 31,	2021	2020
Operating revenues:		
Commercial tolls	\$ 16,646	\$ 15,269
Passenger tolls	1,519	1,641
Rentals	7,810	7,448
Other	313	214
Total operating revenues	26,288	24,572
Operating expenses:		
Toll collection and traffic control	1,386	1,643
Maintenance of bridge, buildings, plazas, and equipment	3,918	3,761
Administration	3,509	3,437
Pension	(408)	283
Other postemployment benefits	(2,855)	(3,650)
Canadian property taxes and U.S. equalization payments	1,061	977
Payments to New York State	200	200
Bad debts	3,192	2,500
Loss on asset disposal/impairment	2,268	306
Depreciation	8,143	8,053
Total operating expenses	20,414	17,510
Operating income	5,874	7,062
Non-operating revenues (expenses):		
Net increase (decrease) in fair value of investments	(767)	1,450
Interest income	34	84
Interest expense	(3,381)	(3,476)
Currency remeasurement	29	147
Total non-operating net expenses	(4,085)	(1,795)
Change in net position	1,789	5,267
Net position - beginning of year	245,030	239,763
Net position - end of year	\$ 246,819	\$ 245,030

See accompanying notes.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Statements of Cash Flows (in thousands)

For the years ended December 31,	2021	2020
Operating activities:		
Toll revenue	\$ 17,727	\$ 17,085
Payments to suppliers	(8,839)	(8,676)
Payments for wages and employee benefits	(5,020)	(5,073)
Other revenues	8,266	6,716
Net operating activities	12,134	10,052
Capital and related financing activities:		
Property and equipment expenditures	(7,222)	(21,024)
Interest payments on debt	(4,222)	(4,351)
Principal payments on debt	(2,690)	(2,550)
Grant proceeds	-	1,100
Net capital and related financing activities	(14,134)	(26,825)
Investing activities:		
Sales of investments	1,755	18,177
Change in fair value of investments	767	(1,450)
Interest proceeds	34	84
Net investing activities	2,556	16,811
Effect of exchange rate changes	69	138
Change in cash	625	176
Cash - beginning	13,139	12,963
Cash - ending	\$ 13,764	\$ 13,139
Reconciliation of operating income to net cash provided from operating activities:		
Operating income	\$ 5,874	\$ 7,062
Adjustments to reconcile operating income to net cash provided from operating activities:		
Depreciation	8,143	8,053
Net pension and OPEB activity	(4,320)	(4,414)
Loss on asset disposal/impairment	2,268	315
Changes in assets and liabilities:		
Accounts receivable	(295)	(547)
Prepaid expenses	(11)	(101)
Accounts payable and accrued liabilities	447	(217)
Accrued compensation and benefits	28	(99)
	\$ 12,134	\$ 10,052

See accompanying notes.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Statements of Fiduciary Net Position (in thousands)

December 31,	Pension and Other Employee Benefit Trust Funds	
	2021	2020
Assets		
Current assets:		
Cash and short-term investments	\$ 328	\$ 615
Noncurrent assets:		
Investments - equity and fixed income securities	57,438	53,961
Total assets	57,766	54,576
Net Position		
Net position held in trust for pension benefits	44,442	42,321
Net position held in trust for OPEB benefits	13,324	12,255
	\$ 57,766	\$ 54,576

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Statements of Changes in Fiduciary Net Position (in thousands)

December 31,	Pension and Other Employee Benefit Trust Funds	
	2021	2020
Additions:		
Employer contributions	\$ 857	\$ 1,247
Net investment income	5,360	7,892
Effect of foreign currency exchange rate changes	134	244
Total additions	\$ 6,351	\$ 9,383
Deductions:		
Benefits paid to participants or beneficiaries	\$ 2,950	\$ 2,964
Administrative expenses	211	223
Total deductions	3,161	3,187
Change in net position	3,190	6,196
Net position - beginning of year	54,576	48,380
Net position - end of year	\$ 57,766	\$ 54,576

See accompanying notes.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Notes to Financial Statements

1. Summary of Significant Accounting Policies:**Reporting Entity**

Buffalo and Fort Erie Public Bridge Authority (the Authority) was established through a legislative act as a public benefit corporation to own and operate an international toll bridge connecting the United States and Canada. The enabling Act, under which the Authority was created, provides that on July 1, 2020, or when all bonds issued by the Authority have been discharged (current final maturity date is January 1, 2047), whichever shall be later, the powers, jurisdiction, and duties of the Board shall cease and the property and assets acquired and held by the Authority within the State of New York and within Canada shall be under jurisdiction of the State of New York and Her Majesty The Queen in Right of Canada, respectively.

Basis of Presentation

The financial statements of the Authority are prepared in conformity with U.S. generally accepted accounting principles (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

Measurement Focus

The Authority reports as a special purpose government engaged in business-type activities, as defined by GASB Statement No. 34. Business-type activities are those that are financed in whole or in part by fees charged to external parties for goods or services. The Authority's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred. Grants and similar items are recognized as revenue when all eligibility requirements imposed by the provider have been satisfied.

The Authority's policy for defining operating activities in the statements of revenues, expenses, and changes in net position are those that generally result from exchange transactions such as payments received for services and payments made to purchase goods or services. Certain other transactions are reported as non-operating activities and include investment income, interest paid on capital debt, and the net effect of currency remeasurement.

Assets held in trust for pension (Note 7) and other postemployment benefits (OPEB) (Note 8) are reported in the Pension and Other Employee Benefit Trust Fund.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash

At various times, cash in financial institutions may exceed insured limits and subject the Authority to concentrations of credit risk.

Investments

Investments consist of money market funds, commercial paper, corporate bonds, and U.S. mortgage and government agency obligations and are stated at fair value on a recurring basis as determined by quoted prices in active markets.

Restricted Assets

The Authority established the following accounts in order to comply with bond resolution and other requirements:

Bond – trustee accounts established to receive amounts necessary to meet current principal and interest payments and to maintain a sufficient balance in a debt service reserve fund.

Government payments – holds amounts necessary to fund payments to the State of New York as required under current legislation.

Operating expense reserve – holds amounts necessary to pay current year operating expenses as defined, plus an amount equal to one-sixth of the operating expenses of the Authority for the preceding year.

Capital Assets

Capital assets are reported at historical cost. For assets being depreciated, the expense is calculated over estimated useful lives using the straight-line method. Maintenance and repairs are expensed as incurred; significant improvements are capitalized.

Capitalization thresholds for determining which asset purchases are added to capital accounts and the estimated useful lives of capital assets are:

	Capitalization Policy	Estimated Useful Life
Bridge infrastructure	\$ 5,000	10-150 years
Buildings and plazas	\$ 5,000	10-40 years
Equipment - general	\$ 1,000	3-10 years
Equipment - toll system	\$ 1,000	7 years

Currency Translation

Due to its bi-national operations, the Authority accounts for transactions in either United States dollars (USD) or Canadian dollars (CAD). The Authority translates all Canadian asset and liability accounts at the year end exchange rate, except for property and equipment, which is translated at historical rates in effect in the year of acquisition. Revenues and expenses are converted at the average monthly exchange rate for the month in which the transaction occurs. Translation gains and losses are included as a component of non-operating revenues (expenses) as a currency remeasurement.

Compensated Absences

The Authority provides for vacation, sick, and compensatory time that is attributable to services already rendered and vested. The liabilities are recorded based on employees' rates of pay as of the end of the year, and include all payroll-related liabilities.

Pensions

The net pension asset, deferred outflows and deferred inflows of resources, pension expense, and information about and changes in the fiduciary net position of the Authority's defined benefit pension plans (Note 7) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms, and investments are reported at fair value.

Other Postemployment Benefits (OPEB)

The net OPEB asset (liability), deferred outflows and deferred inflows of resources, net OPEB income, and information about and changes in the fiduciary net position of the Authority's defined benefit healthcare plans (Note 8) have been measured on the same basis as reported by the plans. For this purpose, benefit payments in the plans are recognized when due and payable in accordance with the benefit terms, and investments are reported at fair value.

Net Position

- *Net investment in capital assets* – consists of net capital assets reduced by outstanding balances of any related debt obligations attributable to the acquisition, construction, or improvement of the assets.
- *Restricted* – consists of restricted assets, reduced by liabilities and deferred inflows of resources related to those assets, subject to externally imposed restrictions by creditors (such as through debt covenants), federal or state laws, or enabling legislation.
- *Unrestricted* – the net amount of assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the definition of the above restrictions and are available for general use of the Authority.

The Authority has adopted a policy of using restricted funds, when available, prior to unrestricted funds.

2. Deposits and Investments:

The Authority's policy is to obtain collateral from U.S. financial institutions for its cash deposits. Cash deposits maintained in banks within the United States are covered by U.S. Federal Deposit Insurance and by collateral held by a custodial bank in the Authority's name based upon the average daily funds available as determined by the bank. Canada Deposit Insurance covers a portion of cash deposits maintained at banks within Canada.

Custodial credit risk is the risk that in the event of a bank failure, the Authority's deposits may not be returned to it. At December 31, 2021, \$3,924,000 of the Authority's bank deposits were uncollateralized and therefore exposed to custodial credit risk.

The Authority's exposure to foreign currency risk derives from its deposits denominated in Canadian currency totaling \$4,431,000 (USD) at December 31, 2021.

Interest rate risk is the risk that the value of investments will decrease as a result of a change in interest rates. The Authority's investments had the following maturities at December 31, 2021 (in thousands):

	Less than	
	1 year	1-5 years
Money market funds	\$ 5,611	\$ -
Commercial paper	5,248	-
Corporate bonds	-	16,387
Federal notes	200	53,111
	<u>\$ 11,059</u>	<u>\$ 69,498</u>

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Authority's investments in corporate bonds are all within investment grade categories.

The Authority manages its investments pursuant to the bond resolution, which defines the nature and maturity of allowable investments.

3. Accounts Receivable, net:

(in thousands)	2021	2020
Accounts receivable for rental and tolls	\$ 7,606	\$ 4,200
Less allowance for doubtful accounts (Note 9)	(5,693)	(2,501)
	<u>\$ 1,913</u>	<u>\$ 1,699</u>

4. Investments:

(in thousands)	2021	2020
Unrestricted:		
Federal Home Loan Mortgage Corporation notes	\$ 11,524	\$ 18,800
Federal Home Loan Bank notes	12,369	1,016
Federal Farm Credit notes	11,336	11,552
Federal National Mortgage Association notes	10,789	12,540
Corporate bonds	16,387	19,368
Commercial paper	5,248	150
U.S. Treasury notes	200	-
Money market fund	5,611	13,234
	<u>\$ 73,464</u>	<u>\$ 76,660</u>
Restricted:		
U.S. Treasury notes	\$ 7,093	\$ 7,186

5. Capital Assets:

(in thousands)	January 1, 2021	Additions	Reclassifications and Disposals	December 31, 2021
Non-depreciable capital assets:				
Land	\$ 25,243	\$ -	\$ (965)	\$ 24,278
Construction-in-progress	25,131	6,319	(29,582)	1,868
Total non-depreciable assets	<u>50,374</u>	<u>6,319</u>	<u>(30,547)</u>	<u>26,146</u>
Depreciable capital assets:				
Bridge	157,864	-	4,863	162,727
Buildings and plazas	128,197	-	399	128,596
Equipment - general	6,911	-	59	6,970
Equipment - toll system	4,253	-	(8)	4,245
Total depreciable assets	<u>297,225</u>	<u>-</u>	<u>5,313</u>	<u>302,538</u>
Less accumulated depreciation:				
Bridge	(38,483)	(3,873)	21,016	(21,340)
Buildings and plazas	(54,234)	(3,229)	840	(56,623)
Equipment - general	(4,384)	(606)	28	(4,962)
Equipment - toll system	(585)	(435)	16	(1,004)
Total accumulated depreciation	<u>(97,686)</u>	<u>(8,143)</u>	<u>21,900</u>	<u>(83,929)</u>
Total depreciable assets, net	<u>199,539</u>	<u>(8,143)</u>	<u>27,213</u>	<u>218,609</u>
	<u>\$ 249,913</u>	<u>\$ (1,824)</u>	<u>\$ (3,334)</u>	<u>\$ 244,755</u>

(in thousands)	January 1, 2020	Additions	Reclassifications and Disposals	December 31, 2020
Non-depreciable capital assets:				
Land	\$ 25,243	\$ -	\$ -	\$ 25,243
Construction-in-progress	12,248	19,082	(6,199)	25,131
Total non-depreciable assets	37,491	19,082	(6,199)	50,374
Depreciable capital assets:				
Bridge	157,408	-	456	157,864
Buildings and plazas	124,765	-	3,432	128,197
Equipment - general	6,819	-	92	6,911
Equipment - toll system	3,440	-	813	4,253
Total depreciable assets	292,432	-	4,793	297,225
Less accumulated depreciation:				
Bridge	(35,842)	(3,641)	1,000	(38,483)
Buildings and plazas	(50,938)	(3,296)	-	(54,234)
Equipment - general	(3,799)	(658)	73	(4,384)
Equipment - toll system	(145)	(458)	18	(585)
Total accumulated depreciation	(90,724)	(8,053)	1,091	(97,686)
Total depreciable assets, net	201,708	(8,053)	5,884	199,539
	\$ 239,199	\$ 11,029	\$ (315)	\$ 249,913

Net investment in capital assets as of December 31, 2021 and 2020 consists of the following (in thousands):

	2021	2020
Capital assets, net of accumulated depreciation	\$ 244,755	\$ 249,913
Bonds and related premiums	(94,374)	(97,893)
Capital asset purchases included in accounts payable	(393)	(2,363)
Accrued interest	(2,077)	(2,144)
Defeasance loss	89	146
	\$ 148,000	\$ 147,659

6. Bond Indebtedness:

(in thousands)	January 1, 2021	Increases	Decreases	December 31, 2021	Due Within One Year
Series 2014 bonds	\$ 14,950	\$ -	\$ (2,690)	\$ 12,260	\$ 2,830
Unamortized premium 2014 refunding	854	-	(329)	525	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	11,289	-	(500)	10,789	-
	\$ 97,893	\$ -	\$ (3,519)	\$ 94,374	\$ 2,830

(in thousands)	January 1, 2020	Increases	Decreases	December 31, 2020	Due Within One Year
Series 2014 bonds	\$ 17,500	\$ -	\$ (2,550)	\$ 14,950	\$ 2,690
Unamortized premium 2014 refunding	1,250	-	(396)	854	-
Series 2017 bonds	70,800	-	-	70,800	-
Unamortized premium 2017 bond issue	11,771	-	(482)	11,289	-
	\$ 101,321	\$ -	\$ (3,428)	\$ 97,893	\$ 2,690

In June 2014, the Authority issued \$28,840,000 in fixed rate Toll Bridge System Revenue Refunding Bonds at a premium of \$4,262,000, with interest rates ranging from 4% to 5%, to currently refund \$33,500,000 of outstanding Series 2005 bonds. The Series 2014 bond proceeds of \$33,102,000 plus \$3,710,000 in Series 2005 bond reserve monies were used to refund the Series 2005 bonds under mandatory tender and establish the Series 2014 debt reserves. The Series 2005 bonds refunded Series 1995 bonds which resulted in a difference between the reacquisition price and the net carrying amount of the old debt of \$2,242,000. This defeasance loss, reported in the accompanying balance sheets as a deferred outflow, is being charged to operations through the year 2024 using the effective interest method. The defeasance loss remaining is \$89,000 and \$146,000 at December 31, 2021 and 2020.

In June 2017, the Authority issued \$70,800,000 in fixed rate Toll Bridge System Revenue Bonds at a premium of \$12,915,000, with an interest rate of 5%. The Series 2017 bond proceeds totaling \$83,715,000 were used to partially fund a \$100,000,000 bridge redecking and rehabilitation project and to establish the Series 2017 debt reserves. The bonds were structured so that principal repayments will begin upon the payoff of the Series 2014 bonds (January 1, 2025) and will continue until January 1, 2047.

Debt service requirements are as follows (in thousands):

Years ending December 31,	Principal	Interest
2022	\$ 2,830	\$ 4,012
2023	2,980	3,863
2024	3,140	3,706
2025	5,150	3,540
2026	1,930	3,448
2027-2031	11,205	15,693
2032-2036	14,300	12,696
2037-2041	18,240	8,646
2042-2046	23,285	3,606
	<u>\$ 83,060</u>	<u>\$ 59,210</u>

7. Pension Plans:

Defined Benefit Plans

The Authority maintains two non-contributory, single-employer defined benefit pension plans: Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in the United States (U.S. Plan) and Pension Plan for Employees of Buffalo and Fort Erie Public Bridge Authority in Canada (Canadian Plan), collectively, the Defined Benefit Plans. The Defined Benefit Plans cover full and part-time employees hired before September 29, 2006 (union) and January 1, 2009 (non-union) in the United States, and before July 27, 2007 (union) and January 1, 2009 (non-union) in Canada. The Board of Directors has the responsibility to establish and amend benefit provisions. Audited financial statements of the Defined Benefit Plans are not required and have not been prepared.

Benefits: The Defined Benefit Plans provide retirement, death benefits, and if applicable, certain annual cost of living adjustments to members and beneficiaries. Cost of living adjustments are effective when the most recent actuarial valuation reports reveal a surplus which is greater than twice the annual service cost. The cost of living adjustment, on a percentage basis, is equal to 50% of the change in consumer price indices based on the average change over the 12 month period ending on September 30th of the calendar year prior to the effective date of the adjustment. The cost of living adjustments are included in the Authority's annual pension cost only in the applicable years.

Employees Covered by Benefit Terms: At December 31, 2021 and 2020, the following employees were covered by the Defined Benefit Plans:

	2021		2020	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Active employees	14	13	14	15
Inactive employees or beneficiaries currently receiving benefits	44	58	44	58
Inactive employees entitled to but not yet receiving benefits	-	1	-	1
	58	72	58	74

Contributions: The Authority pays the full cost of all benefits provided under the Defined Benefit Plans. As a federally regulated pension plan, the Canadian plan is funded based upon an actuarial valuation and funding standards established by the *Pension Benefits Standards Act*. The Authority's policy with respect to the U.S. plan is to fund the greater of the annual required contribution or the current year service cost, as actuarially determined. Actuarial valuations are prepared no less frequently than every other year. For the years ended December 31, 2021 and 2020, the Authority's contribution rate to the Canadian Plan was 38% and 37%, respectively, of covered payroll and 12% and 10% of covered payroll for the U.S. Plan, respectively.

Net Pension Asset

The net pension asset was measured as of December 31, 2020 based on an actuarial valuation as of January 1, 2020, rolled forward to December 31, 2020. There have been no significant changes in benefits or other plan provisions from the beginning of the year to the end of the year.

Actuarial Assumptions: Based on the size of the plans, it was not deemed appropriate to perform an experience study. The total pension liability in the January 1, 2020 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

	Canadian Plan	U.S. Plan
Inflation	2.25%	2.75%
Salary increases	2.75%	2.75%
Investment rate of return	4.25%, compounded annually, net of all expenses (4.5% previously)	6.5%, compounded annually, net of all expenses
Mortality	CPM2014 Mortality Table with generational improvements projected using Scale B – no assumed preretirement deaths	Various Pub-2010 mortality tables, projected generationally with Scale MP-2020 improvements – no assumed preretirement deaths
Discount rate	4.25% (4.5% previously)	6.5%
COLA increases	0.26% COLA assumed (0.93% previously)	0.69% COLA assumed (0.85% previously)

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of pension plan investments and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Canadian Plan		
Canadian equities	5%	5.3%
International equities	10%	5.3%
Fixed income	80%	0.8%
Real estate	5%	6.0%
	<u>100%</u>	
U.S. Plan		
U.S. equities	30%	5.5%
International equities	5%	3.5%
Fixed income	41%	0.6%
Multi-asset	17%	4.0%
Real estate	5%	3.2%
Cash	2%	-
	<u>100%</u>	

Discount rate: The projection of cash flows used to determine the respective discount rates assumed that the Authority's contributions will continue to follow the current funding policy. Based on this assumption, the Authority's fiduciary net position was projected to be sufficient to make all projected future benefit payments of the Defined Benefit Plans' current members. Therefore, the discount rate equals the long-term rate of return of 4.25% (Canadian Plan) and 6.5% (U.S. Plan).

Changes in the Net Pension Asset

Canadian Plan (in thousands)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Asset
Balances at 12/31/19	\$ (13,427)	\$ 15,615	\$ 2,188
Effect of currency exchange rate changes	(210)	244	34
Changes for the year:			
Service cost	(137)	-	(137)
Interest	(603)	-	(603)
Differences between expected and actual experience	(77)	-	(77)
Employer contributions	-	282	282
Net investment income	-	1,660	1,660
Benefit payments	744	(744)	-
Administrative expenses	-	(76)	(76)
Net changes	(73)	1,122	1,049
Balances at 12/31/20	\$ (13,710)	\$ 16,981	\$ 3,271
Effect of currency exchange rate changes	(108)	134	26
Changes for the year:			
Service cost	(104)	-	(104)
Interest	(610)	-	(610)
Differences between expected and actual experience	(265)	-	(265)
Changes of assumptions	(380)	-	(380)
Employer contributions	-	342	342
Net investment income	-	1,151	1,151
Benefit payments	762	(762)	-
Administrative expenses	-	(74)	(74)
Net changes	(597)	657	60
Balances at 12/31/21	\$ (14,415)	\$ 17,772	\$ 3,357
U.S. Plan			
(in thousands)			
Balances at 12/31/19	\$ (21,192)	\$ 22,586	\$ 1,394
Changes for the year:			
Service cost	(49)	-	(49)
Interest	(1,333)	-	(1,333)
Employer contributions	-	87	87
Differences between expected and actual experience	(131)	-	(131)
Net investment income	-	4,275	4,275
Benefit payments	1,484	(1,484)	-
Administrative expenses	-	(124)	(124)
Net changes	(29)	2,754	2,725
Balances at 12/31/20	\$ (21,221)	\$ 25,340	\$ 4,119
Changes for the year:			
Service cost	(50)	-	(50)
Interest	(1,335)	-	(1,335)
Employer contributions	-	106	106
Differences between expected and actual experience	441	-	441
Changes of assumptions	58	-	58
Net investment income	-	2,823	2,823
Benefit payments	1,485	(1,485)	-
Administrative expenses	-	(114)	(114)
Net changes	599	1,330	1,929
Balances at 12/31/21	\$ (20,622)	\$ 26,670	\$ 6,048

The following presents the Authority's net pension asset for the Defined Benefit Plans calculated using the discount rate of 4.25% (Canadian Plan) and 6.5% (U.S. Plan) and the impact of using a discount rate that is 1.0% higher or lower than the current rate as of December 31, 2021.

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Canadian Plan	\$ 1,655	\$ 3,357	\$ 4,780
U.S. Plan	\$ 3,873	\$ 6,048	\$ 7,889

Pension Expense and Deferred Outflows and Deferred Inflows of Resources Related to Pensions

For the years ended December 31, 2021 and 2020, the Authority recognized pension expense of \$267,000 and pension income of \$37,000 for the Canadian Plan and pension income of \$1,056,000 and pension expense of \$69,000 for the U.S. Plan. At December 31, 2021 and 2020, the Authority reported deferred outflows and deferred inflows of resources as follows:

(in thousands)	2021			
	Canadian Plan		U.S. Plan	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ 319	\$ 1,048	\$ 924	\$ 3,051
Changes of assumptions	63	-	-	13
Changes in experience	44	-	-	102
Authority contributions subsequent to the measurement date	308	-	103	-
	<u>\$ 734</u>	<u>\$ 1,048</u>	<u>\$ 1,027</u>	<u>\$ 3,166</u>
(in thousands)	2020			
	Canadian Plan		U.S. Plan	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ 475	\$ 1,129	\$ 1,489	\$ 3,000
Changes of assumptions	-	-	-	-
Changes in experience	22	-	37	-
Authority contributions subsequent to the measurement date	341	-	97	-
	<u>\$ 838</u>	<u>\$ 1,129</u>	<u>\$ 1,623</u>	<u>\$ 3,000</u>

Authority contributions subsequent to the measurement date are recognized as an addition to the net pension asset in the subsequent year. Other amounts reported as deferred outflows and deferred inflows of resources at December 31, 2021 related to pensions will be recognized in pension expense as follows (in thousands):

Years ending December 31,	
2022	\$ (987)
2023	(466)
2024	(1,088)
2025	(323)
	<u>\$ (2,864)</u>

Defined Contribution Plans

The Authority has also established two non-contributory defined contribution money purchase plans which separately cover U.S. and Canadian employees hired subsequent to the eligibility dates of the Defined Benefit Plans described above.

The defined contribution plans require the Authority to contribute 6.0% of each qualified employee's covered salary annually. Contributions to the defined contribution plans totaled \$114,000 and \$112,000 in 2021 and 2020, respectively. The Authority makes all required contributions when due.

8. OPEB:

The Authority maintains two single-employer defined benefit postemployment healthcare plans (the Plans), one covering certain Canadian employees and one covering certain U.S. employees. The Plans provide benefits in the form of insurance premium payments for coverage of eligible retirees and dependents. Plan provisions, including Authority and member contribution rates, are determined by the Authority and collective bargaining agreements. The Plans do not issue publicly available financial reports.

Eligibility is based on date of hire, attainment of retirement age, and years of service. The Authority pays 100% of the health, dental, and life insurance premiums for employees meeting the following criteria:

Canadian Plan

Full-time employees hired prior to September 19, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after September 19, 2003 but prior to July 27, 2007 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

U.S. Plan

Full-time employees hired prior to July 18, 2003 (union) or November 21, 2003 (non-union), upon attainment of age 50 with 2 years of service.

Full-time employees hired on or after July 18, 2003 but prior to September 29, 2006 (union) or on or after November 21, 2003 but prior to December 31, 2008 (non-union), upon attainment of age 50 with 10 years of service.

At December 31, 2021 and 2020, employees covered by the Plan include:

	2021		2020	
	Canadian Plan	U.S. Plan	Canadian Plan	U.S. Plan
Active employees	12	12	14	14
Inactive employees or beneficiaries currently receiving benefits	56	72	53	75
Inactive employees entitled to but not yet receiving benefits	-	-	-	-
	<u>68</u>	<u>84</u>	<u>67</u>	<u>89</u>

Net OPEB Asset

The Authority's net OPEB asset of \$604,000 at December 31, 2021 was measured as of December 31, 2020, and the total OPEB asset used to calculate the net OPEB asset was determined by an actuarial valuation as of January 1, 2020, rolled forward to December 31, 2020.

The Authority established a qualified trust as defined by GASB Statement Nos. 74 and No. 75 which was funded with an initial cash contribution of \$10,000,000 during the year ended December 31, 2018. The Plan has adopted a funding policy and began making contributions in 2019 that are projected to cover all future benefit payments. Therefore, the discount rate is equal to the long-term rate of return.

The long-term expected rates of return on plan assets were determined using best estimate ranges of expected future real rates of return (expected returns, net of plan expenses and inflation) developed for each major asset class. These ranges are combined to produce the long-term expected rates of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class are summarized as follows:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
U.S. equities	32%	5.8%
International equities	6%	3.5%
Fixed income	35%	0.6%
Multi-asset	20%	4.0%
Real estate	5%	3.2%
Cash	2%	0%
	<u>100%</u>	

The total OPEB asset in the December 31, 2020 valuation was determined using the following actuarial assumptions and other inputs, applied to all periods included in the measurement, unless otherwise specified:

Healthcare cost trend:

Canadian Plan: 5.25% (5.5% previously) grading down by 0.125% each year to 4.25%

U.S. Plan: 5.75% (6.0% previously) grading down by 0.125% each year to 4.75%

Discount rate:

Discount rate at measurement date is 6.0% which is equal to the long-term rate of return on the trust assets

Mortality:

U.S. Plan: General Pub-2010 Headcount Weighted Mortality using Projection Scale MP-2020

Canadian Plan: CIA CPM-2014 Combined Mortality with CIA Scale CPM-B

Retirement:

Expected dates for each active employee based upon their unreduced pension eligibility

Salary:

Increases of 2.75%

Termination:

Rates calibrated to produce 3% aggregate turnover of the active data based on the Authority's historical experience

Changes in the Net OPEB Asset (Liability)

(in thousands)	Total OPEB Liability	Plan Fiduciary Net Position	Net OPEB Asset (Liability)
Balances at December 31, 2019	\$ (17,407)	\$ 10,179	\$ (7,228)
Effect of foreign currency exchange rate changes	(217)	-	(217)
Changes for the year:			
Employer contributions	-	878	878
Net investment income	-	1,957	1,957
Service cost	(69)	-	(69)
Interest	(1,031)	-	(1,031)
Differences between expected and actual experience	190	-	190
Changes of assumptions	3,674	-	3,674
Benefit payments	736	(736)	-
Administrative expenses	-	(23)	(23)
Net changes	3,500	2,076	5,576
Balances at December 31, 2020	\$ (14,124)	\$ 12,255	\$ (1,869)
Effect of foreign currency exchange rate changes	(162)	-	(162)
Changes for the year:			
Employer contributions	-	409	409
Net investment income	-	1,386	1,386
Service cost	(52)	-	(52)
Interest	(825)	-	(825)
Differences between expected and actual experience	140	-	140
Change of assumptions	1,600	-	1,600
Benefit payments	703	(703)	-
Administrative expenses	-	(23)	(23)
Net changes	1,566	1,069	2,635
Balances at December 31, 2021	\$ (12,720)	\$ 13,324	\$ 604

The following presents the sensitivity of the Authority's net OPEB asset to changes in the discount rate, including what the Authority's net OPEB asset would be if it were calculated using a discount rate that is 1% higher or lower than the current discount rate of 6.0%:

(in thousands)	1.0% Decrease	At Current Discount Rate	1.0% Increase
Net OPEB Asset (Liability)	\$ (1,687)	\$ 604	\$ 1,176

The following presents the sensitivity of the Authority's net OPEB asset to changes in the healthcare cost trend rates, including what the Authority's net OPEB asset would be if it were calculated using trend rates that are 1% higher or lower than the current healthcare cost trend rates of 5.75% to 4.25%:

(in thousands)	1.0% Decrease	At Current Trend rate	1.0% Increase
Net OPEB Asset (Liability)	\$ 1,137	\$ 604	\$ (1,627)

OPEB Expense and Deferred Outflows and Deferred Inflows of Resources Related to OPEB

For the years ended December 31, 2021 and 2020, the Authority recognized OPEB income of \$2,855,000 and \$3,650,000. At December 31, 2021 and 2020, the Authority reported deferred outflows and deferred inflows of resources as follows:

(in thousands)	2021		2020	
	Deferred Outflows of Resources	Deferred Inflows of Resources	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ -	\$ 1,302	\$ -	\$ 1,102
Changes of assumptions	-	485	-	1,403
Changes in experience	25	76	-	72
Authority contributions subsequent to the measurement date	248	-	370	-
	<u>\$ 273</u>	<u>\$ 1,863</u>	<u>\$ 370</u>	<u>\$ 2,577</u>

Authority contributions subsequent to the measurement date are recognized as an addition to the net OPEB asset in the subsequent year. Other amounts reported as deferred inflows of resources related to OPEB will be recognized in pension expense (income) as follows (in thousands):

Years ending December 31,	
2022	\$ (939)
2023	(406)
2024	(372)
2025	(121)
	<u>\$ (1,838)</u>

9. Rentals:

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

Due to the border restrictions imposed by the U.S and Canadian governments in response to the COVID-19 pandemic, both duty-free enterprises entered into rent deferral agreements with the Authority. These agreements allowed for the deferral of minimum rent due under the lease agreements for a specified period of time at an interest rate of 4% per annum. The Canadian duty-free rent deferral agreement expired July 31, 2020 and the duty-free lease is currently in default. The Authority has recognized an allowance for uncollectible accounts of \$5,693,000 and \$2,500,000 at December 31, 2021 and 2020.

The Authority also leases space to a governmental entity under a non-cancelable twenty year operating lease expiring June 30, 2039. Rental revenue received by the Authority under this lease totaled \$2,480,000 and \$2,422,000 in 2021 and 2020.

Minimum amounts, assuming all rentals are received under the leases, are as follows (in thousands):

Years ending December 31,	
2022	\$ 6,962
2023	6,962
2024	6,998
2025	7,034
2026	5,829
Thereafter	49,086
	<u>\$ 82,871</u>

The Authority also leases certain real property under cancelable operating leases to commercial enterprises and governmental agencies. These leases are generally maintained on a month-to-month basis.

10. Deferred Compensation Plan:

All employees of the Authority in the United States are offered participation in a deferred compensation plan (the Plan) created in accordance with Internal Revenue Code Section 457. The Plan permits eligible participants to defer a portion of their salaries until future years. Under the Plan, amounts deferred are not available to employees until separation, retirement, death, or unforeseen emergency. All amounts deferred under the Plan, all property, and rights purchased with those amounts, and all income attributable to those amounts, property, or rights, are held in trust until paid or made available to the employee or other beneficiary.

The Authority also has unfunded liabilities of \$1,890,000 and \$1,627,000 included in accrued liabilities as of December 31, 2021 and 2020 to current and former management employees due under separate deferred compensation agreements. Payments made under these agreements totaled \$4,800 in 2021 and 2020.

11. Commitments and Contingencies:

Risk Management

The Authority purchases commercial insurance for various risks of loss due to torts, theft, damage, errors and omissions, injuries to employees, and natural disasters. Settled claims resulting from these risks have not exceeded commercial coverage in any of the past three years. Losses resulting from acts of terrorism have been excluded from property and excess liability policies. The Terrorism Risk Insurance Act of 2002 of the United States governs coverage for acts of terrorism under the general liability policy.

Contractual Commitments

As of December 31, 2021, the Authority had contractual commitments of approximately \$1,200,000 primarily related to ongoing capital construction projects.

Litigation

The Authority is involved in various legal proceedings, the outcome of which is not expected to have significant impact on the financial position of the Authority.

12. Net Position:

Unrestricted - Designated

The Board of Directors has designated available unrestricted amounts for acquisition or construction of capital projects and maintenance.

Restricted

(in thousands)	2021	2020
Debt service funds:		
Debt service fund	\$ 4,918	\$ 4,927
Debt reserve fund	7,002	7,086
Operating expense reserve account	2,975	2,968
	<u>\$ 14,895</u>	<u>\$ 14,981</u>

13. Risks and Uncertainties:

On January 31, 2020, the United States Secretary of Health and Human Services (HHS) declared a public health emergency related to the global spread of coronavirus COVID-19, and a pandemic was declared by the World Health Organization in February 2020. On March 7, 2020, the Governor of the State of New York declared a disaster emergency in the State of New York, ordered all non-essential businesses State-wide to be closed, and required other restrictive social distancing and related measures. On March 17, 2020, the premier of the province of Ontario declared a state of emergency in the province of Ontario and ordered all non-essential businesses to be closed along with other restrictive measures. Efforts to fight the widespread disease resulted in a severe disruption of Authority operations. Financial markets also experienced significant fluctuations in value.

In response to the pandemic, various travel restrictions have been imposed by the U.S. and Canadian governments since March 2020, negatively impacting passenger tolls during this time. The extent of the impact of COVID-19 on the Authority's operational and financial performance will depend on further developments, including the duration and spread of the outbreak and its continued impact on travelers, employees, and vendors, none of which can be predicted.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Required Supplementary Information
Schedule of Changes in the Authority's Net Pension Asset and Related Ratios - Canadian Plan
(in thousands)

As of the measurement date of December 31,	2020	2019	2018	2017	2016	2015	2014
Total pension liability							
Service cost	\$ 104	\$ 137	\$ 156	\$ 126	\$ 124	\$ 207	\$ 190
Interest	610	603	604	605	633	593	565
Benefit payments, including refunds of employee contributions	(762)	(744)	(750)	(697)	(750)	(673)	(565)
Differences between expected and actual experience	265	77	(217)	680	191	-	-
Changes of assumptions	380	-	-	-	187	-	-
Net change in total pension liability	597	73	(207)	714	385	127	190
Total pension liability - beginning	13,710	13,427	13,033	13,296	12,139	11,581	11,391
Effect of foreign currency exchange rate changes	108	210	601	(977)	772	431	-
Total pension liability - ending	\$ 14,415	\$ 13,710	\$ 13,427	\$ 13,033	\$ 13,296	\$ 12,139	\$ 11,581
Plan fiduciary net position							
Employer contributions	\$ 342	\$ 282	\$ 411	\$ 484	\$ 498	\$ 554	\$ 647
Net investment income (loss)	1,151	1,660	(64)	1,429	995	175	1,432
Benefit payments, including refunds of employee contributions	(762)	(744)	(750)	(697)	(750)	(673)	(565)
Administrative expense	(74)	(76)	(101)	(68)	(24)	(41)	(19)
Net change in plan fiduciary net position	657	1,122	(504)	1,148	719	15	1,495
Plan fiduciary net position - beginning	16,981	15,615	15,405	15,388	13,793	13,283	11,788
Effect of foreign currency exchange rate changes	134	244	714	(1,131)	876	495	-
Plan fiduciary net position - ending	\$ 17,772	\$ 16,981	\$ 15,615	\$ 15,405	\$ 15,388	\$ 13,793	\$ 13,283
Net pension asset - ending	\$ 3,357	\$ 3,271	\$ 2,188	\$ 2,372	\$ 2,092	\$ 1,654	\$ 1,702
Plan fiduciary net position as a percentage of the total pension liability	123.3%	123.9%	116.3%	115.7%	115.7%	113.6%	114.7%
Covered payroll	\$ 809	\$ 930	\$ 895	\$ 863	\$ 965	\$ 949	\$ 868
Net pension asset as a percentage of covered payroll	415.0%	351.7%	244.5%	275.0%	216.8%	174.2%	196.0%
Foreign currency exchange rate:	1.27	1.28	1.30	1.36	1.26	1.34	1.39

* Data prior to 2014 is unavailable.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Required Supplementary Information
Schedule of Changes in the Authority's Net Pension Asset and Related Ratios - U.S. Plan
(in thousands)

As of the measurement date of December 31,	2020	2019	2018	2017	2016	2015	2014
Total pension liability							
Service cost	\$ 50	\$ 49	\$ 62	\$ 84	\$ 138	\$ 283	\$ 267
Interest	1,335	1,333	1,281	1,289	1,269	1,269	1,252
Benefit payments, including refunds of employee contributions	(1,485)	(1,484)	(1,623)	(1,374)	(1,233)	(1,610)	(936)
Difference between expected and actual experience	(441)	131	485	-	207	-	-
Changes of assumptions	(58)	-	(1,094)	-	103	-	-
Net change in total pension liability	(599)	29	(889)	(1)	484	(58)	583
Total pension liability - beginning	21,221	21,192	22,081	22,082	21,598	21,656	21,073
Total pension liability - ending	\$ 20,622	\$ 21,221	\$ 21,192	\$ 22,081	\$ 22,082	\$ 21,598	\$ 21,656
Plan fiduciary net position							
Employer contributions	\$ 106	\$ 87	\$ 167	\$ 157	\$ 219	\$ 266	\$ 300
Net investment income (loss)	2,823	4,275	(856)	3,263	854	(657)	1,515
Benefit payments, including refunds of employee contributions	(1,485)	(1,484)	(1,623)	(1,374)	(1,233)	(1,610)	(936)
Administrative expense	(114)	(124)	(133)	(120)	(53)	(65)	(42)
Net change in plan fiduciary net position	1,330	2,754	(2,445)	1,926	(213)	(2,066)	837
Plan fiduciary net position - beginning	25,340	22,586	25,031	23,105	23,318	25,384	24,547
Plan fiduciary net position - ending	\$ 26,670	\$ 25,340	\$ 22,586	\$ 25,031	\$ 23,105	\$ 23,318	\$ 25,384
Net pension asset - ending	\$ 6,048	\$ 4,119	\$ 1,394	\$ 2,950	\$ 1,023	\$ 1,720	\$ 3,728
Plan fiduciary net position as a percentage of the total pension liability	129.3%	119.4%	106.6%	113.4%	104.6%	108.0%	117.2%
Covered payroll	\$ 928	\$ 987	\$ 1,023	\$ 1,469	\$ 1,430	\$ 2,157	\$ 2,099
Net pension asset as a percentage of covered payroll	651.7%	417.3%	136.3%	200.8%	71.5%	79.7%	177.6%

* Data prior to 2014 is unavailable.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Required Supplementary Information
Schedule of Canadian Plan Contributions (in thousands)

December 31,	2021	2020	2019	2018	2017	2016	2015
Actuarially determined contribution	\$ 308	\$ 341	\$ 298	\$ 415	\$ 523	\$ 468	\$ 534
Contributions in relation to the actuarially determined contribution	308	341	298	415	523	468	534
Contribution deficiency (surplus)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Covered payroll	\$ 809	\$ 930	\$ 895	\$ 863	\$ 965	\$ 949	\$ 868
Contributions as a percentage of covered payroll	38.07%	36.67%	33.30%	48.12%	54.19%	49.30%	61.50%
Foreign currency exchange rate:	1.27	1.28	1.30	1.36	1.26	1.34	1.39
The following is a summary of changes of assumptions:							
Inflation	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%
Salary increases	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Investment rate of return	4.25%	4.50%	4.50%	4.50%	5.00%	5.00%	5.00%
Cost of living adjustments	0.26%	0.93%	1.11%	0.78%	0.67%	1.01%	1.01%
Discount rate	4.25%	4.50%	4.50%	4.50%	5.00%	5.00%	5.00%

* Data prior to 2015 is unavailable.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Required Supplementary Information
Schedule of U.S. Plan Contributions (in thousands)

December 31,	2021	2020	2019	2018	2017	2016	2015
Actuarially determined contribution	\$ 102	\$ 97	\$ 92	\$ 166	\$ 157	\$ 286	\$ 270
Contributions in relation to the actuarially determined contribution	102	97	92	166	157	219	266
Contribution deficiency (surplus)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67	\$ 4
Covered payroll	\$ 928	\$ 987	\$ 1,023	\$ 1,469	\$ 1,430	\$ 2,157	\$ 2,099
Contributions as a percentage of covered payroll	10.99%	9.83%	8.99%	11.30%	10.98%	10.15%	12.67%
The following is a summary of changes of assumptions:							
Inflation	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Salary increases	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Investment rate of return	6.50%	6.50%	6.50%	6.00%	6.00%	6.00%	6.00%
Cost of living adjustments	0.69%	0.85%	1.14%	0.73%	0.73%	0.83%	0.83%
Discount rate	6.50%	6.50%	6.50%	6.00%	6.00%	6.00%	6.00%

* Data prior to 2015 is unavailable.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Required Supplementary Information
Schedule of Changes in the Authority's Net
OPEB Asset (Liability) and Related Ratios (in thousands)

December 31,	2021	2020	2019	2018
Total OPEB liability - beginning	\$ (14,124)	\$ (17,407)	\$ (20,638)	\$ (20,419)
Effect of foreign currency exchange rate changes	(162)	(217)	(228)	298
Changes for the year:				
Service cost	(52)	(69)	(106)	(100)
Interest	(825)	(1,031)	(1,234)	(1,190)
Differences between expected and actual experience	140	190	1,657	(9)
Changes of assumptions	1,600	3,674	2,378	-
Benefit payments	703	736	764	782
Net change in total OPEB liability	1,566	3,500	3,459	(517)
Total OPEB liability - ending	\$ (12,720)	\$ (14,124)	\$ (17,407)	\$ (20,638)
Plan fiduciary net position - beginning	\$ 12,255	\$ 10,179	\$ -	\$ -
Changes for the year:				
Employer contributions	409	878	10,765	-
Net investment income	1,386	1,957	178	-
Benefit payments	(703)	(736)	(764)	-
Administrative expenses	(23)	(23)	-	-
Net change in plan fiduciary net position	1,069	2,076	10,179	-
Plan fiduciary net position - ending	\$ 13,324	\$ 12,255	\$ 10,179	\$ -
Net OPEB asset (liability) - ending	\$ 604	\$ (1,869)	\$ (7,228)	\$ (20,638)
Plan fiduciary net position as a percentage of the total OPEB asset (liability)	104.7%	86.8%	58.5%	0%
Covered-employee payroll	\$ 1,829	\$ 1,819	\$ 1,806	\$ 2,149
Net OPEB asset (liability) as a percentage of covered-employee payroll	33.0%	102.7%	400.2%	960.4%
The following is a summary of changes of assumptions:				
Healthcare cost trend rate (U.S.)	5.75% to 4.75%	6.0% to 5.0%	6.25% to 5.0%	6.75% to 5.0%
Healthcare cost trend rate (Canadian)	5.25% to 4.25%	5.5% to 4.5%	5.75% to 4.5%	6.25% to 4.5%
Salary increases	2.75%	2.75%	2.75%	2.75%
Investment rate of return	6.00%	6.00%	6.00%	6.00%
Discount rate	6.00%	6.00%	6.00%	6.00%

Data prior to 2018 is unavailable.

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



Commissioner, etc.

	Peace Bridge Traffic-Eastbound			1633	Car Traffic
	Cars	Trucks	Buses	Total	vs 2019
Oct 2022	124,964	44,770	435	170,169	-27%
Sep 2022	114,411	46,521	409	161,341	-35%
Aug 2022	139,629	50,155	386	190,170	-44%
Jul 2022	138,852	49,024	365	188,241	-40%
Jun 2022	101,401	49,024	264	150,689	-46%
May 2022	88,446	48,787	207	137,440	-46%
Apr 2022	77,616	46,277	212	124,105	-46%
Mar 2022	57,787	50,680	175	108,642	-62%
Feb 2022	33,448	40,527	88	74,063	-71%
Jan 2022	33,958	42,527	111	76,596	-70%
Jan-Oct2022	910,512	468,292	2,652	1,381,456	-47%
Dec 2021	54,587	43,403	141	98,131	-62%
Nov 2021	49,587	48,055	116	97,758	-66%
Oct 2021	37,478	49,453	28	86,959	-78%
Sep 2021	39,614	49,934	13	89,561	-78%
Aug 2021	38,189	50,624	17	88,830	-85%
Jul 2021	22,522	45,787	17	68,326	-90%
Jun 2021	21,332	50,342	17	71,691	-89%
May 2021	20,674	48,512	31	69,217	-87%
Apr 2021	17,422	47,780	12	65,214	-88%
Mar 2021	15,766	53,579	7	69,352	-90%
Feb 2021	12,148	43,130	6	55,284	-89%
Jan 2021	13,393	44,175	8	57,576	-88%
YTD 2021	342,712	574,774	413	917,899	-83%
Dec 2020	12,881	43,112	1	55,994	-91%
Nov 2020	13,431	46,718	2	60,151	-91%
Oct 2020	15,260	46,809	3	62,072	-91%
Sep 2020	14,777	46,113	3	60,893	-92%
Aug 2020	14,501	44,420	2	58,923	-94%
Jul 2020	12,742	42,932	6	55,680	-94%
Jun 2020	11,559	40,734	2	52,295	-94%
May 2020	8,718	35,148	1	43,867	-95%
Apr 2020	6,545	34,031	2	40,578	-95%
Mar 2020	67,111	44,325	338	111,774	-55%
Feb 2020	121,355	44,804	649	166,808	5%
Jan 2020	123,186	45,576	921	169,683	8%
YTD 2020	422,066	514,722	1,930	938,718	-79%
Dec 2019	145,503	40,069	1,061	186,633	
Nov 2019	147,129	43,215	1,053	191,397	
Oct 2019	171,744	48,675	1,100	221,519	
Sep 2019	176,774	46,973	976	224,723	
Aug 2019	249,184	45,722	1,050	295,956	
Jul 2019	230,244	45,928	929	277,101	
Jun 2019	188,736	45,312	826	234,874	
May 2019	164,405	47,670	752	212,827	
Apr 2019	143,282	46,316	659	190,257	
Mar 2019	150,707	46,407	723	197,837	
Feb 2018	115,595	42,608	610	158,813	
Jan 2019	114,306	43,837	611	158,754	
YTD 2019	1,997,609	542,732	10,350	2,550,691	

Peace Bridge Traffic-Eastbound

1634 Car Traffic

Cars Trucks Buses Total vs 2019

Dec 2018	154,528	40,532	743	195,803
Nov 2018	147,854	46,565	867	195,286
Oct 2018	169,751	51,686	903	222,340
Sep 2018	179,114	45,595	965	225,674
Aug 2018	249,704	47,479	1,074	298,257
Jul 2018	244,804	46,947	1,063	292,814
Jun 2018	196,380	48,141	953	245,474
May 2018	172,250	51,282	813	224,345
Apr 2018	142,730	50,688	800	194,218
Mar 2018	166,680	50,103	826	217,609
Feb 2018	125,661	45,222	838	171,721
Jan 2018	131,293	47,879	845	180,017
YTD 2018	2,080,749	572,119	10,690	2,663,558
Dec 2017	161,352	40,828	981	203,161
Nov 2017	158,464	47,868	881	207,213
Oct 2017	182,156	51,633	1,187	234,976
Sep 2017	190,180	47,125	1,110	238,415
Aug 2017	247,105	51,577	1,237	299,919
Jul 2017	244,254	46,192	1,164	291,610
Jun 2017	184,617	51,486	1,106	237,209
May 2017	160,985	52,799	941	214,725
Apr 2017	150,020	47,330	843	198,193
Mar 2017	143,223	51,459	778	195,460
Feb 2017	123,090	44,836	761	168,687
Jan 2017	127,857	47,757	802	176,416
YTD 2017	2,073,303	580,890	11,791	2,665,984

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



Commissioner, etc.

	Total Revenues	PBDf	Tim Horton
Jan2017	1,113,047	1,039,046	74,001
Feb2017	1,132,241	1,063,573	68,668
Mar2017	1,421,366	1,336,602	84,763
Apr2017	1,558,657	1,476,219	82,438
May2017	1,782,859	1,692,693	90,166
Jun2017	2,031,919	1,952,544	79,374
Jul2017	2,474,768	2,363,915	110,853
Aug2017	2,478,928	2,361,448	117,480
Sep2017	2,098,971	2,003,123	95,848
Oct2017	2,138,131	2,031,668	106,463
Nov2017	2,004,149	1,906,906	97,243
Dec2017	1,976,017	1,880,534	95,483
Jan2018	1,026,382	956,197	70,185
Feb2018	1,141,705	1,072,855	68,850
Mar2018	1,582,901	1,490,462	92,439
Apr2018	1,391,850	1,311,689	80,161
May2018	1,737,031	1,646,796	90,235
Jun2018	2,017,500	1,928,287	89,213
Jul2018	2,327,377	2,222,873	104,504
Note- only half of the store at a time was open during renovation months			
Renovations Aug2018	2,247,258	2,228,492	18,766
Renovations Sep2018	1,688,790	1,688,790	0
Renovations Oct2018	1,594,221	1,594,221	0
Renovations Nov2018	1,650,001	1,650,001	0
Renovations Dec2018	1,521,935	1,521,935	0
Renovations Jan2019	808,614	786,454	22,160
Renovations Feb2019	914,450	865,987	48,463
Renovations Mar2019	1,234,896	1,170,012	64,884
Renovations Apr2019	1,289,118	1,225,273	63,845
Renovations May2019	1,680,048	1,609,629	70,419
Renovations Jun2019	1,861,013	1,787,096	73,917
Jul2019	2,201,435	2,112,130	89,305
Aug2019	2,616,163	2,514,542	101,621
Sep2019	1,880,952	1,808,864	72,088
Oct2019	1,923,072	1,841,330	81,742
Nov2019	1,863,824	1,789,858	73,966
Dec2019	1,738,567	1,671,142	67,425
Jan2020	977,058	920,345	56,713
Feb2020	1,034,963	977,455	57,507
Mar2020	587,300	553,247	34,053
Note-closed March 21, 2020			
Nov2020	186	186	0
Dec2020	111	111	0
Jan2021	147	147	
Feb2021	87	87	
Mar2021	102	102	
Apr2021	63	63	
May2021	117	117	
Jun2021	138	138	
Jul2021	117	117	
Aug2021	91	91	
Sep2021	97,691	97,691	

	Total Revenues	PBDF	Tim Horton
Oct2021	309,754	309,754	
Nov2021	545,927	545,927	
Dec2021	571,208	571,208	
Jan2022	266,652	266,652	
Feb2022	317,739	317,739	
Mar2022	574,900	574,900	
Apr2022	803,466	803,466	
May2022	839,157	839,157	
Jun2022	942,743	942,743	
Jul2022	1,332,856	1,332,856	
Aug2022	1,295,437	1,295,437	
Sep2022	1,189,993	1,189,993	
Oct2022	1,214,518	1,214,518	

Court File No. CV-21-00673084-00CL
PEACE BRIDGE DUTY FREE INC.

ROYAL BANK OF CANADA

and

Applicant

Respondent

Email address of recipient: See Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

AFFIDAVIT OF JIM PEARCE

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Lawyers for the Respondent

TAB 15

**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

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 26 November 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 response to the Affidavit of Jim Pearce affirmed 13 November 2022 (the “**Pearce 13 Nov 22 Affidavit**”). I wish to note that the Authority does not believe that PBDF’s purported Cross-Motion is properly brought in this Application and I do not want the fact that I am addressing statements or arguments made by Mr. Pearce in his Affidavit taken as the Authority agreeing that PBDF’s purported Cross-Motion is properly brought in this Application. I am assuming that the Pearce 13 Nov 22 Affidavit is also delivered in response to the Authority’s Motion returnable on 9 December 2022

I. Summary

3. There is no dispute that the minimum rent payable by PBDF under the Lease is \$333,333 per month. Mr. Pearce confirms that in paragraph 40 of his Affidavit that the Lease provides for minimum monthly rent of \$333,333 and PBDF told the Federal government that its rent was \$333,333.
4. There is no dispute that: (a) PBDF has not paid the minimum base rent of \$333,333 per month on the 1st day of the month since 14 December 2021 and has instead paid only 20% of its reported gross sales on random dates each month; or (b) the Authority: (i) never agreed in writing or otherwise to amend the Lease to provide for percentage only rent; and (ii) has consistently advised PBDF that the payment of percentage only rent is not acceptable to the Authority.
5. As is evident from the Pearce 13 Nov 22 Affidavit, PBDF wants the Authority to agree: (a) to give PBDF a 75% rent abatement and that PBDF does not have to pay anything to reduce the remaining rent owing until sometime in the future; and (b) that PBDF can pay percentage rent only for the foreseeable future. The Authority will not agree to give PBDF what it is demanding.
6. The Authority has provided PBDF with what it believes is a very reasonable offer in terms of a rent abatement—50% for the period from 1 April 2020 to 1 November 2021—and for the repayment the remaining rent owing by PBDF.
7. PBDF is using the stays imposed by the Appointment Order that prevent the Authority from exercising its remedies under the Lease as leverage, while not complying with the requirement of the Appointment Order that it pay rent in accordance with the Lease.

II. Letter Attached as Exhibit A to the Pearce 13 Nov 22 Affidavit

8. Attached as Exhibit A to the Pearce 13 Nov 22 Affidavit is a letter from John C. Wolf of Blaney McMurtry LLP ("**Blaney**") dated 14 January 2022. As is evident from the e-mail communications attached to that letter, Mr. Wolf had agreed that PBDF would not provide that letter to the Court. That is why there is no formal response from the Authority to the various assertions made by Mr. Wolf in that letter.
9. As noted in the e-mail exchange between Gowling WLG Canada LLP ("**Gowling**") and Blaney that is included with Exhibit A to the Pearce 13 Nov 22 Affidavit, the Authority contested a number of the

assertions made by Mr. Wolf in his letter of 14 January 2022, but did not formally respond based on Mr. Wolf's assertion that his letter would not be placed before the Court.

10. In his letter of 14 January 2022, Mr. Wolf asserted that PBDF and the Authority are in "general agreement" concerning certain points. This is not the case. The matters on which Mr. Wolf asserts there was "general agreement" are points to which the Authority was prepared to agree as part of a package of amendments that included the issues upon which Mr. Wolf concedes there was no agreement.
11. None of the arguments made by Mr. Wolf in his letter of 14 January 2022 changed the Authority's position as to what constitutes a fair allocation of the financial impact of COVID as between the Authority, and PBDF and its shareholders as most-recently stated in the letter of 2 August 2022 that is at Tab 10 of the Brief of Exhibits.

III. Response to Pearce 13 Nov 22 Affidavit

A. Minimum Rent is \$333,333 per month

12. In paragraphs 53 and 103 of his Affidavit, Mr. Pearce argues that minimum base rent under the Lease is "predicated upon" 20% of PBDF's gross sales and that was the "underlying conceptual basis" for the base rent required by the Lease. I have no idea what PBDF had in mind when it offered to pay minimum rent of \$333,333 per month, but the Lease is clear that the minimum rent required to be paid by PBDF is \$333,333 per month notwithstanding PBDF's gross sales—the Lease assigns the risk of lower-than-anticipated sales to PBDF.

B. Authority did not Agreed to Accept Percentage Rent

13. In paragraph 55 of his Affidavit, Mr Pearce asserts that the Authority has accepted PBDF's rent payments. This is somewhat misleading as it implies that the Authority made the decision to accept the amounts paid to it by PBDF. This is not correct. PBDF pays its rent by direct deposit and the Authority did not return any of the rent paid by PBDF. Rent paid by PBDF was applied against the rent owing in accordance with the Lease. The Authority repeatedly advised PBDF that it was not agreeing that PBDF could pay percentage only rent.

14. In paragraph 103 of his Affidavit, Mr. Pearce asserts that the Authority's insistence that PBDF pay the \$333,333 base rent required by the Lease after 14 December 2021 is "inconsistent with the normal payment practices at the time of the Appointment Order". This is disingenuous. Mr. Pearce is aware that the Authority specifically rejected the request by PBDF to pay percentage only rent and consistently objected to PBDF paying percentage only rent.

C. Authority Acted in Good Faith and Consulted with PBDF

15. In paragraphs 17-21, 27 and 32 of his Affidavit, Mr. Pearce: (a) implies that the Authority did not consult with PBDF concerning the impact of the COVID-related restrictions as required by Article 18.07 of the Lease; (b) asserts that the Authority has not acted reasonable as required by Art 2.15 of the Lease; and (c) implies that the Authority has not complied with some duty of good faith and honest performance. This is not accurate.
16. The Authority has always dealt in good faith, and been honest, with PBDF. The Authority has fulfilled its obligation to consult with PBDF.
17. Aside from engagements surrounding the First Rent Deferral in April of 2020 and the (aborted) Second Rent Deferral in November of 2020, there have been other engagements between PBDF and the Authority concerning the impact of COVID and the (further) accommodations that the Authority might be willing to make to address the impact that COVID was having (and had) on PBDF.
18. While I do not propose to detail all of the various dealings between PBDF and the Authority, I will provide a high level overview of some of the engagements that took place as contemplated by Article 18.07 of the Lease. The results of these dealings are summarized in Mr. Wolf's letter of 14 January 2022.
19. There were exchanges of written communications between PBDF and the Authority in December of 2020. At that time, the Authority offered to assist PBDF to obtain Federal government assistance and, to that end, to arrange a meeting with the Member of Parliament for Niagara Centre. PBDF did not respond to that offer.
20. As noted in paragraph 32 of the Pearce 13 Nov 22 Affidavit, I and Karen Costa met with Mr. Pearce and the President and Managing Partner of PBDF Greg O'Hara on 13 May 2021 to discuss the

situation relating to the closure by PBDF of the duty free on the Canadian side of the Peace Bridge. At that meeting, PBDF presented for the third time the same proposal to address the rent owing and payable by PBDF. The Authority was clear that this proposal was not acceptable the first two times it had been presented and remained unacceptable. At the meeting on 13 May 2021, PBDF made it clear that: (a) the shareholders of PBDF were not prepared to provide financial support to PBDF; and (b) PBDF would not apply for the Business Credit Availability Program.

21. In August of 2021, there was a without prejudice proposal presented to the Authority by PBDF and a meeting among the parties' lawyers. That proposal included PBDF paying percentage only rent. I am advised by Chris Stanek of Gowling and verily believe that in a telephone call on or about 27 September 2021, he told PBDF's lawyer—then Ben Mills of Colin Bedard LLP—that a proposal by PBDF that it pay only percentage rent was not acceptable to the Authority. On or about 30 September 2022, PBDF, through its lawyers, indicated that it would be in a position to provide the Authority with an offer to address the rent arrears by 15 October 2021. On 15 October 2021, Mr. O'Hara made another without prejudice proposal to the Authority. On 26 October 2021, the Authority responded to PBDF's proposal and provided a counter-proposal.

22. In a 24 December 2021 e-mail, Mr. Wolf wrote:

Further to our last call we have acquired more information from our client, participated in a several hours long meeting to consider options, and plan to finish our review of material over the holidays.

We plan to write to you with more fulsome information after Christmas and to propose a further meeting with clients to try to address a commercially reasonable LAA having regard to subjective ability to pay, and with objective reference to how the market place is assisting other duty free stores.

We think this negotiation process may be facilitated by a mediator....

The sooner we start the booking process the earlier date we could achieve. Ideally, we could find a cancellation the first or second week of January before the return date of the hearing.

23. On 30 December 2022, Mr. Stanek responded

We note that your e-mail offering a mediation was not accompanied by a proposal designed to deal with your client's default. Based upon the proposals exchanged to date, our respective clients' positions are too far apart for a mediation to be effective.

All of the proposals made by your client to date provided that your client will only pay a small portion of the arrears each month out of future revenue over a significant period of time. That is not acceptable to our client. Your client is a party to a binding Lease that our client is entitled to rely upon. Your client is in default and owes substantial arrears. Any proposal must include a provision for the repayment of the arrears and go-forward rent supported by a detailed business plan and personal guarantees from individual(s) with financial means and/or third-party security. Once we have seen such a proposal with this supporting information, we are prepared to re-visit whether there is room for settlement and whether a mediator may be able to assist with any negotiations.

24. PBDF has never engaged with the Authority to negotiate a mutually acceptable reduction in the minimum rent payable under the Lease. After the Authority refused to agree to PBDF paying only percentage rent, PBDF ignored the requirements of the Lease and began to unilaterally pay percentage only rent, which PBDF unilaterally determined would be 20% of sales. PBDF, first relying on the Provincial eviction moratorium and then the Appointment Order, has continued to pay percentage only rent over the Authority's objection. As noted in my Affidavit sworn on 7 September 2022, the Authority advised the Monitor on 7 January 2022 that PBDF was not paying the required minimum rent and has repeatedly advised PBDF that it did not accept the payment of percentage only rent.

D. Authority met with FDFA

25. There is no dispute that when Frontier Duty Free Association ("FDFA") first reached out to the Authority and asked for a meeting, the Authority declined. This was because they did not represent PBDF. However, on 10 March 2022, the Authority responded to further request(s) for a meeting confirmed that it would meet with FDFA on 25 March 2022.
26. In paragraph 86 of his Affidavit, Mr. Pearce implies that the Authority excluded PBDF from the meeting on 25 March 2022 and refused to discuss the specifics of the Lease with PBDF. That is not accurate.
27. In the letter to FDFA on 10 March 2022 in which it agreed to meet with FDFA, the Authority wrote "[y]ou will appreciate that we will not be able to discuss with you the specifics of the situation involving [PBDF] or the offers that have been made to them unless you obtain written consent from them for us to speak to you about those matters." In that letter, the Authority also asked FDFA for an outline of what they proposed to discuss at the meeting on 25 March 2022. For some reason, that letter does not appear to have been attached as an Exhibit to the Pearce 13 Nov 22 Affidavit.

28. PBDF did not provide consent for the Authority to discuss with FDFA its specific situation and the outline that FDFA provided to the Authority—which I assume was shared with PBDF—did not include any discussion of PBDF’s specific situation or the Lease. My e-mail of 21 March 2022 that is attached as Exhibit T to and referred in paragraph 86 of the Pearce 13 Nov 22 Affidavit was more of a question than a statement—I was confirming whether PBDF would be attending the meeting and whether there was intended to be a discussion of the Lease. In my view, the entire purpose of meeting with FDFA was to address PBDF’s specific situation and the Lease because the information that FDFA presented to the Authority’s Board on 25 March 2022 was not unknown to the Authority.
29. The Authority considered the points made by FDFA in its communications with the Authority and it did not (and does not) change the Authority’s views as to what it is prepared to agree to in terms of a rent abatement and conditions for the repayment of the remaining rent owing by PBDF.

E. Authority has Offered PBDF a Generous Rent Abatement

30. In paragraph 18 of his Affidavit, Mr. Pearce asserts that the Authority is appearing to take the position that minimum rent is payable by PBDF from 31 July 2020 onward. As noted in the letter at Tab 10 of the Brief of Exhibits, the Authority has confirmed that it is willing to give PBDF a 50% rent abatement for the period that PBDF (voluntarily) closed the duty free as a result of the COVID-related restrictions imposed on cross-border travel subject to their being an acceptable agreement to pay the remaining rent owing.
31. In paragraph 19 of his Affidavit, Mr. Pearce argues that the Authority is asserting that the “Border Restrictions” had no impact on the Lease beyond 31 July 2020. That is untrue. The Authority acknowledged in the First Rent Deferral and continues to acknowledge that the “Border Restrictions” have impacted PBDF’s business—although the Authority does dispute that PBDF was required to stop operating the duty free—and has offered to give PBDF a generous rent abatement and to negotiate terms for the repayment of the remaining rent over time.
32. The barrier to the parties reaching an agreement is that PBDF wants a 75% rent abatement and does not want to agree to a plan to repay the remaining rent arrears on terms that are acceptable to the Authority.

F. Factors Considered by the Authority

33. In paragraph 27 of his Affidavit, Mr. Pearce asserts that it was and continues to be his expectation that the Authority would take into consideration the fact that border restrictions impacted the ability of PBDF and to generate sales. The Authority has taken those factors into account in determining that it is prepared to provide PBDF with a 50% rent abatement, subject to a plan acceptable to the Authority being put in place to repay the remaining arrears. The Authority also considered, among other factors: (a) that PBDF voluntarily closed the duty free while other operators did not; (b) the financial interest of PBDF's shareholders and the need to fairly apportion the financial impact of COVID between the Authority and PBDF; (c) the arrangements made with other duty free operators; (d) Mr. Wolf's argument in his letter of 14 January 2022; and (e) the information provided by FDFA.

G. PBDF was not Forced to Close the Duty Free

34. In paragraphs 27, 46, 106 and 107 of his Affidavit, Mr. Pearce implies that PBDF was prevented by the Government from continuing to operate the duty free, ordered to close the duty free and forced to close that duty free. Mr. Pearce knows that is not accurate. It was PBDF's decision to close the duty free at the Peace Bridge due to the reduced traffic caused by the Government border restrictions. I note that other duty frees remained open. For example, the duty free on the US side of the Peace Bridge and duty frees at other international bridges, including the Blue Water Bridge in Sarnia, Ontario and the Ambassador Bridge in Windsor, Ontario remained open.

H. Authority Cannot Subsidize PBDF or its Shareholders

35. In paragraph 105 of his Affidavit, Mr. Pearce asserts that the Authority has USD\$77MM in unrestricted cash on hand. This is correct. However, the Authority also has significant long-term debt. The Authority's cash reserves are intended for the care and maintenance of the Peace Bridge, which is a significant asset that requires extensive capital expenditures. Those reserves cannot be used to subsidize PBDF and its shareholders.
36. I note that: (a) while indicating how much in rent PBDF has paid to the Authority—see paragraph 5 of the Pearce 13 Nov 22 Affidavit—Mr. Pearce does not disclose how much in profit PBDF realized since 1986; and (b) while asserting that it is impossible for PBDF to pay rent as required by the Lease—see paragraph 32 of the Pearce 13 Nov 22 Affidavit—Mr. Pearce does not provide any

information as to the net personal wealth of the shareholders of PBDF or indicate why they will not provide financial support to PBDF.

I. The Authority is not an “Outlier”

37. Any assertion that the Authority is an “outlier” in terms of what it has offered to PBDF is not correct. What the Authority has offered to PBDF appears to be more than reasonable having regard to what other international bridge authorities have offered to their duty free tenants.
38. I have confirmed with that Niagara Falls Commission that the operators of the duty frees at the Rainbow Bridge and the Leiston Bridge paid less than the minimum rent required by the applicable leases during COVID, but they were not given a rent abatement and have agreed to pay over time 100% of the rent that they were unable to pay during COVID plus interest.
39. PBDF relies on the assertion that the Sault Ste Marie Bridge Authority (the “**SSM Authority**”) provided a rent abatement to the duty free store at the Sault Ste Marie International Bridge. I spoke to the General Manager of the SSM Authority who advised me that the abatements it provided to its duty free did not result in the SSM Authority being “out-of-pocket”. The SSM Authority is a Crown corporation. While I am not privy to its financial dealings with the Federal government, I assume that it received COVID relief money from the Federal government.

J. Authority has not Favoured the US Duty Free

40. In paragraphs 101 to 104 of his Affidavit Mr. Pearce asserts that: (a) the operator of the US duty free was, in 2021, paying only percentage rent; and (b) the Authority has given preferential treatment to the operator of the US duty free by requiring that PBDF pay the base rent required by the Lease. This is unfair. The Authority negotiated an agreement with the operator of the US duty free that contemplated the temporary deferral of rent in 2021 similar to what was provided for in the First Rent Deferral. There is now an agreement in place with the operator of the US duty free that provides for a much smaller rent abatement than has been offered to PBDF and the deferred rent owing by the operator of the US duty free is being repaid, with interest.

K. Authority has Considered Facts Raised by Mr. Pearce

41. In paragraphs 116 to 121 of his Affidavit, Mr. Pearce argues, essentially, why the Authority ought to provide PBDF with the concessions it is demanding from the Authority. The Authority is aware of and has considered all of the matters raised by Mr. Pearce in these paragraphs and they do not change the Authority's position that it wants to have the right to exercise its remedies based on the failure of PBDF to pay base rent from 14 December 2021 as required by the Lease and the Appointment Order.

L. Articles 18.07 and 18.08 of the Lease

42. In paragraphs 17, 20, and 32 of his Affidavit, Mr. Pearce refers to Article 18.07 of the Lease and implies that this provision requires that the Authority agree to amend the Lease as requested by PBDF. This is not accurate.
43. Article 18.07 does not require that the Authority accede to PBDF's demand with respect to amendments to the Lease based on a material adverse effect caused by the introduction of or a change to an Applicable Law. It requires that the Authority consult with the Tenant to discuss the impact to the Lease of any such introduction of or change to an Applicable Law. The Authority has done this. The issue is that PBDF wants amendments to the Lease to which the Authority is not prepared to agree.
44. I note that the Lease defines "Unavoidable Delay" as:

...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.

45. And Article 18.08 of the Lease says:

*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 (sic) do not operate to excuse the Tenant from the prompt payment of Rent and any other payments required by this Lease.** (emphasis added)*

M. Authority is not the Government or a Government Agent

46. In paragraphs 14-16 of his Affidavit, Mr. Pearce asserts that the Authority holds and administers the Peace Bridge on behalf of the Canadian and New York State governments. That is not correct. The Authority operates at arms length from the Canadian and New York State governments. Neither government has any direct involvement in the day-to-day business of the Authority and neither government provides the Authority with any direct or indirect financial support. Their involvement is limited to appointing the Authority's directors. The ownership of the Peace Bridge will "revert" to the Canadian and New York State government until 2046, at the earliest.
47. In paragraphs 23, 24 and 41 of his Affidavit, Mr. Pearce argues that the Authority is: (a) a 'government authority' for the purposes of the Lease; and (b) somehow responsible for the COVID-related border restrictions and what he asserts is the inadequacy of the Federal Government's COVID relief programs. This argument is simply absurd.
48. In paragraphs 33-45 of his Affidavit, Mr. Pearce makes assertions with respect to the adequacy of the Federal government's COVID relief packages. That is not something that is under the control of the Authority.

N. Authority is not Subject to Treasury Board Direction

49. In paragraph 36 of his Affidavit, Mr. Pearce asserts that the Authority refused to follow a Treasury Board of Canada Directive. This is not true. The Authority is not a "federal landlord" that is subject to Treasury Board direction.

O. Payment over of Rent Subsidies

50. In paragraphs 7 and 43 of his Affidavit, Mr. Pearce asserts that PBDF has paid to the Authority 20% of its gross sales as well as any government rental assistance that it has received, including amounts received under the Tourism and Hospitality Recovery Program (the “**THRP**”), and provided the Authority with proof of this. I question whether this is accurate. Exhibit E to the Pearce 13 Nov 22 Affidavit, which I saw for the first time when I reviewed the Affidavit, appears to indicate that, except for one month, PBDF did not pay over any portion of the assistance that it received under the THRP.

P. Authority did not Notify RBC of the Lease Defaults

51. In paragraphs 60 and 93 of his Affidavit, Mr. Pearce implies that the Authority contracted RBC and advised it of the defaults by PBDF. The default notices dated 8 September 2021 delivered by the Authority to PBDF were not copied or sent to RBC. Mr. Pearce acknowledges in paragraph 59 that it was PBDF that provided the notices to RBC.
52. On or about 23 September 2021, PBDF’s lawyers—then Colin Bedard LLP—connected the lawyers for the Authority with the lawyers for RBC and indicated that each of the Authority and RBC had made certain demands of PBDF and suggesting that the parties communicate.
53. It is my understanding that RBC and the Authority entered into a forbearance agreement, although I have not seen a copy of that agreement. Based on the letter attached as Exhibit M to the Pearce 12 Dec 21 Affidavit, I understand that the forbearance was somehow based on PBDF addressing the defaults raised by the Authority.
54. In or about October 2021, RBC, via its lawyers, requested that the Authority provide it with notice prior to taking steps to exercise its remedies under the default provisions of the Lease so that RBC could seek to appoint a receiver over the property and assets subject to its security, which RBC asserts includes the Lease. The Authority, via its lawyers, agreed to that request.

Q. Authority does not Know why PBDF Disputes Rent Owing

55. In paragraph 18(d) of his Affidavit, Mr. Pearce argues that the Authority has acknowledged that there is a dispute as to how much rent is owing as at 14 December 2021. Mr. Pearce mischaracterizes

my evidence. In paragraph 12 of my 7 September 2022 Affidavit I indicate “[a]lthough there **may be** a dispute as to how much is owing to PBDF...” (emphasis in original)

56. My understanding that PBDF disputes the amount of rent owing to the Authority as at 14 December 2021 is based on paragraph 14 of the Monitor’s First Report dated 14 January 2022, wherein the Monitor indicates that PBDF “continues to dispute the amounts claimed by the Landlord in respect of rental arrears and current rent owing”. As stated in footnote 1 to my 7 September 2022 Affidavit, PBDF has never provided the Authority with the specifics of any dispute concerning the rent or told the Authority what it thinks is owing.

R. Business Interruption Insurance

57. In paragraphs 110 and 111 of his Affidavit, Mr. Pearce indicates that the Authority has not disclosed whether it applied for business interruption coverage. PBDF has never asked for this information.
58. The Operating Costs to which PBDF is required to contribute do include business interruption insurance. The Authority has not made a claim based on a “business interruption” because the Canada/US border was not actually closed during the COVID pandemic. Travel across the border was restricted and only essentially travellers were permitted to cross the border, but the Peace Bridge remained operational.
59. I note that PBDF is itself required by the Lease to maintain business interruption insurance, but has not disclosed whether it made a claim under that policy.

S. Authority does not Believe Mediation would be Productive

60. In paragraph 82 and 122 of his Affidavit, Mr. Pearce asserts that the Authority has refused to engage in mediation or dispute resolution. The Authority’s position has been provided to PBDF—mediation to be productive there must be something to mediate and unless PBDF is prepared to accept the rent abatement that the Authority has offered and put forward a plan to repay the remaining arrears that is backed by financial projections, there is nothing to mediate.
61. As noted above, on 30 December 2021, in response to a suggestion that the parties engage in mediation, Mr. Stanek wrote to Mr. Wolf:

We note that your e-mail offering a mediation was not accompanied by a proposal designed to deal with your client's default. Based upon the proposals exchanged to date, our respective clients' positions are too far apart for a mediation to be effective.

...Once we have seen such a proposal with this supporting information, we are prepared to re-visit whether there is room for settlement and whether a mediator may be able to assist with any negotiations.

62. PBDF never presented the Authority with a proposal that satisfied the Authority's requirements as outline by Mr. Stanek on 30 December 2022 and never provided the Authority with a business plan.

T. PBDF was Required to Provide Washrooms

63. There is no dispute that for a period of time the duty free was closed PBDF did not provide washrooms to travellers crossing the Peace Bridge. In paragraphs 46 and 47 of his Affidavit, Mr. Pearce asserts that PBDF was not required to provide washrooms for travellers crossing Peace Bridge. This is not accurate. The Lease requires that PBDF provide and maintain public washrooms 24 hours a day, 365 days a year. Section 9.02 of the Lease says

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 the Lease the Tenant shall:

- (a) operate its business 24 hours a day, seven days a week, 365 days a year....;*
- ...*
- (e) keep the leased premises clean, neat and free of hazards and fire dangers at all times;*
- ...*
- (f) **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;***
(emphasis added)

U. Authority does not Agree Provincial Moratorium Applied

64. In paragraphs 61 and 62 of his Affidavit, Mr. Pearce argues, based on statements made by me in my 7 September 2022 Affidavit, that the Authority was "aware that it would be unlawful to terminate the Lease" when it issued default notices to PBDF and advised RBC that it would be proceeding to exercise its default remedies under the Lease. This is not entirely accurate. While the Authority was aware of the Provincial moratorium on eviction, there were issues as to, for example, whether Part IV applied to prevent the Authority from terminating the Lease.

65. I think that I was clear in paragraph 33 of my 7 September 2022 Affidavit that

*...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.*** (emphasis added)

V. PBDF Refused to Provide Financial Information

66. In paragraph 64 and 65 of his Affidavit, Mr. Pearce asserts that PBDF is not obliged to provide the Authority with any financial information aside from monthly statements of gross sales and audited financials. That is incorrect. Article 16.03 of the Lease says:

*(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 statement immediately upon request and in any event within one hundred and twenty (120) days of the end of each fiscal year of the tenant. (emphasis added)

W. Other Information

67. In his e-mail to the Monitor and its lawyers on 9 June 2022—Exhibit K to the Pearce 13 Nov 22 Affidavit—Mr. Wolf indicates that Vance Battaway—the Member of Parliament for Niagara Centre—suggested a 3-way meeting with the Authority, PBDF and the Federal government. I was not advised of any suggested proposal and first learned of it when I saw Mr. Wolf's e-mail.

IV. PBDF's Cross-Motion

68. PBDF's Cross-Motion seeks broad relief against the Authority, including declarations with respect to its rights under the Lease, Court-ordered amendments to the Lease and damages as well as an Order requiring that PBDF attend a mediation.

- 16 -

69. As noted by Mr. Wolf in his e-mail of 14 January 2022 attached as Exhibit A to the Pearce 13 Nov 22 Affidavit that the Authority is not an Applicant or a Respondent on any pending Application involving PBDF. As PBDF's landlord, the Authority is impacted by the stays contained in the Appointment Order, but is not a party to RBC's Application. The Authority is required to bring its Motion in RBC's Application because of the stays included in the Appointment Order and the refusal of the Monitor to consent to the Authority exercising its remedies under the Lease based on the refusal of PBDF to pay rent as required by the Lease.
70. The Authority is prepared to respond to any claim properly brought against it by PBDF, including any claim under the *Commercial Tenancies Act* seeking relief from forfeiture and/or damages.


V. Conclusion

71. The Authority remains willing to try to reach an agreement with PBDF to avoid eviction, but that would involve PBDF providing a workable proposal that provides for the payment of the rent that is owing that is supported by financial projections and backed by security or guarantees. The Authority is prepared to provide a 50% rent abatement for the period that PBDF (voluntarily) closed the duty free, but there has to be a firm commitment from PBDF as to how the remaining rent owing will be repaid. PBDF's shareholders cannot sit on the sidelines and expect the Authority to bear the brunt of the financial impact of their decision to close the duty free on the Canadian side of the Peace Bridge.

SWORN BEFORE ME remotely at Nuevo Vallarta
in the Republic of Mexico and the City of Toronto, in
the Province of Ontario, this 26th day of November
2022.



A COMMISSIONER FOR TAKING AFFIDAVITS



RON RIÑAS

ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF RON RIENAS
(Sworn 26 November 2022)

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

TAB 16

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

REPLY 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 swore affidavits in relations to this matter on December 12th, 2021 and November 13th, 2022.

3. I have reviewed Ron Rienas' affidavit sworn November 26th, 2022 ("**November 26th Affidavit**") and I swear this affidavit to reply to a number of statements made in the November 26th Affidavit and correct certain inaccuracies.

4. Capitalized terms not defined in this affidavit have the same meaning as in the Lease (as defined in the Notice of Motion and my affidavit sworn December 12th, 2021) and my December 12th, 2021 and November 13th, 2022 affidavits.

Overview

5. The Authority (through Mr. Rienas' affidavit) continues to ignore its ongoing obligations to comply with subsection 18.07 of the Lease. Further the Authority acknowledges its refusal to consider the actual impact of the various Border Restrictions on Duty Free's actual Gross Sales and its resulting ability to pay base rent.

6. Subsection 18.07 was not part of the draft lease included in the RFP process which resulted in the Lease. It was specifically inserted during the lease negotiation process because of Duty Free's concerns that in the absence of an Authority guarantee of minimum bridge traffic, that it was imperative to have a mechanism for base rent reset and possibly other changes to the lease to address material impacts to Duty Free's business caused by change in Applicable Laws.

7. Every proposal made by the Authority includes the addition of personal guarantees for the Lease by Duty Free's shareholders where none exist now.

8. Every Authority proposal demands payment of alleged arrears monies that any cursory analysis of Gross Sales would obviously confirm can not, and never could have been funded

through Duty Free's operations. As such the Authority's proposals can only result, if Duty Free agreed to them, of the business failure of Duty Free and the loss of shareholders' family assets.

9. It is obvious to me that the Authority's current strategy and objective is to try take advantage of the carnage caused by Covid-19 and resulting government Border Restrictions and by leveraging its disproportionate impact on land border duty free shops, and in particular Duty Free, to gain access to Duty Free's shareholder's personal assets to apply to what it alleges are rent arrears, including Lease enforcement rights against the individual shareholders which are not provided for in the Lease and is not something that was ever contemplated by the parties.

10. During Duty Free's tenure as a tenant over more than 35 years, it has been an exemplary operator, so I am both astonished and extremely disappointed that the Authority is so adamant on visiting the economic fallout of its stakeholders' Covid-19 policies personally on Duty Free's shareholders and their families.

The Authority either misrepresents or does not know what amounts have been paid by Duty Free

11. At paragraph 4 of the November 26th Affidavit, Mr. Rienas states, "there is no dispute that" and then proceeds to make an objectively false statement, which is disputed. It is not accurate that Duty Free paid "only 20% of the reported gross sales on random dates each month". As explained in my November 13th, 2022 Affidavit, including at paragraphs 7, 54 and 66, Duty Free has been paying the greater of 20% of Gross Sales and any government subsidies received. In addition, Duty Free has been paying 100% of Additional Rent. Duty Free has also been paying HST based on 100% of Base Rent per month, as noted in paragraph 54 of my Affidavit. Further, the payments were not made on "random dates". As explained in paragraph 74 of my Affidavit, the Normal Rent installments were paid on or about the 10th day of each month when the accounting of monthly

sales was completed. Duty Free's accounting practices and payments were then moved up to the first day of the month at the request of the Authority.

12. In paragraph 50 of the November 26th Affidavit, Mr. Rienas says that Exhibit E to my November 13th, 2022 Affidavit (I think he is referring to Exhibit D) shows Duty Free did not pay the THRP to the Authority. Mr. Rienas is mistaken. Duty Free was paying Normal Rent. Exhibit D shows that the Authority always received more than the THRP amount. In one period the Authority received the THRP amount (plus Additional Rent and HST on the full Base Rent).

The Authority purports to know what Duty Free wants and then misstate its position

13. With respect to paragraph 5 of the November 26th Affidavit, I do not agree with Mr. Rienas' characterization of my November 13th, 2022 Affidavit (describe it). Mr. Rienas incorrectly purports to describe what he believes Duty Free "wants" or "is demanding", despite the Authority's refusal to mediate or engage with Duty Free to constructively review the actual financial impact of the Border Restrictions on Duty Free's business and how the Border Restrictions impact the Lease with a view to actually understanding and advancing what appears to me to be the parties' mutual interests.

14. Mr. Rienas incorrectly describes Duty Free's interests and objectives throughout the November 26th Affidavit, including but not limited to at paragraphs 7, and 32.

15. With respect to paragraph 32 of the November 26th Affidavit, Mr. Rienas mischaracterizes what Duty Free "wants". The misunderstanding in my view arises from the fact that the parties have not engaged in any genuine discussion about their respective interests for well over a year with a view to determining whether there is a mutually agreeable solution. As can be seen from

the Authority's evidence, its course of conduct is to arbitrarily present what in its sole discretion it views as appropriate without any regard to actual Gross Sales and resultant ability to pay base rent, let alone alleged arrears. If the Authority's demand for payment of monies (that are not available from Gross Sales) is not accepted, the Authority has taken the unreasonable position that there can be no mutually acceptable solution. However, the Authority has refused to engage in a consultation process as required by subsection 18.07 of the Lease or to reasonably take into consideration the Border Restrictions listed in paragraph 13 of my November 13th, 2022 Affidavit.

The Authority seeks to leverage Covid-19 to obtain Lease enforcement rights against Duty Free's principals personally

16. In response to paragraph 6 of the November 26th Affidavit, the Authority apparently believes it has made a "very reasonable offer". Notwithstanding that the offer does not consider economic realities, it comes with a very significant and personally devastating condition that the Authority seeks direct contractual enforcement rights against Duty Free's shareholders' personal assets, by way of a guarantee, which enforcement rights are not rights that are available to the Authority under the Lease or at law, nor were, or would they have ever been considered as part of the RFP process leading to the Lease.

17. Paragraph 20 of the November 26th Affidavit refers to proposals by Duty Free that were essentially rejected by the Authority. In the last sentence of that paragraph Mr. Rienas appears to imply that any discussion or consideration of the impact of the Border Restrictions on the Lease by the Authority would be conditional on the Authority extracting financial concessions from the shareholders of Duty Free personally.

18. With respect to paragraphs 18 to 24 of the November 26th Affidavit, while the Authority has put forward certain "take it or leave it" positions, it has consistently refused to review and give

fair and reasonable consideration to the actual financial impact of the Applicable Laws on the Lease, and it certainly has not discussed the impact of each of the Border Restrictions set out in paragraph 13 of my November 13th, 2022 Affidavit with Duty Free.

The Lease is based on border traffic at the Peace Bridge at the time of the proposal

19. In paragraph 12 of the November 26th Affidavit in which Mr. Rienas says that he has “no idea” what Duty Free had in mind when it submitted its request for proposal which led to the Lease. Duty Free based its submission on the border traffic at the Peace Bridge around the time of the submission, its experience operating the duty-free shop at the Peace Bridge for decades and the state of the world, including existing Applicable Laws at that time. It was also based on the express provision at 18.07 of the Lease that if there was an unanticipated change in any Applicable Laws that caused a material adverse effect on Duty Free’s business operations, the Authority would consult with Duty Free to discuss the impact of the changes in Applicable Laws to the Lease.

20. The Lease recognizes Duty Free’s business is largely dependent on the regulatory environment, which is the reason subsection 18.07 forms part of the Lease. Duty Free’s business is completely vulnerable to changes in Peace Bridge traffic caused by regulatory changes that are entirely out of Duty Free’s control, but are within the purview of the Authority and its stakeholders.

21. I am advised by Dennis Tobin, senior commercial leasing lawyer at Blaney McMurtry LLP that subsection 18.07 of the Lease is a very unusual and specific lease provision. Such a provision would not be found in a typical commercial retail lease. I am advised by Mr. Tobin that in his more than three decades practicing as a commercial leasing lawyer that he does not recall seeing such a provision in a retail lease between private entities.

22. Mr. Tobin further advised me that subsection 18.07 of the Lease, or similar provisions would only be included in a lease where regulatory changes outside of the control of the tenant would impact the underlying foundations for a lease making rent adjustment necessary. It is in his words a “safety valve” to ensure the lease terms are modified if and when the clause is triggered, and is intended to protect the tenant from the consequences of material adverse impacts caused by a change in Applicable Laws.

Duty Free is ready willing and able to engage with the Authority in an ADR process

23. Regarding paragraph 24 of the November 26th Affidavit, I am at a loss to understand Mr. Rienas’ assertion that Duty Free “has never engaged with Authority to negotiate a mutually acceptable reduction in minimum rent payable under the Lease”. Duty Free has attempted to engage with the Authority to discuss the impact of the Border Restrictions on the Lease, including the appropriate amendments to minimum rent [Base Rent] many times, including proposing informal discussions, meetings with counsel and formal mediation as well as in the context of the motions currently before the court. If Mr. Rienas believes Duty Free has not engaged with the Authority to negotiate, I would be pleased to attend a court directed negotiation on behalf of Duty Free with the Authority.

The Authority’s “generous rent abatement”

24. With respect to paragraphs 30 and 31 of the November 26th Affidavit that describe the Authority’s “generous rent abatement” and the letter at Tab 10 of the Authority’s Brief of Exhibits, as indicated in the Tab 10 letter, the Authority’s proposal comes with a very significant string attached, being a third-party guarantees.

25. In my view by definition any proposal that will result in the destruction of the Duty Free business and the seizure of personal assets not otherwise available to the Authority could never in any circumstances be a proper, adequate or “generous” rent abatement.

26. This is in contrast to the Authority’s attempt to distance itself from its government stakeholders at paragraphs 46-48 of Mr. Rienas’ affidavit. The government stakeholders appointed the Authority’s directors and guiding minds; endowed it with its principal asset and source of revenue, being the Peace Bridge; and all the Authority’s assets, including the Leased Premises with its \$6 million of improvements that it is currently seeking repossess, that will ultimately revert to the government stakeholders.

27. Mr. Rienas also seems to be under a mistaken belief that the shareholders of Duty Free have access to some extraordinary wealth, which is not the case. Exposing individuals personally to liability to the Authority was never contemplated by anyone when entering into the Lease. Asking any of the individual shareholders to accept liability for the vast amounts of money sought by the Authority is absurd. Based on the border traffic and sales volume, the Authority knows its demands are entirely unrealistic.

28. It is unfathomable to me that the consultation process in subsection 18.07 of the Lease could be misused by the Authority to go behind the corporate structure of Duty Free to access the personal assets of individual shareholders.

Duty Free did not “voluntarily” close its business

29. I do not agree with Mr. Rienas’ characterization of Duty Free’s retail store as “voluntary” in paragraph 30 of the November 26th Affidavit and elsewhere. Retail stores in Ontario were

ordered to close. The Authority seems to think Duty Free could have taken an aggressive interpretation the regulations and considered itself a liquor store. Even then it could not have legally operated in accordance with the terms of the Lease. There were dozens of changes to the Ontario regulations, but even liquor stores were subject to hours restrictions, so there was no possibility of operating 24/7 as provided for in the Lease.

30. Further, while I do not intend to repeat by previous affidavit, the law requires that goods purchased at a Duty Free shop must be immediately exported. The Border Restrictions effectively eliminated any potential customers. Whether or not the store was legally allowed to open at a particular time, there would be effectively no revenue because daily crossing essential workers did not have any duty-free allowance. This is explained in paragraphs 25, 47, 82 and 83 of my November 13th, 2022 affidavit.

31. The Authority acknowledges in the letter Mr. Rienas refers to in the same paragraph that Duty Free was closed during a “mandatory COVID-related shutdown”, when it demanded all post mandatory shutdown rent be paid in full within 10 business days from August 22nd, 2022 (Tab 10 of the Authority’s Brief of Exhibits), despite the ongoing Border Restrictions beyond the “mandatory COVID-related shutdown”.

Authority’s anecdotal information about 2 of 33 landlord border duty free stores

32. In paragraph 34 of the November 26th Affidavit, Mr. Rienas cites two duty free stores that he says stayed open despite the Covid-19 mandated shutdowns.

33. Based on my knowledge of the situation and from information from the Sarnia duty free operator, the reason the Sarnia location was open was that there are no truck stops or plazas

anywhere nearby, so it was essential that it remained open for truckers. I understand from FDFA that while the store opened, its sales were off by 95%.

34. The Ambassador Bridge location in Windsor is a unique situation because the bridge, duty free store and nearby gas station are all owned by the same entity or related entities, so rental payment not a significant concern in that situation.

The Rainbow and Lewiston duty free leases are not comparable to the Lease

35. Regarding paragraphs 37 and 38 of the November 26th Affidavit, and Mr. Rienas' assertion that the Authority has been "more than reasonable", he gives the example of the Rainbow Bridge and the Lewiston Bridge (which was referred to as "Leiston"). Mr. Rienas gives a general statement, but few particulars. To understand why those situations are not comparable, one must consider the terms of the leases. Based on my industry knowledge and discussion with various industry participants, many land border duty free stores have no minimum rent at all, and most that do have less than \$1 million per year minimum rent. I understand Rainbow bridge and Lewiston's minimum rents are both well below \$1 million per year. In non-Covid times, those minimum rents were entirely irrelevant. Those duty-free stores generate sales that are somewhere between 50%-65% of Duty Free's Gross Sales. Since their leases provide for rent payable at the greater of the minimum rent and percentage rent, they always paid the percentage rent.

36. If the Authority is not an outlier and is prepared to match the Rainbow or Lewiston duty free lease deals in absolute terms, Duty Free is prepared to have that discussion.

Duty Free provided the Authority with a plan, including projections

37. Regarding paragraph 62 of the November 26th Affidavit, Mr. Rienas says Duty Free never provided a business plan. However, in August 2021 Duty Free did present the Authority with a proposal supported by projections and a plan. Attached as **Exhibit “A”** is a copy of Duty Free’s August 2021 proposal.

38. The more accurate statement would be that the Authority refused to participate in any mediation or ADR process because Duty Free has not agreed to the Authority’s pre-condition of personal shareholder guarantees.

Request for financial information

39. Paragraph 66 of the November 26th Affidavit, references paragraphs 64 and 65 of my November 13th, 2022 Affidavit. Those paragraphs were in response to Mr. Rienas’ statement in paragraphs 38 of his original affidavit when he incorrectly asserted a default under Article V of the Lease. In paragraph 66 of the November 26th Affidavit, Mr. Rienas refers to Article XVI of the Lease, which of course is not Article V. Article XVI is titled STATUS STATEMENT, ATTORNMENT AND SUBORDINATION, which deals with rights relating to request from mortgagees and potential purchasers of the Leased Premises. The point is that Duty Free was not in default of the Lease as alleged or at all.

Record breaking snow storm affected November 2022 sales

40. Duty Free was on track for an excellent month in November when a record breaking snow storm hit the region, resulting in over 6 feet of snow in the Buffalo area. The storm shut down all travel and caused a Buffalo Bills home game to move to Detroit. During the Thursday to Monday storm timeframe, Gross Sales were down approximately 80%. This meant that overall for month

Gross Sales were down about 40%. Without the storm we project Gross Sales would have been about 5% higher than October

41. As such, the rent paid for November is anomalous to the general positive trend. Duty Free anticipates its sales will revert to the upward trend after November 2022. Attached as **Exhibit “B”** is a summary of Duty Free rent payments to November 2022.

CCAA Template

42. In paragraph 42 of its factum the Authority says the terminology used in paragraph 11 of the Appointment Order is a “template” and is used in orders appointing receivers and interim receivers, and initial orders under the *Companies’ Creditors Arrangement Act* (“**CCAA**”). Attached as **Exhibit “C”** is a *CCAA* initial order template form downloaded from www.ontariocourts.ca.

43. I am advised by my lawyers Blaney McMurtry LLP that initial orders under the *CCAA* typically have a section that specifically addresses payment of rent where the party’s intentions are for rent to be paid strictly in accordance with the language in a lease. Paragraph 9 of the *CCAA* order template states as follows:

9. THIS COURT ORDERS that until a real property lease is disclaimed [**or resiliated**]¹ in accordance with the *CCAA*, **the Applicant shall pay all amounts constituting rent or payable as rent under real property leases** (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), **for the period commencing from and including the date of this Order**, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

¹ The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

44. As explained in paragraphs 66-70 of my November 13th, 2022 Affidavit, counsel for the Authority received the draft Appointment Order and did not request that it include payment of contractual rent in strict compliance with the Lease, rather than Normal Rent, nor did the Authority' counsel raise that issue with counsel or the court when the Appointment Order was being amended on January 17th, 2022 or March 23rd, 2022.

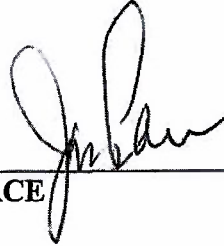
45. Since the Appointment Order, Duty Free has continued to pay Normal Rent in accordance with the same prices and normal payment practices in place and that were being accepted at that time of the Appointment Order.

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 Tyler Matthews stated as)
 being in the City of Toronto, in the)
 Province of Ontario on this 2nd)
 day of December, 2022, in accordance)
 with O.Reg. 431/20, Administering the)
 Oath or Declaration remotely.)
)
)



A Commissioner for Taking Affidavits,
Tyler Matthews

Tyler Andrew George Matthews,
 a Commissioner, etc., Province of Ontario,
 while a Student-at-Law.
 Expires May 4, 2024.



JIM PEARCE

This is Exhibit "A" referred to in the Reply Affidavit of Jim Pearce
sworn remotely this 2nd day of December 2022.



Commissioner for Taking Affidavits (or as may be)

Tyler Matthews (*Articling Student*)

**Tyler Andrew George Matthews,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 4, 2024.**



PROPOSAL MADE TO:
THE BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

A. Introduction

1. Peace Bridge Duty Free (PBDF) has been operating a duty-free shop at the Peace Bridge site and as a tenant of the Buffalo and Fort Erie Public Bridge Authority (PBA) since November 1986.
2. Over those years, there have been ups and downs in terms of the business and unexpected events along the way.
3. Some events have been positive, such as the Bills playoff runs of the early 1990s, which gave a boost to traffic.
4. Other events have been tragic, such as the 9-11 attacks on the US.
5. However, we have never experienced anything like COVID-19.
6. The measures associated with COVID-19 have had an unprecedented and prolonged impact on border operations and will continue to have an impact in the near future as both the US and Canada strive to return to normal.
7. The purpose of this document is to set out a proposal that will provide a path forward to recovery as things improve and restrictions loosen.
8. We have included relevant background information to assist the PBA in its assessment of this proposal. We welcome receipt of any information that the PBA may have that is relevant to determining the way forward, such as traffic projections.
9. Overall, our goal is for PBDF and the PBA to agree on terms that will serve as a foundation for our efforts to recover and return to normal operations.

B. Current Situation

10. Normal operations at the duty-free shop were disrupted in March 2020.
11. However, since that time and at our own cost, PBDF has:
 - Continued to maintain essential services such as washrooms, ATM services in US and Canadian funds, and processing of customs paperwork for truckers.
 - Continued to pay the insurance and commercial taxes associated with the building.
 - Kept building maintenance and security current including the costs of washroom repairs.
 - Applied for government programs (CERS, CEWS, HASCAP).
 - Made an insurance claim on the basis of COVID-19 disruptions and, when that claim was denied, joined a class-action lawsuit against our insurer for denying our COVID related business interruption insurance.
12. We have also sought to stabilize PBDF's financial situation by reaching out to suppliers as well as the bank so that PBDF can be in a position to weather the storm and to hit the ground running as things return to normal.
13. We have also maintained connections with key industry players that have contributed to our success in the past (e.g., motor coach companies, etc.).
14. Currently, we are ready to re-open when the Canadian and US governments remove current restrictions that affect traffic flow.
15. We are also monitoring the Peace Bridge crossing as well as other crossings for changes in traffic levels.

C. Where we were before COVID – PBDF delivered on promises

16. Prior to COVID-19, we were delivering on PBDF's long-standing commitment to retail excellence, and we were delivering on the promises made in PBDF's 2016 lease proposal.
17. Since 2016, PBDF has made capital investments of \$7 million in the property.
18. These investments and associated effort have been recognized by our peers as PBDF was awarded the Second-Best Land Border Store in the Americas and a was a finalist for the World's Best Land Border store.
19. Under the 2016 lease, PBDF performance has been as follow:

RENT REPORT							
	Food Sales Revenue	Duty Free Revenue	Total Lease Revenue	Base Rent Paid	Percentage Rent Paid	Total Rent Paid	Effective Rate
2019	829,834	19,182,317	20,012,151	4,000,000	2,673	4,002,673	20.0
2018	614,353	19,312,598	19,926,951	4,000,000	-	4,000,000	20.0
2017	1,102,781	21,108,271	22,211,052	4,000,000	486,431	4,486,431	20.2
Note that Duty-Free store was undergoing renovations from July 2018 to June 2019.							

20. During this period, the traffic levels at the Peace Bridge border crossing were:

PEACE BRIDGE CROSSING TRAFFIC REPORT				
Year	Cars	Trucks	Buses	Total
2019	1,997,609	542,732	10,350	2,550,691
2018	2,080,749	572,119	10,690	2,663,558
2017	2,073,303	580,890	11,791	2,665,984

D. The Plan for Recovery

21. The plan for recovery is simple. We will regrow the business on the basis of our market knowledge and commitment to retail excellence.
22. This plan includes:
 - Re-engaging with our customers through PBDF's loyalty programs and by providing a great shopping experience.
 - Returning to a normal advertising cycle where we highlight our most current offerings and best deals to attract retail traffic.
 - Leveraging our industry and motorcoach connections to increase traffic and revenue.
 - Renewing our industry alliances with our brand suppliers and strategic partners.
23. We have the infrastructure in place to achieve the revenues that we were previously earning on the basis of “normal” traffic levels.
24. It is not a matter of starting over.
25. It is a re-set that will involve a period of time where we ramp-up as traffic levels increase.
26. As is always the case, revenue in the context of a well-run duty-free shop is very much dependent upon traffic levels.

E. The proposal

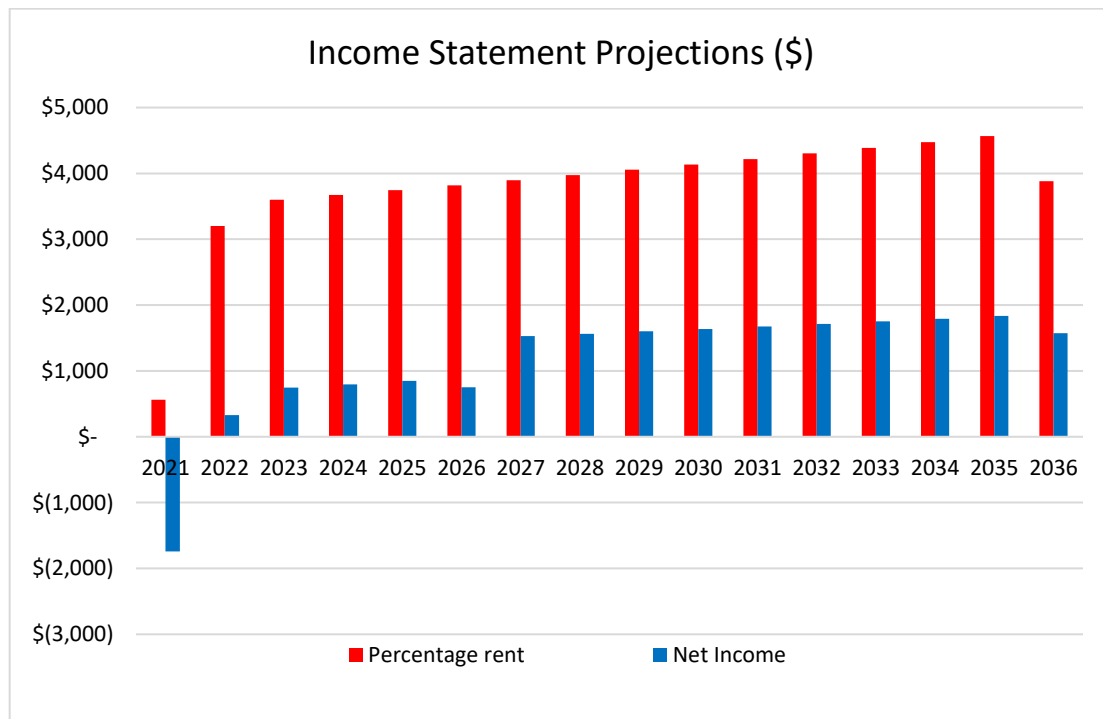
27. To provide a foundation for PBDF's re-opening and plan for recovery, PBDF makes the following proposal for PBA's consideration:

- The duty-free shop will re-open to retail customers.
- PBDF will pay percentage rent of 20% of revenue received.
- Payment of base rent under section 4.02 of the lease that has been accrued will be waived by the PBA and we would move to a percentage rent basis going forward.
- PBDF will continue to cover all the costs associated with its operation as per normal and will continue to adhere to all other provisions under the lease (e.g., building maintenance and security, insurance, taxes, etc.).
- To accommodate and attract a top tier food tenant, it is necessary to charge rent that is competitive for that industry. Simply put, the food industry does not pay rent on the same basis as a duty-free shop as a food tenant does not have to be located adjacent to a border. Having a food tenant in place would help attract business and drive duty-free revenues. The rent paid by the food tenant would be counted as "revenue" for the purposes of PBDF's revenues. However, this rent would have to be competitive for that industry.
- Process all CERS applications.

28. This approach will allow PBDF to operate a business that will generate rent for the PBA and has the potential to be profitable for PBDF.

29. We believe that the viability of the duty-free shop is only possible under the percentage rent scenario.

30. It is our understanding that the percentage-rent approach is common with other duty-free stores.
31. Ultimately, we expect that when traffic levels return to previous levels, PBA will still obtain the \$4m in annual revenues and PBDF would realize Net Income of \$1.5m.
32. On the basis of our detailed projections noted in section F (below), we see rent and net income as trending in the following manner:



33. As can be seen from this chart, PBA will see a return to “normal” rent at a much faster pace than PBDF will see a return to previous net income levels. For example, on the basis of this model and projections, PBA would receive \$3.8M in rent in 2026 and the PBDF would hear \$753K in net income.

F. Financial Information and Projections

Peace Bridge Duty Free Inc.

Income Statement Projections	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2021-36
Sales	2,800	16,000	18,000	18,360	18,727	19,102	19,484	19,873	20,271	20,676	21,090	21,512	21,942	22,381	22,828	19,404	302,450
Margin	1,400	8,000	9,000	9,180	9,364	9,551	9,742	9,937	10,135	10,338	10,545	10,756	10,971	11,190	11,414	9,702	151,225
Expenses																	
Percentage rent	560	3,200	3,600	3,672	3,745	3,820	3,897	3,975	4,054	4,135	4,218	4,302	4,388	4,476	4,566	3,881	60,490
Wages & benefits	820	1,904	2,000	2,040	2,081	2,123	2,165	2,208	2,252	2,298	2,343	2,390	2,438	2,487	2,537	2,114	34,201
Severance estimation	500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	500
RBC Lease payments	819	819	819	819	819	1,000	0	0	0	0	0	0	0	0	0	0	5,095
Insurance	300	300	306	312	318	325	331	338	345	351	359	366	373	380	388	323	5,416
Marketing	60	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	3,810
Bank & C/C fees	41	248	207	211	215	220	224	229	233	238	243	247	252	257	263	219	3,546
Commercial taxes	60	60	61	62	64	65	66	68	69	70	72	73	75	76	78	65	1,083
Other expenses	371	583	595	606	619	631	644	656	670	683	697	710	725	739	754	628	10,309
Total expenses	3,531	7,364	7,838	7,973	8,111	8,433	7,577	7,723	7,873	8,025	8,181	8,339	8,501	8,666	8,835	7,480	124,450
Operating Income	(2,131)	636	1,162	1,207	1,252	1,118	2,165	2,213	2,263	2,313	2,364	2,416	2,470	2,524	2,580	2,222	26,775
Amortization	222	191	152	130	102	100	100	100	100	100	100	100	100	100	100	100	1,898
Income taxes	(612)	116	263	280	299	265	537	549	562	575	589	602	616	630	645	552	6,468
Net Income	(1,741)	330	747	797	851	753	1,528	1,564	1,600	1,638	1,675	1,714	1,754	1,794	1,835	1,570	18,409

Current Lease Cash Flow

<u>Peace Bridge Authority</u>								<u>PBDF Shareholders</u>								
<u>Actual</u>	2016	2017	2018	2019	2020	2021	Total			2016	2017	2018	2019	2020	2021	Total
	(2 mths)					(8 mths)				(2 mths)						
Rent	809	4,486	4,000	4,003	1,000	nil	14,298		Dividends	160	960	960	1,360	160	nil	3,600
Extra Rent	11	86	84	85	104	90	460		Attributable							
									to Ham.	9	55	91	290	100		545
CERS					161		161									
									Div. Attrib.	151	905	869	1,070	60		3,055
CERS 2021									to P.B.							
Basic						338										
Lockdown						169			Cash					-2,299	-960	-3,259
									Expended							
TOTAL							14,919		TOTAL							- 204
<u>Projected</u>	2021	2022	2023	2024	2025	2026				2021	2022	2023	2024	2025	2026	
	(4 mths)															
Rent	560	3,200	3,600	3,672	3,745	3,820	18,597			nil	nil	nil	nil	nil	nil	Nil

This is Exhibit "B" referred to in the Reply Affidavit of Jim Pearce
sworn remotely this 2nd day of December 2022.



Commissioner for Taking Affidavits (or as may be)

Tyler Matthews (*Articling Student*)

Tyler Andrew George Matthews,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 4, 2024.

<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
Aug.	\$1,295,000	\$333,333.33	\$259,000	9/8/2022
Sept.	\$1,185,000	\$333,333.33	\$237,000	10/4/2022
Oct.	\$1,215,000	\$333,333.33	\$243,000	11/1/2022
Nov.	\$980,000	\$333,333.33	\$196,000	12/1/2022

** 4/20/2022 - Rec'd \$18,545.66 (CERS - Jan. 16 thru Feb. 12, 2022)*

This is Exhibit "C" referred to in the Reply Affidavit of Jim Pearce
sworn remotely this 2nd day of December 2022.



Commissioner for Taking Affidavits (or as may be)

Tyler Matthews (*Articling Student*)

**Tyler Andrew George Matthews,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 4, 2024.**

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE)	DAY OF MONTH, 20YR

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF [APPLICANT'S NAME] (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME]¹ although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor,

¹ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Affidavit of [NAME]

² If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

³ This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed **[or resiliated]**⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, **[and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate]**⁵

⁴ The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

⁵ Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

- (b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate];** and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including [DATE – MAX. 30 DAYS], or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

16. THIS COURT ORDERS that during the Stay Period, 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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

⁶ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that [MONITOR'S NAME] is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of 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 the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

30. 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.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [38] and [40] hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate

purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.

34. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the

Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

First – Administration Charge (to the maximum amount of \$●);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$●).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent

⁹ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. 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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

46. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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

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

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. 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 Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and 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.

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Court File No. CV-21-00673084-00CL
PEACE BRIDGE DUTY FREE INC.

ROYAL BANK OF CANADA

and

Applicant

Respondent

Email address of recipient: See Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

AFFIDAVIT OF JIM PEARCE

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Lawyers for the Respondent

TAB 17

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 BEN MILLS IN SUPPORT OF RESPONDENT'S CROSS-MOTION

I, **Ben Mills**, of the City of Ottawa, in the Province of Ontario, **AFFIRM AND SAY THAT:**

1. I am a lawyer with the law firm Conlin Bedard LLP. I acted for Peace Bridge Duty Free Inc. ("**Duty Free**") in relation to its negotiations with the Buffalo and Fort Erie Public Bridge Authority ("**Authority**") that resulted in a building lease dated July 28th, 2016 ("**Lease**"). 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 state the source of my information and belief, and, in all such cases, believe it to be true.

2. Capitalized terms not defined in this affidavit have the same meaning as in the Lease.

The Lease and Duty Free's concerns about reduced bridge traffic impacting its business

3. Duty Free's business is premised on the Peace Bridge and the Canada-US border being open and there being sufficient traffic crossing the border to generate sales revenues to cover expenses, the most significant of which is Base Rent. Duty Free premised its bid for the Lease RFP on the basis of border traffic being consistent with the levels indicated in the Authority's RFP materials, and in particular the responses to questions 12 and 13 the RFP Questions and Answers. Attached as **Exhibits "A"** and **"B"** are the RFP Questions and Answers dated April 12th, 2016 and Appendix E of the RFP.

4. The minimum Base Rent payable under the Lease was predicated on expected sales, which were in turn dependent on traffic over the Peace Bridge. Duty Free recognized that it was taking a business risk with respect to its ability to extract revenue from the expected traffic flow that was crossing the Peace Bridge. However, in light of the obligation to pay minimum Base Rent, Duty Free was concerned about risks that could affect that traffic flow that were outside of its control.

5. Prior to executing the Lease, both parties recognized that an interruption at the Peace Bridge and/or changes in laws or regulations would impact Duty Free's sales, and could impact Duty Free's business and its ability to meet the requirement to pay the minimum Base Rent as set out in the Lease. However, the parties disagreed on how to address the issue of loss of sales by reason of the actions or omissions of third parties outside the influence or control of Duty Free.

6. In July 2016, Jim Pearce and Greg O'Hara on behalf of Duty Free met with representatives of the Authority, including Ron Rienas and Karen Costa, to discuss Duty Free's concerns regarding the potential of an interruption in normal bridge traffic that materially impacts Duty Free's business. I know this as Messrs. Pearce and O'Hara and I were in communication regarding these

discussions and how to best present Duty Free's concerns. I also had discussions with the Authority's lawyer, Graham Darling of Gowlings.

7. Because its revenues are directly tied to bridge traffic, Duty Free wanted to include in the Lease provisions regarding fluctuations in traffic levels on the bridge that would provide it some comfort that it would have sufficient business to pay minimum Base Rent due under the Lease and also wanted to include a provision that would address catastrophic events or changes in law.

8. With respect to changes in law, it is important to recognize that Duty Free's revenue are directly tied to the ability of traffic to cross the border and is directly tied to its ability to sell products duty-free, both of which are controlled by unique laws and regulations. The Authority refused to guarantee minimum traffic flows, but, on the basis of the correspondence noted below, recognized that there were circumstances involving unexpected events outside Duty Free's control that could impact Duty Free's ability to generate revenue and, in turn would require changes to the Lease, which would include adjustments to minimum Base Rent.

The addition of 18.07 is to address rental adjustments in the event of changes in Applicable Laws that cause a material adverse effect on Duty Free's business operations

9. Subsection 18.07 was not included in the original draft form of lease included by the Authority as part of the RFP process.

10. Rather, it was specifically added later during Lease negotiations as the factual matrix evolved based on concerns raised by Duty Free about its ability to pay minimum Base Rent in the event of a change in laws or regulations and/or any kind of bridge closure/partial closure that materially affected its business. Duty Free also sought to include rent abatements due to general

declines in annual vehicle traffic volume; but the Authority was not receptive to providing relief for that issue in the Lease.

11. In the same vein, the parties also considered how scheduled bridge refurbishment could impact travel and, thus, Duty Free's ability to generate revenue to cover Base Rent. However, I understand that this was addressed by there being a change to the remedial work (or at least to Duty Free's understanding of what remedial work was required) such that it no longer was seen as having an impact on bridge traffic.

12. Attached as **Exhibits "C" and "D"** respectively are the version of the lease provided as part of the RFP process and the final executed version of the Lease.

13. During the discussions between Duty Free and the Authority in mid-July 2016, Duty Free circulated to the Authority a number of proposed concerns and/or proposed revisions to the form of lease. Specifically, I am advised by Jim Pearce that he met with the Authority's representatives on July 18th, 2016 and provided a handout that included several issues Duty Free wanted to be addressed by the Authority before finalizing the Lease. These included the following:

Business disruption due to bridge closure-

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. **The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance.** For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. \$4,000,000 / 365 days).

...

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

- possible sharing the subsidizing of the rents payable by the Food Concessions

- insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- In the event that during the Term and should it be necessary, that issues arise (**something catastrophic**) **beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).** [emphasis added]

14. Attached as **Exhibit "E"** is a copy of the handout from the July 18th, 2016 meeting with Jim Pearce's handwritten notes.

15. I understand from Jim Pearce that the Authority was generally receptive to the concerns raised by Duty Free and there was agreement in principle that an interruption at the Peace Bridge and/or changes in regulations could impact sales such that the minimum Base Rent would need to be modified. However, the Authority was of the view that a number of the potential sources of disruption that were being discussed would be covered by business interruption insurance. The Authority did not want to include language in the Lease that could pre-empt recovery under business interruption insurance. Also, I understand from Jim Pearce that the Authority would not agree to any language that specified the quantum of minimum Base Rent abatement for what the Authority believed was an insurable risk.

16. Nonetheless, the Authority recognized that changes in Applicable Law could have a significant impact on Duty Free's ability to generate revenue to pay the Base Rent. As such, the Authority was agreeable to including subsection 18.07 in the Lease. The intended purpose of 18.07 was to provide a "safety valve" and create a basis on which the parties, acting reasonably, would engage in good faith negotiations to determine what adjustments needed to be made to the Lease to address any specific changes in Applicable Law. In terms of traffic volume decline caused

by changes in Applicable Laws that result in materially reduced Gross Sales, 18.07 was intended to prompt negotiations to adjust Rent in a way that was reasonable and proportionate to the magnitude of the effect of the change in Applicable Laws.

17. If, for example, tobacco products were no longer duty free, then there would have to be an adjustment to Base Rent as a primary revenue source is taken out. If the situation is one where the change has an immediate effect to decrease revenues but, with adjustments, revenues might expect to increase over time as adjustments are made, then the abatement would be formulated to allow for an incremental return to normal/expected rent levels as revenues increase.

18. On July 19th, 2016, the day after meeting with Jim Pearce and receiving his handout, Karen Costa, on behalf of the Authority, wrote to Duty Free's representatives (copying Ron Rienas) attaching the final version of the Lease. Attached as **Exhibit "F"** to this affidavit is a copy of Ms. Costa's July 19th, 2016 email.

19. In her July 19th, 2016 email, Ms. Costa noted that:

We reviewed the additional requests from yesterday and have accommodated the majority of your requests. There are a few, upon advice from counsel, that we will not consider.

...

Business disruption due to bridge closure - the lease requires you to insure for the risk of business interruption (Section XI). Your broker should ensure you have the proper coverage for this risk. **We will not include any rent abatement for an insurable risk.**

...

You have also requested we have further discussions on the following topics:

...

3. **Lease discussion in the event of a catastrophic event** - we reviewed the examples listed as catastrophic. **We agree that**

changes in governmental regulations could materially impact the business and have added section 18.07 to the lease. All other events listed were are routine events at a border crossing.
[emphasis added]

20. In this email, Ms. Costa is confirming that subsection 18.07 was included in the Lease to address a situation where changes to governmental regulations that could materially impact the business and, thus, trigger the need for good faith adjustments to Duty Free's Rent to address the impact the regulatory changes are having on the business. In her email, Ms. Costa is pointing to subsection 18.07 in response to, and as a solution to, some of the concerns outlined in Jim Pearce's July 18th, 2016 handout.

21. Subsection 18.07 of the Lease was solely for Duty Free's protection and was to address a change in Applicable Laws that would prevent it from generating any or sufficient revenue to pay for minimum Base Rent.

22. I am advised by Jim Pearce PBA never raised the question of personal guarantees, and that doing so would be a "red line" Duty Free would not cross.

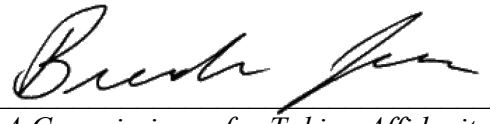
23. I do not recall there ever being any discussion or suggestion that the Authority would demand personal guarantees from the principals of Duty Free as a concession for the rent abatement contemplated by subsection 18.07. I expect that I would recall any such discussion as the Lease, as presented by the Authority, did not include a requirement for any personal guarantees and the inclusion of personal guarantees would have been a significant change.

24. I swear this affidavit to provide the factual matrix, including the discussions between the parties, that led to the execution of the Lease, and specifically with respect to subsection 18.07.

SWORN (OR AFFIRMED) remotely)
 by way of video conference by Ben)
 Mills stated as being located in the)
 City of Ottawa, in the Province of)
 Ontario, before Brendan Jones)
 being in the City of Toronto, in the)
 Province of Ontario on this 1st day of)
 January, 2023, in accordance with)
 O.Reg. 431/20, Administering the Oath)
 or Declaration remotely.)



BEN MILLS



A Commissioner for Taking Affidavits,
BRENDAN JONES

THIS IS **EXHIBIT "A"** TO
THE AFFIDAVIT OF **BEN MILLS**
SWORN REMOTELY by Ben Mills being located in the
City of Ottawa, in the Province of Ontario, before me at
the City of Toronto, in the Province of Ontario, on
January 1st, 2023, in accordance with O.Reg 431/20,
administering Oath or Declaration Remotely



Commissioner, etc.



In accordance with Section IIIc) of the Request for Proposals for a Canadian Duty Free Store Operator, the following questions were received and answered.

1. Is this tender subject to the land border rules insisting on beneficial Canadian ownership or may foreign nationals submit bids?

All Proponents must demonstrate their ability to obtain, and the selected Proponent must obtain, a license to operate a Duty Free Shop in Canada pursuant to CBSA licensing requirements. These requirements are found on the CBSA website (a portion of which is reproduced below). The Authority cannot answer any questions pertaining to CBSA's licensing process.

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-1072/page-1.html#h-4>

“PART I

Licensing of Duty Free Shops

Issuance of Licence

- **3 (1)** *For the purposes of section 24 of the Act and subject to subsection (6), a licence may be issued to any qualified person who makes an application in accordance with subsection (2) and who gives the security required under section 4.*
- **(2)** *The person shall submit the application for a licence in the prescribed form to the Commissioner.*
- **(3)** *A corporation is qualified to operate a duty free shop at a border crossing point if
 - **(a)** *the corporation is incorporated in Canada;*
 - **(b)** *all the shares of the corporation are beneficially owned by
 - **(i)** *a Canadian citizen or permanent resident,*
 - **(ii)** *another corporation that is incorporated in Canada all of whose shares are beneficially owned by a Canadian citizen or permanent resident, or*
 - **(iii)** *both a Canadian citizen or permanent resident and that other corporation; and***

- *(c) the Canadian citizen or permanent resident referred to in paragraph (b)*
 - *(i) is of good character,*
 - *(ii) maintains their principal residence in Canada, and*
 - *(iii) resided in Canada for at least 183 days of the year before the year in which the corporation makes the application for the licence.*
- *(4) A person other than a corporation is qualified to operate a duty free shop at a border crossing point if the person*
 - *(a) is a Canadian citizen or a permanent resident;*
 - *(b) is of good character;*
 - *(c) maintains his principal residence in Canada; and*
 - *(d) resided in Canada for at least 183 days of the year preceding the year in which the person makes the application for the licence.*
- *(5) A person is qualified to operate a duty free shop at an airport or at a border crossing point if the person has been granted a lease or other right to occupy the place proposed as the duty free shop.*
- *(6) The Minister shall not issue a licence to an applicant unless*
 - *(a) the applicant meets the qualifications referred to in subsection (3) or (4) and subsection (5) in the case of a duty free shop at a border crossing point, or subsection (5) in the case of a duty free shop at an airport;*
 - *(b) [Repealed, SOR/96-153, s. 2]*
 - *(c) the applicant has sufficient financial resources to enable him to lease or purchase the place proposed to be operated as a duty free shop;*
 - *(d) the applicant has sufficient financial resources to enable him to provide the facilities, equipment and personnel required under these Regulations;*
 - *(e) an adequate range of goods is not available in, or adequate service is not provided by, any duty free shop already located in the area in which the proposed duty free shop is to be located;*

- *(f) the establishment of a duty free shop will not impede the flow of traffic in the vicinity in which the proposed duty free shop is to be located; and*
- *(g) the Agency is able to provide customs services with respect to the proposed duty free shop.”*

2. Does the Buffalo & Fort Erie Public Bridge Authority expect lease payments to be paid by the successful proponent regardless of whether said proponent has a Duty Free Shop license?

All lease payments are expected to commence in conjunction with the commencement date of the Lease with the successful Proponent. The RFP process is designed to allow the Authority to determine the best value operator. Upon selection of the preferred operator the onus is solely on that preferred operator to produce a license issued by CBSA.

3. Are the fixtures and furnishings (i.e., racking, millwork, furniture) owned by the current Duty Free tenant?

The Authority does not own the fixtures and furnishings in the current duty free store. It is unknown to the Authority as to what entity owns the fixtures and furniture in the duty free store.

4. On November 1, 2016, will the fixtures and furnishing that remain on-site become the property of the successful proponent?

Based on the existing Lease, any free standing equipment, counters and display cases not removed from the premises by the current tenant within 10 days following the expiration of the lease become property of the Authority (as Landlord).

5. Can you please provide a cost and breakdown of any additional services and any other assessments over and above the rent payments and property tax charged by the Buffalo & Fort Erie Public Bridge Authority to the current tenant for the past 3 years?

The current lease requires that an annual marketing grant be paid to the Authority in the amount of approximately \$135,000.

6. How are the property taxes allocated to the Leased Premises? Is there a separate assessment? There are two methods stated in the RFP for property tax calculations. Which method is currently utilized?

Currently, the property taxes are allocated to the Leased Premises based on an assessment of all Authority property provided by MPAC. There is currently no separate assessment provided by MPAC for the Leased Premises. The methodology used by MPAC is “cost”.

7. Does the Landlord have any repair or replacement obligations with respect to the building or lands comprising the Leased Premises?

Landlord obligations related to repairs or replacements are as described in Appendix A of the RFP.

8. Given that the Landlord insures the building and the Tenant is required to pay for the Landlord's insurance, who performs major repairs and replacements in the event of damage to the building? If the landlord is not responsible for the repairs, how does the tenant receive the insurance proceeds to effect the repairs?

Parties responsible for major repairs and replacements are as stated in Appendix A of the RFP. All requirements as to insurance and use of proceeds is also as stated in Appendix A.

9. What were the Landlord's Operating Costs charged to the Tenant under the lease in recent years? What were the Operating Costs comprised of? If there is a change in Operating Costs obligations for the Selected Proponent from the current tenancy agreement, what are the historical and/or anticipated Operating Expenses associated with that?

There have been no Landlord Operating Costs charged to the tenant in the past 3 years. Tenant is responsible for all Operating Costs. Any Landlord Operating Costs would be as indicated in Appendix A of the RFP.

10. What is the current environmental condition of the lands and building comprising the Leased Premises?

There are no known environmental conditions and no environmental orders filed against the Leased Premises. Section 10.06 of Appendix A states that the Authority expressly releases the tenant from any environmental liability for any pre-existing contaminants as of the commencement date of the lease.

11. During the RFP process, is there anything preventing potential Proponents from approaching the current sub-tenants with respect to continuance of their services after October 31, 2016, should the Selected Proponent differ from the current tenant? This would refer to any provisions or terms in any agreements between the Landlord and the Tenant and the Tenant and the Sub-Tenants.

The Authority is not a party to Tenant-Sub Tenant agreements and cannot provide an answer to this question.

- 12. Appendix E of the RFP states that “annual duty free sales volumes during the past five (5) years have been in the range of \$20,000,000 - \$25,000,000.” Can the Bridge Authority clarify and confirm that the term “annual duty free sales volume” includes only retail sales from the operations, including the sales at the sub-tenant restaurants, can the Bridge Authority please provide more specific figures with respect to the volume of retail sales between duty free operations and sub-tenant restaurant operations?**

The term “annual duty free sales volumes” as included in Appendix E are the annual gross sales as defined in Appendix A of the RFP, Section 2.01 (rr).

- 13. It is not clear whether the traffic volumes noted on Page 5 of the RFP and in Appendix E represent both US to Canada as well as Canada to US traffic flows. As only Canada to US travelers are able to access the duty free plaza, can the Bridge Authority please clarify and confirm the Canada to US traffic figures – as this will give a more accurate picture of the volume of traveler traffic that is able to access the duty free plaza.**

Total traffic volumes included as Appendix E provides the scope of total vehicular traffic volume on the Peace Bridge, as the store is highly visible to traffic in both directions. Below is the breakout of the Canada to US vehicular traffic volumes for the historical periods originally provided.

Year	US Bound Volume		Yearly Average
	Passenger	Commercial	USD Exchange Rate
2010	2,374,962	642,462	1.031
2011	2,386,641	665,579	0.990
2012	2,369,772	671,759	1.000
2013	2,305,251	650,162	1.030
2014	2,163,780	650,711	1.100
2015	2,069,120	639,996	1.280

- 14. Page 5 of the RFP states that there is over 28,000 sf of retail space at the current duty free store. Yet, the store plans that are attached as Appendix H to the RFP indicate that while the building has a total area of over 28,000 sf there is only approximately 14,000 sf of retail space. According to the store plans in Appendix H, the remaining space appears to be for upstairs office space, warehouse, tenant space, food court and common area. Can the Bridge authority please clarify and confirm the total square footage of retail space?**

Total rentable square footage of the Leased Premises is 28,000 sf. Utilization of space within the Leased Premises rests with the tenant. Appendix H represents the current configuration of the Leased Premises.

THIS IS **EXHIBIT "B"** TO
THE AFFIDAVIT OF **BEN MILLS**
SWORN REMOTELY by Ben Mills being located in the
City of Ottawa, in the Province of Ontario, before me at
the City of Toronto, in the Province of Ontario, on
January 1st, 2023, in accordance with O.Reg 431/20,
administering Oath or Declaration Remotely

A handwritten signature in black ink, appearing to read 'Bruce Lee', is written over a horizontal line.

Commissioner, etc.

Appendix E

Historical Traffic Information

Below is the historical traffic for the past five (5) years at the Peace Bridge

Year	Volume		Yearly Average
	Passenger	Commercial	USD Exchange Rate
2010	4,768,254	1,249,471	1.031
2011	4,772,064	1,284,934	0.990
2012	4,747,023	1,295,595	1.000
2013	4,653,634	1,274,252	1.030
2014	4,340,338	1,277,645	1.100
2015	4,155,935	1,254,312	1.280

Historically, annual duty free sales volumes during the past five (5) years have been in the range of \$20,000,000 - \$25,000,000.

THIS IS **EXHIBIT "C"** TO
THE AFFIDAVIT OF **BEN MILLS SWORN REMOTELY**
by Ben Mills being located in the City of Ottawa, in the
Province of Ontario, before me at the City of Toronto, in
the Province of Ontario, on January 1st, 2023, in
accordance with O.Reg 431/20, administering Oath or
Declaration Remotely



Commissioner, etc.

1720
APPENDIX A

BUILDING LEASE

BETWEEN

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

- AND -

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DRAFT

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SCHEDULES :

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

SCHEDULE "B"

PLAN OF LEASED PREMISES

SCHEDULE "C"

RULES AND REGULATIONS

THIS LEASE is dated as of the ● day of ●, 20●.

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:

●
(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:

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: \$500,000.

(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) **“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.
- (t) **“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.
- (u) **“Landlord”** means the party named in Section 1.01(a) and all successors and assigns of such party.
- (v) **“Lands”** means the lands more particularly described in Schedule “A”.
- (w) **“Leased Premises”** means collectively the Building and the portion of the Lands as identified in Schedule “B”.
- (x) **“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.
- (y) **“Letter of Credit”** means the letter of credit described in Section 4.06.
- (z) **“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.

- (aa) **"Mortgage"** means any mortgage or other security against the Leased Premises or the Landlord's interest in this Lease, from time to time.
- (bb) **"Mortgagee"** means the holder of any Mortgage from time to time.
- (cc) **"Operating Costs"** has the meaning ascribed to that term in Section 6.04.
- (dd) **"Percentage Rent"** means the percentage rent payable by the Tenant and described in Section 4.03
- (ee) **"Permitted Use"** means the operation of a duty free shop and related services (such as banking and travel related services).
- (ff) **"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.
- (gg) **"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".
- (hh) **"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.
- (ii) **"Release"** means, in respect of Contaminants, without limitation, a spill, leak, disposal, dumping, pumping, pouring, emission, emptying, discharge, deposit, injection, escape, release or leaching.
- (jj) **"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.
- (kk) **"Rent"** means collectively the Base Rent, Percentage Rent and Additional Rent payable under this Lease.

- (ll) **“Rental Year”** means a period of time, the first Rental Year of the Term commencing on the Commencement Date, and ending on the last day of the month of December next following. 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.
- (mm) **“Rules and Regulations”** means the rules and regulations promulgated by the Landlord from time to time pursuant to the terms of this Lease.
- (nn) **“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.
- (oo) **“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.
- (pp) **“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.
- (qq) **“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.
- (rr) **“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. 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 (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; and
- (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.

(ss) **"Term"** means the period of time set out in Section 1.01(d).

(tt) **"Termination Date"** means the date set out in Section 1.01(f).

(uu) **"Transfer"** has the meaning ascribed to that term in Section 14.01.

(vv) **"Transferee"** has the meaning ascribed to that term in Section 14.01.

(ww) **"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 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 \$2,500,000. The Base Rent for the second and each succeeding year of the Lease shall be the greater of: (i) the Base Rent paid in the immediately preceding year of the Lease; and (ii) seventy-five percent (75%) of the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately preceding year of the Lease.

4.03 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, _____ percent (____%) of 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 together with all applicable taxes, to the Landlord as Percentage Rent.

The Tenant covenants and agrees with the Landlord that if, during any month (including any broken calendar month) of the Extension Term of the Lease, _____ percent (____%) of 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 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.

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 (the "**Letter of Credit**") in favour of Landlord issued by a Schedule 1 Canadian chartered bank in the amount of \$500,000.00, 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 \$500,000 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 fifth (5th) 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(rr) (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 thirty (30) 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.

5.03 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.

5.04 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.

5.05 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. 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 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.

5.06 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 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 Article 7.5.

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;
- (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; and
- (n) 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 whose labour union affiliations are compatible with others employed by the Landlord and its contractors, 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 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.

12.09 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.

12.10 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. 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 13.02, 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).

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, but will not be liable for any damages, whether direct, indirect or consequential, to any Person or property in respect of any temporary interference with or denial of access during the performance of such work, or in any other way in respect of the performance of such work, or for failure to perform 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 and the Indemnifier 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 and the Indemnifier shall provide the Landlord with their respective most recent 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 and the Indemnifier.
- (c) The Tenant agrees to provide to the Landlord prompt notice of any impending financial difficulties of it or the Indemnifier 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 whether or not written notice of the failure is given from the Landlord to the Tenant;
- (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 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: _____
Title: _____

Per _____
Name: _____
Title: _____

I/We have authority to bind the Compact

● **TENANT**

Per _____
Name: _____
Title: _____

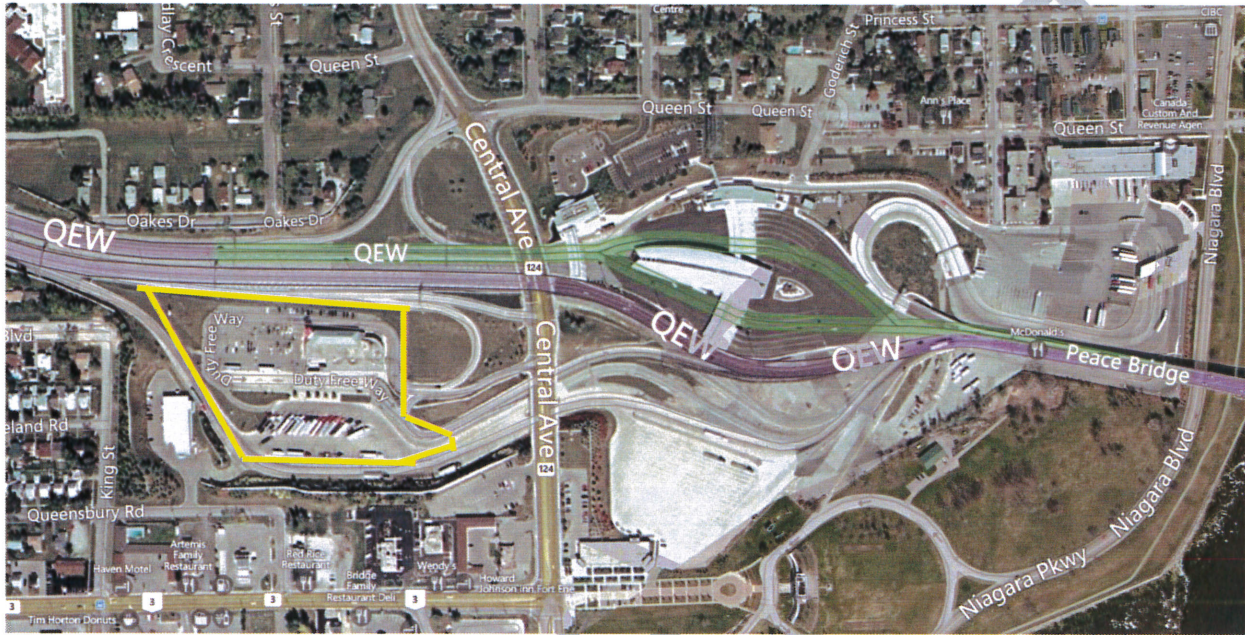
I have the authority to bind the Corporation

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.

THIS IS **EXHIBIT "D"** TO
THE AFFIDAVIT OF **BEN MILLS**
SWORN REMOTELY by Ben Mills being located in the
City of Ottawa, in the Province of Ontario, before me at
the City of Toronto, in the Province of Ontario, on
January 1st, 2023, in accordance with O.Reg 431/20,
administering Oath or Declaration Remotely



Commissioner, etc.

BUILDING LEASE

BETWEEN

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

- AND -

PEACE BRIDGE DUTY FREE INC.

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SCHEDULE "B"	PLAN OF LEASED PREMISES
SCHEDULE "C"	RULES AND REGULATIONS
SCHEDULE "D"	TENANT'S PROPOSAL

THIS LEASE is dated as of the ● day of ●, 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:
Title:

Per _____
Name:
Title:

I/We have authority to bind the Compact
PEACE BRIDGE DUTY FREE INC.

Per _____
Name:
Title:

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)

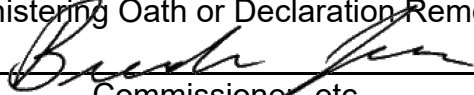
**SCHEDULE “B”
LEASED PREMISES PLAN**

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

THIS IS **EXHIBIT "E"** TO
THE AFFIDAVIT OF by **BEN MILLS**
SWORN REMOTELY by Ben Mills being located in the
City of Ottawa, in the Province of Ontario, before me at
the City of Toronto, in the Province of Ontario, on
January 1st, 2023, in accordance with O.Reg 431/20,
administering Oath or Declaration Remotely



Commissioner, etc.

Clarity items

2.01 (ss) Tenant's Gross Sales - as an example, hotel reservations for Erie PA are a great marketing draw and currently we don't process but may be a possibility

✓ - add Travel Services - "Ticket Sales and Travel Services"

✓ (iii) to clarify so not to include non-sales or service items such as investment income, etc

- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises..."

4.03 Percentage Rent

✓ - for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown

✓ - suggested - "the calculation of Accumulated YTD Percentage Rent exceeds the Accumulated YTD Monthly Base rent for the same period, then the Tenant will pay....." ✓

Art 5 Financial Information - the traffic counts are extremely important to our marketing and decision-making

✓ - add - continue to receive the daily bridge traffic counts

5.05 Audit

✓ - add "auditor chosen to be professional, independent and acting reasonably"

5.06 Confidentiality

✓ - add - "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential)"

yes
OK Schedule "B" - is this for a map of the Leased Premises ?

OK
No Schedule "D" - in addition to our proposal add a copy of the RFP ?

✓ Schedule "E" - would like deleted - will have a proper legal document sent to PBA asap and any future changes we acknowledge we will get consent and are obligated to report
- concern is this shouldn't be part of the lease as others (outside parties) may seek or need access to the lease and this may become more public that we desire

Typo's - 8.02 - no "Art 7.5"
14.01 - "13.02" s/b "14.02"

Jim PearceExplanations

6.04 (f) - *include normal wages + costs*
support documentation of costs

15.04 Roof Rights - add subject to the Tenant's right of quiet enjoyment

15.05 - Solar Panels - yes agree but delete second sentence

Business disruption due to bridge closure -

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. \$4,000,000 / 365 days).

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

- possible sharing the subsidizing of the rents payable by the Food Concessions

- insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- in the event that during the Term and should it be necessary, that issues arise (something catastrophic) beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

THIS IS **EXHIBIT "F"** TO
THE AFFIDAVIT OF **BEN MILLS**
SWORN REMOTELY by Ben Mills being located in the
City of Ottawa, in the Province of Ontario, before me at
the City of Toronto, in the Province of Ontario, on
January 1st, 2023, in accordance with O.Reg 431/20,
administering Oath or Declaration Remotely



Commissioner, etc.

From: [Jim Pearce](#)
To: [Ben Mills](#)
Subject: FW: PBDF Lease
Date: July 19, 2016 11:53:16 AM
Attachments: [Duty Free Shop Building Lease-EDC LAW-1389402-v18B.PDF](#)
[Duty Free Shop Building Lease-EDC LAW-1389402-v18.pdf](#)
Importance: High

From: Karen L. Costa [<mailto:klc@peacebridge.com>]
 Sent: Tuesday, July 19, 2016 11:47 AM
 To: JIM PEARCE;jimp9999@gmail.com
 Cc: Karen L. Costa;Ron Rienas
 Subject: PBDF Lease
 Importance: High

Hi Jim –

Please find attached a redlined (18B) copy and a clean copy of the Lease (18).

We reviewed the additional requests from yesterday and have accommodated the majority of your requests. There are a few, upon advice from counsel, that we will not consider.

- 15.04 – Roof Rights and quiet enjoyment. There is a quiet enjoyment clause in the lease. That is sufficient.

- Schedule D – it is not appropriate to include the actual RFP as an attachment to the lease. Your Proposal is included as a reference to the lease as the representations made in the Proposal were the basis for your group being selected as the successful Proponent. Including your Proposal as a Schedule to the lease provides assurance that the representations will be carried out.

- Business disruption due to bridge closure – the lease requires you to insure for the risk of business interruption (Section XI). Your broker should ensure you have the proper coverage for this risk. We will not include any rent abatement for an insurable risk.

You have also requested we have further discussions on the following topics:

1. Possible sharing the subsidizing of the rents payable by the food concessions – their gross sales are to be included in the calculation of Tenant Gross Sales as defined in Section 2.01 (ss)

2. Insurance clauses – we have agreed to have our insurance broker meet with you insurance broker so that they can help determine the proper insurance is carried. All insurance coverages will comply to the lease Section XI as it is currently written.

3. Lease discussion in the event of a catastrophic event – we reviewed the examples listed as catastrophic. We agree that changes in governmental regulations could materially impact the business and have added section 18.07 to the lease. All other events listed were are routine events at a border crossing.

Jim, we very much would like to get this wrapped up in the next few days so that the motion to approve the lease can be brought to our July board meeting. This will ensure that we are complying with the 30 day negotiation period as defined in the RFP. The 30 day period ends this week. In your proposal your group clearly indicated that you accepted the form of lease in the RFP as is with no changes. This fact was considered in the scoring of your proposal. The PBA has acted in good faith in considering your requests and has agreed to the vast majority of them. We consider our negotiations complete and the attached lease to be the final version.

I hope that your group can agree to execute the lease so that we can move forward for another 20 years.

Thanks!

Karen

Karen L. Costa, CPA

Finance Manager
Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213

klc@peacebridge.com <<mailto:klc@peacebridge.com>> | T 905-994-3679 | T 716-884-8638 | F 905-871-9940 | F 716-884-2089

For up to the hour traffic conditions, visit mobile.peacebridge.com <<http://mobile.peacebridge.com>>

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